

Ordinance No. 1589(13)

An Ordinance of the City Council of the City of Lompoc, California, Amending Provisions of the Lompoc Municipal Code Pertaining to State Video Franchise Holders Operating Within the City by Uncodifying Chapters 5.64, 5.68 and 12.04; Adding a New Chapter 5.66; Amending Sections 12.12.020, 12.24.210; and Adding Sections 12.12.105, 12.12.055, 12.24.285, 13.04.120 and 13.04.130, Related to Relocations and Installations of Utilities.

WHEREAS, the Legislature of the State of California (the "State") adopted the Digital Infrastructure and Video Competition Act of 2006 ("DIVCA"); and

WHEREAS, the City of Lompoc's (the "City") local cable franchise agreement between the City and Comcast will expire in 2014; and

WHEREAS, DIVCA, establishes a regulatory structure for the State to issue franchises to video service providers ("State franchise(s)"); and

WHEREAS, DIVCA establishes local entities, such as the City, are responsible for the administration and implementation of certain provisions of DIVCA and requires that the City establish, by ordinance, a fee to support Public, Educational and Governmental ("PEG") channel facilities, which the City establishes by way of this Ordinance; and

WHEREAS, the City will receive a fee of five percent (5%) of gross revenues from each holder of a State franchise ("State franchisee"), which operates within the City for use of the public rights-of-way, unless the City opts to waive collection of the fee; and

WHEREAS, the City does not currently opt to waive the collection of the five percent (5%) franchise fee; and

WHEREAS, the City may audit the business records of a State franchisee once annually, to ensure compliance with the payment of the franchise and PEG fees; and

WHEREAS, DIVCA also requires the City adopt a schedule of penalties for any material breach by a State franchisee for violation of customer service and protection standards that the City is permitted to enforce; and

WHEREAS, existing Chapters 5.64, 5.68 and 12.04 of the Lompoc Municipal Code shall be uncodified, but remain in full force and effect as applicable; and

WHEREAS, Chapter 12.12 must also be amended to comply with DIVCA's requirement as it relates to permit denials; and

WHEREAS, the City seeks to amend Chapter 12.12, 12.24 and 13.04 to include requirements regarding utility location or relocation consistent with governing law.

THE CITY COUNCIL OF THE CITY OF LOMPOC DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Chapters 5.64 (“Community Antenna Television Systems”), 5.68 (“Cable Systems and Open Video Systems”) and Chapter 12.04 (“Installation and Operation of Community Antenna Television Systems”) of the Lompoc Municipal Code are hereby uncodified, but shall remain in full force and effect, as applicable.

SECTION 2. A new Chapter 5.66 is added to the Lompoc Municipal Code to read in its entirety as follows:

"State Video Franchises

§ 5.66.010 Definitions.

- A. For the purposes of this Chapter, "CPUC" shall mean the California Public Utilities Code.
- B. For the purposes of this Chapter, "franchise holder" shall mean a holder of a State franchise, as that term is defined at CPUC section 5830.
- C. For the purposes of this Chapter, "gross revenues" shall have the definition as set forth at CPUC section 5860.
- D. For the purposes of this Chapter, "material breach" shall have the definition as set forth at CPUC section 5900(j).
- E. For the purposes of this Chapter, "PEG" shall refer to the public, educational and governmental access operations as addressed at section CPUC section 5870.
- F. For the purposes of this Chapter, "State" shall mean the State of California.

§ 5.66.020 State Video Franchise and PEG Fees.

A. Any franchise holder operating within the boundaries of the City, shall calculate and remit to the City a franchise fee of five percent (5%) of its gross revenues in accordance with the following:

1. The fee shall be payable to the City quarterly, no later than 45 days following the end of the calendar quarter for which the payment is due. However, in accordance with CPUC subsection 5860(a), the first remittance by a franchise holder shall not be due until one hundred and eighty (180) days after the provision of service began.

2. As required by CPUC subsection 5860(h), the payment shall be accompanied by a summary explaining the basis for the calculation of the franchise fee. The City prefers to receive summaries in electronic form by email.

3. Pursuant to CPUC subsection 5860(h), if the franchise holder does not pay the franchise fee when due, then 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%).

B. As required by CPUC subsection 5870(n), the City hereby establishes a fee of three percent (3%) of a franchise holder's gross revenues to support PEG facilities, to be paid by any franchise holder operating within the boundaries of the City in accordance with the following:

1. The fee shall be payable to the City quarterly, no later than June 1, September 1, December 1 and March 1 for the preceding calendar quarter for which the payment is due.

2. As permitted by CPUC subsection 5870(o), any franchise holder operating in the City may recover the PEG fees required herein as a separate line item on the regular bill of each subscriber.

§ 5.66.030 Audit Authority.

Not more than once annually, the City Administrator or her/his designee may examine and perform an audit of the business records of any franchise holder to ensure compliance with Subsection 5.66.020 of this Code or any other fee or tax as permitted by law.

§ 5.66.040 Customer Service Penalties.

A. Any franchise holder shall, at minimum, comply with all applicable State and Federal customer service and protection standards pertaining to the provision of video service.

B. The City Administrator or her/his designee will provide a franchise holder with written notice of any material breach of applicable customer service and protection standards, and will allow the franchise holder at least thirty (30) calendar days after the franchise holder's receipt of the notice to remedy the specified material breach. A material breach that is not remedied by the franchise holder within the remedy period shall subject the franchise holder to the following penalties to be imposed by the City:

1. For the first occurrence of a material breach, a penalty of not more than Five Hundred Dollars (\$500) for each day of each material breach, not to exceed One Thousand Five Hundred Dollars (\$1,500) for each occurrence of a material breach.

2. For the second violation of the same nature within twelve (12) months, a penalty of One Thousand Dollars (\$1,000) 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 violation of the same nature within twelve (12) months, a penalty of Two Thousand Five Hundred Dollars (\$2,500) for each day of each material breach, not to exceed Seven Thousand Five Hundred Dollars (\$7,500) for each occurrence of the material breach.

C. The franchise holder may appeal any imposition of penalties to the City Administrator. Any appeal must be made within thirty (30) calendar days after the City's delivery of the notice regarding the imposition of penalties. All appeals must be timely submitted in writing to the City Clerk. Any appeal must contain a detailed explanation of why the applicant believes that the finding of material breach or the imposition of penalties was inconsistent with statutory requirements or authority.

D. The City Administrator shall hear all evidence and relevant testimony and may uphold, modify or vacate the penalty. The City Administrator's decision on the imposition of a penalty shall be final.

E. The City and any franchise holder may mutually agree to extend the time periods specified herein. Any such agreement shall be in writing and executed by the City Administrator, or her/his designee, and an authorized representative of the franchise holder.

F. Any penalty imposed on the franchise holder pursuant to this Section shall be paid to the City. As provided for in Subsection 5900(g) of the CPUC, the City shall submit one-half of all penalties received from a franchise holder to the Digital Divide Account established in Section 280.5 of the CPUC.

§ 5.66.050 City Response to Franchise Holder Applications.

A. Any person who applies to be a State franchise holder within the boundaries of the City must concurrently provide complete copies to the City of any application, or amendments to applications, filed with the CPUC. One complete copy must be provided to the City Clerk.

B. Within thirty (30) days after receipt of any documents described in Subsection A, above, the City Administrator, or her/his designee will provide any appropriate comments to the CPUC regarding an application or an amendment to an application for a State franchise.

§ 5.66.060 Indemnification & Insurance Requirements for Franchise Holders.

A. The franchise holder shall, at the sole risk and expense of franchise holder, upon demand of the City, made by and through the City Council, City Administrator or City Attorney, appear in and defend any and all suits, actions, or other legal proceedings, whether judicial, quasi-judicial, administrative, legislative, or otherwise, brought or instituted or had by third person or duly constituted authorities, against or affecting the City, its elected officers, boards,

commissions, agents or employees, and arising out of, or pertaining to, the exercise or the enjoyment of such state video franchise.

B. The franchise holder shall pay and satisfy and shall cause to be paid and satisfied any judgment, decree, order, directive, or demand rendered, made or issued against the franchise holder, the City, its elected officers, boards, commissions, agents, or employees in any of these premises; and such indemnity shall exist and continue without reference to or limitation by the amount of any bond, policy of insurance, deposit, undertaking or other assurance required hereunder, or otherwise provided, that neither the franchise holder nor City shall make or enter into any compromise or settlement of any claim, demand, cause of action, action, suit, or other proceeding, without first obtaining the written consent of the other.

C. Insurance Required. Upon becoming a franchise holder, the franchise holder shall file with the Risk Manager and shall thereafter, during the entire term of the installation and/or occupation in the public rights-of-way with any of the franchise holder's equipment, maintain, in full force and effect, at its own cost and expense, each of the following policies of insurance:

General comprehensive liability insurance in the amount of Three Million Dollars (\$3,000,000), together with bodily injury liability insurance in an amount not less than Three Million Dollars (\$3,000,000) for injuries including accidental death, to any one person, and subject to the same limit for each person in an amount not less than One Million Dollars (\$1,000,000) on account of any one occurrence, and property damage liability insurance in an amount not less than One Hundred Thousand Dollars (\$100,000) resulting from any one occurrence; provided, as follows:

(i) The City shall be named as an additional insured in any of such insurance policies;

(ii) The insurance provided shall be primary and non-contributory and shall not be cancelled or materially amended without 30-days' written notice to the City, except 10-days' written notice shall be sufficient for non-payment of the premium; and

(iii) Where such insurance is provided by a policy which also covers the franchise holder or any other entity or person, it shall contain the standard cross-liability endorsement which excludes cross-liability suits.

§ 5.66.070 Undergrounding.

A. In those areas and portions of the City where the transmission or distribution facilities of both the public utility provided telephone service and those of the utility providing electric service are underground, or hereafter may be placed underground, then the franchise holder shall likewise construct, operate and maintain all of its transmission and distribution facilities underground.

B. When the franchise holder's conduits and other facilities are not being installed underground, the franchise holder shall utilize its existing poles, conduits or other facilities (collectively, "system") to the extent feasible, as reasonably determined by the Utility Director, and shall remove all portions of the above-ground system which will no longer be utilized. In addition, all facilities which are installed above ground shall utilize anti-graffiti surfaces.

C. If the City undertakes a program to cause all conduits and other facilities to be located beneath the surface of the streets in any area or throughout the City, then upon reasonable notice to a franchise holder utilizing poles, conduits or other above-ground facilities, any such conduits or other facilities of the franchise holder shall be constructed, installed, placed or replaced beneath the surface of the streets. Any construction, installation, placement, replacement or changes which may be so required shall be made at the expense of the franchise holder, whose costs shall be determined as in the case of public utilities.

§ 5.66.080 Emergency Alert System.

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

B. Per CPUC section 5880, all franchise holders shall comply with the requirements of the local franchise requirements related to the Emergency Alert System until January 1, 2015, or for such time said requirements are allowed for under the law. Accordingly, each franchisee shall provide the system capability to transmit an emergency alert signal to all participating subscribers, in the form of an emergency override capability that permits the City to interrupt and cablecast an audio message on all channels simultaneously in the event of a disaster, public emergency or other reason permitted under the law.

§ 5.66.090 Compliance with Other Codes.

Each franchise holder shall comply with all other applicable laws, including Chapter 12.12 of this Code, if applicable."

SECTION 3. Section 12.12.020 of the Lompoc Municipal Code shall be amended in its entirety to read as follows:

"12.12.020 Permit--Issuance.

A. No encroachment permit under this Chapter shall be issued unless a written application for the issuance of an encroachment permit is submitted to the Public Works Director. The written application shall state the name and address and principal place of business of the applicant, the name and address and telephone number of the person responsible or in charge of the work, the location and dimensions of the installation, the purpose of the facility and the approximate

time which will be required to complete such work and remove waste material and debris.

B. When a completed application for a permit is received by the Public Works Department, the application shall be approved or denied by the Public Works Director, or his/her designee, within sixty (60) days after the date of his/her receipt.

C. An application for a permit sought pursuant to this Chapter shall not be complete until the applicant has complied with all requirements, including any analysis required under the California Environmental Quality Act (CEQA) and State CEQA Guidelines, and has paid the required fee as established by a resolution of the City Council.

D. Any permit shall be subject to any reasonable conditions or limitations imposed thereon, to assure the elimination or avoidance of adverse effects.

E. If the applicant complies with every provision of this Chapter and with all applicable provisions of this Code, the Public Works Director may issue to the applicant a written permit to perform the work set forth in the application. The application, when approved and signed by the Public Works Director, shall constitute the permit.

F. An extension of time may be granted by the Public Works Director for good and sufficient reasons.

H. In the event the Public Works Director denies an application for a permit, the Director shall notify the applicant of the denial and furnish to the applicant a detailed explanation of the reason(s) for the denial.

I. In the event an applicant wishes to appeal the Public Works Director's decision to deny an application or revoke a permit issued pursuant to this Chapter, the decision may be appealed to the City Council. An appeal shall be filed by submitting to the City Clerk, within ten (10) days after the Public Works Director's notification of a decision on the application, a notice of appeal stating the grounds for the appeal, along with a filing fee in an amount established by resolution of the City Council. If the tenth day falls on a weekend or legal holiday recognized by the City, then the final appeal day shall be the next regular business day of the City. Within thirty (30) days after the receipt of a timely appeal, the City Administrator shall agendize a City Council hearing to consider the appeal."

SECTION 4. Section 12.12.055 of the Lompoc Municipal Code shall be added to read in its entirety as follows:

"12.12.055 Bond Required and Abandoned Utility Structures.

A. The Public Works Director shall require a bond, letter of credit or other security instrument for all permits issued pursuant to this Chapter wherein the applicant seeks to install any above ground utility structure. Said bond shall be in an amount deemed adequate by the Public Works Director, based on the cost of construction, repair, removal or other reasonable factors.

B. All unused, above ground utility structures in the right-of-way, shall be removed promptly and the owner shall promptly restore the street, alley, or other area of the right-of-way from which such encroachment has been removed to a condition satisfactory to the Public Works Director. Any above ground utility structure not in use for twelve months or more shall be deemed abandoned. If after notice from the City, the owner fails to remove an abandoned structure within a reasonable time, the City may remove the structure and seek reimbursement from the owner, or the City may act on its right under the security instrument on file.”

SECTION 5. Section 12.12.105 of the Lompoc Municipal Code shall be added to read in its entirety as follows:

“12.12.105 Utility Relocation.

A. Any permittee under this Chapter shall at its own expense protect, support temporarily, disconnect, relocate in the same street, alley or public place, or remove from any street, alley or public place, any property of the permittee when required by the Public Works Director by reason of traffic conditions, public safety, street vacation, freeway and street construction, change or establishment of street grade, installation of sewers, drains, water pipes, power lines, traffic signals and tracks or any other type of structures or improvements by governmental agencies when acting in a governmental or proprietary capacity or any other structures or public improvements; provided, that the permittee shall, in all such cases, have the privileges and be subject to the obligations to abandon any property of the permittee in place. Upon failure of the permittee to complete any work required by law or by the provisions of this Chapter to be done in any street, within the time prescribed, and to the satisfaction of the Public Works Director, the Public Works Director may cause such work to be done and the permittee shall pay to the City the cost thereof in the itemized amounts reported by the Public Works Director to the permittee, within 30 days after receipt of such itemized report.

B. Notwithstanding Subsection A, above, in the event that an existing utility line or associated equipment is in conflict with a City use, said utility shall be required to move its lines or equipment at its sole costs, in accordance with governing law or franchise.”

SECTION 6. Section 12.24.210 of the Lompoc Municipal Code shall be amended in its entirety to read as follows:

“12.24.210 Relocation, Protection and Repair Facilities.

A. A permittee under this Chapter shall not interfere with any existing facility without the written consent of the Public Works Director and the owner of the facility. If it becomes necessary to relocate an existing facility, this shall be done by its owner. No facility owned by the City shall be moved to accommodate the permittee, unless the cost of such work is borne by the permittee. The cost of moving privately owned facilities shall be similarly borne by the permittee, unless he or she makes other arrangements with the person owning the facility. The permittee shall support and protect by timbers or otherwise all pipes, poles, wires or other apparatus which may be in any way affected by the excavation work, and shall do everything necessary to support, sustain and protect them under, over, along or across such work. The permittee shall secure approval of the method of support and protection from the owner of the facility. In case any pipe, conduits, poles, wires or apparatus should be damaged, and for this purpose, pipe coating or other encasement or devices are to be considered as part of a substructure, the permittee shall promptly notify the owner thereof. All damaged facilities shall be repaired by the agency or person owning them and the expense of such repairs shall be charged to the permittee. It is the intent of this Section that the permittee shall assume all liability for damage to facilities and any resulting damage or injury to anyone because of such facility damage and such assumption of liability is a contractual obligation of the permittee. The only exception will be such instances where damage is exclusively due to the negligence of the owning utility. The permittee shall inform him or herself as to the existence and location of all underground facilities and protect the same against damage.

B. Any permittee under this Chapter shall at its own expense protect, support temporarily, disconnect, relocate in the same street, alley or public place, or remove from any street, alley or public place, any property of the permittee when required by the Public Works Director by reason of traffic conditions, public safety, street vacation, freeway and street construction, change or establishment of street grade, installation of sewers, drains, water pipes, power lines, traffic signals and tracks, or any other type of structures or improvements by governmental agencies, when acting in a governmental or proprietary capacity or any other structures or public improvements; provided, that the permittee shall, in all such cases, have the privileges and be subject to the obligations to abandon any property of the permittee in place. Upon failure of the permittee to complete any work required by law or by the provisions of this Chapter to be done in any street, within the time prescribed, and to the satisfaction of the Public Works Director, the Public Works Director may cause such work to be done and the permittee shall pay to the City the cost thereof in the itemized amounts reported by the Public Works Director to the permittee, within 30 days after receipt of such itemized report.

C. Notwithstanding Subsection B, above, in the event an existing utility line or associated equipment is in conflict with a City use, said utility shall be required to move its lines or equipment at its sole costs, in accordance with governing law or franchise.”

SECTION 7. Section 12.24.285 of the Lompoc Municipal Code shall be added to read in its entirety as follows:

“12.24.285 Utility installations.

Any above or below ground utility conduit, structure or devices permitted under this Chapter to be constructed or installed in streets or public easements shall be so constructed, installed and maintained, only in conformity with this Code and any other ordinances, resolutions, rules and regulations adopted by the City Council, at such locations and in such manner as shall be approved by the Public Works Director acting in the exercise of his or her reasonable discretion. Plans and specifications for such facilities shall be filed with the Public Works Director. Construction or installation of cables, lines or conduits in all other public places shall be subject to approval of and regulation by the City Council or its designee.”

SECTION 8. Section 13.04.120 of the Lompoc Municipal Code shall be added to read in its entirety as follows:

“13.04.120 Antennas Located in Vicinity of Water Facilities.

No antenna or ancillary equipment not owned and maintained by the City of Lompoc shall be installed within the fenced compound of any City of Lompoc Water facility. Antennas and ancillary equipment located adjacent to fenced water facilities must be kept separate from the water facility and accessed by means of its own gates, separate from those of the water facility and shall not have access to the fenced area of a water facility.”

SECTION 9. Section 13.04.130 of the Lompoc Municipal Code shall be added to read in its entirety as follows:

“13.04.130 Antennas on Reservoirs and Tanks.

No antenna shall be added or installed upon any City of Lompoc water reservoir or storage tank that is not a part of the operation of the reservoir or tank.”

SECTION 10. If any section, subsection, sentence, clause, phrase or word of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have adopted this ordinance, and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion or the ordinance would be subsequently declared invalid or unconstitutional.

SECTION 11. This Ordinance shall be effective thirty (30) days after its enactment. The City Clerk, or her duly appointed deputy, shall attest to the adoption of this ordinance and shall cause this ordinance to be posted in the manner required by law.

SECTION 12. This Ordinance was introduced on February 5, 2013, and duly adopted by the City Council of the City of Lompoc at its duly noticed regular meeting on _____, 2013, by the following electronic vote:

AYES: Councilmember:

NOES: Councilmember:

PASSED, APPROVED and ADOPTED this ____ day of _____ 2013.

John H. Linn, Mayor
City of Lompoc

Attest:

Stacey Alvarez, City Clerk
City of Lompoc