

**CITY MANAGER'S REPORT  
JUNE 11, 2018 CITY COUNCIL REGULAR MEETING**

**ITEM:** **PUBLIC HEARING (PUBLIC NOTICE) AND INTRODUCTION OF AN ORDINANCE ADDING LATHROP MUNICIPAL CODE CHAPTER 13.22 ENTITLED "STATE VIDEO SERVICE FRANCHISES"**

**RECOMMENDATION:** **Council to Consider the Following:**

- 1. Hold a Public Hearing; and**
- 2. Introduction and First Reading of an Ordinance Adding Lathrop Municipal Code Chapter 13.22 "State Video Service Franchises"**

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**SUMMARY:**

The local cable franchise with Comcast expired in December 2017. Comcast Communications filed an application with the California Public Utilities Commission for a new State Franchise that commenced at the expiration of the local franchise. Therefore, it is necessary that the Lathrop City Council adopt an ordinance adding Lathrop Municipal Code Chapter 13.22, which implements the provisions of the Digital Infrastructure and Video Competition Act (DIVCA).

**BACKGROUND:**

In September 2006, then Governor of the State of California signed into law the Digital Infrastructure and Video Competition Act of 2006 (DIVCA). DIVCA, which took effect on January 1, 2007 creates a process for the state to grant video service franchises (cable TV) and establishes the California Public Utilities Commission as the sole franchising authority for video service providers in the state.

Historically, the City of Lathrop has had the power to grant and renew franchises to provide cable service in the City. However, DIVCA established a new regulatory structure under which the authority to grant and renew video service franchises now resides with the State and not with local governments.

DIVCA affords the City certain rights that must be secured in a local DIVCA ordinance. For example, DIVCA permits the City to continue to collect franchise fees (Public Utility Code (CPUC section 5860); to retain revenue for Public, Education and Governmental ("PEG") purposes (CPUC section 5870); assess penalties for violations of customer service standards (CPUC section 5900); and to impose restrictions on the use of City rights-of-way (CPUC section 5885). DIVCA also requires the City to provide a process for State franchise holders to appeal encroachment permit denials (CPUC section 5885(c)(4)).

**REASON FOR RECOMMENDATION:**

Comcast has filed an application with the California Public Utilities Commission for a new franchise. The state franchise was granted and commenced at the expiration of the local franchise in December 2017. Therefore, it is necessary to pass this

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ordinance that addresses video franchises issued by the state and which secures the City's rights under state law.

More specifically, under DIVCA the City will continue to receive a 5% cable TV franchise fee (maximum allowed by the Federal Government) that it has been receiving during the term of the local franchise. In addition, Public, Education and Governmental ("PEG") channels and funding can continue to be provided by Comcast as well as any other state video franchisees. Without the Ordinance, PEG funding would be eliminated.

**FISCAL IMPACT:**

Under the proposed DIVCA Ordinance the City will continue to collect a franchise fee of five percent (5%) of gross cable services sales in the City of Lathrop, estimated at \$80,000 annually. In addition, the proposed DIVCA Ordinance will allow the City to collect a Public, Educational, and Government (PEG) fee of one percent (1%) from Comcast and any other state cable/video franchisee. The ordinance also outlines customer service related fines that can be imposed on a state franchisee as needed.

**ATTACHMENTS:**

- A. Ordinance Adding Lathrop Municipal Code 13.22 "State Video Service Franchises"

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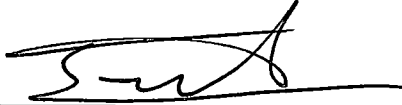
**APPROVALS:**

  
\_\_\_\_\_  
Tony Fernandes  
Information Technology Manager


4-3-18  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Cari James  
Director of Finance

4/4/18  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Salvador Navarrete  
City Attorney

4-3-18  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Stephen J. Salvatore  
City Manager

6.6.18  
\_\_\_\_\_  
Date

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LATHROP ADDING CHAPTER 13.22 ENTITLED "STATE VIDEO SERVICE FRANCHISE TO TITLE 13 "PUBLIC SERVICES" OF THE LATHROP MUNICIPAL CODE, TO IMPLEMENT THE PROVISIONS OF THE DIGITAL INFRASTRUCTURE AND VIDEO COMPETITION ACT OF 2006, CODIFIED IN CALIFORNIA PUBLIC UTILITIES CODE SECTION 5800 ET SEQ.**

**WHEREAS**, the City Council of the City of Lathrop finds that it is necessary to establish this Chapter to address video service providers that 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["DIVCA"]), to provide cable or video service in any location(s) within the incorporated boundaries of the City; and

**WHEREAS**, it is necessary to implement this Chapter in order for the City to adopt provisions of DIVCA and exercise its rights thereunder.

**NOW THEREFORE**, The City Council of The City of Lathrop Does Ordain Chapter 13.22 is Added To The Lathrop Municipal Code To Read As Follows:

**CHAPTER 13.22 STATE VIDEO SERVICE FRANCHISES**

**SECTIONS:**

**13.22.010 General Provisions**

**13.22.020 Definitions**

**13.22.030 Franchise Fees**

**13.22.040 Customer Service**

**13.22.050 Permits and Construction**

**13.22.060 Emergency Alert System**

**13.22.070 Public, Educational, and Government Access Channel Capacity, Support, Interconnection, and Signal Carriage**

**13.22.080 Notices**

**13.22.010 General Provisions**

(1) Purpose. This Chapter is applicable to video service providers who 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 ["DIVCA"]), to provide cable or video services in any location(s) within the incorporated boundaries of the City. It is the purpose of this Chapter to implement within the incorporated boundaries of the City the provisions of DIVCA and the rules of the California Public Utilities Commission promulgated there under that are applicable to a "local franchising entity" or a "local entity" as defined in DIVCA.

(2) Rights Reserved.

A. 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 law, and no action, proceeding or exercise of a right shall affect any other rights which may be held by the City.

B. Except as otherwise provided by DIVCA, a state franchise shall not include, or be a substitute for:

i. compliance with applicable requirements for the privilege of transacting and carrying on a business within the City, including, but not limited to, compliance with the conditions that the City may establish before facilities may be constructed for, or providing, non-video services;

ii. any permit or authorization required in connection with operations on or in public rights-of-way or public property, including, but not limited to, encroachment permits, street work permits, pole attachment permits and street cut permits; and

iii. any permit, agreement or authorization for occupying any other property of the City or any private person to which access is not specifically granted by the state franchise.

C. No permit issued by the City to a state franchise holder is itself a franchise, nor shall any permit create a vested right that would prohibit the City from revoking or amending the permit.

(3) Compliance with City Ordinances. Nothing contained in this Chapter shall be construed so as to exempt 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 consistent with this Chapter or California Public Utilities Code Section 5800 *et seq.*, or any obligations under any franchise issued by the City insofar as those obligations may be enforced under California Public Utilities Code Section 5800 *et seq.*

**13.22.020 Definitions**

(1) Definitions Generally -- Interpretation of Language. For purposes of this Chapter, the following terms, phrases, words, and their derivations shall have the meaning given in this Chapter. Words not defined in this Chapter shall have the same meaning as established in: (1) DIVCA, and if not defined therein, (2) California Public Utilities Commission rules implementing DIVCA, and if not defined therein, (3) Title VI of Title 47 of the Communications Act of 1934, as amended, 47USC § 521 *et seq.*, and if not defined therein (4) their common and ordinary meaning. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, words in the singular number include the plural number, and "including" and "include" are

not limiting. The words "shall" and "will" are always mandatory, but the use of those terms grants no private rights to any person with respect to the City. References to governmental entities (whether persons or entities) refer to those entities or their successors in authority. If specific provisions of law referred to herein are renumbered, then the reference shall be read to refer to the renumbered provision. References to laws, ordinances or regulations shall be interpreted broadly to cover government actions, however nominated, and include laws, ordinances and regulations now in force or hereinafter enacted or amended.

A. "Access" or "PEG access," or "PEG" means the availability of a cable or state franchise holder's system for public, educational, or governmental use by various agencies, institutions, organizations, groups, and individuals, including organizations, groups, or individual members of the general public, educational institutions, and the City and its designated access providers, to acquire, create, and distribute programming not under a state franchise holder's editorial control.

B. "Gross revenues" means all revenues actually received by the holder of a state franchise or its affiliates that are derived from the operation of the holder's network to provide cable service or video service within the incorporated areas of the City.

C. "State franchise holder" means a cable operator or video service provider that has been issued a franchise by the California Public Utilities Commission to provide cable service or video service, as those terms are defined in California Public Utilities Code Section 5830, within any portion of the incorporated limits of the City.

### **13.22.030 Franchise Fees**

(1) State Franchise Fees. Any state franchise holder operating within the incorporated areas of the City shall pay to the City a state franchise fee equal to five percent (5%) of gross revenues that may be subject to a franchise fee under California Public Utilities Code Section 5860.

(2) Payment of Franchise Fees. The state franchise fee required pursuant to this Chapter shall be paid 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, which shall be agreed to by the City, a separate payment for the state franchise fee not later than forty-five (45) days after the end of each calendar quarter. Each payment made shall be accompanied by a report, detailing how the payment was calculated, and shall include such additional information on the appropriate form as designated by the City.

(3) Examination of Business Records. The City may examine the business records of the holder of a state franchise in a manner consistent with California Public Utilities Code Section 5860(i).

(4) Late Payments. In the event a state franchise holder fails to make payments required by this Chapter on or before the due dates specified herein, 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%).

(5) Other. In the event a state franchise holder leases or licenses access to a network owned by the City, the City may set a franchise or other fee for access to the City-owned network separate and apart from the franchise fee charged to state franchise holders pursuant to this Chapter, which fee shall otherwise be payable in accordance with the procedures established by this Chapter.

### **13.22.040 Customer Service**

(1) Customer Service Standards. A state franchise holder shall comply with Sections 53055, 53055.1, 53055.2 and 53088.2 of the California Government Code; the FCC customer service and notice standards set forth in Sections 76.309, 76.1602, 76.1603, and 76.1619 of Title 47 of the Code of Federal Regulations; section 637.5 of the California Penal Code; the privacy standards of Section 551 of Title 47 of the United States Code; and, to the extent consistent with DIVCA, all other applicable state and federal customer service and consumer protection standards pertaining to the provision of video service, include any such standards hereafter adopted. In case of a conflict, the stricter standard shall apply. All customer service and consumer protection standards under this paragraph shall be interpreted and applied to accommodate newer or different technologies while meeting or exceeding the goals of the standards.

(2) Penalties for Violations of Standards. The City shall enforce the compliance of state franchise holders with respect to the state and federal customer service and consumer protection standards set forth in this Chapter. The City will provide a state franchise holder with a written notice of any alleged material breaches, as defined in California Public Utilities Code Section 5900, of applicable customer service or consumer protection standards, and will allow the state franchise holder 30 days from the receipt of the notice to remedy the specified material breach. Material breaches not remedied by a state franchise holder within the 30-day time period, irrespective of the number of customers affected, will be subject to the following penalties to be imposed by the City:

A. For the first occurrence of a material breach, a fine of \$500 may be imposed for each day the violation remains in effect, not to exceed \$1,500 for each violation.

B. For a second material breach of the same nature within 12 months, a fine of \$1,000 may be imposed for each day the violation remains in effect, not to exceed \$3,000 for each violation.

C. For a third material breach of the same nature within 12 months, a fine of \$2,500 may be imposed for each day the violation remains in effect, not to exceed \$7,500 for each violation.

(3) Any penalties imposed by the City shall be imposed in a manner consistent with California Public Utilities Code Section 5900.

### **13.22.050 Permits and Construction**

(1) Except as expressly provided in this section, all provisions of Chapter 3.22, of the Lathrop Municipal Code, and all City administrative rules and regulations developed to any of these provisions, as now existing or as hereafter amended, shall apply to all work performed by or on behalf of a state franchise holder on any City public rights-of-way, public property, or City easement.

(2) Permits. Prior to commencing any work for which a permit is required by Title 13, a state franchise holder shall apply for and obtain a permit in accordance with the provisions of Title 13 and shall comply with all other applicable laws and regulations, including but not limited to all applicable requirements of Division 13 of the California Public Resources Code, section 21000, *et seq.* (the California Environmental Quality Act).

(3) C. The City Manager or designee shall either approve or deny a state franchise holder's application for any permit required under Section 5.21.050 A within sixty (60) days of receiving a completed permit application from the state franchise holder.

(4). If the City Manager or designee denies a state franchise holder's application for a permit, the City Manager or designee 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.

(5). A state franchise holder that has been denied a permit by final decision of the City Manager or designee may appeal the denial to the City Council. Upon receiving a notice of appeal, the City Council shall take one of the following actions:

1. Affirm the action of the City Manager or designee without any further hearing; or
2. Refer the matter back to the City Manager or designee for further review with or without instructions; or
3. Set the matter for a de novo hearing before the City Council.

(6). In rendering its decision on the appeal, the City Council shall not hear or consider any argument or evidence of any kind other than the record of the matter received from the City Manager or designee unless the City Council is itself conducting a public hearing on the matter.



(7) The issuance of a permit 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. Without limitation, a permit to place cabinets and similar appurtenances aboveground may be revoked and the permittee required to place facilities underground, in accordance with applicable law.

### **13.22.060 Emergency Alert System**

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. To the extent consistent with Public Utilities Code section 5880, each state franchise holder shall install and maintain an audio override on all channels for transmission of emergency messages and alerts.

### **13.22.070 Public, Educational, and Government Access Channel Capacity, Support, Interconnection, and Signal Carriage**

#### (1) PEG Channel Capacity.

A. A state franchise holder shall designate a sufficient amount of capacity on its network to allow the provision of at least three (3) PEG channels to satisfy the requirement of section 5870 of the California Public Utilities Code, within the time limits specified therein.

B. A state franchise holder shall provide an additional PEG channel when the standards set forth in section 5870(d) of the California Public Utilities Code are satisfied by the City or any entity designated by the City to manage one or more of the PEG channels.

#### (2) PEG Support.

A. Amount of PEG Support Fee. Any state franchise holder shall pay to the City -- or if directed by the City, to the City's designated PEG provider -- a PEG fee equal to one percent (1%) of gross revenues.

B. The PEG support fee shall be used for PEG purposes in a manner that is consistent with state and federal law.

C. A state franchise holder shall remit the PEG support fee quarterly, within forty-five days after the end of each calendar quarter. Each payment made shall be accompanied by a summary, detailing how the PEG support fee was calculated.

D. In the event that a state franchise holder fails to pay the PEG support fee when due, or underpays the proper amount due, the state franchise holder shall pay interest at the rate per year equal to the highest prime lending rate

during the period of delinquency, plus one percent (1%), or the maximum rate specified by state law.

(3) PEG Carriage and Interconnection.

A. As set forth in sections 5870(b) and 5870(g)(3) of the California Public Utilities Code, state franchise holders shall ensure that all PEG channels are receivable by all subscribers, whether they receive digital or analog service, or a combination thereof, without the need for any equipment other than that needed to receive the lowest cost tier of service. PEG access capacity provided by a state franchise holder shall be of similar quality and functionality to that offered by commercial channels (unless the PEG signal is provided to the state franchise holder at a lower quality or with less functionality), and shall be carried on the state franchise holder's lowest cost tier of service. To the extent feasible, the PEG channels shall not be separated numerically from other channels carried on the lowest cost tier of service and the channel numbers for the PEG channels shall be the same channel numbers used by any incumbent cable operator, unless prohibited by federal law. After the initial designation of the PEG channel numbers, the channel numbers shall not be changed without the agreement of the City unless federal law requires the change.

B. Where technically feasible, 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 for PEG carriage, the City may require the incumbent cable operator to allow each 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 of interconnection is available, each state franchise holder shall make interconnection available to each PEG channel originator programming a channel in the City and shall provide the facilities necessary for the interconnection. The cost of any interconnection shall be borne by each state franchise holder requesting the interconnection unless otherwise agreed to by the parties.

**13.22.080 Notices**

(1) 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 file with the California Public Utilities Commission.

(2) 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 both the City

Manager and the City staff person in charge of cable and telecommunications, or their successors or designees.

Section 2. To the extent that the terms and provisions of this Ordinance may be inconsistent or in conflict with the terms or conditions of any prior city ordinance, motion, resolution, rule or regulation governing the same subject, the terms of this Ordinance shall prevail with respect to the subject matter thereof and such inconsistent or conflicting provisions of prior ordinances, motions, resolutions, rules or regulations are hereby repealed.

Section 3. If any Chapter, subsection, subdivision, paragraph, sentence, clause or phrase added by this Ordinance, or any part thereof, is for any reason held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each Chapter, subsection, subdivision, paragraph, sentence, clause or phrase thereof irrespective of the fact that any one or more subsections, subdivisions, paragraphs, sentences, clauses or phrases are declared unconstitutional, invalid or ineffective.

Section 4. This Ordinance shall go into effect and be in full force and operation thirty (30) days after its final passage and adoption. The City Clerk shall certify to the adoption of this Ordinance and cause the same to be posted and published once within fifteen days after passage and adoption as may be required by law; or, in the alternative, the City Clerk may cause to be published a summary of this Ordinance and a certified copy of the text of this Ordinance shall be posted in the Office of the City Clerk five days prior to the date of adoption of this Ordinance; and, within fifteen days after adoption, the City Clerk shall cause to be published, the aforementioned summary and shall post a certified copy of this Ordinance, together with the vote for and against the same, in the Office of the City Clerk.

**THIS ORDINANCE** was regularly introduced at a meeting of the City Council of the City of Lathrop on the 11<sup>th</sup> day of June, and was PASSED AND ADOPTED at a regular meeting of the City Council of the City of Lathrop on \_\_\_\_\_ day of \_\_\_\_\_, by the following vote:

AYES:


NOES:

ABSTAIN:

ABSENT:

\_\_\_\_\_  
SONNY DHALIWAL, MAYOR

ATTEST:

APPROVED AS TO FORM:  
  
\_\_\_\_\_  
Salvador Navarrete, City Attorney

\_\_\_\_\_  
Teresa Vargas, City Clerk