

**CITY OF EL PASO, TEXAS
AGENDA ITEM DEPARTMENT HEAD'S SUMMARY FORM**

DEPARTMENT: City Manager, Public Information Office
AGENDA DATE: July 29, 2008
CONTACT PERSON/PHONE: Juliet Lozano, (915) 541-4010
DISTRICT(S) AFFECTED: Citywide

SUBJECT:

City Cable 15 Administrative Fee for Public Access Programs.

BACKGROUND / DISCUSSION:

The City Council has expressed its interest in allocating a certain number of hours for Public Access Programming on City Cable 15. The City Manager has approved a Public Access Programs City Cable 15 Program Guidelines in order to implement such programming in a fair and equitable basis. Texas Elections Code prohibits the use of public funds for political advertising. In order to implement such project on a non-commercial, non-exclusive and content-neutral basis, it is recommended that the Council establish an Administrative Fee that every producer would pay to air a public access program. The Administrative Fee will be based on the City's expenditures on staff and use of equipment and facilities in the cablecasting of each one (1) hour program.

PRIOR COUNCIL ACTION:

Has the Council previously considered this item or a closely related one?

Yes

AMOUNT AND SOURCE OF FUNDING:

How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?

N/A

BOARD / COMMISSION ACTION:

Enter appropriate comments or N/A

*****REQUIRED AUTHORIZATION*****

LEGAL: (if required) _____ **FINANCE:** (if required) _____

DEPARTMENT HEAD: _____

(Example: if RCA is initiated by Purchasing, client department should sign also)

Information copy to appropriate Deputy City Manager

APPROVED FOR AGENDA:

CITY MANAGER: _____ **DATE:** _____

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RESOLUTION

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WHEREAS, the City of El Paso operates City Cable 15, a governmental access channel;

WHEREAS, the City Council desires to make available certain designated hours for public access programming on City Cable 15 on a fair and equitable, first come, first served, non-commercial, non-exclusive and content-neutral basis and the City Manager has administratively approved Public Access Programs City Cable 15 Program Guidelines;

WHEREAS, the Texas Elections Code prohibits the expenditure of public funds for political advertising;

WHEREAS, in order to remain content-neutral and avoid the use of public funds for political advertising, it is necessary to establish an Administrative Fee to be paid by every producer desiring to air a public access program;

WHEREAS, the City Manager recommends the establishment of an Administrative Fee for each one (1) hour public access program aired on City Cable 15 to pay for the City's staff and use of equipment and facilities in the cablecasting of each program;

WHEREAS, Council finds that the recommended Administrative Fee as set forth below is appropriate and necessary and should be adopted as official City policy; and

WHEREAS, Council finds that the Administrative Fee constitutes an important public purpose or benefit to the City and citizens of El Paso for which the City is willing to utilize City resources and provide services in order to support the mission of City Cable 15 to provide an outlet for freedom of expression through public access programming for members of the El Paso community.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

THAT the Administrative Fee of Thirty and no/100 Dollars (\$30.00) to be paid by each public access program producer for each one (1) hour program aired on City Cable 15 is hereby

adopted and may be amended from time to time as provided in the City's annual budget resolution.

PASSED AND APPROVED this _____ day of _____, 2008.

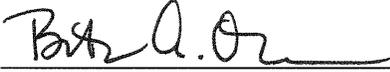
CITY OF EL PASO

John F. Cook
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Bertha A. Ontiveros
Assistant City Attorney

APPROVED AS TO CONTENT:



Juliet Lozano, Public Information Officer
City Manager's Office

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CITY OF EL PASO, TEXAS

**PUBLIC ACCESS PROGRAMS
CITY CABLE 15 PROGRAM GUIDELINES**

The City shall provide public access programming on Time Warner Cable (or its successor) Channel 15 (known as "City Cable 15"). While City Cable 15 is generally operated as a "Government Access Channel," the City shall designate certain operating hours for Public Access Programs. The guidelines herein apply to Public Access Programs. For Governmental Access Programs, see the City of El Paso Governmental Access Programs Guidelines for Programming and Operating Policies for City Cable 15.

I. OBJECTIVES

The primary purpose of the Public Access programming on City Cable 15 is to provide an outlet for freedom of expression regardless of disability or ability on a fair and equitable basis that is non-discriminatory, non-commercial, non-exclusive and content-neutral. Programming for City Cable 15 will be produced to meet the following goals and objectives:

- Promote community dialogue and freedom of artistic expression
- Promote the creative power and First Amendment right to free speech for members of the El Paso community who wish to access television and multi-media forum

It shall be the goal of the City to have Public Access Programming available on City Cable 15 three (3) to six(6) hours per week on Sundays. The number of hours available each Sunday may be adjusted by the City Manager from time to time depending on the demand for Public Access Programming. The City reserves the right to air governmental programming if there is not sufficient Public Access Programming for the hours allocated.

II. CITY CABLE 15 PUBLIC ACCESS PROGRAMMING ELIGIBILITY

Public Access Programming on City 15 is available on a non-commercial basis and on a content-neutral basis. All program Producers must pay any Administrative Fee due and execute a completed Program Contract.

Eligibility for use of the Public Access Programming on City Cable 15 is limited to any adult resident (or authorized minor) of the City of El Paso, provided that:

1. The individual produces a non-commercial program for the Public Access Programming on City Cable 15.
2. The Producer has executed a Programming Contract.

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3. The Producer provides a current local street residence address and a current local contact telephone number along with two valid identification documents (one to establish personal ID and one to establish residency). **NOTE:** The Producer use of a post office box as a resident address for Public Access Programming purposes, including information provided on program forms, is not acceptable.
4. The Producer is in good standing (has paid all Administrative fees and is in compliance with Program Contract.)
5. The Producer (or if the Producer is a minor, the minor and the authorizing adult) shall affirm that they have read and understand these Guidelines for Public Access Programming.

City Cable 15 shall not be used to present any advertising, promotional material concerning any commercial products or services presented for the purpose of any solicitation of funds or other things of value. City Cable 15 is a non-commercial channel.

City Cable 15 shall not be used for the presentation of any information concerning any lottery, gift enterprise or similar promotion offering prizes based upon lot or chance.

City Cable 15 shall not be used for the presentation of any material which constitutes obscenity, libel, slander, invasion of privacy, violation of trademark, or copyright, or which might violate any local, state or federal law, including Federal Communications Commission regulations.

City Cable 15 programming shall not include lewd, obscene, indecent, or violent material or language. When questions arise as to the admissibility of material or language in this regard, the material will be reviewed subject to state and/or local law, including Federal Communications Commission regulations.

Programming submitted to City Cable 15 shall not include copyrighted materials unless written permission has been obtained from the copyright holder. Copyright permission must be obtained for all original programs to be telecast by City Cable 15 that is produced by sources other than the City or a governmental agency with an interlocal agreement with the City. Copyrighted music is not permitted unless written permission is obtained from the copyright holder.

City Cable 15 programming shall not include declared candidates for elected office. Candidates for elected office may not use City Cable 15 as a part of a campaign effort. This exclusion does not apply to persons who receive air time as part of official public meeting coverage, special election news coverage and coverage of incumbents performing official duties.

City Cable 15 shall not be used to urge electors to vote in favor of or against any political candidate or measure on a Federal, State or local ballot, except as otherwise permitted by law.

OPINIONS EXPRESSED ON CITY CABLE 15 MAY NOT NECESSARILY REFLECT THOSE OF THE CITY OF EL PASO OR CITY CABLE 15.

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III. PUBLIC ACCESS PROGRAMMING PRIORITIES AND SCHEDULING

Programs are scheduled as single play or as a Series. Series programs are given a regular, weekly time slot. Series time slots are awarded by application and are awarded in as equitable a manner as possible based upon available channel space. Conflicts on request for time slots will be determined on a random basis.

- A. Each Producer may have only one series, not to exceed one hour per week.
- B. Producers may request individual cablecast times as available. Once the program has shown, repeats may be scheduled as channel space allows, but shall not exceed one repeat per month of the same program.
- C. In order to submit a program, the Producer must complete and sign a Programming Contract. In signing the Public Access Programming Contract, the Producer warrants that the program does not include:
 - 1. Any material that is libelous, slanderous, defamatory or that constitutes an unlawful invasion of privacy.
 - 2. Any material that is in violation of Subchapter B: Obscenity, of Chapter 43 of the Texas Penal Code.
 - 3. Any material that violates local, state, or federal law.
 - 4. Any product advertising (i.e. material that promotes any commercial product or service).
 - 5. Any solicitation or appeals for funds, to the extent they are prohibited by law.
 - 6. Any unlawful use of copyrighted material.

(These may be referred to as the "Public Access Program Contract Warranties").

- D. Through the Public Access Programming Contract the Producer agrees in writing to indemnify and save harmless the City of El Paso and El Paso's franchised cable companies from all claims, demands, damages or other liabilities, including legal fees and expenses that may arise as a result of cablecasting the program.
- E. "Protected speech" programming containing any graphic physical violence, nudity or sexually explicit material will play only between 6:00 a.m. and 8:00 a.m. Sundays (or if program hours are extended, between 12 midnight and 6:00 am and 10 p.m. to midnight).

Scheduling Priorities. In scheduling programs on the Public Access Programming on City Cable 15, the programs shall be given the following priority:

1st Priority: Original programs locally created by Producers.

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2nd Priority: Original programs not produced by local Producer but submitted or sponsored by a local Producer.

3rd Priority: Replays of Programs which are First or Second Priority.

Within each priority area, requests shall be considered on a first come, first served basis. To the extent requests are received at the same time and a conflict exists on any requested times, which may include an overlap of time slots, the scheduling will be allocated on a random basis (such as, for example drawing lots).

VI. SERIES PROGRAMS.

- A. Series time slots are available for shows that are cablecast on the same day of the week and time on a regular basis.
- B. A series time slot is a privilege, not a right. Only one series will be permitted per Producer. Time slots shall not be less than thirty minutes and may be up to one hour per week.
- C. To keep a series time slot, the producer must maintain a 1:1 ratio of total to new programs (i.e., 50% of the programming for the series must be first-run programming).
- D. Series may be granted for a set period of time and may be granted contingent upon available space on a first come, first served basis. Requests will be granted until all available time slots are used, conflicting time slots will be determined on a random basis. The time slot chosen by the Producer will be granted unless there is a conflict with a request already granted, in which case, other choice(s) of the applicant will be granted. In cases where requests cannot be filled, applicants will be notified and may reapply at the next scheduled Series Annual Renewal, which occurs in September of each year.
- E. Producers who do not have series reservations may make requests for new series at any time. New series will be granted as channel space is available on an annual basis until September 1st of each year when the Scheduled Annual Renewal Period occurs. All requests for new or renewal Series in the Annual Renewal Period shall be submitted no earlier than July 1st of each year. These Guidelines shall apply in scheduling Time Slots. Producers who wish to make changes in the time or length of their current series may do so at any time. Such requests can be granted immediately, if no other conflicts exist.

Selection and scheduling of all programming on City Cable 15 shall be the responsibility of the City's Public Information Office. Scheduling will be in accordance and the availability of equipment and resources.

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Reservation requests should be received by the City's Public Information Office at least by 2:00 p.m. on Wednesday (*10 days in advance* of the desired Sunday airing date). Reservation forms are available from the City's Public Information Office. Program tapes to be aired on Sunday must be received by the Public Information Office by 10:00 a.m. on Friday prior to the airing date.

Emergency Override Notification – City Cable 15 reserves the right to pre-empt programs to provide citizens with information and procedures in the event of emergency situations (severe weather, civil emergencies, failure of governmental services or systems, hazardous waste, etc.). The City also reserves the right to cablecast any other available programming if there is not sufficient public access programming reserved for the hours allocated for public access programming.

VII. TECHNICAL STANDARDS AND PRODUCTION REQUIREMENTS.

- A. Program tapes to be aired on Sunday must be received by the Public Information Office by 10:00 a.m. on Friday prior to the airing date.
- B. Programs submitted for cablecast on City of El Paso's Public Access Programming on City Cable 15 must conform to the technical standards and production requirements established for cablecast by the FCC. The programs shall not interfere with any other channels, or with the cable system spectrum or cause the Cable Operator to be out of compliance with any applicable FCC Technical Standards.
- C. The Producer must be identified at least once at the end of the program material by a character generated name and address tag for at least 5 seconds. The tag must include two points of contact information: (the producer's name OR a 'pseudonym') and a local street address, OR a local telephone number. Two examples: ("paper tiger," 713-430-6736) (Mary Smith, PO Box 38000000).
- D. Promotion and Credits
 - 1. Program credits have the following limitations:
 - a. City of El Paso or City Cable 15 telephone numbers may not be used in the credits without permission or be listed as contacts for the community access producer, unless the aforementioned is the Producer.
 - b. The Producer may not list private phone numbers or addresses (other than the Producers) without prior consent of City Cable 15 and the owner of the private phone numbers.
- E. Channel Identification

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1. Producers are encouraged to run a program slate at the beginning of each program. The slate is for channel identification purposes and is run as a service to the community. The identification helps new viewers find the same type of programming again.
2. Producers may encode a channel identifying "bug" within their program if they desire.

F. Fund Raising

Programming may include requests for contribution subject to the following limitations: 1) such fund raising is limited to requests for contributions to offset the costs of producing the programming or the costs which the producer of the programming is required to pay to the City Cable 15 under these Guidelines, or for legitimate non-commercial purposes that could qualify for Section 501(c)(3) of the Internal Revenue Code; and 2) the programming time used for such fund raising does not exceed five minutes in any one hour program or proportional time period in a shorter or longer program.

VIII. PROGRAM COPYRIGHT/OWNERSHIP

The City of El Paso shall hold all right, title and interest including the copyright on all original programming produced primarily for airing on City Cable 15. Public Access Programs developed by Producers All recordings produced by and use for production of television programs by City Cable 15 staff shall remain the property of City Cable 15 and the City of El Paso.

IX. RULES VIOLATIONS AND LOSS AND RESTORATION OF PRIVILEGES

- A. City Cable 15 does not censor, judge or review programs before cablecast. City Cable 15 may refuse a cablecast when the Producer is in violation of these Guidelines, such as non-payment of the Administrative fee or false statements on the Program Contract.
- B. The following are considered violations:
 1. Owing funds to City Cable 15 due to failure to pay fees owed.
 2. False or incomplete information on the Program Contract.
 3. Non-compliance with any of the Programming Contract Warranties, or these Guidelines.
 4. The cablecasting of any programming content violative of II.B.3. (Items 1 through 6) shall constitute a major violation for which suspension may be warranted. All other violations shall be deemed minor violations subject to

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immediate cure, except a third minor violation within a three (3) year period may be deemed a major violation for which suspension may be warranted. Suspension shall not exceed one year provided the Producer brings himself into compliance with the Guidelines and agrees to abide by such Guidelines in the future.

C. Within three (3) days following refusal to cablecast a program, City Cable 15 shall confer with responsible Producer to seek voluntary compliance with the Guidelines, including Program Warranties. City Cable 15 will review such evidence as the Producer wishes to present concerning his alleged violation of the Guidelines.

D. General Appeal and Grievance Procedure

1. A Producer may make a grievance or appeal any enforcement of the Program Contract by making a written statement to the PIO. Any restrictions in cablecasting resulting from a disciplinary action remains in effect throughout the appeal or grievance process.
2. The PIO will investigate the circumstances surrounding the incident in question and return a written report and judgment to the Producer within ten (10) working days. In disciplinary cases, the PIO may choose to reinstate the Producer's right to cablecast and shall do so with respect to minor and major violations consistent with Section IV.B.4. above.

X. CITY CABLE 15 ADMINISTRATION

The Public Access Programming on City Cable 15 is administered by the City of El Paso. The City of El Paso shall exercise no prior restraint on content of public access programs. The City does not review or censor public access programs before cablecast.

Reservation requests should be received by the City's Public Information Office at least by 2:00 p.m. on Wednesday (***10 days in advance*** of the desired Sunday airing date). Reservation forms are available from the City's Public Information Office. Program tapes to be aired on Sunday must be received by the Public Information Office by 10:00 a.m. on Friday prior to the airing date.

These Guidelines for Programming and Operating Policies for City Cable 15 may be amended from time to time by the City Manager.

XI. AMENDMENTS TO THE GUIDELINES

A. Amendments

The City Manager is the responsible person for enforcement of these Guidelines. Recommended amendments to the Guidelines may be submitted in writing to the City Manager. The City may consider changes to the Guidelines where such

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amendments are deemed necessary to protect the availability of media resources for the residents of El Paso.

The City Manager monitors the operation of PIO and makes recommendations for change where existing Guidelines are not protecting the access to the media by El Paso residents or the resources of PIO. No such changes to the Guidelines shall be adopted, except as proposed by City Manager and as approved by the City Council, after a public hearing.

B. Effective Date

Normally, rule changes will take effect 30 days after notification of Producers (public posting and/or mailed notification) unless the changes require immediate action.

XIII. DEFINED TERMS

First come, first served is determined upon receipt by PIO.

Administrative Costs - The incremental costs incurred by the PIO administering the Public Access Channel. Such Administrative Costs would include staff hourly time as allocated to scheduling, maintenance, and other actual time allocated to assist in cablecasting the Public Access Programming on City Cable 15 and administering the Public Access Programming, equipment and any goods directly required in connection therewith.

Producer - An individual who upon having paid the required fees of the Guidelines and having executed a Program Contract who provides programming shown on City Cable 15. The tag at the end of the program must bear the same name or pseudonym of the Producer, including a valid address and/or phone number. Name, pseudonym, phone and address must be the same as listed in the Producer Application.

Program Contract - A required and binding agreement in the form attached to these Guidelines as Appendix "A" from a Producer in which the Producer makes a legally binding commitment to abide by these Guidelines and Program Warranties. It also includes submission instructions.

Program Contract Warranties - A legally binding agreement by a Producer, found in the Program Contract (Appendix "A" attached hereto) that guarantees the program to be free from any of the listed restrictions regarding content.

Repeat Program - A program which was previously aired on the City Cable 15 or on any public access channel.

Series - A series is a program cablecast under the same name and at the same time on a weekly basis.

Series Annual Renewal Period - A period beginning in September 1 during which all who wish to request a series, both new and existing, live and tape, for the coming fiscal year must submit an

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application. Time slot requests are based on first come, first serve. If requests for the same time slot are received simultaneously, a random drawing will be made in accordance with these Guidelines.

Taped Program - A videotaped production which, after taping, is subsequently shown on the community access channels.

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