

## ORDINANCE NO. 26

### URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WILDOMAR ADOPTING WILDOMAR MUNICIPAL CODE SECTIONS REGARDING CABLE FRANCHISE AND VIDEO SERVICE AND CONTINUING FRANCHISE FEES.

THE CITY COUNCIL OF THE CITY COUNCIL OF WILDOMAR DOES ORDAIN  
AS FOLLOWS:

**SECTION 1. CHAPTER 5.06: CABLE SYSTEM FRANCHISE** is added to the  
City of Wildomar Municipal Code to read as follows:

#### CHAPTER 5.06

#### Video Franchise Fees, Customer Service and Other Video-Related Matters

##### Sections

- 5.06.010 Regulation of Video Franchises and Definitions
- 5.06.020 State Video Franchise Fees
- 5.06.030 Audit Authority
- 5.06.040 Customer Service and Protection Standards
- 5.06.050 Material Breach of Customer Standards
- 5.06.060 Response to Notice of Breach
- 5.06.070 Request for Exemption from Breach
- 5.06.080 Penalties for Customer Service and Protection Standards  
Violations
- 5.06.090 Appeal of Penalties for Customer Service and Protection  
Standards Violations
- 5.06.100 City Response to State Video Franchise Applications

##### **5.06.010. Regulation of Video Franchises and Definitions.**

(a) Under Division 2.5 of the California Public Utilities Code ("CPUC"), the Digital Infrastructure and Video Competition Act of 2008, commencing at Section 5800, et seq. ("DIVCA"), the California Public Utilities Commission (PUC) has the exclusive authority to grant and administer state video franchises. The definitions contained in DIVCA apply to this Chapter.

(b) Notwithstanding, DIVCA confers certain rights and responsibilities on the City with respect to state video franchise holders ("SVFH") operating within the City under DIVCA, including but not limited to, receipt of fees for rent of right of ways in the form of a franchise fee and additional fees for support of public, educational, and governmental ("PEG") access channels. Both fees are based on a percentage of the gross revenues of state franchise holders. The City also hereby establishes and

enforces penalties for violations of customer service rules. The City retains authority, without change, over all City video franchisees until such time as they no longer hold a City franchise, or are no longer operating under a current City franchise. The City may modify, renew, extend or terminate existing City video franchises.

(c) The City Council intends this Ordinance to supplement, not to duplicate or contradict, applicable state and federal law and this Ordinance shall be construed in light of that intent.

**5.06.020. State Video Franchise Fees.**

(a) Each SVFH, shall pay a fee to the City equal to five percent (5%) of that SVFH's gross revenue, as defined in GPM section 5660, pursuant to CPUC section 5840(q)(1). Failure to pay the fee in a timely manner will incur fines to the City as set out in that section.

(b) Such fees shall be payable as of July 1, 2008, the date of City's incorporation.

**5.06.030. Audit Authority.**

Not more than once annually, the City Manager or his/her designee may examine and perform an audit of an SVFH's records kept in the ordinary course of business, such as those commonly used and relied upon for accounting purposes or in preparation of financial statements or pro formas, to ensure compliance with this section. In the event that the audit discloses an underpayment of five percent (5%) or more, the SVFH shall pay for the audit. If the audit discloses that all fees have been paid, the City shall pay for the audit; otherwise, the cost shall be divided evenly between the parties.

**5.06.040. Customer Service and Protection Standards.**

(a) An SVFH shall comply with all applicable state and federal customer service and protection standards pertaining to the provision of video service. In addition, the SVFH shall prepare, adopt and annually review its own consumer standards regarding installation and service; telephone and office hours; billing procedures; termination of service; change in service; and complaint procedures. Each SVFH annually must distribute such standards to the City and to each customer.

(b) The City shall give the SVFH written notice of its failure to distribute such notice. If distribution does not occur within 60 days after receipt of the notice, the City may impose and collect a penalty of \$500 for each year in which the notice is not distributed after such notice.

**5.06.050. Material Breach of Customer Standards.**

Where the City manager determines that an SVFH has materially breached any provision of its own consumer standards or of state or federal law, including but not

limited to nonpayment of franchise fees, the City may provide written notice of the breach ("Notice of Breach") to the SVFH.

(a) A "Material Breach" is defined as an SVFH's substantial and repeated failure to comply with service quality and other standards of federal or state law or of its own consumer standards.

(b) Receipt of a Notice of Breach shall be deemed to have occurred either;

(1) Five (5) calendar days after the date on which the Notice of Breach was deposited to be mailed with the United States Postal Service or equivalent;

(2) Two (2) calendar days after the date the Notice of Breach was sent via facsimile or e-mail; or

(3) On the date an SVFH's designated representative was personally served the Notice of Breach,

#### **5.06.060. Response to Notice of Breach.**

An SVFH which has been issued a Notice of Breach shall either remedy the conduct described in the Notice of Breach ("Notice of Breach Conduct") to the satisfaction, and in the sole discretion of, the City Manager no later than thirty (30) calendar days from the date of receipt of the notice; or assert that the SVFH should be exempted from violation because the violation is out of its control.

If the SVFH asserts that the Notice of Breach Conduct is out of its reasonable control, then the SVFH shall submit a Request for Exemption From Breach. A Request for Exemption From Breach shall contain all of the following points in order to be considered by the City Manager: It shall be in writing; it shall describe in detail why the conduct was out of its reasonable control; it shall describe in detail the Notice of Breach Conduct, the reasons for its occurrence, all factors and/or influences asserted to be outside the SVFH's control thereby creating the conduct, and all facts precluding the SVFH's ability to remedy; and it shall include as attachments any and all supporting documentation which the SVFH wishes the City Manager to review. Only information so submitted shall be considered by the City Manager.

#### **5.06.070. Request for Exemption from Breach.**

Where the City Manager receives a Request for Exemption From Breach, City Manager shall review the Request for Exemption From Breach promptly; and shall render a final determination on the Request for Exemption From Breach. This final determination shall be in writing and shall include one of the following conclusions: (i) The Notice of Breach Conduct is outside the SVFH's control and is therefore Exempt or (ii) The Notice of Breach Conduct is within the SVFH's control and is therefore subject to the provisions of this Chapter. The City Manager's decision is final.

**5.06.080. Penalties for Customer Service and Protection Standards Violations.**

(a) Each SVFH that fails to remedy the Notice of Breach Conduct in violation of this Section ("Un-remedied Breach,") and/or that fails to obtain an exemption determination shall pay a penalty to the City as set out here.

(b) Penalties for an SVFH's failure to remedy the Notice of Breach Conduct shall accrue daily as follows:

(1) Commencing on the first calendar day following expiration of the time to cure in through the date of remedy of the breach under Section; or

(2) Commencing on the first calendar day following receipt of denial of a Request for Exemption From Breach through the date of remedy of the breach.

(c) An SVFH shall pay a penalty for the un-remedied first Notice of Breach not to exceed a fine of \$500 for each calendar day, not to exceed \$1,500 for each occurrence of an Un-remedied Breach

(d) For a second Material Breach of a similar nature as the Notice of Breach for which a penalty was assessed, occurring within twelve (12) months from the date of the first Notice of Breach, whether remedied or not, an SVFH shall pay a penalty accruing not to exceed \$1,000 per calendar day, not to exceed \$3,000, for each occurrence of an Un-remedied Breach.

(d) For a third or further Material Breach, of a similar nature as the Notice of Breach for which a penalty was assessed, occurring within the same twelve (12) months of the date of the Notice of Breach, whether or not remedied an SVFH shall pay a penalty not to exceed \$2,500 per calendar day, not to exceed \$7,500 for each occurrence of an Un-remedied Breach.

**5.06.090. Appeal of Penalties for Customer Service and Protection Standards Violations.**

(a) An SVFH assessed a penalty under Section 5.06.080 may appeal the assessed penalty only by satisfying all of the following: Submit to the City Manager a written appeal describing in detail the basis for the appeal; and file the appeal no later than sixty (60) calendar days from receipt of the notice of penalties; and

(b) Where the City Manager receives an appeal under this Section, the City Manager shall review the appeal promptly, render a final determination on the appeal, and provide a final written determination; and

(c) The City Manager's determination on the appeal shall be final. The penalty owing shall be a debt to the City that may be collected in any legally available manner.

**5.06.100. City Response to State Video Franchise Applications.**

(a) Applicants for state video franchises within the boundaries of the City of Wildomar shall concurrently provide complete copies to the City of any application or amendments to applications filed with the PUC. The applicant shall provide one complete copy to the City Clerk, and another complete copy to the City Manager.

(b) In its discretion, the City may provide any comments to the PUC on the application or amendments to the application.

**SECTION 2. DECLARATION OF FACTS CONSTITUTING URGENCY.** It is necessary that this ordinance take effect immediately in order to ensure that the City receives the franchise fees paid by SVFHs and to be in compliance with the state law requirement that the City have an ordinance in place providing a schedule of penalties for SVFHs who materially breach the customer service standards provided for by law. If this ordinance does not take effect immediately, it may result in the City not receiving franchise fees from SVFHs. Therefore, the City Council finds that this ordinance is necessary for the immediate preservation of the public peace, health, and safety, and declares that it shall take effect immediately upon its adoption as an urgency ordinance.

**SECTION 3: EFFECTIVE DATE.** This ordinance shall take effect immediately upon adoption.

**SECTION 4. PUBLICATION.** The City Clerk shall certify the passage of this ordinance and have it published or posted in accordance with Council Policy and state law, either in a daily newspaper of general circulation in the City of Wildomar or by posting for ten (10) days in three public places designated by the City Council.

**PASSED, APPROVED, AND ADOPTED** this 22nd day of April, 2009.

  
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Scott Farnam, Mayor

**ATTEST:**

  
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Sheryll Schroeder, City Clerk

**APPROVED AS TO FORM:**



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Julie Hayward Biggs, City Attorney

STATE OF CALIFORNIA       )  
COUNTY OF RIVERSIDE     )  
CITY OF WILDOMAR         )

I, Sheryll Schroeder, City Clerk of the City of Wildomar, do hereby certify that the foregoing urgency Ordinance No. 26 was duly adopted by the City Council of the City of Wildomar at a regular meeting, held on the 22nd day of April, 2009, by the following vote of the Council:

AYES:           Mayor Farnam, Council Members Moore, Ade, Cashman, Swanson

NOES:           None

ABSTAIN:       None

ABSENT:        None

  
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Sheryll Schroeder, City Clerk