

## ORDINANCE NO. 7,014–N.S.

AMENDING THE BERKELEY MUNICIPAL CODE TO ADD CHAPTER 9.58,  
REGULATING HOLDERS OF STATE VIDEO FRANCHISES

BE IT ORDAINED by the City Council of the City of Berkeley as follows:

Section 1. Findings

The Council finds as follows:

A. The Digital Infrastructure and Video Competition Act of 2006 (“Act”) established a state video franchising system to govern video franchises.

B. Under the Act, only the state has the authority to grant franchises, regulate build-out and non-discrimination standards, impose user and application fees and establish franchise fees.

C. Under the Act, the City has the authority to manage the rights of way, regulate the payment of Public, Education and Government (“PEG”) fees, require the provision of PEG channels and enforce federal and state customer service standards.

Section 2. The Berkeley Municipal Code Chapter 9 is amended by adding Section 9.58 as follows:

**9.58.010 Title**

This ordinance shall be known as the "Video Franchise Fees, Customer Service and Other Video-Related Matters Ordinance."

**9.58.020 Regulation of State Video Franchises and City Video Franchises**

Under State law effective January 1, 2007, the California Public Utilities Commission (“PUC”) will have the authority to grant state video franchises (“State Franchises”). The City of Berkeley (“City”) will acquire certain rights and responsibilities with respect to state video franchise holders. These include the receipt of a franchise fee and a fee for Public, Educational and Government (“PEG”) purposes, both based on a percentage of the gross revenues of state franchise holders, as well as the establishment and enforcement of penalties for violations of customer service rules.

**9.58.030 State Video Franchise Fees**

(a) Any state video franchise holder (“State Franchisee”) operating within the boundaries of the City shall pay a fee to the City equal to five percent (5%) of the Gross Revenue of that State Franchisee.

(b) Any State Franchisee operating within the boundaries of the City shall pay an additional fee to the City equal to one percent (1%) of the Gross Revenue of that State Franchisee, which fee shall be used by the City for PEG purposes consistent with state and federal law.

(c) Gross Revenue, for the purposes of (a) and (b) above, shall have the definition set forth in California Public Utilities Code § 5860.

**9.58.040 Audit Authority.**

Not more than once annually, the City may examine and perform an audit of the business records of a State Franchisee to ensure compliance with Section 9.58.030.

**9.58.050 Customer Service Penalties Under State Franchises**

(a) The holder of a State Franchise shall comply with all applicable state and federal customer service and protection standards pertaining to the provision of video service.

(b) The City Manager, or his/her designee, shall monitor the compliance of State Franchisee(s) with respect to state and federal customer service and protection standards. The City Manager, or his/her designee, shall provide the State Franchisee(s) written notice of any material breaches of applicable customer service standards, and shall allow the State Franchisee(s) thirty (30) days from the receipt of the notice to remedy the specified material breach. Material breaches not remedied within the 30-day time period shall be subject to the following penalties by the City Manager, or his/her designee.

(i) 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 \$1500.00 for each violation.

(ii) For a second violation of the same nature within 12 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.

(iii) For a third violation of the same nature within 12 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 to the City Council within sixty (60) days by providing written notice to the City Manager. Upon receiving the written notice from the State Franchisee, the City Council shall schedule a public hearing to be noticed in a public agenda. In addition, such public notice shall be mailed, not fewer than 14 days prior to the hearing, to any resident that is directly affected by the actions of the State Franchisee which formed the basis for the assessment of penalties by the City Manager. After relevant speakers are heard, and any necessary staff reports are submitted, the City Council will vote to either uphold or vacate the penalty. The City Council's decision on the imposition of a penalty shall be final.

**9.58.060 City Response to State Franchise Applications**

(a) Applicants for State Franchises within the boundaries of the City must concurrently provide complete copies to the City of any application or amendments to applications filed with the PUC. One complete copy must be provided to the City Clerk, and one complete copy to the City Manager.

(b) The City Manager shall provide any appropriate comments to the PUC regarding an application or an amendment to an application for a State Franchise.

**9.58.070 Severability**

In the event any court of competent jurisdiction holds any provision of this Ordinance invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 3. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within fifteen (15) days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

At a regular meeting of the Council of the City of Berkeley held on December 18, 2007, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Capitelli, Maio, Moore, Olds, Spring, Wozniak and Bates.

Noes: None.

Absent: Anderson and Worthington.

