

# ***Lompoc City Council Agenda Item***



**City Council Meeting Date:** February 5, 2013

**TO:** Honorable Mayor and City Council

**FROM:** Richard Gracyk, Wireless Services Administrator  
R\_gracyk@ci.lompoc.ca.us

**SUBJECT:** Ordinance and Resolution for the Regulation of State Video Franchises in Accordance with the Digital Infrastructure & Video Competition Act ("DIVCA") and Related Municipal Code Amendments Addressing Relocations and Installations of Utilities

---

## **Recommendation:**

Staff recommends the City Council waive further reading, introduce Ordinance No. 1589(13) and adopt associated Resolution No. 5822(13).

## **Background:**

Historically, the City of Lompoc had the ability to enter into a local franchise for the provision of cable services. Pursuant to the City's local franchise with Comcast, the City has been receiving a five percent franchise fee.

On September 26, 2006, the Digital Infrastructure & Video Competition Act ("DIVCA") of 2006 was signed into law and became effective on January 1, 2007. DIVCA creates a new regulatory structure where the California Public Utility Commission is the sole franchising authority. Video service providers, therefore, seek a franchise from the state prior to operation in a city. Pursuant to DIVCA, cities continue to be responsible for the administration and implementation of customer service penalties and other provisions.

On January 14, 2013, proposed Ordinance No. 1589(13) and associated Resolution No. 5822(13) was reviewed and discussed by the City of Lompoc Utility Commission. A motion was made, and passed, to forward the ordinance and resolution to the City Council for further discussion and passage.

## **Discussion & Analysis:**

DIVCA requires the City of Lompoc pass an ordinance to provide for customer service penalties and to collect Public, Educational and Governmental (PEG) fees. DIVCA also stipulates (i) franchise fees remain at five percent (unless the City passes an ordinance implementing a lesser fee), (ii) cities have the power to audit the State franchise

holders, (iii) generally a State franchisee must match the number of PEG channels provided by the incumbent and (iv) State franchise holders must comply with existing State mandated customer service standards.

The proposed ordinance permits the City to continue enforcing customer service standards by collecting the State established penalties. Under the ordinance, an appeal of a customer service penalty is sent to the City Administrator or her/his designee. The proposed ordinance also clarifies the City intends to continue collecting a five percent franchise fee. In addition, consistent with DIVCA (and prior years of PEG fees recouped under the local franchise agreement), the proposed ordinance seeks to establish a three percent PEG fee to support PEG channel facilities.

The proposed ordinance also requires State franchise holders to provide to the City proof of insurance. Additionally, it amends the City's code with regard to encroachment permits to comply with the DIVCA requirement that all encroachment permits be approved or denied by the City within 60 days after receipt of a completed application. In accordance therewith, there is also a proposed resolution establishing a fee for any related appeal.

Next, there are sections relating to utility relocation that have been amended and moved to Chapters 12.12 and 12.24, for clear applicability to all utilities in the right-of-way. Additionally, existing sections regarding the location of antennas at water facilities has been moved to Chapter 13.04.

**Fiscal Impact:**

There is no fiscal impact to the General Fund, as the Franchise fees will remain at current levels. PEG fees will be recalculated as a percentage of the Franchisee's gross, as opposed to the current fixed-dollar amount. At the three percent, proposed by this ordinance (the maximum allowed by DIVCA), PEG fees are estimated to decrease by \$50,000 to \$60,000 annually, or approximately 20 percent of annual appropriations for the program. In the absence of this ordinance, DIVCA would establish PEG fees at one percent of the gross, equating to approximately 75 percent reduction from current levels.

**Conclusion:**

To avoid dramatic fiscal impacts to the PEG studio, staff recommends the City Council waive further reading, introduce Ordinance No. 1589(13) and adopt associated Resolution No. 5822(13).

---

Richard Gracyk, Wireless Services Administrator

**APPROVED FOR SUBMITTAL TO THE CITY ADMINISTRATOR:**

---

Larry A. Bean, Utilities Director

**APPROVED FOR SUBMITTAL TO THE CITY COUNCIL:**

---

Laurel M. Barcelona, City Administrator

Attachments: 1) [Ordinance No. 1589\(13\)](#)  
2) [Resolution No. 5822\(13\)](#)