

**July 29, 2004**  
**CITY OF BRENTWOOD**  
**ADJOURNED CITY COUNCIL MEETING**  
**City Council Chamber, 734 Third Street, Brentwood, CA 94513**

A complete packet of information is available for public review at City Hall or on our website at  
[www.ci.brentwood.ca.us](http://www.ci.brentwood.ca.us)

**CALL TO ORDER**  
Roll Call

Beginning Resolution No. 2004-192  
Beginning Ordinance No. 783

**CLOSED SESSION**  
**3:30 P.M.**

**ADJOURN TO CLOSED SESSION**

Conference with Legal Counsel - Anticipated Litigation pursuant to Gov't Code § 54956.9(b):  
Comcast franchise renewal

**ADJOURNED CITY COUNCIL MEETING**  
**3:30 P.M. or as soon thereafter as time permits**

**RECONVENE IN OPEN SESSION**

**CLOSED SESSION REPORT**

**AGENDA REVIEW**

**CITIZEN COMMENTS**

*Persons addressing the City Council are required to limit their remarks to five (5) minutes unless an extension of time is granted by the Mayor subject to approval of the Council. Please file your name with the Mayor on the form provided at the podium. Speakers desiring answers to questions should direct it to the Council and, if relevant, the Council may direct it to the appropriate staff member.*

**NEW BUSINESS**

1. Review of Comcast's compliance with City Ordinances, and consideration of a Resolution declaring a continuing Material Breaches of Franchise, imposing forfeitures, and authorizing City Manager to issue a 20-day Notice of Public Hearing for Termination, and set the public hearing date for August 19, 2004 at 4:00 p.m. (D. Beougher)

**PUBLIC HEARINGS**

*Persons addressing the Council are asked to file their name with the Mayor on the form provided at the podium. The Council may adopt reasonable regulations at the onset of the public hearing to facilitate public testimony. These regulations may include time limits. In the absence of such regulations, the public hearing shall follow the protocol for Citizen Comments.*

2. Continued public hearing to determine whether a material breach of Cable Television Franchise has occurred – Assignment of Franchise without the City's approval. (D. Beougher)

**REQUESTS FOR FUTURE AGENDA ITEMS**

**ADJOURNMENT**

**NOTICE**

In compliance with the Americans with Disabilities Act, the meeting room is wheelchair accessible and disabled parking is available at the City Hall Parking lot. If you are a person with a disability and you need disability-related modifications or accommodations to participate in this meeting, please contact the City Clerk's Office at (925) 516-5440 or fax (925) 516-5441. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting. {28 CFR 35.102-35, 104 ADA Title II}

**POSTING STATEMENT**

On July 28, 2004, a true and correct copy of this agenda was posted on the City Hall Bulletin Board, outside City Hall, 708 Third Street, Brentwood, CA 94513 and at our website [www.ci.brentwood.ca.us](http://www.ci.brentwood.ca.us)

## CITY COUNCIL AGENDA ITEM NO. 1

**Meeting Date:** July 29, 2004

**Subject/Title:** Review of Comcast's Compliance with City Ordinances, City Manager's 30-Day Demand for Possible Declaration of Continuing Material Breaches of Franchise, Imposition of Forfeitures, Authorize City Manager to Issue a 20-Day Notice of Public Hearing to Request Termination, and Set a Date for that Public Hearing

**Submitted By:** Dennis Beougher, City Attorney

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### RECOMMENDATION

Review status of compliance by Comcast of California IV, Inc. ("Comcast") with City's regulatory ordinances, City Manager's 30-day demand letter, authorize City Manager to issue a 20-day notice of public hearing to request termination, and set a date for that public hearing. If Council finds continuing material breaches, then:

1. Approve a resolution declaring continuing material breaches of the franchise agreements in Resolution 107X, as amended by Resolutions 83-33, 98-119, 98-160, 2408 and 2421 and violations of the related regulatory ordinances Chapter 5.24.220 (a) and (b) and 5.24.420 (2002), or in the alternative section 5.24.180 (1968), of the Municipal Code; and
2. Impose forfeitures and provide required 20-day notice for hearing to terminate the franchise.
3. Set the date of Thursday, August 19, 2004, at 4:00 p.m., for the Public Hearing to impose forfeitures and terminate the franchise.

### PREVIOUS ACTION

On June 23, 2004, the City Manager notified Comcast of apparent violations of the following sections of the City's regulatory ordinance:

Ordinance 705 (2002)

1. Section 5.24.220 (a) Compliance With Construction and Technical Standards.
2. Section 5.24.220 (b) Additional Specifications.
3. Section 5.24.420 Compliance with Local, State and Federal Laws.

Ordinance 181 (1968)

1. Section 5.24.180 Construction and Installations—General Specifications.

He based the notice on a study entitled "Brentwood System" undertaken at the City's request by B&B International and dated March 17, 2004. In his notice, the City Manager demanded "correction of all violations of these ordinances in the system" within 30 days.

On June 24, 2004, the City Manager amended the 30-day period to extend from June 24, 2004.

B&B International will submit an update report to staff and Council to confirm or deny the conclusion presented in B&B International's previous report that sixty-nine percent (69%) of the Comcast system failed to satisfy applicable NEC, NESC and G-95 standards. If based on a further sampling in Comcast's cable system, conducted after the 30-day deadline for corrections has passed, B&B International concludes that there are numerous and continuing violations of these same sections of the City's regulatory ordinance, then Staff recommends adoption of the attached resolution.

## **BACKGROUND**

Chapter 5.24.390 of the City's regulatory ordinance provides that:

The City reserves the right to forfeit and terminate the Franchise and all rights and privileges of the Grantee hereunder in the event of a substantial breach of its terms and conditions following the required 30-day cure period. A substantial breach by the Grantee shall include, but not be limited to the following:

(1) Violation of any material provision of the Franchise or any material rule, order or regulation of the City or determination of the City Council.

With respect to a continuing violation:

(c) ...the City may place the issue of termination of the Franchise before the City Council. The City shall cause to be served upon the Grantee, at least twenty (20) days prior to the date of such meeting, a written notice of intent to request such termination and the time and place of the meeting. Public notice shall be given of the meeting and the issue(s) which the Council is to consider.

Chapter 5.24.330 provides for daily monetary forfeitures for non-compliance of up to One Hundred Dollars (\$100.00) per day, per violation, for each day that such violation occurs or continues, for

(c) Material failure to comply with applicable construction, operation, maintenance or installation standards: one hundred dollars (\$100) per day, per violation for each day such failure occurs or continues

## **AND**

(f) any other material violations of the Franchise to be determined by the City in a public hearing but not specifically noted in this section shall not exceed One Hundred Dollars (\$100.00) per day, per violation for each day such violation occurs or continues.

Said forfeitures "shall be jointly and severally recoverable from the Grantee and the surety under the appropriate bond."

Under section 5.24.180 of Ordinance 181 (1968), the franchise may be terminated by the Council "after thirty days' notice of any proposed termination and public hearing."

## **FISCAL IMPACT**

The imposition of forfeitures may increase revenue to the City.

Attachment:  
Resolution

## RESOLUTION NO.

### **A RESOLUTION OF THE CITY COUNCIL DECLARING A CONTINUING MATERIAL BREACH OF THE FRANCHISE, IMPOSING FORFEITURES AND ISSUING A 20-DAY NOTICE OF PUBLIC HEARING FOR TERMINATION**

**WHEREAS**, on June 23 and 24, 2004, the City Manager notified Comcast of California IV, Inc. ("Comcast") of apparent violations in Comcast's cable system ("System") of City Ordinance 705 sections 5.24.220 (a), 5.24.220 (b) (1) (2) and (3) and 5.24.420 or alternatively City Ordinance 181 section 5.24.180; and

**WHEREAS**, the notice from the City Manager demanded that Comcast correct all violations of those provisions in the System within thirty (30) days; and

**WHEREAS**, the City has received evidence of continuing violations in the System of those provisions of the City Ordinances after the end of the 30-day period.

**NOW, THEREFORE, BE IT RESOLVED** that the City hereby finds that there have been and continue to be material breaches of the franchise agreement and of City Ordinance 705 sections 5.24.220 (a), 5.24.220 (b) (1) (2) (3), and 5.24.420, or alternatively City Ordinance 181 section 5.24.180, specifically as referenced in the studies on the System by the City's technical consultant, B&B International, dated March 4, March 17, and July 26, 2004.

**BE IT FURTHER RESOLVED** that, pursuant to Municipal Code section 5.24.390 (c), the City Manager shall cause to be served upon Comcast a written notice of intent to request termination of the Comcast franchise at a meeting of the City Council on August 19, 2004, at 4:00 p.m., in the City Council Chambers located at 734 Third Street, Brentwood, California.

**BE IT FURTHER RESOLVED** that, pursuant to Municipal Code section 5.24.430 (d) and/or (f), the City hereby authorizes the City Manager to impose upon and recover from Comcast and its surety forfeitures of One Hundred Dollars (\$100.00) per day for each violation of Municipal Code section 5.24.220 (a) and (b) (1) (2) and (3) and 5.24.420 (a) beginning on July 30, 2004.

**PASSED, APPROVED AND ADOPTED** by the City Council of the City of Brentwood at a regular meeting held on the 29<sup>th</sup> day of July 2004, by the following vote: