

CITY OF RIVERBANK

ORDINANCE 2018-004

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RIVERBANK, CALIFORNIA, REPEALING IN ITS ENTIRETY CHAPTER 122: VIDEO FRANCHISE OF TITLE XI: BUSINESS REGULATIONS AND REPLACING IT WITH A NEW CHAPTER 122: VIDEO SERVICE FRANCHISE TO INCLUDE REAUTHORIZATION OF THE PEG FEE AND TO AUTOMATICALLY REAUTHORIZE THE PEG FEE UPON RENEWAL OF A STATE VIDEO FRANCHISE

WHEREAS, the State Legislature adopted the Digital Infrastructure and Video Competition Act of 2006, (also known as AB 2987, and "DIVCA"); and

WHEREAS, DIVCA established a state video franchising system that replaced local cable franchising; and

WHEREAS, a state video franchise, that has a term of ten (10) years, is issued by the California Public Utilities Commission ("CPUC"), who administers the California Public Utilities Code ("PUC"); and

WHEREAS, in accordance with DIVCA a local entity may establish a fee to support Public, Education, and Government access facilities ("PEG") payable by state video franchise holders, through the adoption of an ordinance; and

WHEREAS, on December 22, 2008, the Riverbank City Council adopted Ordinance No. 2008-017, establishing Riverbank Municipal Code Chapter 122: Video Franchise of Title XI providing the authority to collect franchise fees, currently 5% of gross revenues, and to collect a PEG fee equal to 1% of the gross revenues, which are payable by the state video franchise holders that operate within the City; and

WHEREAS, the City of Riverbank receives PEG fees from state video franchise holders Charter Communications, Inc. and AT&T Inc., and upon expiration of their issued state video franchise, PUC requires that a city's ordinance be reauthorized by the City Council for the continued collection and payment of the PEG fees; and

WHEREAS, to ensure the collection and remittance of the PEG fee continues, and the video franchise ordinance remains in full effect upon the renewal of a state video franchise by the CPUC, the City Council desires to expressly declare that the City's video service franchise ordinance for the PEG fee is reauthorized, and further desires to amend this ordinance to automatically reauthorize the ordinance for the PEG fee to the extent required by PUC Section 5870(n) upon the renewal of a state video franchise to a holder.

SECTION 1: NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF RIVERBANK DOES ORDAIN AS FOLLOWS:

The Riverbank Municipal Code, Title XI: Business Regulations, Chapter 122: Video Franchise, shall be amended by repealing in its entirety Chapter 122 and replacing it with a new Chapter 122: Video Service Franchise, which shall read as follows:

CHAPTER 122: VIDEO SERVICE FRANCHISE

Section

General Provisions

- 122.01 Purpose and authority
- 122.02 Definitions

Franchise Provisions

- 122.06 State video franchise applications
- 122.07 State video franchise holder franchise fee
- 122.08 Public, educational, and government (PEG) fee
- 122.09 Public, educational, and government channels
- 122.10 Customer service penalties; Appeal
- 122.11 Permit for public rights-of-way; Appeal
- 122.12 Environmental review
- 122.13 Authority to examine business records

GENERAL PROVISIONS

§ 122.01 PURPOSE AND AUTHORITY.

The purpose of this chapter is to implement the Digital Infrastructure and Video Competition Act of 2006, (“DIVCA”) set forth at California Public Utilities Code (“PUC”) section 5800 et seq. that became effective January 1, 2007. Consistent with DIVCA, and the implementing rules issued by the California Public Utilities Commission (“CPUC”) dated March 1, 2007, the City of Riverbank retains local city authority and implements that authority pursuant to DIVCA by implementation of this chapter. This chapter shall be applied to and interpreted consistently with any amendments to, or recodifications of DIVCA that may be made from time to time.

§ 122.02 DEFINITIONS.

VIDEO SERVICE, VIDEO FRANCHISE, and HOLDER shall have the same meaning as those terms as defined in the public utilities code section 5830.

GROSS REVENUE has the meaning set forth in California Public Utilities Code section 5860(d).

Terms not defined here shall have the same meaning as established in (in order of priority); (1) the California Public Utilities Code; (2) commission rules implementing the California Public Utilities Code; and (3) Title 47 United States Code Title VI.

FRANCHISE PROVISIONS

§ 122.06 STATE VIDEO FRANCHISE APPLICATIONS.

(A) *Copy of application to city.* An applicant for a state video franchise within the boundaries of the city must concurrently provide a complete copy of any application or amendments to an application to the city clerk that is filed with the California Public Utilities Commission (PUC § 5840 (e)(1)(D)).

(B) *City Manager comments.* Within 30-days of receipt, the city manager 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.

(C) *Notification of video service.* Prior to offering video service in the City of Riverbank, the state video franchise holder shall notify the city clerk at least 10 days, but no more than 60 days, before the video service provider begins to offer service. (PUC § 5840 (n))

§ 122.07 STATE VIDEO FRANCHISE HOLDER FRANCHISE FEE.

Any state video franchise holder operating within the city shall remit a franchise fee to the city in the amount equal to five percent (5%) of the gross revenues of the state video franchise holder derived from the operation of its franchise within the city in compliance with PUC Sections 5840(q) and 5860.

(A) A State video franchise holder shall pay the franchise fee to the City quarterly, within 45-days after the end of each calendar quarter.

(B) Each payment shall be accompanied by a summary explaining the basis for the calculation of the fee.

(C) Pursuant to PUC Section 5860(h) if the franchise holder does not pay the franchise fee when due, the franchise holder 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 percent (1%).

§ 122.08 PUBLIC, EDUCATIONAL, AND GOVERNMENT (PEG) FEE.

Any state video franchise holder operating within the city shall remit to the city a Public, Educational, and Government (“PEG”) fee in the amount equal to one percent (1%) of the gross revenue of the state video franchise holder derived from the operation of its franchise within the city to support public, educational, and governmental channel facilities in compliance with PUC section 5870(n).

(A) A state video franchise holder shall pay the franchise fee to the City quarterly, within 45-days after the end of each calendar quarter.

(B) All revenue collected pursuant to this fee shall be deposited in a separate fund and shall only be expended for the purpose of supporting PEG channel facilities.

(C) *Automatic Reauthorization.* Notwithstanding PUC section 5870, upon the expiration of any state video franchise, without any action of the city council, this code section shall be deemed to have been automatically reauthorized upon the renewal of a state video franchise by the CPUC to a state video franchise holder operating within the city, unless the holder has given the city manager and city clerk written notice sixty (60) days prior to the expiration of its state video franchise that this section will expire pursuant to the terms of subdivision (n) of the PUC section 5870, or until such time that the city council takes formal affirmative action to cease the reauthorization.

§ 122.09 PUBLIC, EDUCATIONAL, AND GOVERNMENT CHANNELS.

(A) *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 a least two (2) PEG access channels.

(1) PEG access channels shall be for the exclusive use of the City of 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; provided, however, that if the technology used eliminates the basic service tier, then all PEG access channels shall be placed on the cable system in a manner equivalent to local over-the-air broadcast stations.

(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 television signal.

(B) *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 the emergency messages may be distributed over the holder's network. Provisions in the city-issued franchise 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.

§ 122.10 CUSTOMER SERVICE PENALTIES.

(A) Any state video franchise holder shall comply with the customer service provisions set forth in PUC section 5900.

(B) The city shall monitor the compliance of state video franchise holders with respect to state and federal customer service and protection standards. The city manager 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 thirty (30) days from the receipt of the notice to remedy the specified material breach.

(C) The city shall impose the following penalties against a state video franchise holder for any material breach of the customer service provisions not remedied within the 30-day time period as set forth in PUC section 5900:

(1) For the first occurrence of a material breach, a fine of five hundred dollars (\$500) shall be imposed for each day of each material breach, not to exceed one thousand five hundred dollars (\$1,500) for each occurrence of the material breach.

(2) For a second occurrence of a material breach of the same nature as the first material breach that occurs within twelve (12) months, a fine of one thousand dollars (\$1,000) shall be imposed for each day of each material breach, not to exceed three thousand dollars (\$3,000) for each occurrence of the material breach.

(3) For a third or further occurrence of a material breach of the same nature as the previous material breaches that occurs within twelve (12) months, a fine of two thousand five hundred (\$2,500) shall be imposed for each day of each material breach, not to exceed seven thousand five hundred dollars (\$7,500) for each occurrences of the material breach.

(D) A material breach for the purposes of assessing penalties shall be deemed to have occurred for each day within the jurisdiction of the city, following the expiration of the period specified in subsection C of this section, that any material breach has not been remedied by the state video franchise holder, irrespective of the number of customers affected. No monetary penalties shall be assessed for a material breach if it is out of the reasonable control of the state video franchise holder.

(E) Pursuant to PUC section 5900, any penalty remitted to the city by a state video franchise holder for a material breach of the customer service provisions set forth in PUC section 5900 shall be split in half, and the city shall submit one-half of the penalty amount to the Digital Divide Account established by PUC Section 280.5.

(F) *Appeal.* A state video franchise holder may appeal a penalty assessed by the city manager to the city council within sixty (60) days of the initial assessment by sending a letter of request for an appeal hearing, along with payment of the fee, to the city clerk. The matter for a hearing shall be set with the city council to receive all evidence and relevant testimony. The

Council may uphold, modify, or vacate the penalty or decision. The city council's decision on the imposition of a penalty or decision is final.

§ 122.11 PERMIT FOR PUBLIC RIGHTS-OF-WAY.

(A) *Encroachment Permit.* To the extent allowed by law, any state video franchise holder shall apply for an encroachment permit to install, construct or maintain a network pursuant to the Riverbank Municipal Code. In addition to Riverbank Municipal Code procedures, the following shall apply to any state video franchise holder applying for an encroachment permit:

(1) Any encroachment permit application submitted by any state video franchise holder shall be approved or denied within sixty days of receipt of a completed application. An application for an encroachment permit is complete when the state video franchise holder has complied with all statutory requirements, including CEQA, pursuant to Public Resource Code section 21000 et. seq.

(2) The sixty-day time period for approval or denial of an encroachment permit application may be extended if mutually agreed to in a written agreement between the state video franchise holder and the city.

(3) Any denial of an encroachment permit application submitted to any state video franchise holder by the city shall be written and shall include a detailed explanation of the reason for the denial.

(4) *Appeal.* Any state video franchise holder may appeal a denial of an encroachment permit application or a condition placed on an approved encroachment permit to the city council by submitting a written appeal within fifteen days of the date the application was denied or condition imposed. The city clerk shall thereafter give written notice to the holder of a hearing to be held within thirty days of receipt of the appeal. The decision of the city council on the appeal shall be final.

(B) *Other Permits.* A state video franchise holder shall apply for any other permits required by the Riverbank Municipal Code to the extent allowed by law.

§ 122.12 ENVIRONMENTAL REVIEW.

The city shall serve as the lead agency for any environmental review under DIVCA. The city may impose conditions to mitigate environmental impacts of any state video franchise holder's use of the public rights-of-way that may be required pursuant to the California Environmental Quality Act, California Public Resources Code Sections 21000 et seq. ("CEQA").

§ 122.13 AUTHORITY TO EXAMINE BUSINESS RECORDS.

(A) The City may examine once per year the business records of the state video franchise holder relating to gross revenues in a manner consistent with PUC section 5860(i).

(B) All state video franchise holders shall keep and maintain all business records reflecting any gross revenues, regardless of change in ownership, for at least four years after those gross revenues are recognized by the holder on its books and records pursuant to CPUC section 5860.

SECTION 2: *Reauthorization.* The City of Riverbank City Council does hereby reauthorize the PEG fee imposed by section 122.08 of Chapter 122 of the Riverbank Municipal Code by adoption of this ordinance as required by PUC Section 5870(n). All state video franchise holders operating within the City of Riverbank shall continue to be subject to the PEG fee required by Section 122.08.

SECTION 3: *Automatic reauthorization.* PEG fees shall automatically be reauthorized pursuant to Section 122.08(C).

SECTION 4: *Severability.* If any section, subdivision, sentence, clause, phrase or portion of this Ordinance is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

SECTION 5: This Ordinance shall become effective thirty (30) days from and after its final passage and adoption (04/27/2018), provided it is published pursuant to GC § 36933 in a newspaper of general circulation within fifteen (15) days after its adoption.

The foregoing ordinance was given its first reading and introduced by title only at a regular meeting of the City Council of the City of Riverbank on March 13, 2018. Said ordinance was given a second reading by title only and adopted.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Riverbank at a regular meeting on the 27th day of March, 2018; motioned by Councilmember Leanne Jones Cruz, seconded by Vice Mayor (CM-D4) Darlene Barber-Martinez; moved said ordinance by a City Council roll call vote of 5-0:

AYES: Fosi, Campbell, Jones Cruz, Barber-Martinez, and Mayor O'Brien

NAYS: None

ABSENT: None

ABSTAINED: None

ATTEST:

APPROVED:

ORIGINAL SIGNED DOCUMENT ON FILE WITH THE CITY CLERK

Annabelle H. Aguilar, CMC
City Clerk

Richard D. O'Brien
Mayor

APPROVED AS TO FORM:

Tom P. Hallinan, City Attorney