



CITY COUNCIL AGENDA REPORT

MEETING DATE: December 4, 2007

ITEM NUMBER: VIII-2

SUBJECT: ORDINANCE AMENDING CHAPTER 1 OF TITLE 19 RELATING TO PEG ACCESS CHANNEL FEE

DATE: November 21, 2007

FROM: City Attorney's Office

PRESENTATION BY: Kimberly Hall Barlow, City Attorney

FOR FURTHER INFORMATION CONTACT: Kimberly Hall Barlow (714) 754-5399

RECOMMENDATION:

Give second reading and adopt the attached Ordinance Amending Chapter I of Title 19 relating to state-issued video franchises and the public, education and governmental (PEG) access channel fee.

BACKGROUND:

Effective January 1, 2007, the state of California enacted the Digital Infrastructure and Video Competition Act of 2006 (the "Act"), (Public Utilities Code §5800 *et seq.*), to encourage competition in the cable and video service sector. The Costa Mesa Municipal Code does not currently require video providers holding a state issued franchise to pay a one percent (1%) fee to support, public, educational and governmental (PEG) access channel facilities, but does require such a fee be paid by its local franchisee. The Act requires that all franchise holders, local or state-issued be treated the same, and permits local agencies to require state-issued franchisees to pay the same PEG fees which are paid by local franchisees. At its regular meeting on November 20, 2007, City Council gave first reading to the proposed ordinance.

DISCUSSION:

If a new cable or video service provider possesses a state-issued franchise, it may construct infrastructure within the City and offer video services without a City franchise. The City's incumbent cable operator and/or video service provider (Time Warner) may then be able to obtain a state issued franchise. Under the Act, the City may establish a one percent (1%) fee on holders of state-issued franchises to support PEG access channel facilities. As previously discussed, PEG fees currently provide approximately \$150,000 annually to fund government, educational and public access channel services. If the proposed ordinance is not adopted, the City will likely face a reduction in PEG fee revenue.

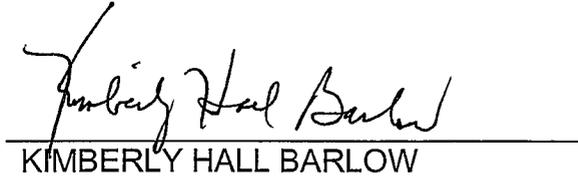
CONCLUSION:

The proposed ordinance is intended to preserve an important source of fee revenue to support PEG activities. The City Attorney recommends that City Council adopt the ordinance.



ALLAN L. ROEDER

City Manager



KIMBERLY HALL BARLOW

City Attorney

DISTRIBUTION: City Manager

ATTACHMENTS: 1 Ordinance

ORDINANCE NO. 07-

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COSTA MESA AMENDING CHAPTER I OF TITLE 19 OF THE COSTA MESA MUNICIPAL CODE RELATING TO STATE-ISSUED FRANCHISES AND THE PUBLIC, EDUCATIONAL AND GOVERNMENTAL CHANNEL ACCESS FACILITY FEE.

WHEREAS, the State of California has enacted the Digital Infrastructure and Video Competition Act of 2006 (the "Act", Public Utilities Code §5800 *et seq.*) to encourage competition in the cable and video service sector; and

WHEREAS, the Act allows incumbent as well as new providers of cable and video services to voluntarily participate in a state-issued franchise authorization process, thereby preempting existing local franchise agreements; and

WHEREAS, pursuant to the Act, local entities may, by ordinance, impose a fee to support public, educational and governmental (PEG) access channel facilities; and

WHEREAS, imposition of the fee to support PEG access channel facilities as allowed by state law is necessary in order to satisfy local needs and deliver enhanced government services.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF COSTA MESA DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Chapter I of Title 19 of the Costa Mesa Municipal Code is hereby amended as follows:

Sec. 19-05. Franchise terms and conditions.

(B) *Franchise required.* It is unlawful for any person to construct, install, or operate a cable television system or any video system within any street or public way in the city without first obtaining either a franchise with the state of California pursuant to the Digital Infrastructure and Video Competition Act of 2006 or a franchise under the provisions of this article.

Sec. 19-09. Application required.

(A) Before commencing the delivery of video programming services to consumers in the city over any open video system, the open video system operator must either possess a state issued franchise pursuant to the Digital Infrastructure and Video Competition Act of 2006 or file an application with the city. That application must include or be accompanied by the following, as applicable:

....

Sec. 19-11. Agreement required.

(A) No video programming services may be provided in the city by an open video system operator unless the operator has obtained a state issued franchise pursuant to the Digital Infrastructure and Video Competition Act of 2006 or the operator and the city have executed a written agreement setting forth the terms and conditions under which the operation of the proposed open video system will be authorized by the city.

Sec. 19-16. Defined terms and phrases.

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“Video programming provider” means any person or group of persons who has the right under the federal copyright laws to select and to contract for the carriage of specific video programming on any cable or open video system.

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ARTICLE 6. PUBLIC, EDUCATIONAL AND GOVERNMENTAL (PEG) ACCESS CHANNEL FEE

Sec. 19-17. Public, educational and governmental (PEG) access channel fee.

Any video service provider, cable service or open video system service provider holding a state issued franchise pursuant to the Digital Infrastructure and Video Competition Act of 2006 (the “Act,” Public Utilities Code § 5800 *et seq.*) or a City of Costa Mesa franchise shall be subject to a fee, which shall not exceed one percent (1%) of the holder’s gross revenues as defined in Public Utilities Code section 5860 or any subsequent amendment thereof. The fee shall be used to support public, educational and governmental (PEG) channel activities.

The PEG fee required to be paid by this section shall be remitted to the City within forty five (45) days after the end of the fiscal year for which the fee is being paid, regardless of when during the fiscal year video services commenced being offered in the City. Each payment shall be accompanied by a summary explaining the basis for the calculation of the PEG fee. If the video service provider does not pay the PEG fee when due, the video service provider 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 video service provider has overpaid its PEG fee, it may deduct the overpayment from its next annual payment.

ARTICLE 6.7. VIOLATIONS; SEVERABILITY

Sec. 19-17 18. Violations; enforcement.

Section 19-18 19. Severability.

Section 2. Any provision of the Costa Mesa Municipal Code or appendices thereto inconsistent with the provisions of this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to that extent necessary to effect the provisions of this Ordinance.

Section 3. If any section, subsection, sentence, clause, phrase 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 of the City of Costa Mesa hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or portions be declared invalid or unconstitutional.

Section 4. The Mayor shall sign and the City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be published and posted pursuant to the provisions of law in that regard and this Ordinance shall take effect 30 days after its final passage.

PASSED AND ADOPTED this _____ day of _____, 2007.

Mayor

APPROVED AS TO FORM:

City Attorney

ATTEST:

City Clerk of the City of Costa Mesa

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss
CITY OF COSTA MESA)

I, JULIE FOLCIK, City Clerk and ex-officio clerk of the City Council of the City of Costa Mesa, hereby certify that the above and foregoing Ordinance No. 07-___ was introduced and considered section by section at a regular meeting of said City Council held on the _____ day of _____, 2007, and thereafter passed and adopted as a whole at a regular meeting of said City Council held on the _____ day of _____, 2007, by the following roll call vote:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of the City of Costa Mesa this _____ day of _____, 2007.

City Clerk and ex-officio
Clerk of the City Council of the
City of Costa Mesa