

REPORT TO CITY COUNCIL

DATE: NOVEMBER 28, 2007

TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL

FROM: GREG RAMIREZ, CITY MANAGER

BY: LOUIS CELAYA, ASSISTANT TO THE CITY MANAGER

SUBJECT: AN ORDINANCE OF THE CITY OF AGOURA HILLS, CALIFORNIA, AMENDING CHAPTER 9 OF ARTICLE VI, OF THE MUNICIPAL CODE BY ADDING NEW SECTIONS 6926.2 AND 6926.4 RELATING TO A SUPPORT FEE FOR LOCAL CABLE USAGE AND SPECIAL PROVISIONS APPLICABLE TO HOLDERS OF STATE VIDEO FRANCHISES

On August 31, 2006, the Legislature passed Assembly Bill 2987, the Digital Infrastructure and Video Competition Act (DIVCA), establishing a State franchise system for the provision of video/cable service. The act was adopted in recognition of the anticipated entrance of telecommunication companies offering video/cable services. The Legislature's goal for establishing DIVCA was to increase competition in the cable and video sector to provide consumers with more choices, lower prices, and speed of deployment of new communication and broadband technologies. The State franchise system is administered by the Public Utilities Commission (PUC) as the sole franchising authority. Currently, cable franchises are administered locally by cities whose authority will conclude once incumbent cable operators move to the State franchise system. It is anticipated that Time Warner and Charter Communications will soon be submitting applications to the PUC. Telecommunication companies (AT&T, Verizon, and Cox Communications) who have filed applications with the PUC are currently operating under the state franchise system.

One of several requirements under DIVCA was the provision of Public, Education, and Government (PEG) programming funding that authorizes local entities (cities) to establish a fee by ordinance to support PEG channel facilities consistent with federal law. The City of Agoura Hills currently does not have a PEG fee within its existing cable television franchise code. The PEG fee would be one percent (1%) of State video franchise holder's gross revenue and is in addition to the five percent (5%) franchise fee the City currently receives from operators, and will continue to receive under DIVCA. DIVCA also reserves the right for cities to manage their local right-of-ways and require encroachment permits for construction activities. Because of this reservation, DIVCA requires cities adopt regulations prescribing procedures for the applicant to appeal the denial of an encroachment. The existing code does not have this provision.

Finally, DIVCA requires State franchise holders to comply with customer service standards established by State and Federal law. Under DIVCA, cities has been delegated the responsibility of enforcement for customer service complaints received, and as a result, are required to adopt an ordinance providing a schedule of penalties for breaches to these standards. The penalties are:

- First Time Violation - monetary penalty of \$500 imposed for each day the violation remains in effect (not to exceed \$1,500 for each violation)
- Second Time Violation (same nature within 12 months) - monetary penalty of \$1,000 imposed for each day the violation remains in effect (not to exceed \$3,000 for each violation)
- Third Violation (same nature within 12 months) - monetary penalty of \$2,500 imposed for each day the violation remains in effect (not to exceed \$7,500 for each violation)

The proposed ordinance will amend the City's existing cable television franchise code to have it comply with the requirements, as prescribed by DIVCA, by establishing a 1% PEG fee, an appeal process for denial of encroachment permit application denial, and provisions of monetary penalties for violation of customer service standards.

RECOMMENDATION

Staff respectfully recommends the City Council introduce, read by title only, and waive further reading of Ordinance No. 07-349.

Attachment: Ordinance No. 07-349