ORDINANCE NO. 07-349

AN ORDINANCE OF THE CITY COUNCIL 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

The City Council of the City of Agoura Hills Does Ordain as Follows:

Section 1. Part 3 of Chapter 9 ("Cable Television Franchises") of the Agoura Hills Municipal Code is amended by adding a new Section 6926.2 to read as follows:

6926.2. Fee For Support Of Local Cable Usage

A fee paid to the City is hereby established for the support of public, educational, and governmental access facilities and activities within the City. Unless a higher percentage is authorized by applicable state or federal law, this fee shall be one percent (1%) of a Grantee's gross annual receipts, as that term is defined above in Section 6901, or in the Grantee's franchise agreement, or in applicable provisions of state or federal law. This fee is also applicable to a state video franchise holder operating within the City, which shall pay to the City one percent (1%) of its gross revenue, as defined in California Public Utilities Code Section 5860.

Section 2. Part 3 of Chapter 9 ("Cable Television Franchises") of the Agoura Hills Municipal Code is amended by adding a new Section 6926.4 to read as follows:

6926.4. Special Provisions Applicable To Holders Of State Video Franchises

(a) Franchise Fee. A state video franchise holder operating in the City shall pay to the City a franchise fee that is equal to five percent (5%) of the gross revenues of that state video franchise holder. The term "gross revenues" shall be defined as set forth in Public Utilities Code Section 5860.

(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 ensure compliance with all applicable statutes and regulations related to the computation and payment of franchise fees.

(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 a state video franchise holder's compliance with 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 30 days from 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 monetary penalties to be imposed by the City in accordance with state law:

(i) For the first occurrence of a violation, a monetary penalty of $500 shall be imposed for each day the violation remains in effect, not to exceed $1500 for each violation.

(ii) For a second violation of the same nature within 12 months, a monetary penalty of $1000 shall be imposed for each day the violation remains in effect, not to exceed $3000 for each violation.

(iii) For a third or further violation of the same nature within 12 months, a monetary penalty of $2500 shall be imposed for each day the violation remains in effect, not to exceed $7,500 for each violation.

(3) A state video franchise holder may appeal a monetary penalty within 60 days after it is assessed by the City. 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. The City Council's decision on the imposition of a monetary penalty shall be final.

(d) City Response to State Video Franchise Applications.

(1) Applicants 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 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 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) 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.

(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) 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 holder's network as identified by the 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.

(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. Provisions in City-issued franchises authorizing the City to provide local emergency notifications shall remain in effect, and shall apply to all state video franchise holders in the City for the duration of the City-issued franchise, or until the term of the franchise would have expired had it not been terminated pursuant to subdivision (m) of Section 5840 of the California Public Utilities Code, or until January 1, 2009, whichever is later.

(h) Encroachment Permit Applications and Appeal Procedures.

(1) As used in this paragraph (h), the term "encroachment permit" means any permit issued by the City relating to construction or operation of facilities in public rights-of-way by the holder of a state video franchise.

(2) The City shall either approve or deny an application from a holder of a state video franchise for an encroachment permit within 60 days of receiving a completed application.

(3) If the City denies an application for an encroachment permit, the City shall, at the time of notifying the applicant of the denial, furnish to the applicant written notice of the reason for the denial. An applicant may appeal the City's denial of an encroachment permit application to the City Council in accordance with the following procedures:

(i) No notice of appeal will be processed unless filed within 10 days after service of written notice of the decision from which the appeal is taken; provided that if written notice of the decision has not been served, the appellant may, within 10 days after being apprised of that decision, demand service of written notice and will have 10 days following that service in which to file the notice of appeal.

(ii) The notice of appeal must specify the specific decision from which the appeal is taken, the specific grounds for the appeal, and the relief or action requested from the City Council.

(iii) The notice of appeal must be accompanied by such fee as may have been established by resolution of the City Council.

(iv) Upon the timely filing of a notice of appeal in proper form, the City Clerk will schedule the matter for hearing by the City Council at a regular meeting, but not later than 45 days after receipt of the notice of appeal. The City Clerk will cause the notice of hearing to be given to the appellant not less than 10 days prior to the hearing, unless that notice is waived in writing by the appellant. The City Clerk will also cause a copy of the notice of appeal and the hearing to be transmitted to the city official or body whose decision is being appealed.

(v) At the time of consideration of the appeal by the City Council, the appellant will be limited to a presentation on the specific grounds of appeal and related matters set forth in its notice of appeal. The appellant will have the burden of persuading the City Council that the decision appealed from should be reversed or modified.

(vi) The City Council may continue the hearing on the appeal from time to time as may be deemed necessary. The City Council may, by resolution, affirm, reverse, or modify, in whole or in part, the decision appealed from and may take any action that might have been taken in the first instance by the city official or body from whose decision the appeal has been taken.

(vii) The decision of the City Council will be deemed final and conclusive upon adoption of the resolution. A copy of the resolution adopted by the City Council will be served upon the appellant by placement in the United States mail, postage prepaid, to the appellant's last known address.

Section 3. The City Clerk is directed to certify to the passage and adoption of this ordinance and to cause this ordinance to be posted or published as required by law.

PASSED, APPROVED, AND ADOPTED, this ____ day of _____, 2007.

AYES: (0)
NOES: (0)
ABSENT: (0)
ABSTAIN: (0)

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John Edelston, Mayor

ATTEST:

_____
Kimberly M. Rodrigues, CMC, City Clerk

APPROVED AS TO FORM:

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Craig A. Steele, City Attorney