

ORDINANCE NO. 3035

AN ORDINANCE OF THE CITY OF COUNCIL OF THE CITY OF ONTARIO, CALIFORNIA, ENACTING NEW CHAPTER 20A OF TITLE 4, RELATING TO STATE VIDEO SERVICE FRANCHISES.

WHEREAS, in 2006, the Digital Infrastructure and Video Competition Act was signed into law and codified at California Public Utilities Code section 5800, *et seq.*, (“DIVCA”); and

WHEREAS, the State legislature stated the purpose of DIVCA was to increase competition in the provision of video, voice and broadband services for all Californians through the institution of a state video franchising system; and

WHEREAS, DIVCA also recognized the continued need to protect local revenues and control of public rights of way; and

WHEREAS, DIVCA authorizes a city to impose reasonable time, place and manner restrictions on a state franchisee regarding the conditions under which the franchisee may construct or operate the facilities necessary to provide video, voice and broadband services; and

WHEREAS, DIVCA further authorizes a city to enforce certain state and federal customer service and privacy standards and to impose monetary penalties for violations of such standards; and

WHEREAS, Time Warner Cable and Verizon were each operating under local franchise agreements with the City on January 1, 2007.

WHEREAS, Time Warner Cable is currently serving the City under a state franchise issued by the California Public Utilities Commission pursuant to DIVCA.

WHEREAS, Verizon continues to serve the City under a local franchise agreement which shall continue, unless terminated early in accordance with the franchise and/or DIVCA, until it expires on its own terms on August 18, 2021, at which time the City may wish to repeal Chapter 20 as its provisions will not apply to any video provider after that time.

WHEREAS, incumbent cable operators serving the City on January 1, 2007 were paying a franchise fee of five percent (5%) of gross revenues to the City under franchises granted by the City.

WHEREAS, incumbent cable operators serving the City on January 1, 2007 were paying a PEG fee of one percent (1%) or less of gross revenues to the City under franchises granted by the City.

NOW, THEREFORE, IT IS HEREBY FOUND, DETERMINED, AND ORDAINED by the City Council of the City of Ontario as follows:

SECTION 1. Findings. The above recitals are true and correct and are incorporated herein by this reference.

SECTION 2. New Chapter 20A, "State Video Service Franchises," is hereby added to Title 4 (Public Safety) of the Municipal Code of the City of Ontario:

Chapter 20A	STATE VIDEO SERVICE FRANCHISES
4-20.50	Purpose
4-20.51	Rights reserved
4-20.52	Compliance with Chapter
4-20.53	Definitions
4-20.54	State Franchise Fees
4-20.55	PEG Fees
4-20.56	Payment of Fees
4-20.57	Audits
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4-20.60	Customer service and consumer protection standards
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4-20.65	Underground Services Alert
4-20.66	Emergency Alert Systems
4-20.67	Interconnection for PEG Programming
4-20.68	Notices

Sec. 4-20.50 Purpose.

This Chapter 20A is applicable to all video service providers who are eligible for, and have been awarded, a state video franchise under the California Public Utilities Code section 5800, *et seq.*, (the Digital Infrastructure and Video Competition Act of 2006), to provide cable or video services in any portion of the City.

Sec. 4-20.51 Rights reserved.

The rights reserved to the City under this Chapter, are in addition to all other rights of the City whether reserved by this Chapter, or authorized by other applicable law, and no action, proceeding or exercise of a right shall affect any other rights which may be held by the City.

Sec. 4-20.52 Compliance with Chapter.

Nothing contained in this Chapter exempts a state franchise holder from compliance with all ordinances, rules or regulations of the City now in effect or which may be hereafter adopted which are not inconsistent with this Chapter or California Public Utilities Code section 5800, *et seq.*, or obligations under any franchise previously issued by the City, insofar as those may be enforced under California Public Utilities Code section 5800.

Sec. 4-20.53 Definitions.

For purposes of this Chapter, the following terms, phrases, words and their derivations shall have the meaning given herein. Unless otherwise expressly stated, words not defined in this Chapter, including but not limited to “gross revenue”, “cable service”, “video service provider” and “video service” shall be given the meaning as set forth in Title 1, Chapter 3, Section 1-3.13 of this Code or in the Digital Infrastructure and Video Competition Act of 2006, California Public Utilities Code, section 5800 and following, as amended from time to time.

“Applicant” means any person submitting any application required under the California Public Utilities Code, section 5800, and following.

“Applicable law” means all lawfully enacted and applicable Federal, State and City laws, ordinances, codes, rules, regulations and orders as the same may be amended or adopted from time to time.

“City Engineer” means the City Engineer or his or her designee.

“City Manager” means the City Manager of the City or his or her duly authorized designee.

“Construction,” and similar formulations of that term mean the named actions interpreted broadly, encompassing, among other things, installation, extension, maintenance, replacement of components, relocation, undergrounding, grading, site preparation, adjusting, testing, make-ready, excavation and tree trimming.

“DIVCA” means the Digital Infrastructure and Video Competition Act of 2006, California Public Utilities Code, section 5800, *et seq.*, as may be amended from time to time.

“PEG” means public, educational, or governmental access.

“State franchise” means a franchise issued by the California Public Utilities Commission to provide cable service or video service, as those terms are defined in DIVCA, within any portion of the City.

“State franchise holder” means a person who holds a state franchise.

"Subscriber" means the City or any person who legally receives any cable service or video service from a state franchise holder delivered over that state franchise holder's network.

Sec. 4-20.54 State franchise fees.

- A. Any state franchise holder operating within the City shall pay to the City a state franchise fee equal to five percent (5%) of the gross revenues of it, or any affiliate, that is subject to a franchise fee under California Public Utilities Code Section 5860.
- B. The City Manager shall promptly send any state franchise holder that notifies the City that it intends to provide video service in the City a copy of this Ordinance and a notice designating the person to whom the state franchise fee payments should be made.

Sec. 4-20.55 PEG fees.

Every state franchise holder operating within the boundaries of the City shall pay a PEG fee in the amount of one percent (1%) of the state franchise holder's gross revenues.

Sec. 4-20.56 Payment of fees.

The state franchise fee required pursuant to Section 4-20.54, and the PEG fee required pursuant to Section 4-20.55, shall each be paid to the City quarterly, in a manner consistent with California Public Utilities Code section 5860. The state franchise holder shall deliver to the City, by check or other means specified by the City, a payment for the state franchise fee and a separate payment for the PEG fee not later than forty-five (45) days after the end of each calendar quarter. Each payment made shall be accompanied by a summary explaining the basis for the state franchise fees, containing such information as the City Manager may require consistent with DIVCA.

Sec. 4-20.57 Audits.

The City may audit the business records of the holder of a state franchise in a manner consistent with California Public Utilities Code section 5860(i).

Sec. 4-20.58 Late payments.

In the event a state franchise holder fails to make payments required by this Chapter on or before the due dates specified in this Chapter, the City shall impose a late charge at the rate per year equal to the highest prime lending rate during the period of delinquency, plus one percent (1%).

Sec. 4-20.59 Lease of City-owned network.

In the event a state franchise holder leases access to a network owned by the City, the City may set a franchise fee for access to the City-owned network separate and apart from the franchise fee charged as rent or a toll to state franchise holders for use of the City's rights-of-way pursuant to Section 4-20.54, which fee shall otherwise be payable in accordance with the procedures established by this Chapter.

Sec. 4-20.60 Customer service and consumer protection standards.

Each state franchise holder shall comply with all applicable customer service and consumer protection standards to the extent consistent with California Public Utilities Code section 5900, including, but not limited to, all existing and subsequently enacted customer service and consumer protection standards established by state and federal law and regulation pertaining to the provision of video service.

Sec. 4-20.61 Penalties for violations of standards.

- A. The City shall enforce the provisions of Code Section 4-20.60.
- B. The local entity shall give the video service provider written notice of any alleged material breach of the customer service standards and allow the video provider at least 30 days from receipt of the notice to remedy the specified material breach
- C. For material breaches, as defined in California Public Utilities Code section 5900, by a state franchise holder of applicable customer service and consumer protection standards, the City may impose the following penalties:
 1. For the first occurrence of a material breach, a fine of \$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 material breach of the same nature within 12 months, a fine of \$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 material breach of the same nature within 12 months, a fine of \$2,500.00 may be imposed for each day the violation remains in effect, not to exceed \$7,500.00 for each violation.
- D. Any penalties imposed by the City shall be imposed in a manner consistent with California Public Utilities Code section 5900.
- E. The City Manager is authorized to provide any notices required under California Public Utilities Code section 5900. The City Manager may coordinate with the Division of Ratepayer Advocate to protect consumers in the City.

- F. 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. The City Council shall hear the matter consistent with the provisions contained in Chapter 4 of Title 1 of this Municipal Code.

Sec. 4-20.62 Construction in the public rights of way.

Except as expressly provided in this Chapter, the provisions of Chapters 3, 5, 6, and 7 of Title 7 of this Code, and all City administrative rules and regulations developed pursuant to Chapters 3, 5, 6, and 7 of Title 7, as now existing or as hereafter amended, shall apply to all work performed by or on behalf of a state franchise holder in any public rights of way.

Sec. 4-20.63 Permits.

- A. Prior to commencing any work for which a permit is required by Chapter 3 of Title 7 of this Code, a state franchise holder shall apply for and obtain a permit in accordance with the provisions of Chapter 3 of Title 7. A permit application is complete when the state franchise holder has complied with all applicable laws and regulations, including but not limited to all City administrative rules and regulations, and all applicable requirements of Division 13 of the California Public Resources Code, section 21000, and following, (the California Environmental Quality Act) and preparation of plans and specifications as required by the City Engineer.
- B. The City Engineer shall, in the exercise of reasonable discretion as permitted by state law, either approve or deny a state franchise holder's application for any permit required under Chapter 3 of Title 7 within sixty (60) days of receiving a complete permit application from the state franchise holder.
- C. If the City Engineer denies a state franchise holder's application for a permit, the City Engineer shall, at the time of notifying the applicant of denial, furnish to the applicant a detailed explanation of the reason or reasons for the denial.
- D. A state franchise holder that has been denied a permit by final decision of the City Engineer may appeal to the City Council with the time frame set forth and consistent with the provisions contained in Section 7-3.06 of this Municipal Code. The City Engineer shall transmit to the Council all maps, diagrams, records, papers, and files that constitute the record in the action from which the appeal was taken.
- E. The issuance of a permit under Chapter 3 of Title 7 of this Code is not a franchise, and does not grant any vested rights in any location in the public rights of way, or in any particular manner of placement within the rights of way. A permit to place cabinets and similar appurtenances aboveground may be revoked and the permittee required to place facilities underground, upon reasonable notice to the permittee.

Sec. 4-20.64 Participation with other utilities.

Each state franchise holder shall cooperate in the planning, locating and construction of its network in utility joint trenches or common duct banks with other communications providers.

Sec. 4-20.65 Underground Services Alert.

Each state franchise holder shall be a member of the regional notification center for subsurface installations (Underground Services Alert) and shall field mark, at its sole cost and expense, the locations of its underground network facilities upon notification in accordance with the requirements of Section 4216 of the California Government Code, and any other applicable law.

Sec. 4-20.66 Emergency Alert Systems.

Each state franchise holder shall comply with the emergency alert system requirements of the Federal Communications Commission in order that emergency messages may be distributed over the state franchise holder's network.

Sec. 4-20.67 Interconnection for PEG Programming.

Each state franchise holder, and each incumbent cable operator, shall negotiate in good faith to interconnect their networks for the purpose of providing PEG programming. Interconnection may be accomplished by any means authorized under Public Utilities Code Section 5870(h). Each state franchise holder and incumbent cable operator shall provide interconnection of PEG channels on reasonable terms and conditions and may not withhold the interconnection. If a state 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 franchise holder to interconnect its network with the incumbent cable operator's network at a technically feasible point on the state franchise holder's network as identified by the state franchise holder. If no technically feasible point for interconnection is available, each state franchise holder will make an interconnection available to each channel originator providing PEG programming to an incumbent cable operator, and will provide the facilities necessary for the interconnection. The cost of any interconnection will be borne by the state franchise holder requesting the interconnection unless otherwise agreed to by the state franchise holder and the incumbent cable operator.

Sec. 4-20.68 Notices.

- A. Each state franchise holder or applicant for a state franchise shall file with the City a copy of all applications or notices that the state franchise holder or applicant is required to provide to the City under DIVCA.

- B. Unless otherwise specified in this Chapter, all notices or other documentation that a state franchise holder is required to provide to the City under this Chapter or the California Public Utilities Code shall be provided to the City Manager.

SECTION 3. CEQA. This ordinance is categorically exempt from the California Environmental Quality Act pursuant because it is not a project and there is not possibility that the ordinance may have a significant effect on the environment. The City Council, therefore, directs that a Notice of Exemption be filed with the County Clerk of the County of San Bernardino in accordance with CEQA Guidelines.

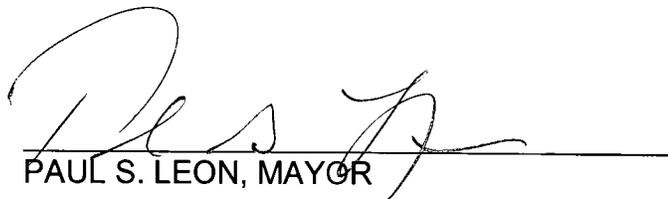
SECTION 4. Custodian of Records. The documents and materials that constitute the record of proceedings on which these findings and this Ordinance are based are located at the City Clerk's office located at 303 East "B" Street, Ontario, CA 91764. The custodian of these records is the City Clerk.

SECTION 5. Severability. If any section, sentence, clause or phrase of this Ordinance or the application thereof to any entity, person or circumstance is held for any reason to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. The People of the City of Ontario hereby declare that they would have adopted this Ordinance and each section, sentence, clause or phrase thereof, irrespective of the fact that any one or more section, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

SECTION 6. Effective Date. This Ordinance shall become effective thirty (30) days following its adoption.

SECTION 7. The Mayor shall sign this Ordinance and the City Clerk shall certify as to the adoption and shall cause a summary thereof to be published at least once, in a newspaper of general circulation in the City of Ontario, California within fifteen (15) days of the adoption. The City Clerk shall post a certified copy of this ordinance, including the vote for and against the same, in the Office of the City Clerk, in accordance with Government Code Section 36933.

PASSED, APPROVED, AND ADOPTED this 1st day of December 2015.



PAUL S. LEON, MAYOR

