

## Staff Report

**July 2, 2001**

**TO:** Jeanie Hippler, Interim City Manager  
**VIA:** Donna Silva, Interim Parks and Community Services Director  
**FROM:** Jerilyn Cochran, Social Services Administrator  
**SUBJECT:** Telecommunications Ordinance  
First Reading

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Recommendation:

Introduce the attached ordinance that provides regulations and guidelines for cable service in Davis.

Fiscal Impact:

There is no direct fiscal impact to the ordinance. Language in the ordinance provides for fees for cable franchise applications. Staff will return to Council with a resolution enumerating the fees related to applications for cable franchises.

Background and Analysis :

The City of Davis has managed to the right-of-way for cable company access since the advent of cable services in Davis in the early 1980s. The Cable Communications Policy Act of 1984 granted local governments the right and responsibility to govern access to right of way for cabling systems.

In Davis, the access is currently authorized via Ordinance 1483, the "Davis Cable Communications Franchise Ordinance" (1988) which articulates the terms by which right-of-way is granted in Davis. A current franchise for this right-of-way is held by TCI/AT&T. The current agreement provides annual revenues of approximately \$242,358.

Western Integrated Networks (WIN) has sent letters of inquiry requesting a franchise. As part of the consideration of this request and because of the vast changes in cable and telecommunications systems since 1988, revision of the Cable Franchise Ordinance was proposed.

As a result of broad-based interest in the ordinance and process, Council appointed a Telecommunications Task Force of community representatives members to hear public input, to make recommendations about the development of an ordinance and to advise the council on telecommunication matters.

Given the dynamic and high-stakes nature of the telecommunications environment, the Council also selected the firm of Miller and Van Eaton as a telecommunications consultant to fill the gaps in the strengths, expertise, experience and viewpoints of Task Force and staff. Some of these specific gaps included:

- Current and comprehensive information about a variety of models for effective local needs assessment and negotiation of franchises
- Recent experience in modeling franchise agreements to meet changing telecommunications innovation
- Identification of opportunities to maximize support from franchise agreements to meet community needs.

The Telecommunications Task Force first met as a Council subcommittee. As a subcommittee, the group met from June 200 through February 2001. The Telecommunications Task Force has met at least monthly and often two times per month from March 2001 through June 2001. The Task Force will continue to meet for twelve more months to complete needs assessment related to renewal of the current cable franchise and to advise staff and the city attorney in negotiations for renewing and new cable franchises. Task Force members and regular attendees from the public have contributed well over 500 hours as volunteers in deliberation research and review of materials since June 2000. On June 25, 2001, the Task Force unanimously recommended approval of the ordinance.

Ordinance: The attached ordinance contains the foundation for regulation, construction, and provision for cable service in Davis. The ordinance describes information needed for applications, references to city approval processes for installation of cable infrastructure in city right-of-ways, customer service standards to provision of cable services and remedies for non-compliance.

The ordinance does not contain details related to franchise fees, provision of equipment, service areas and other details that will be part of individual cable franchise ordinances with existing or new providers. These details will be part of the franchise agreements with providers submitted to Council as they are negotiated with applicants.

While the ordinance is based on local, state and federal law, there are several points within the ordinance about which cable companies may find objectionable during franchise negotiations. The Task Force took the potential concerns of cable companies into consideration and have made changes in the language of the ordinance to offer Council flexibility during franchise negotiations. A few provisions such as the term of the

agreement, the definition of gross revenues, the detail required as part of the customer service standards and the citywide provision of cable services are likely to be the source of discussion in negotiations.

This foundational ordinance is the first step in leveraging other resources for the city. It is likely that an overbuilder and/or changes in the services offered by the existing franchise holders will increase the number of households served and will result in franchise fees increasing in the future.

The renewal franchise and any new cable franchises are likely to result in increased investment in infrastructure to support community goals and needs. The stronger the needs assessment and ordinance at the early stages, the more likely the investment in meeting these needs may be as the franchises are negotiated and renewed.

The first reading of the ordinance will be followed by publication of the ordinance in summary form. The cost of publication of the ordinance as a whole would exceed \$5,000. Instead a summary will be published and copies of the complete ordinance will be available upon request. A required public hearing will be held at the July 25 or August 1 Council meeting, at which the ordinance and funding resolution can be approved. Thirty days after the approval, the ordinance will be enacted and applications for new cable service can be approved.

Issues: The Task Force called out two issues to be resolved at the earliest possible date:

- The application fees should be approved by resolution of the Council. The fees should be sufficient to cover all of the city costs in processing the applications and completing the cable franchise agreement.
- The University of California, Davis has a waiver to use city right-of-way to provide educational programming to the Quarto complex, which includes the service to the Webster, Emerson, Castillian, and Thoreau housing units. Inclusion of this waiver is not in proposed ordinance, because details of the city telecommunications system are not included. The Task Force asked that staff attempt to resolve the issue. Staff met with UCD, which raised concerns that this waiver would be at risk if no clause which “grandfathers” the waiver is included in the ordinance. The City Attorney finds that the waiver is in force, will remain in force and that no provision in the ordinance is necessary. UCD is satisfied with this finding, and has asked that the city attorney provide a letter about this finding for the cable records and to be used in subsequent negotiations, as needed. It is important to note that the finding related to the waiver is for existing service. UCD will need to negotiate for right-of-way for any future projects.