

ORDINANCE NO. 350

AN ORDINANCE OF THE CITY OF MOORPARK, CALIFORNIA, ADDING CHAPTER 5.07, STATE VIDEO FRANCHISES, TO TITLE 5 OF THE MOORPARK MUNICIPAL CODE, ESTABLISHING FRANCHISE AND PEG FEES AND CUSTOMER SERVICE PENALTIES FOR STATE VIDEO FRANCHISE HOLDERS PROVIDING VIDEO SERVICE WITHIN THE CITY OF MOORPARK

WHEREAS, a new state law, the Digital Infrastructure and Video Competition Act of 2006 (Pub. Util. Code § 5800 *et seq.*, "DIVCA") went into effect on January 1, 2007; WHEREAS, under DIVCA, the State of California is the "sole franchising authority" for new video service providers within the City of Moorpark ("City"); and

WHEREAS, the City, although not the franchising authority, has certain rights and responsibilities with respect to the new state video franchise holders; and

WHEREAS, pursuant to DIVCA, certain rights and responsibilities must be established by local ordinance before they may become effective and enforceable against state video franchise holders; and

WHEREAS, the City retains authority, without change, over the City's current cable franchisee until the franchisee no longer holds a City issued franchise, or the franchise expires; and

WHEREAS, the City will receive a fee of 5% of gross revenues from each state video franchisee which operates within the City for use of the public rights-of-way unless the City opts to waive collection of the fee; and

WHEREAS, the City does not currently opt to waive the collection of the 5% franchise fee; and

WHEREAS, Time Warner Cable is currently providing cable service within the City pursuant to a document entitled "Cable System Franchise Agreement Between the City of Moorpark and Century-TCI California, L.P." (the "TWC Franchise"); and

WHEREAS, the TWC Franchise has an effective date of October 1, 2004 and is not set to expire until October 1, 2019; and

WHEREAS, consistent with Utilities Code 5870(k), Time Warner Cable must continue to provide and support PEG channel facilities and institutional networks and to provide cable services to community buildings contained in the TWC Franchise until the TWC Franchise expires, until the term of the franchise would have expired if it had not

been terminated pursuant to Public Utilities Code Section 5840(o), or until January 1, 2009, whichever is later; and

WHEREAS, so long as Time Warner Cable has existing unsatisfied obligations under the franchise to remit to the City any cash payments for the ongoing costs of public, educational, and governmental access channel facilities or institutional networks, the City must divide those cash payments among all cable or video providers on a pro rata basis; and

WHEREAS, the TWC Franchise includes such payment obligations; and

WHEREAS, consistent with Public Utilities Code section 5970(n), the City is authorized to establish a fee to support PEG channel facilities consistent with federal law that would become effective at the expiration of the duty to make any such payments pursuant to the TWC franchise; and

WHEREAS, the City may audit the business records of a state video franchisee once annually to ensure compliance with the payment of the franchise and PEG fees; and

WHEREAS, the City may establish and enforce penalties against state video franchisees for violations of customer service rules consistent with state law.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MOORPARK DOES ORDAIN AS FOLLOWS:

SECTION 1. Chapter 5.07 of the Moorpark Municipal Code is hereby added to provide as follows:

“Chapter 5.07

STATE VIDEO FRANCHISES

Sections:

- 5.07.010 Purpose and Application**
- 5.07.020 State Video Franchise and PEG Fees**
- 5.07.030 Audit Authority**
- 5.07.040 Customer Service Penalties Under State Franchises**
- 5.07.050 City Response to State Video Franchise**

Section 5.07.010 Purpose and Application.

This Chapter is designed to regulate video service providers holding state video franchises and operating within the City.

On January 1, 2007, the State of California became the sole authority with power to grant state video franchises pursuant to the Digital Infrastructure and Video Competition Act of 2006 ("DIVCA"). Pursuant to DIVCA, the City of Moorpark shall receive a franchise fee from all state franchisees. Additionally, each state franchisee must remit to the City its pro rata share of any cash payments for the ongoing costs of public, education, and governmental access channel facilities or institutional networks, as long as there are such payment obligations imposed by a City issued franchise. Upon the termination of such payment obligations, the City intends to impose a fee for public, educational and/or government (PEG) purposes from all state video franchise holders operating within the City. DIVCA confirmed that the City may establish and enforce penalties, consistent with state law, against all state video franchise holders operating within the City for violations of customer service standards. DIVCA precludes the City from adopting its own standards and grants all authority to adopt customer service standards to the state. DIVCA leaves unchanged the City's authority to regulate, in accordance with Chapter 5.06, the City's current cable franchises and any City cable franchise(s) issued on or before January 1, 2008, until the expiration of any such franchise(s).

Section 5.07.020 State Video Franchise and PEG Fees

(a) Any state video franchise holder operating within the boundaries of the City shall pay a fee to the City equal to five percent of the gross revenue of that state video franchise holder.

(b) Any state video franchise holder operating within the boundaries of the City shall pay a fee to the City in the amount of its pro rata share of any cash payments for the ongoing costs of public, education, and governmental access channel facilities or institutional networks, so long as there are such payment obligations imposed by a City issued franchise, or until January 1, 2009, whichever is latest.

(c) Effective the first date on which state franchisees operating within the boundaries of the City are not obligated to make payments pursuant to subdivision (b) of this section, each state franchisee shall pay a fee to the City equal to one percent of gross revenue of that state video franchise holder to support Public, Educational, and/or Governmental (PEG) channel facilities consistent with federal law.

(d) Gross revenue, for the purposes of (a), (b) and (c) above, shall have the definition set forth in California Public Utilities Code § 5860.

Section 5.07.030 Audit Authority

Not more than once annually, the City Manager or his designee may examine and perform an audit of the business records of a holder of a state video franchise to ensure compliance with Section 5.07.020.

Section 5.07.040 Customer Service Penalties Under State Video Franchises

(a) 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.

(b) The City Manager or his designee shall monitor the compliance of state video franchise holders with respect to state and federal customer service and protection standards. The City Manager or his designee will provide the state video franchise holder written notice of any material breaches of applicable customer service standards, and will allow the state video franchise holder 30 days from the receipt of the notice to remedy the specified material breach. Material breaches not remedied within the 30-day time period will be subject to the following penalties to be imposed by the City:

(1) For the first occurrence of a violation, a fine of up to \$500.00 may be imposed for each day the violation remains in effect, not to exceed \$1,500.00 for each violation.

(2) For a second violation of the same nature within 12 months, a fine of up to \$1,000.00 may be imposed for each day the violation remains in effect, not to exceed \$3,000.00 for each violation.

(3) For a third or further violation of the same nature within 12 months, a fine of up to \$2,500.00 may be imposed for each day the violation remains in effect, not to exceed \$7,500.00 for each violation.

(c) A state video franchise holder may appeal a penalty assessed by the City Manager to the City Council within 60 days of the initial assessment. 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.

Section 5.07.050 City Response to State Video Franchise Applications

(a) Applicants for state video franchises within the boundaries of the City must concurrently provide complete copies to the City of any application or amendments to applications filed with the California Public Utilities Commission (PUC). One complete copy must be provided to the City Manager.

(b) Within 30 days of receipt, the City Manager will provide any appropriate comments to the PUC regarding an application or an amendment to an application for a state video franchise."

SECTION 2. If any section, subsection, sentence, clause, phrase, part or portion of this Ordinance is for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase, part or portion thereof, irrespective of the fact that any one or more section, subsections, sentences, clauses, phrases, parts or portions be declared invalid or unconstitutional.

SECTION 3. This Ordinance shall become effective thirty (30) days after its passage and adoption.

SECTION 4. The City Clerk shall certify to the passage and adoption of this ordinance; shall enter the same in the book of original ordinances of said City; shall make a minute of the passage and adoption thereof in the records of the proceedings of the City Council at which the same is passed and adopted; and shall, within fifteen (15) days after the passage and adoption thereof, cause the same to be published once in the Moorpark Star a newspaper of general circulation, as defined in Section 6008 of the Government Code, for the City of Moorpark, and which is hereby designated for that purpose.

PASSED AND ADOPTED this 6th day of June, 2007.

Patrick Hunter, Mayor

ATTEST:

Deborah S. Traffenstedt, City Clerk

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