

GARDEN GROVE CITY COUNCIL

ORDINANCE NO. 2937

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GARDEN GROVE
REAUTHORIZING THE PUBLIC, EDUCATIONAL, AND GOVERNMENTAL FEE ON STATE
VIDEO FRANCHISEES OPERATING WITHIN THE CITY OF GARDEN GROVE

City Attorney's Summary

This Ordinance reauthorizes the public, educational, and governmental fee on state video franchisees operating within the City of Garden Grove. The Ordinance further amends Section 5.25.060 of Chapter 5.25 of Title 5 of the Garden Grove Municipal Code to implement automatic reauthorizations of the fee for any new or renewed state video franchise(s) held by any state-franchised video service provider operating in the City of Garden Grove.

WHEREAS, Section 5870(n) of the California Public Utilities Code ("Section 5870(n)") was enacted as part of the Digital Infrastructure and Video Competition Act of 2006 ("DIVCA") and authorized the City of Garden Grove ("City") to adopt an ordinance establishing a fee on state-franchised video service providers to support public, educational, and governmental ("PEG") channel facilities; and

WHEREAS, on August 26, 2008, the City adopted Ordinance No. 2731 implementing DIVCA, codified at Chapter 5.25 of Title 5 of the Garden Grove Municipal Code establishing, among other requirements, a one percent (1%) fee for the support of PEG channel facilities and activities within the City ("PEG Fee"), which is codified in Section 5.25.060 of the Garden Grove Municipal Code; and

WHEREAS, Ordinance No. 2731 and Chapter 5.25 of the Garden Grove Municipal Code has never been repealed and did not include any expiration date, but was intended to apply to and regulate all current and future franchisees; and

WHEREAS, Section 5870(n) states that an ordinance establishing a PEG fee shall expire, and may be reauthorized, upon the expiration of the state franchise, and therefore it could be argued that the City's ordinance has lapsed; and

WHEREAS, Section 5870(k) further provides that obligations to provide and support PEG channel facilities contained in a locally issued franchise existing on December 31, 2006, shall continue until the local franchise expires, until the term of the franchise would have expired if it had not been terminated pursuant to subdivision (o) of Section 5840, or until January 1, 2009, whichever is later; and

WHEREAS, the City's local franchise with Time Warner Cable LLC, now known as Spectrum after its 2015 merger with Charter Communications, is set to expire on August 21, 2022; and

WHEREAS, notwithstanding having received a state franchise, Spectrum opted to continue to operate under the City's local franchise until its expiration; and

WHEREAS, the City Council desires to reauthorize the PEG fee established by Ordinance No. 2731.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF GARDEN GROVE DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Reauthorization. Chapter 5.25 of Title 5 of the Garden Grove Municipal Code is hereby reauthorized to the extent required by California Public Utilities Code section 5870(n). All state-franchised video service providers operating within the City shall be subject to the franchise fee required by Section 5.25.050 of the Garden Grove Municipal code and the PEG Fee required by Section 5.25.060 of the Garden Grove Municipal Code as of August 22, 2022, which fees shall remain unchanged and in full effect as to all state-franchised video service providers operating within the City.

SECTION 2. Automatic Reauthorization. Commencing from, and after, the effective date of this Ordinance, Chapter 5.25 of Title 5, and the City's fees set forth in Sections 5.25.050 and 5.25.060 of the Garden Grove Municipal Code shall continue to apply to any new or existing franchisee operating in the City and shall automatically be reauthorized upon the expiration of any existing or future state video franchise(s) held by any state-franchised video service provider operating within the City. This Ordinance shall so renew until such time that the City Council takes formal affirmative action to cease the renewals.

SECTION 3. Section 5.25.060 of Chapter 5.25 of Title 5 of the Garden Grove Municipal Code is hereby amended to read as follows (additions in **bold underline**):

5.25.060 PEG Fee.

- A. In addition to the franchise fee required pursuant to section 5.25.050, a state video franchise holder operating in the City shall pay to the City a fee that is equal to one percent (1%) of the gross revenues of that state video franchise holder which fee shall be used to support PEG channel facilities. The term "gross revenues" shall be defined as set forth in Public Utilities Code Section 5860. Further, pursuant to Public Utilities Code Section 5870, this Section shall become applicable upon the expiration or termination of the incumbent operator's franchise agreement; the terms of Public Utilities Code Section 5870 and the existing franchise agreement shall otherwise apply to the incumbent franchisee until such expiration or termination.
- B. **To the extent reauthorization is required by law, this chapter, including the the PEG fee set forth in in subdivision (A) above shall continue to apply to any new or existing franchisee**

operating in the City and is automatically reauthorized as to each affected state video franchise holder upon the expiration of any existing or future state video franchise(s) held by any state-franchised video service provider operating within the City. Any and all reauthorizations shall be effective for so long as such reauthorization is required by law.

SECTION 4. Severability. If any section, subsection, subdivision, sentence, clause, phrase, word or portion 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 section, subsection, subdivision, sentence, clause, phrase, word or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, words or portions thereof be declared invalid or unconstitutional.

SECTION 5. The City Clerk shall certify to the adoption of this Ordinance and cause the same to be posted at the duly designated posting places within the City 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.

The foregoing Ordinance was passed by the City Council of the City of Garden Grove on the ____ day of _____.

MAYOR

ATTEST:

STATE OF CALIFORNIA)
COUNTY OF ORANGE) SS:
CITY OF GARDEN GROVE)

I, TERESA POMEROY, City Clerk of the City of Garden Grove, do hereby certify that the foregoing Ordinance was introduced for first reading and passed to second reading on July 12, 2022, with a vote as follows:

Garden Grove City Council

Ordinance No. 2937

Page 4

AYES: COUNCIL MEMBERS: (6) BRIETIGAM, O'NEILL, BUI,
KLOPFENSTEIN, NGUYEN K., NGUYEN D.
NOES: COUNCIL MEMBERS: (0) NONE
ABSENT: COUNCIL MEMBERS: (1) JONES