

ORDINANCE NO. 44-07 N.S.

**AN ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF RICHMOND ADDING CHAPTER 2.35 TO THE
CITY OF RICHMOND MUNICIPAL CODE
ESTABLISHING REQUIREMENTS FOR VIDEO
SERVICE PROVIDERS**

Now, therefore, the City Council of the City of Richmond do ordain as follows:

SECTION 1

Chapter 2.35 entitled “**REQUIREMENTS FOR VIDEO SERVICE PROVIDERS**” is hereby added to the City of Richmond Municipal Code to read as follows:

CHAPTER 2.35

Sections:

- 2.35.010 Purpose and interpretation.**
 - 2.35.020 Definitions.**
 - 2.35.030 State franchise required.**
 - 2.35.040 Administration and regulations.**
 - 2.35.050 Construction, operation, maintenance and repair.**
 - 2.35.060 Franchise fee.**
 - 2.35.070 Public, educational and governmental access channel capacity and support.**
 - 2.35.080 Audits and records.**
 - 2.35.090 State franchise service obligations.**
 - 2.35.100 Customer service and protection.**
 - 2.35.110 Emergency alert system.**
 - 2.35.120 Notices.**
 - 2.35.130 Miscellaneous provisions.**
- 2.35.010 Purpose and interpretation.**

It is the purpose of this Chapter 2.35 to implement within the jurisdictional boundaries of the City of Richmond the provisions of the Digital Infrastructure and Video Competition Act of 2006, Assembly Bill 2987 (Ch. 700, Stats. 2006), codified at Public Utilities Code Sections 5800, *et seq.*, and the rules of the California Public Utilities commission promulgated thereunder that are applicable to a "local franchising entity" or a "local entity" as defined in Sections 5830(h) and 5830(k) of the California Public Utilities Code, respectively. Consistent with that purpose, the provisions of this Chapter 2.35 are to be construed in a manner that is consistent with the California Public Utilities Code and the applicable rules of the commission promulgated thereunder.

2.35.020 Definitions.

For the purposes of this Chapter 2.35, the following words, terms, phrases, and abbreviations and their similar formulations shall have the meanings given them in this Chapter 2.35, as may be amended from time to time. Words not defined in this Chapter 2.35 shall have the same meaning as established in (1) the California Public Utilities Code, and, if not defined therein, (2) commission rules implementing the California Public Utilities Code, and, if not defined therein, (3) Title VI of Title 47 of the United States Code, and, if not defined therein, (4) their common and ordinary meaning. References to governmental entities (whether persons or entities) shall refer to those entities or their successors in authority. If a specific provision of law referred to in this Chapter 2.35 should be renumbered, then the reference shall be read to refer to the renumbered provision. References to any law shall be interpreted broadly to cover government actions, however nominated, including any law now in force or subsequently

enacted or amended.

(a) "Access," "PEG access," or "PEG use" means the availability of cable system or video service provider network capacity for public, educational or governmental use by various agencies, institutions, organizations, groups, and individuals, including the City and its designated access providers, to acquire, create and distribute programming not under a cable operator's or video service provider's editorial control, including, but not limited to:

(1) "Educational access" or "educational use" which means access where accredited educational institutions are the primary or designated programmers or users having editorial control over their programming;

(2) "Governmental access" or "governmental use" which means access where governmental institutions or their designees are the primary or designated programmers or users having editorial control over their programming; and

(3) "Public access" or "public use" which means access where organizations, groups or individual members of the general public, on a nondiscriminatory basis, are the primary or designated programmers or users having editorial control over their programming.

(b) "Cable coordinator" means the City Manager or the individual or individuals designated by the City Manager to administer oversight of state franchisees in the City.

(c) "California Public Utilities Code" means California Public Utilities Code Sections 5800, et seq., as may be amended from time to time.

(d) "Channel" means a portion of the electromagnetic frequency spectrum which is used in a cable system or the network of a video service provider and which is capable of delivering a television signal whether in an analog or digital format. The definition does not restrict the use of any channel to the transmission of analog television signals.

(e) "City" means the government of the City of Richmond, a chartered city and a municipal corporation duly organized and validly existing under the laws of the State of California, and all departments, divisions, and offices thereof.

(f) "Council" means the City Council of the City of Richmond.

(g) "Commission" means the California Public Utilities Commission.

(h) "Comcast Franchise" means the Cable Television Franchise Agreement by and between the City of Richmond, California, and LenComm, Inc., effective as of September 14, 1988.

(i) "Communications service equipment" and "communications service facilities" means the equipment and facilities used by a video service provider to provide cable or video service.

(j) "EAS" means emergency alert system.

(k) "FCC" means the Federal Communications Commission.

(l) "Person" includes any natural person, association, company, corporation, limited liability company, limited liability partnership, limited partnership, joint stock company, partnership, trust, or any other legal entity, but not the City.

(m) "PEG" means public, educational and governmental access.

(n) "Public rights-of-way" means the surface of and the space above and below any street, road, highway, freeway, bridge, lane, path, alley, court, sidewalk, parkway, drive, or right-of-way or easement primarily dedicated to travel, now or hereafter existing within the City which may be properly used for the purpose of installing, constructing, operating, maintaining, and repairing a cable system or a video service provider's network; and any other property that a state franchisee is entitled by California or federal law to use by virtue of the grant of a state franchise.

(o) "Public property" means any property that is owned or under the control of the City that is not located in the public rights-of-way, including, for purposes of this Chapter, but not limited to, buildings, parks, and pole structures, such as utility poles and light poles, or similar facilities or property owned by or leased to the City.

(p) "State franchisee" means any cable operator or video service provider that, pursuant to the California Public Utilities Code, has been granted by the commission a state franchise to provide cable or video service by means of communications service equipment or facilities and whose video service area includes all or any part of the incorporated limits of the City.

(q) "Video service" has the meaning set forth in California Public Utilities Code Section 5830(s).

(r) “Video service provider” has the meaning set forth in California Public Utilities Code Section 5830(t) and, in addition, refers collectively to any cable operator as defined in Public Utilities Code Section 5830(b), or OVS operator as defined in Public Utilities Code Section 5830(n).

2.35.030 State franchise required.

(a) No person may construct, operate, maintain or repair a cable system or video service provider's network in the City without first obtaining a state franchise therefor.

(b) A state franchise shall not convey rights other than as specified in this Chapter 2.35 or in the California Public Utilities Code or other applicable law; no rights shall pass by implication.

(c) Except as otherwise provided by the California Public Utilities Code, a state franchise shall not include, or be a substitute for:

(1) Compliance with generally 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;

(2) Any permit or authorization, other than a state franchise, 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, and street cut permits; and

(3) 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.

(d) Except as otherwise provided in the California Public Utilities Code, a state franchise shall not relieve a franchisee of its duty to comply with all laws, including the ordinances, resolutions, rules, regulations, and other laws of the City, and every state franchisee shall comply with the same. The City reserves its rights to the lawful exercise of police and other powers the City now has or may later obtain.

(e) The City reserves the right to construct, operate, maintain or repair its own cable system or video service provider network.

2.35.040 Administration and regulations.

(a) The City may from time to time adopt rules and regulations to implement the provisions of this Chapter 2.35 consistent with the California Public Utilities Code.

(b) The Cable Coordinator is hereby authorized to administer this Chapter 2.35 and to provide or cause to be provided any notices (including noncompliance notices) and to take any action on behalf of the City that may be required under this Chapter 2.35, the California Public Utilities Code, or under applicable law.

(c) The failure of the City, upon one or more occasions, to exercise a right or to require compliance or performance under this Chapter 2.35 or any other applicable law shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance, unless such right has been specifically waived in writing or its exercise by the City is not permitted by the California Public Utilities Code.

(d) The City may designate one or more entities, including itself, to control and manage the use of PEG access channels, and any PEG facilities and equipment (in addition to any other communications service equipment or facilities) owned, controlled or used by the City or the designated entity or entities.

2.35.050 Construction, operation, maintenance and repair.

(a) A video service provider operating within the jurisdictional boundaries of the City shall, in its use of public rights-of-way and public and private property, be considered a “utility” within the meaning of Section 12.48.010 of the Richmond Municipal Code, and shall abide by the provisions of Chapters 7.76, 12.28, 12.36, 12.48, 15.04, and 15.08 of the Richmond Municipal Code not in conflict with this Chapter and which are applicable to any utility or utilities. Any application to use the public rights-of-way shall include a description, including locations, of the state franchisee’s existing or proposed network.

(b) No video service provider may construct, operate, maintain or repair a cable system or network in the public rights-of-way without first complying with all statutory requirements, including the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

2.35.060 Franchise fee.

(a) Every state franchisee operating within the jurisdictional boundaries of the City shall pay a franchise fee to the City in the amount of five (5) percent of that state franchisee's gross revenues derived from the operation of its network to provide cable or video services within the City.

(b) For purposes of this Chapter 2.35, "gross revenue" shall have the meaning set forth in Section 5860 of the California Public Utilities Code.

(c) A state franchisee shall remit the franchise fee to the City quarterly, within forty-five (45) days after the end of each calendar quarter. Each payment shall be accompanied by a summary explaining the basis for the calculation of the franchise fee.

(d) If a state franchisee fails to pay the franchise fee when due, or underpays the proper amount due, the state franchisee shall pay a late payment charge at an annual interest rate equal to the highest prime lending rate during the period of delinquency, plus one (1) percent.

2.35.070 Public, educational and governmental access channel capacity and support.

(a) PEG Channel Capacity.

(1) A state franchisee shall designate and activate four (4) PEG channels on its network. The state franchisee shall designate and activate the four (4) PEG channels within three (3) months from the date that the state franchisee receives a state franchise to provide video service in an area including the City, provided, however, that this three-month period shall be tolled for such a period, and only for such a period, during which the state franchisee's ability to designate or provide such PEG capacity is technically infeasible, as provided in Section 5870(a) of the California Public Utilities Code.

(2) A state franchisee 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 be responsible for PEG.

(b) PEG Support and amount of PEG Support Fee. Every state franchisee operating within the boundaries of the City shall pay a PEG support fee to the City in the amount of one (1) percent of that state franchisee's gross revenues derived from the operation of its network to provide cable or video services within the City.

(2) The PEG support fee shall be used by the City for PEG purposes consistent with state and federal law.

(3) A state franchisee shall remit the PEG support fee to the City quarterly, within forty-five (45) days after the end of each calendar quarter. Each payment shall be accompanied by a summary explaining the basis for the calculation of the PEG support fee.

(4) If a state franchisee fails to pay the PEG fee when due, or underpays the proper amount due, the state franchisee shall pay a late payment charge at an annual interest rate equal to the highest prime lending rate during the period of delinquency, plus one (1) percent.

(c) PEG Carriage and Interconnection.

(1) State franchisees 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 franchisee shall be of similar quality and functionality to that offered by commercial channels on the state franchisee's lowest cost tier of service unless the PEG signal is provided to the state franchisee at a lower quality or with less functionality.

(2) If a state franchisee and an incumbent cable operator cannot reach a mutually acceptable interconnection agreement for PEG carriage, the City shall require the incumbent cable operator to allow the state franchisee to interconnect its network with the incumbent cable operator's network at a technically feasible point on the state franchisee's network as identified by the state franchisee. If no technically feasible point

of interconnection is available, the state franchisee shall make interconnection available to the PEG channel originator and shall provide the facilities necessary for the interconnection. The cost of any interconnection shall be borne by the state franchisee requesting the interconnection unless otherwise agreed to by the parties.

(d) Institutional Network and Other In-Kind PEG Facilities and Cable Service Support Obligations. The incumbent cable operator's obligation to provide and support PEG channel facilities and institutional networks and to provide free cable service to schools and other public buildings as provided in the Comcast Franchise shall continue until January 1, 2009.

2.35.080 Audits and records.

(a) Not more than once annually, the City or its designee may examine and audit the business records of a state franchisee to ensure compliance with the franchise fee payment obligations of Section 2.35.060 and the PEG support fee payment obligations of Section 2.35.070(b).

(b) A state franchisee shall keep all business records reflecting any gross revenues, even if there is a change in ownership of the state franchisee, for a least four (4) years after such gross revenues are recognized by the state franchisee on its books and records. In the case of subscriber numbers used for calculating the PEG fee, a state franchisee shall keep data on the number of its subscribers in the City, even if there is a change in ownership of the state franchisee, for at least four (4) years after the close of each calendar quarter on which the PEG support fee is to be paid.

(c) To the extent consistent with the California Public Utilities Code and other applicable law, the City may request, and a state franchisee shall provide, information and books and records to the extent necessary to monitor a state franchisee's compliance with this Chapter 2.35.

2.35.090 State franchise service obligations.

A state franchisee may not discriminate against or deny access to service to any group of potential residential subscribers because of income of the residents in the area in which such group resides. The City may bring complaints to the commission that a state franchisee is not offering video service as required by Section 5890 of the California Public Utilities Code.

2.35.100 Customer service and protection.

(a) A state franchisee 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 all other applicable state and federal customer service and consumer protection standards pertaining to the provision of video service, including 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.

(b) The Cable Coordinator shall monitor the compliance of state franchisees with respect to the state and federal customer service and consumer protection standards set forth in paragraph (a). The Cable Coordinator will provide a state franchisee with written notice of any material breaches of applicable customer service or consumer protection standards, and will allow the state franchisee thirty (30) days from the receipt of the notice to remedy the specified material breach. Material breaches not remedied within the thirty-day time period will be subject to the following penalties to be imposed by the City:

(1) For the first occurrence of a violation, a fine of \$500.00 shall be imposed for each day the violation remains in effect, not to exceed \$1,500.00 for each violation.

(2) For a second violation of the same nature within twelve months, a fine of \$1,000.00 shall be imposed for each day the violation remains in effect, not to exceed \$3,000.00 for each violation.

(3) For a third or further violation of the same nature within twelve months, a

fine of \$2,500.00 shall be imposed for each day the violation remains in effect, not to exceed \$7,500.00 for each violation.

(c) A state franchisee may appeal a penalty assessed by the Cable Coordinator to the Council within sixty (60) days of the initial assessment. The Council shall hear all evidence and relevant testimony and may uphold, modify or vacate the penalty. The Council's decision on the imposition of a penalty shall be final.

2.35.110 Emergency alert system.

(a) A state franchisee shall comply with the EAS requirements of the FCC in order that emergency messages may be distributed over the state franchisee's network.

(b) A state franchisee's EAS shall be remotely activated by telephone and shall allow an authorized representative of the City to override the audio and video on all channels on the state franchisee's network that may be lawfully overridden, without the assistance of the state franchisee, for emergency broadcasts from a location designated by the City in the event of a civil emergency or for reasonable tests. Testing of a state franchisee's EAS shall occur at times that will cause minimal subscriber inconvenience.

(c) The City shall permit only appropriately trained and authorized persons to operate the EAS equipment. Except to the extent expressly prohibited by applicable law, the City shall hold the state franchisee, its employees and officers harmless from any claims arising out of the emergency use of its facilities by the City.

(d) Paragraphs (b) and (c) of this Section 2.35.110 shall expire and no longer be effective after December 31, 2007.

2.35.120 Notices.

All notices and copies of documents that the California Public Utilities Code requires to be provided to the City, as a local entity or a local franchising entity, shall be addressed to the City Manager, Attention: Cable Coordinator.

2.35.130 Miscellaneous provisions.

(a) The captions to sections throughout this Chapter 2.35 are intended solely to facilitate reading and reference to the sections and provisions of this Chapter. Such captions shall not affect the meaning or interpretation of this Chapter 2.35.

(b) Unless otherwise indicated, when the performance or doing of any act, duty, matter, or payment is required under this Chapter 2.35, and a period of time or duration for the fulfillment of doing thereof is prescribed and is fixed herein, the time shall be computed so as to exclude the first and include the last day of the prescribed or fixed period of time.

(c) To the extent Chapter 7.94 of the Richmond Municipal Code is inconsistent with any provision of this Chapter concerning "video service" as defined herein, this Chapter shall prevail.

SECTION 2

Any provisions of the Richmond Municipal Code, or appendices thereto, or any other ordinances of the City inconsistent herewith, to the extent of such inconsistencies and no further, are hereby repealed.

SECTION 3

If any section, subsection, sentence, clause, or phrase 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 the ordinance. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, sentence, clause, and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid or unconstitutional.

SECTION 4

This Ordinance shall be effective 30 days after passage and adoption.

First introduced at a regular meeting of the City Council of the City of Richmond held on September 18, 2007 and finally passed and adopted at a regular meeting held on October 16, 2007 by the following vote:

AYES: Councilmembers Butt, Marquez, Rogers, Sandhu, Thurmond, and Mayor McLaughlin

NOES: None

ABSTENTIONS: None

ABSENT: Councilmembers Bates, Lopez, and Viramontes

DIANE HOLMES
CLERK OF THE CITY OF RICHMOND

(SEAL)

Approved:

GAYLE McLAUGHLIN
Mayor

Approved as to form:

LOUISE RENNE, Interim
City Attorney

State of California }
County of Contra Costa : ss.
City of Richmond }

I certify that the foregoing is a true copy of Ordinance No. 44-07 N.S., finally passed and adopted by the Council of the City of Richmond at a meeting held October 16, 2007, and published in accordance with law.