



COUNTY OF HUMBOLDT

AGENDA ITEM NO.

C9

For the meeting of: **May 22, 2018**

Date: **May 16, 2018**

To: **Board of Supervisors**

From: **County Counsel's Office**
Jeffrey S. Blanck, County Counsel

Subject: **Adoption of Ordinance Amending Section 851-15 of Division 5 of Title VIII of the Humboldt County Code Relating to Cable Systems and Open Video Systems.**

RECOMMENDATION(S):

That the Board of Supervisors adopt Ordinance No. 2601, amending Section 851-15 of Division 5 of Title VIII of the Humboldt County Code relating to Cable Systems and Open Video Systems.

SOURCE OF FUNDING:

Costs to prepare this agenda item have been borne by the General Fund.

DISCUSSION:

On May 15, 2018, your Board introduced the above-referenced ordinance for adoption with a directive to the Clerk of the Board to publish a pre-adoption summary of the ordinance and set the ordinance for adoption at least one week away. The recommended action will complete adoption of the ordinance and result in publication of a post-adoption summary.

FINANCIAL IMPACT:

Adoption of the above-referenced ordinance will have a minimal net impact to the general fund.

Prepared by: John B. Nguyen

CAO Approval

REVIEW:

Auditor _____ County Counsel JJB Human Resources _____ Other _____

TYPE OF ITEM:

☒ Consent
☐ Departmental
☐ Public Hearing
☐ Other _____

PREVIOUS ACTION/REFERRAL:

Board Order No. I-1, C-8,

Meeting of: June 20, 2017, June 27, 2017, May 15, 2018

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT

Upon motion of Supervisor Bass Seconded by Supervisor Fennell

Ayes Bass, Fennell, Sundberg, Bohn, Wilson

Nays
Abstain
Absent

and carried by those members present, the Board hereby approves the recommended action contained in this Board report.

Dated: 5/22/18

By:
Kathy Hayes, Clerk of the Board

Today's recommended actions support the Board's Strategic Framework by seeking to efficiently enforce the Humboldt County Code and other local and state laws and regulations.

OTHER AGENCY INVOLVEMENT:

None

ALTERNATIVES TO STAFF RECOMMENDATIONS:

Board Discretion.

ATTACHMENTS:

1. Ordinance Amending Section 851-15 of Division 5 of Title VIII of the Humboldt County Code Relating to Cable Systems and Open Video Systems.
2. Pre Adoption and Post Adoption Summaries

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT, STATE OF CALIFORNIA

Certified copy of portion of proceedings, Meeting of May 22, 2018

**AN ORDINANCE OF THE BOARD OF SUPERVISORS OF THE COUNTY OF HUMBOLDT
AMENDING SECTION 851-15 TO DIVISION 5 OF TITLE VIII OF THE HUMBOLDT COUNTY
CODE RELATING TO CABLE SYSTEMS AND OPEN VIDEO SYSTEMS**

ORDINANCE NO. 2601

The Board of Supervisors of the County of Humboldt ordains as follows:

SECTION 1. Section 851-15 is hereby amended to Chapter 1 of Division 5 of Title VIII of the Humboldt County Code as shown on the attached page.

SECTION 2. This ordinance shall take effect and be in force thirty (30) days from the date of its passage. A summary shall be published at least five (5) days before the date set for adoption and again fifteen (15) days after passage of this ordinance. It shall be published once with the names of the Board of Supervisors voting for and against the ordinance in a newspaper of general circulation published in the County of Humboldt, State of California.

PASSED, APPROVED AND ADOPTED this 22nd day of May, 2018 on the following vote, to wit:

AYES:	Supervisors	Fennell, Bohn, Sundberg, Bass, Wilson
NOES:	Supervisors	--
ABSENT:	Supervisors	--



Ryan Sundberg, Chair
Board of Supervisors of the County of Humboldt,
State of California

(SEAL)

ATTEST:

Kathy Hayes, Clerk of the Board of Supervisors
of the County of Humboldt, State of California

By: 

Ryan Sharp, Deputy

851-15. ENFORCEMENT AND REMEDIES.

(a) *Franchise Violation-Notice and Procedures.* Before revoking a Franchise or issuing an order to assess liquidated damages or administrative penalties, the County shall follow the procedures set forth below: (Ord. 2316, § 1, 4/20/04)

(1) The County shall notify a Cable Communications System Operator in writing of any alleged violation ("Violation Notice") of a Franchise or this Division. The Violation Notice shall: (1) identify the violation; (2) direct the Cable Communications System Operator to cure the violation or show cause why the violation cannot or should not be cured; and (3) state the time for the Cable Communications System Operator's response, which shall be at minimum thirty (30) days from the date of issuance of the Violation Notice, except for violations that present a danger to public health, safety or welfare, in which case the time for response may be shortened. (Ord. 2316, § 1, 4/20/04)

(2) Within the time period designated for response, the Cable Communications System Operator shall respond in writing to the County indicating that: (1) the Cable Communications System Operator intends to contest the Violation Notice and describing all facts relevant to its claim; or (2) the Cable Communications System Operator has completely cured the violation, in which the Cable Communications System Operator shall provide documentation demonstrating that the violation has been completely cured; or (3) the Cable Communications System Operator has begun to correct the violation, however, the violation cannot be corrected immediately despite the Cable Communications System Operator's continued due diligence, in which case the Operator shall describe in detail the steps already taken and Operator's proposed plan and time schedule for completely curing the violation. Correction of the violation is not complete until all damages and penalties owed are paid in full. (Ord. 2316, § 1, 4/20/04)

(3) If the Cable Communications System Operator contests the Violation Notice or the County determines that the Cable Communications System Operator has failed to completely cure the violation, to submit an acceptable plan to cure the violation, or to work diligently to cure the violation, the County shall schedule a hearing before the County Board of Supervisors ("Violation Hearing"). The County shall provide Cable Communications System Operator written notice of the Violation Hearing at least twenty (20) days prior to the hearing ("Hearing Notice"). (Ord. 2316, § 1, 4/20/04)

(4) The Hearing Notice shall indicate: (1) the time and place of Violation Hearing; (2) the nature of the violation; and (3) the Cable Communications System Operator's right to present oral and written testimony at an open and public meeting. (Ord. 2316, § 1, 4/20/04)

(5) At the Violation Hearing, the Board of Supervisors shall hear and consider evidence from the Cable Communications System Operator, County staff and members of the public regarding the alleged violation. The Cable Communications System Operator shall be given an opportunity to present any and all evidence relating to the alleged violation. (Ord. 2316, § 1, 4/20/04)

(6) If, based upon the evidence presented at the Violation Hearing, the County Board of Supervisors finds that Cable Communications System Operator has violated a Franchise, this Division or any applicable state or federal law, the Board of Supervisors may issue an order

assessing liquidated damages if provided for by the Cable Communications System Operator's Franchise, or revoke or modify the Franchise, or impose administrative penalties. (Ord. 2316, § 1, 4/20/04)

(b) *Revocation and termination.* The County Board of Supervisors may revoke a Franchise or modify a Franchise if it finds, after complying with procedures set forth above, that a Cable Communications System Operator has violated this Division or its Franchise or License. Except as to violations that are impossible to cure, and as provided in Subsections (d) and (e), below, the Franchise may only be revoked if the Franchisee (A) was given notice of the default; and (B) 30 days to cure the default; and (C) the Franchisee failed to cure the default, or to propose a schedule for curing the default acceptable to the County where it is impossible to cure the default in 30 days. (Ord. 2316, § 1, 4/20/04)

(c) *Exception for certain acts.* No opportunity to cure is required for repeated violations, and fraud and attempted fraud shall be deemed incurable. Further, the County may declare a Franchise forfeited without opportunity to cure where a Franchisee (A) voluntarily stops providing service it is required to provide; or (B) transfers the Franchise without the prior consent of the County. (Ord. 2316, § 1, 4/20/04)

(d) *Exception for bankruptcy.* A Franchise will terminate automatically by force of law 120 calendar days after an assignment for the benefit of creditors or the appointment of a receiver or trustee to take over the business of the Franchisee, whether in a receivership, reorganization, bankruptcy assignment for the benefit of creditors, or other action or proceeding. However, the Franchise may be reinstated within that 120 day period, if: (A) such assignment, receivership or trusteeship has been vacated; or (B) such assignee, receiver or trustee has fully complied with the terms and conditions of this Division and the Franchise, and has executed an agreement, approved by any court having jurisdiction, assuming and agreeing to be bound by the terms and conditions of this Division and the Franchise. In the event of foreclosure or other judicial sale of any of the facilities, equipment or property of a Franchisee, the County may revoke the Franchise following a public hearing before the County Board of Supervisors by serving notice upon the Franchisee and the successful bidder at the sale, in which event the Franchise and all rights and privileges thereunder will be revoked and will terminate 30 calendar days after serving such notice, unless: (A) the County has approved the transfer of the Franchise to the successful bidder; and (B) the successful bidder has covenanted and agreed with the County to assume and be bound by the terms and conditions of the Franchise and this Division. (Ord. 2316, § 1, 4/20/04)

(e) *Effect of termination or forfeiture.* Upon termination or forfeiture of a Franchise, whether by action of the County as provided above, or if a Franchise expires and is not renewed, the Franchisee must stop using the Cable Communications System for the purposes authorized by the Franchise. The County may take possession of some or all of Franchisee's facilities, or require the Franchisee or its bonding company to remove some or all of the Franchisee's facilities from the County's property, and restore affected property to its same or better condition. This provision does not permit the County to remove facilities that are used to provide another service for which the Franchisee holds a valid Franchise issued by the County or if Franchisee's facilities are otherwise lawfully located on the County property pursuant to applicable local, state or federal law. (Ord. 2316, § 1, 4/20/04)

(f) *Remedies cumulative.* Remedies provided for under this Code, or under a Franchise shall be cumulative. Recovery by the County of any amounts under insurance, the performance bond, the security fund or letter of credit, does not limit a Franchisee's duty to indemnify the County; or relieve a Franchisee of its Franchise obligations or limit the amounts owed to the County. (Ord. 2316, § 1, 4/20/04)

(g) *Liquidated Damages Required in Franchise:* A Franchise granted pursuant to this Division shall require liquidated damages, in an amount to be specified in the Franchise, for specified breaches of the Franchise including but not limited to, failure to commence construction, failure to meet construction plan benchmarks, failure to comply with rebuild plan benchmarks, failure to commence service, and material breach of Franchise obligation(s). The Franchise shall also provide that the County may withdraw liquidated damages owed from the Grantee's security deposit, after complying with the procedures set forth in Subsection (a), above. Liquidated damages shall commence on that date that performance was due and/or failed, and continue until the Grantee demonstrates to the satisfaction of the County that the Grantee has fully performed its obligations giving rise to the payment of liquidated damages. Any obligation to pay liquidated damages does not in any way affect the Grantee's obligation to pay Franchise fees or perform other obligations in the Franchise and such liquidated damages do not constitute Franchise fees and are not subject to any limitations on Franchise fees contained in 47 U.S.C. § 542(b). Grantee acknowledges that liquidated damages are not costs of satisfying Franchise requirements as provided in 47 C.F.R § 76.925. Grantee agrees it will not pass the cost of any liquidated damages to Subscribers through Subscriber rates or itemize or otherwise identify on Subscriber bills any obligation Grantee may have to pay liquidated damages. (Ord. 2316, § 1, 4/20/04)

(h) *Penalties, Fines and Other Monetary Sanctions.* (Ord. 2316, § 1, 4/20/04)

(1) *Penalties.* In addition to any other remedies provided for in this Division or otherwise available by law, the County shall have the power to impose administrative penalties in the event a Grantee violates any provision of this Division, a Franchise, or any regulation lawfully adopted thereunder. The amounts of such penalties shall be consistent with the principles and criteria set forth in Division ~~13~~ 5 of Title ~~17~~ III of this Code. Penalties may be imposed in accordance with the procedures set forth in this Division or Division ~~13~~ 5. (Ord. 2316, § 1, 4/20/04; Ord. _____, § __, ____/____/2018)

(i) *Private Suit Against Grantee.* (Ord. 2316, § 1, 4/20/04)

(1) Any person or organization adversely affected by a violation, or by a pattern and practice of violations, shall have the right to sue a Grantee in a court of competent jurisdiction for damages and for injunctive and other relief to require enforcement of the Franchise. Organizations shall be entitled to sue on behalf of themselves or their members. (Ord. 2316, § 1, 4/20/04)

(2) The remedy herein provided shall be in addition to any remedies provided by law. (Ord. 2316, § 1, 4/20/04)

(3) Except in emergency situations in which immediate relief is required, private litigants shall notify in writing the County Counsel and County Risk Manager not fewer than 10 days prior to filing suit. However, suit by the County shall not preempt the private litigant's right to proceed. (Ord. 2316, § 1, 4/20/04)

(4) The violation of any provision of this Division is unlawful and declared to be a misdemeanor offense. (Ord. 2316, § 1, 4/20/04)

851-16. BOOKS AND RECORDS.

(a) *Generally.* Each Cable Communications System Operator shall provide the County access to books and records related in whole or in part to the construction, operation, or repair of the Cable Communications System, or a group of systems of which the system is a part, so that the County may inspect and copy these books and records. The records include, but are not limited to revenue records, and other records related to compliance with any provision of this Division or a Franchise. A Franchisee is responsible for obtaining or maintaining the necessary possession or control of all such books and records, so that it can produce the documents upon request. Books and records must be maintained for a period of five years, except that a Franchise may specify a shorter period for certain categories of voluminous books and records where the information contained therein can be derived simply from other materials. The phrase "books and records" shall be read expansively to include information in whatever format stored. (Ord. 2316, § 1, 4/20/04)

(b) *Production.* Books and records requested shall be produced to the County by a time and at a location in the County designated by the County Administrative Officer. However, if the requested books and records are too voluminous, or for security reasons cannot be copied and moved, then the Franchisee may request that the inspection take place at some other location mutually agreed to by the County and the Franchisee, provided that (1) the Franchisee must make necessary arrangements for copying documents selected by the County after its review; and (2) the Franchisee must pay all travel and additional copying expenses incurred by the County (above those that would have been incurred had the documents been produced in the County) in inspecting those documents or having those documents inspected by its designee. (Ord. 2316, § 1, 4/20/04)

851-17. REPORTS.

(a) *Obligation to submit.* The County Administrative Officer may from time to time direct a Franchisee to prepare reports and to submit those reports by a date certain, in a format prescribed by the County Administrative Officer, in addition to those required by this Division for the purpose of ensuring compliance with the provisions of this Division and the Franchise. (Ord. 2316, § 1, 4/20/04)

(b) *Quarterly reports.* Unless an exemption is granted by the County Administrative Officer, within 45 days of the end of each calendar quarter, a Franchisee shall submit a report to the County containing the following information: (Ord. 2316, § 1, 4/20/04)

(1) the number of service calls (calls requiring a truck roll) received during the prior quarter and the percentage of service calls compared to the Subscriber base; and (Ord. 2316, § 1, 4/20/04)

(2) the total estimated hours of known outages as a percentage of total hours of operation. An outage is a loss of sound or video on any signal, or a significant deterioration of any signal affecting two or more Subscribers. (Ord. 2316, § 1, 4/20/04)

SUMMARY FOR PUBLICATION PRIOR TO ADOPTION OF ORDINANCE

(The summary shall be published and a certified copy of the full text of the proposed ordinance shall be posted in the office of the Clerk of the Board of Supervisors at least five (5) days prior to the Board of Supervisors meeting at which the proposed ordinance is to be adopted.)

SUMMARY

On _____, 2018, at its regularly scheduled Board meeting, the Humboldt County Board of Supervisors will consider for adoption a proposed ordinance amending Section 851-15 of Division 5 of Title VIII of the Humboldt County Code relating to Cable Systems and Open Video Systems.

The text of the proposed ordinance is available from the Clerk of the Board, Room 111, 825 Fifth Street, Eureka, CA.

SUMMARY FOR PUBLICATION AFTER ADOPTION OF ORDINANCE

(The summary shall be published within fifteen (15) days after the adoption of the ordinance.)

SUMMARY

On _____, 2018, the Humboldt County Board of Supervisors adopted Ordinance No. _____ amending Section 851-15 of Division 5 of Title VIII of the Humboldt County Code relating to Cable Systems and Open Video Systems.

A copy of the ordinance is posted in the office of the Clerk of the Board of Supervisors.

The votes were:

AYES:

NOES:

ABSENT: