

LEGISLATIVE DIGEST

[Police Code - Choice of Communications Services Providers in Multiple Occupancy Buildings]

Ordinance amending the Police Code to prohibit owners of multiple occupancy buildings from interfering with the choice of communications services providers by occupants, establish requirements for communications services providers to obtain access to multiple occupancy buildings, and establish remedies for violation of the access requirement.

Existing Law

Not applicable.

Amendments to Current Law

The ordinance establishes the right of occupants of residential multiple dwelling units and commercial office buildings (“multiple occupancy buildings”) to choose among providers of communications services by prohibiting property owners from either: (i) interfering with the choice of communications services providers by occupants; and/or (ii) denying communications services providers access to wiring within the building.

The ordinance: (i) establishes a procedure for a communications services provider to obtain access to multiple occupancy buildings and existing wiring to provide communications services; (ii) requires communications services providers to pay property owners just and reasonable compensation for access to their properties; (iii) specifies those circumstances under which it would be proper for a property owner to refuse a communications services provider request for access to its property; and (iv) allows the City Attorney, the occupant, or the communications services provider to enforce the ordinance in court.

The ordinance applies to state video service providers and telecommunications services providers. Only these types of providers have the right under both state and City law to use the public right-of-way to provide communications services to their customers.

Background Information

Many occupants of residential and commercial multiple occupancy buildings are unable to choose between service providers because in some such buildings property owners allow only one provider to install the facilities and equipment necessary to provide services to occupants.

State and federal regulatory agencies have adopted policies that promote competition among service providers, believing that this competition will benefit all consumers by incentivizing

lower costs and better service. As the Federal Communications Commission (“FCC”) has noted, “contractual agreements granting . . . exclusivity to cable operators harm competition and broadband deployment and . . . any benefits to consumers are outweighed by the harms of such [agreements].” *In the Matter of Exclusive Service Contracts for Provision of Video Services in Multiple Dwelling Units & Other Real Estate Developments, Report & Order & Further Notice of Proposed Rulemaking*, 22 FCC Rcd 20235, at 20236 (2007), affirmed, *National Cable & Telecommunications Association v. FCC*, 567 F.3d 659 (D.C. Cir. 2009) (“*FCC Decision*”).)

In 1998, the California Public Utilities Commission (“CPUC”) prohibited telecommunications carriers from “entering into any type of arrangement with private property owners that has the effect of restricting the access of other [telecommunications] carriers to the owners’ properties or discriminating against the facilities of other carriers.” Decision 98-10-058, *Order Instituting Rulemaking on the Commission’s Own Motion into Competition for Local Exchange Service*, 82 CPUC 2d 510, 1998 WL 1109255 (CPUC 1998).

In 2007, the FCC prohibited cable television providers from executing contracts with property owners that contained exclusivity clauses and from enforcing existing contracts containing those clauses. *FCC Decision*, 22 FCC Rcd at 20235.¹

In *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982), the United States Supreme Court considered a New York City law mandating that property owners allow cable television providers to install their facilities and equipment on their properties. The Supreme Court decided that this use of plaintiff’s property required payment of just and reasonable compensation. This ordinance requires communications services providers to pay property owners just and reasonable compensation for the use of their properties.

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¹ Pursuant to that decision, the FCC promulgated certain regulations to ban exclusive contracts. See 47 C.F.R. § 76.2000.