

**MOORPARK CITY COUNCIL
AGENDA REPORT**

TO: Honorable City Council

FROM: Joseph Montes, City Attorney

DATE: May 10, 2007 (CC Regular Meeting of 5/16/2007)

SUBJECT: Consider Update on Time Warner--Request City Attorney to Re-Schedule June 6 Hearing

BACKGROUND AND DISCUSSION

At the Council's meeting of April 18, the Council directed that a hearing be set for June 6, 2007 to consider whether Time Warner has breached the terms of the franchise agreement and, if so, to consider imposing penalties. Notice for such hearing did not go out in sufficient time for the June 6 hearing date, so the City Attorney is requesting that the Council move the hearing date to its meeting of June 20 so that the required 30 day notice can be sent.

Additionally, at the meeting of April 18, the City had not yet received any substantive response from Time Warner. The City has now received a letter from Time Warner indicating they believe that a different customer service standard than that identified by the City applies to them. The City Attorney will brief the council on this issue and suggest that the hearing notice to be sent for 6/20 also respond to this issue raised by Time Warner, so that Time Warner does not focus on the incorrect standard in their preparations for the hearing.

Attached for the Council's reference is the April 18 staff report concerning this item.

STAFF RECOMMENDATION

1. Direct the City Attorney to provide Time Warner with notice of a hearing to be held at the City Council's regular June 20, 2007 meeting; and
2. Re-Schedule hearing from June 6, 2007 to June 20, 2007.

Attachment: 4/18/07 Agenda Report Item 9.A.

ATTACHMENT

ITEM

9. A.

MOORPARK CITY COUNCIL
AGENDA REPORT

CITY OF MOORPARK, CALIFORNIA
City Council Meeting
DATE: 4-18-2007
ACTION: Directed staff to follow option no. 3
BY: M. Benson

To: Honorable City Council
From: John Brand, Senior Management Analyst JB
Date: April 12, 2007 (CC Meeting of 04/18/2007)
Subject: Consider Time Warner Cable TV Customer Service Performance

BACKGROUND

On March 21, the Council directed staff to: 1) Transmit a written notice of material default to Time Warner Cable for failure to meet the customer service standards of the franchise agreement and the Moorpark Municipal Code for at least the last three months; and 2) Place this item on the agenda for the April 18 regular City Council meeting.

On March 27, the City Attorney mailed and faxed the attached correspondence to Time Warner Cable. Copies of the letter were sent to the top management on west coast, local region managers, and the general counsel of Time Warner Cable. On April 11, the City received a reply letter (also attached) indicating that Time Warner Cable is gathering information and will respond to the City within the 30 days allowed.

Under the terms of the franchise agreement and the City's municipal code, Time Warner has 30 days within which to respond to the notice. Thereafter, the City Council may hold a public hearing, on not less than 30 days notice, to determine whether or not a material default has occurred (in light of any information provided by staff and any response provided by Time Warner) and if so, whether or not to impose fines.

Options for the Council include:

1. Take no action at this time, pending a response from Time Warner;
2. Continue this item to the meeting of May 2, 2007 for further Council consideration;
or
3. Direct staff to provide Time Warner with notice on April 27, 2007 of a hearing to be held at the Council's regular June 6, 2007 meeting, which date is more than the required 30 days notice after the conclusion of the notice of default period.

STAFF RECOMMENDATION

Direct Staff as Deemed Appropriate.

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Honorable City Council
March 21, 2007
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Attachments:

1. March 27 Notice of Material Default Letter to Time Warner Cable
2. April 11 Response Letter to City Attorney

000107

444 South Flower Street - Suite 2400
Los Angeles, California 90071-2953
voice 213 236 0600 - fax 213 236 2700
www.bwslaw.com

BURKE, WILLIAMS & SORENSEN, LLP

RECEIVED

MAR 29 2007

CITY CLERK'S DIVISION
CITY OF MOORPARK

Writer's Direct Dial:
213-236-2736
Our File No:
01359-0001
jmontes@bwslaw.com

March 27, 2007

VIA CERTIFIED MAIL

Mr. Stephen Pagano
Executive Vice President
Los Angeles Region
Time Warner Cable Inc.
550 North Continental Blvd., Suite 250
El Segundo, CA 90245

Gary Matz, General Counsel
Time Warner Cable, Inc.
290 Harbor Drive
Stamford, CT 06904-2210

Re: Notice of Material Default of Moorpark Cable Franchise Obligations

Gentlemen:

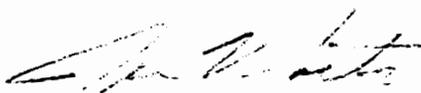
This office serves as the City Attorney for the City of Moorpark ("Moorpark") and writes on its behalf.

This letter serves as notice that the City has made a preliminary determination that Time Warner Cable ("Time Warner") is in material default of its obligations under the Municipal Code and Franchise Agreement for at least the last three months for failure to meet the customer service standards of Moorpark Municipal Code § 5.06.810.

By law, you must either correct these material violations within 30 days or provide evidence of nonviolation within 30 days. Notwithstanding that time frame, it is respectfully requested that you provide any evidence of compliance or correction of violations to the City on or before April 11. That will allow the City time to review your comments prior to April 18, the date on which the Moorpark City Council will next consider any steps taken by Time Warner to cure the material default or any provided evidence of non-violation.

Very truly yours,

BURKE, WILLIAMS & SORENSEN, LLP



Joseph M. Montes

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135 Harbor Lane
John E. Fogarty & Associates, LLP
Stamford, CT 06902
Tel: (203) 328-1000
Fax: (203) 351-2000

John E. Fogarty
John E. Fogarty & Associates, LLP of Counsel, Regulators
Legal



Assistant City Managers Office

Mr. Joseph M. Montes
Burke, Williams & Sorensen, LLP
444 South Flower Street, Suite 2400
Los Angeles, CA 90071-2953

Re: Time Warner Cable Franchise

Dear Mr. Montes:

Time Warner Cable is in receipt of your letter of March 27, 2007.

While your letter is not clear regarding the specific nature of the alleged default, we assume based on prior contacts with the City that you are referring to the telephone answering issue.

Time Warner Cable takes any allegation of default with the utmost seriousness. We note your request that we respond substantively to these allegations earlier than required. However, this is, as noted above, a matter we take very seriously and one deserving of a considered response.

It is incumbent upon us in order to protect our own interests to assemble and prepare all relevant evidence. This will also provide the City with a complete record on which to consider the matter.

We are preparing and will provide to you within 30 days from your letter the information in this regard. We hope that we may then work with you and other representatives of the City to resolve the issue in a mutually acceptable manner to the benefit of our customers in Moorpark.

Thank you for your courtesy in this matter.

Sincerely,

John E. Fogarty

JEF/srt

cc: Patricia Fregoso-Cox

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