

ORDINANCE NO. 10502
(New Series)

FEB 9 1971

AN ORDINANCE OF THE CITY OF SAN DIEGO GRANTING THE NONEXCLUSIVE RIGHT, PRIVILEGE AND FRANCHISE TO LAY AND USE LINES, WIRES, COAXIAL CABLE AND APPURTENANCES FOR TRANSMITTING, DISTRIBUTING AND SUPPLYING RADIO AND TELEVISION ANTENNA SERVICE ALONG, ACROSS AND UPON THE PUBLIC STREETS, WAYS, ALLEYS AND PLACES WITHIN THE CITY OF SAN DIEGO KNOWN AS THE MIRA MESA AREA.

BE IT ORDAINED, by the Council of The City of San Diego,
as follows:

GENERAL

Section 1. CITATION OF ORDINANCE

This ordinance may be cited as the Mira Mesa Community Antenna Television Franchise Ordinance.

Section 2. RULES OF CONSTRUCTION

This ordinance shall be construed liberally in order to effectuate its purposes. Unless otherwise specifically prescribed in this ordinance, the following provisions shall govern its interpretation and construction:

(a) When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number.

(b) Time is of the essence of this ordinance. Grantee shall not be relieved of its obligation to

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APR 28 1978

comply promptly with any provision of this ordinance by any failure of City to enforce prompt compliance with any of its provisions.

(c) Any right or power conferred, or duty imposed upon any officer, employee, department or board of City is subject to transfer by operation of law to any other officer, employee, department or board of City.

(d) Grantee shall have no recourse whatsoever against City for any loss, cost, expense or damage arising out of any provision or requirement of this ordinance or the enforcement thereof.

(e) This ordinance does not relieve Grantee of any requirement of the City Charter or of any ordinance, rule, regulation or specification of City now or hereafter in effect, including, but not limited to, any requirement relating to street work, street excavation permits, undergrounding of utility facilities, including CATV facilities, or the use, removal or relocation of property in streets.

(f) Provisions of this ordinance shall be construed in accordance with Sections 103, 103.1, 104 and 105 of the Charter of The City of San Diego.

Section 3. PURPOSE AND INTENT

It is the purpose and intent of this ordinance to grant a franchise to engage in the business of operating

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10502

APR 28 1978

a community antenna television system in that portion of the City of San Diego particularly described in Section 6 of this ordinance. It is the further purpose and intent of this ordinance that the Grantee of the franchise granted by this ordinance provide the citizens of the City of San Diego living in Grantee's service area the best possible community antenna television service consistent with the state of the art at rates reasonable to both Grantee and its subscribers.

Section 4. DEFINITIONS

Whenever in this ordinance the following words or phrases are used, they shall mean:

(a) "City" shall mean The City of San Diego, a municipal corporation in the State of California.

(b) "Council" shall mean the City Council of City.

(c) "Dwelling Unit" shall mean a room or suite of rooms in a building or portion thereof, used for living purposes by one family. A "dwelling unit" shall not mean a building used solely for commercial uses or a Guest House, Guest Room, Hotel or Lodging House.

(d) "Franchise" shall mean the right and authority granted by this ordinance to Grantee to construct, maintain and operate a CATV system through use of the public streets, other public rights of way or public places in City.

(e) "Franchise Property" shall mean all property owned, installed or used under authority of this ordinance by Grantee.

(f) "Grantee" shall mean Penasquitos Antenna System, Inc., and any lawful successor or assignee of the original Grantee.

(g) "School System" shall mean the San Diego Unified School District or its successor.

(h) "Street" shall mean the surface, the air space above the surface and the area below the surface of any public street, other public right of way or public place.

(i) "Community Antenna Television System," referred to in this ordinance as "CATV System," shall mean any facility which receives directly or indirectly over the air and amplifies or otherwise modifies the signals transmitting programs broadcast by one or more radio or television stations and distributes such signals by wire or cable to subscribing members of the public who pay for such service. "CATV Service" shall mean any service furnished by a CATV System.

(j) "Subscriber" shall mean any person or entity receiving for any purpose the CATV service of Grantee.

(k) "Total Gross Receipts" shall mean any and all compensation and other consideration collected or

received or in any manner gained or derived by Grantee from the operation of its CATV service within the corporate limits of The City of San Diego as such corporate limits now exist or may be established hereafter.

(1) "Undeveloped Region" shall mean any area in which there exists few or no buildings, streets or other improvements, and in which, in the opinion of the City Manager, the public interest does not require that the coaxial cables of the CATV system be placed underground.

(m) "Master Antenna Facilities" shall mean that portion of the CATV system consisting of the television receiving antennae and structures necessary to support such antennae in a position to receive television broadcast signals.

Section 5. NATURE AND EXTENT OF GRANT

The franchise granted by this ordinance to Grantee, constitutes authority to use the public streets, other public rights of way or public places in City, to engage in the business of operating a CATV system within the service area described in Section 6 of this ordinance subject to all of the terms and conditions contained in this ordinance. Pursuant to such authority, until lawfully revoked, Grantee may construct, maintain and operate wires, cables, poles, conduits, manholes and other television conductors and equipment necessary for the maintenance and operation of a CATV system.

MICROFILMED
10502 APR 28 1978

Grantee shall not engage in the business of selling, leasing or renting television or other receivers which make use of signals transmitted by its system, nor shall Grantee engage in the repair of or sale of parts for such receivers.

Section 6. DESIGNATION OF SERVICE AREA

The service area referred to in Section ³ of this ordinance is more particularly delineated in Document No. 734826 on file in the office of the City Clerk which is by this reference hereby incorporated into this ordinance as if set out fully herein.

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Section 7. DURATION OF GRANT

(a) The franchise shall become effective on the thirty-first (31st) day after the passage of this ordinance provided that prior to the date of the passage of this ordinance Grantee has filed with the City Clerk:

(1) A written instrument, addressed to the Council, accepting the franchise and agreeing to comply with all the provisions of this ordinance;

(2) A certified check payable to The City of San Diego in a sum equal to the amount of Grantee's bid;

(3) A surety bond, cash deposit or deposit in any Federal or State of California chartered bank or savings and loan association in accordance with the provisions of Section 21 of this ordinance; and

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MICROFILMED

APR 28 1978

10502



(4) The term of the franchise shall be fifteen (15) years commencing on the effective date of the franchise as provided in paragraph (a) of this section; provided that upon written notice given by City to Grantee not less than one (1) year prior to the fifth (5th) and tenth (10th) anniversaries of the effective date, the terms and conditions of this ordinance may be subject to renegotiation. Renegotiations shall be directed toward effecting alterations in the terms and conditions to reflect those technical and economic changes which have occurred during the interim period. If renegotiation prior to the end of the term of the franchise results in agreement between City and Grantee, the franchise shall be extended five (5) years upon each such successful renegotiation.

(b) The franchise may be terminated at any time by the City Council in the event the Council finds, after notice and hearing that:

(1) the Grantee fails to comply with any provision of this ordinance;

(2) any provision of this ordinance becomes invalid or unenforceable and the Council expressly finds that the invalid or unenforceable provision

constitutes a consideration material to the grant of the franchise; or

(3) City purchases the property of Grantee, as provided in the Charter of City; provided, however, that Grantee shall be given thirty (30) days' notice of any termination proceedings.

Section 8. LIMITATIONS UPON GRANT

(a) No privilege or exemption is granted or conferred by this ordinance except those specifically prescribed in it.

(b) The franchise granted by this ordinance is subordinate to any existing public use or any existing franchise or lawful occupancy of any public highway, street, road or other public property for the purpose of erecting, operating and maintaining poles, lines, conduits, cables, gas pipelines and other necessary fixtures used in connection with the purpose of existing franchises or any extension of them.

(c) The franchise granted by this ordinance is a privilege personal to the original Grantee. It cannot in any event be sold, transferred, leased, assigned, or disposed of as a whole, or in part, either by forced sale, merger, consolidation, by operation of law, or otherwise, without prior consent of City expressed by ordinance, and then only under such conditions as may be prescribed in the consenting ordinance; provided, however, that no

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such consent shall be required for any transfer in trust, mortgage, or other hypothecation, as a whole, to secure an indebtedness.

(d) In the event that Grantee is a corporation, prior approval of the City Council, expressed by ordinance, shall be required where ownership or control of more than thirty percent (30%) of the voting stock of Grantee is acquired by a person or group of persons acting in concert, none of whom already own or control thirty percent (30%) or more of the voting stock, singularly or collectively. Any such acquisition occurring without prior approval of the City Council shall constitute a failure to comply with a provision of this ordinance within the meaning of subparagraph (1) of paragraph (b) of Section 7 of this ordinance.

Section 9. RIGHTS RESERVED TO CITY

(a) City provides and reserves to itself every right and power which is required to be reserved or provided in this ordinance by any provision of the Charter of City or of any ordinance of City, and Grantee by its acceptance of this franchise agrees to be bound thereby and to comply with any action or requirement of City in its exercise of any such right or power.

(b) Neither the granting of this franchise nor any provision of this ordinance shall constitute a waiver or bar to the exercise of any governmental right or power of City.

MICROFILMED

APR 28 1978

10502

(c) The franchise granted by this ordinance shall be nonexclusive and neither the granting of the franchise nor any of the provisions contained in this ordinance shall prevent City from granting any identical or similar franchise to any person or corporation other than the Grantee, either within or without the area designated in Section 6.

Section 10. SERVICES TO CITY

Grantee shall at its own expense and without any cost to City whatsoever provide and maintain the following facilities and services to City:

(a) One connection of the CATV system permitted by this ordinance to each City office building, police station, fire station and library within the service area described within Section 6 of this ordinance, except that Grantee shall not be required to provide the CATV distribution system within said places.

(b) One connection to each public school within the service area described within Section 6 of this ordinance, except that Grantee shall not be required to provide the CATV distribution system within said places.

(c) In the event that City or School System desires to have additional connections of the CATV system or the CATV distribution system within such buildings installed by Grantee, Grantee shall make such connections or installations charging to the City or School System the

MICROFILMED
APR 28 1978
10502

actual variable cost to Grantee of such connections or installation.

(d) Grantee shall not charge City or School System any charge for providing the distribution of visual images or audio signals to any of the buildings described in subsections (a), (b) or (c) of this section.

(e) Grantee shall provide without cost one channel to City for its use for the distribution of programming in the public interest. Grantee shall provide interconnection of such channel with all other CATV systems operating pursuant to a franchise granted by City. Grantee shall without cost to City provide origination service to City at such reasonable times as are mutually agreed upon utilizing Grantee's remote or permanent vehicles and equipment for telecasting and video taping. It is the intent of this section that Grantee shall at its own expense and without cost to City provide City with the capability of providing public service programming without incurring any expense for the telecasting, video taping and distribution of such programming.

(f) Grantee shall provide without cost one channel to School System for its use.

Section 11. ESTABLISHMENT AND EXTENSION OF SERVICE

Installation of a CATV system shall be commenced within one hundred eighty (180) days after the effective

date of this ordinance. Grantee shall extend and offer service to one hundred percent (100%) of the dwelling units within the franchise area by the end of the fifth (5th) year from the effective date of this ordinance and shall undertake said extension in a manner calculated to serve twenty percent (20%) of the dwelling units by the end of each succeeding year except as provided in Section 12 of this ordinance.

Section 12. EXCEPTIONS TO EXTENSION OF SERVICE REQUIREMENTS

Grantee shall not be required to extend or offer service:

(a) to noncommercial dwelling units being served by some other CATV system; or

(b) in any area where coaxial cables are permitted to be placed aboveground and Grantee is constructing its system aboveground and there are less than twenty-five (25) noncommercial dwelling units per cable mile; or

(c) in any existing subdivision subject to the provisions of paragraph 7, Section 102.0221 of the San Diego Municipal Code, or in any subdivision not subject to said paragraph 7, Section 102.0221, where Grantee is constructing its system underground and there are less than fifty (50) noncommercial dwelling units per cable mile; or

MICROFILMED

-12-

10502 APR 28 1978

Rev 1-26-71

(d) in the event the Federal Communications Commission does not permit Grantee to carry television signals originating outside of the San Diego market, as defined by the Commission, the requirement of subsection (b) of this section shall be fifty (50) noncommercial dwelling units per cable mile and the requirement of subsection (c) of this section shall be seventy-five (75) noncommercial dwelling units per cable mile.

Measurement of a cable mile for the purpose of complying with this section shall not include the distance between the Master Antenna Facilities and such noncommercial dwelling units or the distance between the furthest previous extension of the system and such noncommercial dwelling units.

Section 13. ABANDONMENT OF SERVICE

(a) After Grantee has established service pursuant to this ordinance in the franchise area, such service shall not be suspended or abandoned in the whole of or any part of the franchise area unless the suspension or abandonment is authorized by the City Council.

(b) Whenever Grantee shall file with the City Council a written application alleging that the public interest, convenience and necessity no longer require that Grantee furnish service pursuant to this ordinance in that whole of or in any part of the franchise area, the City Council, at a public hearing, shall take evidence upon

that question and shall make a finding with respect to it. Notice of the hearing shall be given by Grantee in writing to each subscriber in the part of the franchise area in question at least fifteen (15) days prior to the date scheduled for the hearing. If the City Council shall find that the public interest, convenience and necessity no longer require that Grantee furnish service, the City Council, after hearing as provided herein, shall authorize suspension or abandonment of service upon such reasonable terms and conditions as may be prescribed by the City Council.

Section 14. REGULATION OF RATES AND SERVICE

(a) The City Council shall have the power and right at all times for the duration of the franchise granted by this ordinance to require Grantee to conform to reasonable rules and regulations now or hereafter adopted by the City Council, including the power to regulate and establish reasonable rates and charges by Grantee for services rendered under this ordinance. The establishment of such rules and regulations shall be discretionary with the City Council.

(b) Grantee shall:

(1) produce a picture, whether in black and white or in color, that is undistorted, free from ghost images, and accompanied with proper sound on typical standard production television

receiver sets in good repair, and as good as the state of the art allows;

(2) provide, maintain and operate facilities which deliver signals of adequate strength to produce good pictures with good sound at all outlets without causing cross-modulation in the cables or interfering with other electrical or electronic systems;

(3) limit failure to a minimum by locating and correcting malfunctions promptly, but in no event longer than twenty-four (24) hours after notice;

(4) upon complaint by a subscriber, make a demonstration satisfactory to the City Manager that a signal is being delivered which is of sufficient strength and quality to meet the standards set forth in this paragraph;

(5) render efficient service, making repairs promptly and interrupting service only for good cause and for the shortest time possible; such interruptions insofar as possible shall be preceded by notice given to subscribers twenty-four (24) hours in advance and shall occur during periods of minimum use of the system;

(6) maintain an office within the City of San Diego, which office shall be open during all

the usual business hours, have a telephone number listed in the directories of The Pacific Telephone and Telegraph Company for the San Diego and North San Diego County extended areas, and be so operated that complaints and requests for repairs or adjustments may be received at any time.

(c) Grantee shall operate the CATV system authorized by this ordinance twenty-four (24) hours per day, seven (7) days per week.

Section 15. UNDERGROUND SYSTEM

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(a) The CATV system to be installed under authority of ^{this} ~~the~~ ordinance shall be placed underground in all subdivisions which are subject to the provisions of paragraph 7, Section 102.0221 of the San Diego Municipal Code, except as otherwise provided in this section.

(b) Where facilities are required to be installed underground, Grantee may place aboveground the master antenna facilities necessary to operate the system; provided, however, that irrespective of whether the system is above or underground, no master antenna facilities shall be placed in any street.

(c) With approval of the City Manager, expressed in writing, Grantee may place coaxial cables aboveground in undeveloped regions of the service area. The City Manager, in writing, at his sole discretion, may withdraw such permission at any time, after giving Grantee 30 days' notice of his intention to do so.

10502

-16-

MICROFILMED APR 28 1978

(d) Under no circumstances may the City Manager grant permission to place aboveground in any street any portion of the CATV system authorized by this ordinance and required by Section 102.0221 of the San Diego Municipal Code to be constructed underground.

STREET WORK

Section 16. LOCATION OF FRANCHISE PROPERTY

Franchise property shall be constructed or installed only at such locations and in such manner as shall be approved by the City Engineer, acting in the exercise of reasonable discretion.

Section 17. REMOVAL OR ABANDONMENT OF FRANCHISE PROPERTY

(a) In the event that (1) the use of any franchise property is discontinued for any reason for a continuous period of twelve (12) months, (2) franchise property has been installed in any street or other dedicated public right of way without complying with the requirements of this ordinance, or (3) the franchise has been terminated, canceled or has expired, Grantee, at its expense, shall remove promptly from the street all franchise property other than any which the City Engineer may permit to be abandoned in place. In the event of any such removal, Grantee shall promptly restore to a condition satisfactory to the City Engineer the street or other dedicated public right of way or other public places in City from which the franchise property has been removed.

(b) Franchise property to be abandoned in place shall be abandoned in the manner prescribed by the City Engineer. Upon permanent abandonment of any franchise property in place, Grantee shall submit to the City Manager an instrument, satisfactory in form to the City Attorney, transferring to City the ownership of the franchise property abandoned.

Section 18. CHANGES REQUIRED BY PUBLIC IMPROVEMENTS

Grantee shall, at its expense, protect, support, temporarily disconnect, relocate in the same street, alley, or public place, or remove from any street, alley or public place, any franchise property when required by the City Engineer by reason of traffic conditions, public safety, street vacation, freeway and street construction, change or establishment of street grade, installation of sewers, drains, water pipes, power lines, signal lines, and tracks or any other type of structures or improvements including but not limited to placing such structures and improvements underground by governmental agencies when acting in a governmental or proprietary capacity, or any other structures or public improvements; provided, however, that Grantee shall in all such cases have the privileges and be subject to the obligations to abandon franchise property in place, as provided in Section 17.

Section 19. FAILURE TO PERFORM STREET WORK

Upon failure of Grantee to commence, pursue or complete any work required by law or by the provisions of

this ordinance to be done in any street, within the time prescribed and to the satisfaction of the City Engineer, the City Engineer may, at his option, cause such work to be done and the Grantee shall pay to the City the cost thereof in the itemized amounts reported by the City Engineer to Grantee, within thirty (30) days after receipt of such itemized report.

COMPENSATION AND GUARANTEE TO THE CITY

Section 20. ANNUAL PAYMENTS TO THE CITY

(a) By its acceptance of this franchise, Grantee agrees to pay to City annually in lawful money of the United States five percent (5%) of the total gross receipts collected or received, or in any manner gained or derived by Grantee in each calendar year, or portion thereof, during the term of this franchise, from the properties, operations and business referred to in Section 5 of this ordinance.

(b) Checks for all such payments shall be made payable to the City Treasurer, and shall be submitted to the City Treasurer on or before March 1 of each year for the previous calendar year or portion thereof.

(c) Each payment shall be accompanied by a statement, in duplicate, verified by Grantee or by a general officer or other duly authorized representative of Grantee, showing in such form and detail as the City Manager may require from time to time the facts material to a determination of the amount due.

(d) The payment made to City by Grantee pursuant to this section for any calendar year shall be in lieu of any license, fee or business tax prescribed by City for the same period, but only to the extent of such payment.

(e) The amount of the annual payment to the City to be made by Grantee in accordance with this section is subject to renegotiation under the terms of paragraph ^{(a)(4)} ~~4~~ of Section 7 of this ordinance.

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Section 21. FAITHFUL PERFORMANCE BOND

Grantee shall, within the period specified in paragraph (a) of Section ~~6~~⁷, file with the City Clerk and, at all times thereafter, maintain in full force and effect an acceptable corporate surety bond, in the amount of FIVE THOUSAND DOLLARS (\$5,000), effective for the entire term of the franchise granted by this ordinance, and conditioned that in the event Grantee shall fail to comply with any one or more of the provisions of this ordinance, then there shall be recoverable jointly and severally from the principal and surety of such bond any damages suffered by City as a result thereof, including the full amount of any compensation, indemnification, or cost of removal or abandonment of property as prescribed by Sections 17, 20 or 22 of this ordinance which may be in default, up to the full amount of the bond; the condition to be a continuing obligation for the duration of the franchise granted by this ordinance and thereafter until Grantee has liquidated all of its obligations with

C&R: *lm*

City that may have arisen from the acceptance of the franchise by Grantee or from its exercise of any privilege herein granted. In lieu of said bond Grantee may deposit cash with The City of San Diego or in a federal or State of California bank or savings and loan association in the name of The City of San Diego, but with interest reserved to the Grantee, on terms and conditions approved by the City Attorney.

Neither the provisions of this section, any bond accepted by City pursuant thereto nor any damages recovered by City thereunder, nor any withdrawal from any cash deposit shall be construed to excuse faithful performance by Grantee or to limit the liability of Grantee under this ordinance or for damages, either to the full amount of the bond or otherwise.

Section 22. INDEMNIFICATION TO CITY

Grantee shall indemnify City, its officers and its employees, against all claims, demands, actions, suits and proceedings by others and against all liability to others, and against any loss, cost and expense resulting therefrom, including reasonable attorneys' fees, arising out of the exercise or enjoyment of the franchise granted by this ordinance, irrespective of the amount of the bond designated in Section 21.

Section 23. INSPECTION OF PROPERTY AND RECORDS

(a) At all reasonable times Grantee shall permit examination by any duly authorized representative of the City Manager, City Engineer or the City Auditor of all

franchise property, together with any appurtenant property of Grantee situated within or without the City. Grantee shall also permit any duly authorized representative of the City Manager, City Engineer or the City Auditor to examine and transcribe any and all maps and other records kept or maintained by Grantee or under its control concerning the operations, affairs, transactions or property of Grantee. If any of such maps or records are not kept in the City, or upon reasonable request made available in the City, and if the City Manager, City Engineer or the City Auditor shall determine that an examination of such maps or records is necessary or appropriate to the performance of any of their duties, then all travel and maintenance expense necessarily incurred in making such examination shall be paid by Grantee.

(b) Grantee shall prepare and furnish to the City Manager, City Engineer or the City Auditor, at the times and in the form prescribed by the City Manager, City Engineer or the City Auditor, such reports with respect to its operations, affairs, transactions or property as may be reasonably necessary or appropriate to the performance of any of the duties of the City Manager, City Engineer or the City Auditor in connection with this ordinance. Such reports may include, but are not limited to, a complete set of records and plans of all facilities as finally installed within the franchise service area.

**Section 24. FILINGS AND COMMUNICATION WITH
REGULATORY AGENCIES**

Copies of all petitions, applications and communications of all types submitted by Grantee to the Federal Communications Commission, Securities and Exchange Commission, California Public Utilities Commission, or any other Federal or State regulatory commission or agency having jurisdiction over any matter affecting operation of Grantee's CATV system shall be submitted simultaneously to the City by delivery to the City Clerk who shall advise interested City departments of such filing. A copy of each document filed with the City Clerk in accordance with this section shall be delivered to the City Attorney.

**Section 25. FRANCHISE GRANTED UNDER AUTHORITY
OF CHARTER**

Notwithstanding any other provisions contained herein, this franchise is granted solely and exclusively under Sections 103, 103.1, 104 and 105 of the Charter of The City of San Diego and under no other authority.

Section 26. EFFECTIVE DATE OF ORDINANCE

This ordinance shall take effect and be in force on the thirty-first day from and after its passage.

APPROVED: JOHN W. WITT, City Attorney

By 
Clifton E. Reed, Deputy

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-23-

MICROFILMED

10502

APR 28 1978

Passed and adopted by the Council of The City of San Diego on FEB 9 1971
 by the following vote:

Councilmen	Yeas	Nays	Excused	Absent
Helen Cobb	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sam T. Loftin	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Henry L. Landt	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Leon L. Williams	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Floyd L. Morrow	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bob Martinet	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Allen Hitch	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Mike Schaefer	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mayor Frank Curran	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

AUTHENTICATED BY: FRANK CURRAN
 Mayor of The City of San Diego, California.

JOHN LOCKWOOD
 City Clerk of The City of San Diego, California.

(Seal) By Elfa J. Hamel, Deputy.

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on JAN 26 1971, and on FEB 9 1971.

~~I FURTHER CERTIFY that said ordinance was read in full prior to its final passage.~~

I FURTHER CERTIFY that the reading of said ordinance in full was dispensed with by a vote of not less than a majority of the members elected to the Council, and that there was available for the consideration of each member of the Council and the public prior to the day of its passage a written or printed copy of said ordinance.

(Seal) JOHN LOCKWOOD
 City Clerk of The City of San Diego, California.

By Elfa J. Hamel, Deputy.

RECEIVED
 CITY CLERK'S OFFICE
 1971 JAN 22 AM 9:52
 SAN DIEGO, CALIF.

FORM CC-1255-A (1-70)

Office of the City Clerk, San Diego, California		
Ordinance Number	<u>10502</u>	Adopted <u>FEB 9 1971</u>

MICROFILMED APR 28 1978

ATTORNEY (S)

City of San Diego
202 C Street
Community Concourse
San Diego, California 92101

CERTIFICATE OF PUBLICATION

No.

IN THE MATTER OF

NO. 10502

RECEIVED
CITY CLERK'S OFFICE
1971 FEB 22 AM 10:44
SAN DIEGO, CALIF.

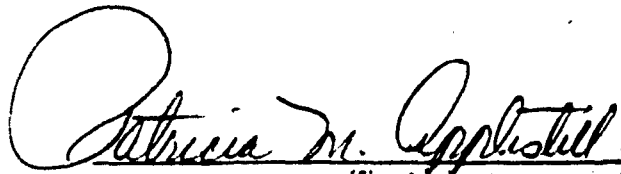
I, Patricia M. Applestill hereby certify that **The Daily Transcript** is a daily newspaper of general circulation within the provisions of the Government Code of the State of California, printed and published in the City of San Diego, County of San Diego, State of California; that I am the principal clerkef said newspaper; that the

ORDINANCE NO. 10502 (NEW SERIES)

to a true and correct copy of which this certificate is annexed was published in said newspaper on

February 19, 1971

I certify under penalty of perjury that the foregoing is true and correct, at San Diego, California, on Feb. 19, 1971


(Signature)

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ORDINANCE NO. 10502
(NEW SERIES)

AN ORDINANCE OF THE CITY OF SAN DIEGO GRANTING THE NON-EXCLUSIVE RIGHT, PRIVILEGE AND FRANCHISE TO LAY AND USE LINES, WIRES, COAXIAL CABLE AND APPURTENANCES FOR TRANSMITTING, DISTRIBUTING AND SUPPLYING RADIO AND TELEVISION ANTENNA SERVICE ALONG, ACROSS AND UPON THE PUBLIC STREETS, WAYS, ALLEYS AND PLACES WITHIN THE CITY OF SAN DIEGO KNOWN AS THE MIRA MESA AREA.

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(a) When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number.

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(f) Provisions of this ordinance shall be construed in accordance with Sections 103, 103.1, 104 and 105 of the Charter of The City of San Diego.

Section 3. PURPOSE AND INTENT
It is the purpose and intent of this ordinance to grant a franchise to engage in the business of operating a community antenna television system in that portion of the City of San Diego particularly described in Section 6 of this ordinance. It is the further purpose and intent of this ordinance that until lawfully revoked, Grantee may the Grantee of the franchise granted by this ordinance provide the citizens of the City of San Diego living in the Grantee's service area the best possible community antenna television service consistent with the state of the art and rates reasonable to both Grantee and its subscribers.

Section 4. DEFINITIONS
Whenever in this ordinance the following words or phrases are used, they shall mean:

(a) "City" shall mean The City of San Diego, a municipal corporation in the State of California.

(b) "Council" shall mean the City Council of City.

(c) "Dwelling Unit" shall mean a room or suite of rooms in a building or portion thereof, used for living purposes by one family. A "dwelling unit" shall not mean a building used solely for commercial uses or a Guest House, Guest Room, Hotel or Lodging House.

(d) "Franchise" shall mean the right and authority granted by this ordinance to Grantee to construct, maintain and operate a CATV system through use of the public streets, other public rights of way or public places in City.

(e) "Franchise Property" shall mean all property owned, installed or used under authority of this ordinance by Grantee.

(f) "Grantee" shall mean Penasquitos Antenna System, Inc., and any lawful successor or assignee of the original Grantee.

(g) "School System" shall mean the San Diego Unified School District or its successor.

(h) "Street" shall mean the surface, the air space above the surface and the area below the surface of any public street, other public right of way or public place.

(i) "Community Antenna Television System," referred to in this ordinance as "CATV System," shall mean any facility which receives directly or indirectly over the air and amplifies or otherwise modifies the signals transmitting programs broadcast by one or more radio or television stations and distributes such signals by wire or cable to subscribing members of the public who pay for such service. "CATV Service" shall mean any service furnished by a CATV System.

(j) "Subscriber" shall mean any person or entity receiving for any purpose the CATV service of Grantee.

(k) "Total Gross Receipts" shall mean any and all compensation and other consideration collected or received or in any manner gained or derived by Grantee from the operation of its CATV service within the corporate limits of The City of San Diego as such corporate limits now exist or may be established hereafter.

(l) "Undeveloped Region" shall mean any area in which there exists few or no buildings, streets or other improvements, and in which, in the opinion of the City Manager, the public interest does not require that the coaxial cables of the CATV system be placed underground.

(m) "Master Antenna Facilities" shall mean that portion of the CATV system consisting of the television receiving antennae and structures necessary to support such antennae in a position to receive television broadcast signals.

Section 5. NATURE AND EXTENT OF GRANT

The franchise granted by this ordinance to Grantee, constitutes authority to use the public streets, other public rights of way or public places in City, to engage in the business of operating a CATV system within the service area described in Section 6 of this ordinance, subject to all of the terms and conditions contained in this ordinance. Pursuant to such authority, Grantee may lawfully construct, maintain and operate wires, cables, poles, conduits, manholes and other television conductors and equipment necessary for the maintenance and operation of a CATV system.

Grantee shall not engage in the business of selling, leasing or renting television or other receivers which make use of signals transmitted by its system, nor shall Grantee engage in the repair of or sale of parts for such receivers.

Section 6. DESIGNATION OF SERVICE AREA

The service area referred to in Section 3 of this ordinance is more particularly delineated in Document No. 731826 on file in the office of the City Clerk which is by this reference hereby incorporated into this ordinance as if set out fully herein.

Section 7. DURATION OF GRANT

(a) The franchise shall become effective on the thirty-first (31st) day after the passage of this ordinance provided that prior to the date of the passage of this ordinance Grantee has filed with the City Clerk:

(1) A written instrument, addressed to the Council, accepting the franchise and agreeing to comply with all the provisions of this ordinance;

(2) A certified check payable to The City of San Diego in a sum equal to the amount of Grantee's bid;

(3) A surety bond, cash deposit or deposit in any Federal or State or California chartered bank or savings and loan association in accordance with the provisions of Section 21 of this ordinance; and

(4) The term of the franchise shall be fifteen (15) years commencing on the effective date of the franchise as provided in paragraph (a) of this section; provided that upon written notice given by City to Grantee not less than one (1) year prior to the fifth (5th) and tenth (10th) anniversaries of the effective date, the terms and conditions of this ordinance may be subject to renegotiation. Renegotiations shall be directed toward effecting alterations in the terms and conditions to reflect those technical and economic changes which have occurred during the interim period. If renegotiation prior to the end of the term of the franchise results in agreement between City and Grantee, the franchise shall be extended five (5) years upon each such successful renegotiation.

(b) The franchise may be terminated at any time by the City Council in the event the Council finds, after notice and hearing that:

(1) The Grantee fails to comply with any provisions of this ordinance;

(2) any provision of this ordinance becomes invalid or unenforceable and the Council expressly finds that the invalid or unenforceable provision constitutes a consideration material to the grant of the franchise; or

(3) City purchases the property of Grantee, as provided in the Charter of City; provided, however, that Grantee shall be given thirty (30) days' notice of any termination proceedings.

Section 8. LIMITATIONS UPON GRANT

(a) No privilege or exemption is granted or conferred by this ordinance except those specifically prescribed in it.

(b) The franchise granted by this ordinance is subordinate to any existing public use or any existing franchise or lawful occupancy of any public highway, street, road or other public property for the purpose of erecting, operating and maintaining poles, lines, conduits, cables, gas pipelines and other necessary fixtures used in connection with the purpose of existing franchises or any extension of them.

(c) The franchise granted by this ordinance is a privilege personal to the original Grantee. It cannot in any event be sold, transferred, leased, assigned, or disposed of as a whole, or in part, either by forced sale, merger, consolidation, by operation of law, or otherwise, without prior consent of City expressed by ordinance, and then only under such conditions as may be prescribed in the consenting ordinance; provided, however, that no such consent shall be required for any transfer in trust, mortgage, or other hypothecation, as a whole, to secure an indebtedness.

(d) In the event that Grantee is a corporation, prior approval of the City Council, expressed by ordinance, shall be required where ownership or control of more than thirty percent (30%) of the voting stock of Grantee is acquired by a person or group of persons acting in concert, none of whom already own or control thirty percent (30%) or more of the voting stock, singularly or collectively. Any such acquisition occurring without prior approval of the City Council shall constitute a failure to comply with a provision of this ordinance within the meaning of subparagraph (1) of paragraph (b) of Section 7 of this ordinance.

Section 9. RIGHTS RESERVED TO CITY

(a) City provides and reserves to itself every right and power which is required to be reserved or provided in this ordinance by any provision of the Charter of City or of any ordinance of City, and Grantee by its acceptance of this franchise agrees to be bound thereby and to comply with any action or requirement of City in its exercise of any such right or power.

(b) Neither the granting of this franchise nor any provision of this ordinance shall constitute a waiver or bar to the exercise of any governmental right or power of City.

(c) The franchise granted by this ordinance shall be nonexclusive and neither the granting of the franchise nor any of the provisions contained in this ordinance shall prevent City from granting any identical or similar franchise to any person or corporation other than the Grantee, either within or without the area designated in Section 6.

Section 10. SERVICES TO CITY

Grantee shall at its own expense and without any cost to City whatsoever provide and maintain the following facilities and services to City:

(a) One connection of the CATV system permitted by this ordinance to each City office building, police station, fire station and library within the service area described within Section 6 of this ordinance, except that Grantee shall not be required to provide the CATV distribution system within said places.

(b) One connection to each public school within the service area described within Section 6 of this ordinance, except that Grantee shall not be required to provide the CATV distribution system within said places.

(c) In the event that City or School System desires to have additional connections of the CATV system or the CATV distribution system within such buildings installed by Grantee, Grantee shall make such connections or installations charging to the City or School System the actual variable cost to Grantee of such connections or installation.

(d) Grantee shall not charge City or School System any charge for providing the distribution of visual images or audio signals to any of the buildings described in subsections (a), (b) or (c) of this section.

(e) Grantee shall provide without cost one channel to City for its use for the distribution of programming in the public interest. Grantee shall provide interconnection of such channel with all other CATV systems operating pursuant to a franchise granted by City. Grantee shall without cost to City provide origination service to City at such reasonable times as are mutually agreed upon utilizing Grantee's remote or permanent vehicles and equipment for telecasting and video taping. It is the intent of this section that Grantee shall at its own expense and without cost to City provide City with the capability of providing public service programming without incurring any expense for the telecasting, video taping and distribution of such programming.

(f) Grantee shall provide without cost one channel to School System for its use.

Section 11. ESTABLISHMENT AND EXTENSION OF SERVICE

Installation of a CATV system shall be commenced within one hundred eighty (180) days after the effective date of this ordinance. Grantee shall extend and offer service to one hundred percent (100%) of the dwelling units within the franchise area by the end of the fifth (5th) year from the effective date of this ordinance and shall undertake said extension in a manner calculated to serve twenty percent (20%) of the dwelling units by the end of each succeeding year except as provided in Section 12 of this ordinance.

Section 12. EXCEPTIONS TO EXTENSION OF SERVICE REQUIREMENTS

Grantee shall not be required to extend or offer service:
(a) to noncommercial dwelling units being served by some other CATV system; or
(b) in any area where coaxial cables are permitted to be placed above ground and Grantee is constructing its system aboveground and there are less than twenty-five (25) noncommercial dwelling units per cable mile; or
(c) in any existing subdivision subject to the provisions of paragraph 7, Section 102.0221 of the San Diego Municipal Code or in any subdivision not subject to said paragraph 7, Section 102.0221, where Grantee is constructing its system underground and there are less than fifty (50) noncommercial dwelling units per cable mile; or
(d) in the event the Federal Communications Commission does not permit Grantee to carry television signals originating outside of the San Diego market, as defined by the Commission, the requirement of subdivision (a) of this section shall be units per cable mile and the requirement of subdivision (c) of this section shall be seventy-five (75) noncommercial dwelling units per cable mile.

Measurement of a cable mile for the purpose of complying with this section shall not include the distance between the Master Antenna facilities and such noncommercial dwelling units, or the extension of the system and such noncommercial dwelling units.

Section 13. ABANDONMENT OF SERVICE

(a) After Grantee has established service pursuant to this ordinance in the franchise area, such service shall not be suspended or abandoned in whole or in part of the franchise area unless the suspension or abandonment is authorized by the City Council.
(b) Whenever Grantee shall file with the City Council a written application alleging that the public interest, convenience and necessity no longer require that Grantee furnish service pursuant to this ordinance in that whole or in any part of the franchise area, the City Council, at a public hearing, shall take evidence upon that question and shall make a finding with respect to it. Notice of the hearing shall be given by Grantee in writing to each subscriber in the part of the franchise area in question at least fifteen (15) days prior to the date scheduled for the hearing. If the public interest, convenience and necessity no longer require that Grantee furnish service, the City Council, after hearing as provided herein, shall authorize suspension or abandonment of service upon such reasonable terms and conditions as may be prescribed by the City Council.

Section 14. REGULATION OF RATES AND SERVICE

(a) The City Council shall have the power and right at all times for the duration of the franchise granted by this ordinance to require Grantee to conform to reasonable rules and regulations now or hereafter adopted by the City Council, including the power to regulate and establish reasonable rates and charges for services rendered under this ordinance. The establishment of such rules and regulations shall be discretionary with the City Council.

(b) Grantee shall:
(1) produce a picture, whether in black and white or in color, that is undistorted, free from ghost images, and accompanied with proper sound on typical standard production television receiver sets in good repair, and as good as the state of the art allow;

(2) provide, maintain and operate facilities which deliver signal of adequate strength to produce good pictures with good sound at all outlets without causing cross-modulation in the cables or interfering with other electrical or electronic systems;

(3) limit failure to a minimum by locating and correcting malfunctions promptly, but in no event longer than twenty-four (24) hours after notice;

(4) upon complaint by a subscriber, make a demonstration satisfactory to the City Manager that a signal is being delivered which is of sufficient strength and quality to meet the standards set forth in this paragraph;

(5) render efficient service, making repairs promptly and interrupting service only for good cause and for the shortest time possible; such interruptions, insofar as possible shall be preceded by notice given to subscribers twenty-four (24) hours in advance and shall occur during periods of minimum use of the system;

(6) maintain an office within the City of San Diego, which office shall be open during all the usual business hours, have a telephone number listed in the directories of The Pacific Telephone and Telegraph Company for the County extended areas, and be so operated that complaints and requests for repairs or adjustments may be received at any time.

(7) Grantee shall operate the CATV system authorized by this ordinance twenty-four (24) hours per day, seven (7) days per week.

Section 15. UNDERGROUND SYSTEM

(a) The CATV system to be installed under authority of this ordinance shall be placed underground in all subdivisions which are subject to the provisions of paragraph 7, Section 102.0221 of the San Diego Municipal Code, except as otherwise provided in this section.

(b) Where facilities are required to be installed underground, Grantee may place aboveground the master antenna facilities necessary to operate the system; provided, however, that irrespective of whether the system is above or underground, no placed in any street.

(c) With approval of the City Manager, expressed in writing, Grantee may place coaxial cables aboveground in undeveloped regions of the writing, at his sole discretion, may withdraw such permission at any time, after giving Grantee 30 days' notice of his intention to do so.

(d) Under no circumstances may the City Manager grant permission to place aboveground in any street any portion of the CATV system authorized by this ordinance and the San Diego Municipal Code to be constructed underground.

Section 16. LOCATION OF FRANCHISE PROPERTY

Franchise property shall be constructed or installed only at such locations and in such manner as shall be approved by the City Engineer, acting in the exercise of reasonable discretion.

Section 17. REMOVAL OR ABANDONMENT OF FRANCHISE PROPERTY

(a) In the event that (1) the use of any franchise property is discontinued for any reason for a continuous period of twelve (12) months; (2) franchise property has been installed in any street or other dedicated public right of way without complying with the requirements of this ordinance; or (3) the franchise has been terminated, canceled or has expired, Grantee, at its expense, shall remove promptly from the street all franchise property other than any which the City Engineer may permit to be abandoned in place. In the event of any such removal, Grantee shall promptly restore to a condition satisfactory to the City Engineer the street or other dedicated public right of way which the franchise property has been removed.

(b) Franchise property to be abandoned in place shall be abandoned in the manner prescribed by the City Engineer. Upon permanent abandonment of any franchise property in place, Grantee shall submit to the City Manager an Instrument, satisfactory in form to the City Attorney, transferring to City the ownership of the franchise property abandoned.

Section 18. CHANGES REQUIRED BY PUBLIC IMPROVEMENTS

Grantee shall, at its expense, protect, support, temporarily disconnect, relocate in the same street, alley, or public place, or remove from any street, alley or public place, any franchise property when required by the City Engineer by reason of traffic conditions, public safety, street vacation, or establishment of street grade, change of station of sewers, drains, water pipes, power lines, signal lines, water tanks or any other type of structures or improvements including but not limited to placing such structures and improvements underground and mental agencies when acting in a governmental or proprietary capacity, or any other structures or public improvements; provided, however, that Grantee shall in all such cases have the privileges and be subject to the obligations to abandon franchise property in place, as provided in Section 17.

Section 19. FAILURE TO PERFORM STREET WORK

Upon failure of Grantee to commence, pursue or complete any work required by law or by the provisions of this ordinance to be done in any street, within the time prescribed and to the satisfaction of the City Engineer, the City Engineer may, at his option, cause such work to be done and the Grantee shall pay to the City the cost thereof in the itemized amounts reported by the City Engineer after receipt of such itemized report.

Section 20. ANNUAL PAYMENTS TO THE CITY

(a) By its acceptance of this franchise, Grantee agrees to pay to the City annually in lawful money of the United States five percent (5%) of the total gross receipts collected or derived by Grantee in each calendar year, or portion thereof, during the term of this franchise, from the properties, operations and business referred to in Section 3 of this ordinance.

(b) Checks for all such payments shall be made payable to the City Treasurer, and shall be submitted to the City Treasurer on or before March 1 of each year for the previous calendar year or portion thereof.

(c) Each payment shall be accompanied by a statement, in duplicate, verified by Grantee or by a general officer or other duly authorized representative of Grantee, showing in such form and detail as the City Manager may require from time to time the facts material to a determination of the amount due.

(d) The payment made to City by Grantee pursuant to this section for any calendar year shall be in lieu of any license, fee or business tax prescribed by City for the same period, but only to the extent of such payment.

(e) The amount of the annual payment to the City to be made by Grantee in accordance with this section is subject to renegotiation under the terms of paragraph (a)(4) of Section 7 of this ordinance.

Section 21. FAITHFUL PERFORMANCE BOND

Grantee shall, within the period specified in paragraph (a) of Section 7, times thereafter, maintain in full force and effect an acceptable corporate surety bond, in the amount of FIVE THOUSAND DOLLARS (\$5,000), effective for the entire term of the franchise granted by this ordinance, and shall fall to comply with any one or more of the provisions of this ordinance, then there shall be recoverable jointly and severally from the principal and surety of such bond any damages suffered by City as a result thereof, including the full amount of any compensation, indemnification, or cost of removal or abandonment of property as prescribed by Sections 17, 20 or 22 of this ordinance which may be in default, up to the full amount of the bond; the condition to be a continuing obligation for the duration of the franchise granted by this ordinance and thereafter until Grantee has liquidated all of its obligations with acceptance of the franchise by Grantee or from its exercise of any privilege herein granted. In lieu of said bond Grantee may deposit cash with The State of California bank or savings and loan association in the name of The City of San Diego, but with interest reserved to the Grantee, on terms and conditions approved by the City Attorney.

Neither the provisions of this section, any bond accepted by City pursuant thereto nor any damages recovered by City thereunder, nor any withdrawal from any cash deposit shall be construed to excuse faithful performance by Grantee or to limit the liability of Grantee under this ordinance or for damages, either to the full amount of the bond or otherwise.

Section 22. INDEMNIFICATION TO CITY

Grantee shall indemnify City, its officers and its employees, against all claims, demands, actions, suits and proceedings by others and against all liability to others, and against all loss, cost and expense resulting therefrom, including reasonable attorneys' fees, arising out of the exercise or enjoyment of the franchise granted by this ordinance, irrespective of the amount of the bond designated in Section 21.

Section 23. INSPECTION OF PROPERTY AND RECORDS

(a) At all reasonable times, Grantee shall permit examination by any City authorized representative of the City Manager, City Engineer or the City Auditor of all franchise property, together with any appurtenant property of Grantee situated within or without the City. Grantee shall also permit any duly authorized representative of the City Manager, City Engineer or the City Auditor to examine and transcribe any and all maps and other records kept or maintained by Grantee or under its control concerning the operations, affairs, transactions or property of Grantee. If any of such maps or records are not kept in the City, or upon reasonable request made available in the City, and if the City Auditor shall determine that an examination of such maps or records is necessary or appropriate to the performance of any of their duties, then necessary and maintenance expense incurred in making such examination shall be paid by Grantee.

the times and in the form prescribed by the City Manager, City Engineer or the City Auditor, such reports with respect to its operations, affairs, transactions or property as may be reasonably necessary or appropriate to the performance of any of the duties of the City Auditor, in connection with this ordinance. Such reports may include, but are not limited to, a complete set of records and plans of all facilities as finally installed within the franchise service area.

Section 24. FILINGS AND COMMUNICATION WITH REGULATORY AGENCIES

Copies of all petitions, applications and communications of all types submitted by Grantee to the Federal Communications Commission, State Public Exchange Commission, California Public Utilities State regulatory commission or agency having jurisdiction over any matter affecting operation of Grantee's CATV system shall be submitted simultaneously to the Clerk by delivery to the City Clerk who shall file the interested City departments with this filing. A copy of each document filed with the City Clerk in accordance with this section shall be delivered to the City Attorney.

Section 25. FRANCHISE GRANTED UNDER AUTHORITY OF CHARTER

Notwithstanding any other provisions contained herein, this franchise is granted solely and exclusively under Sections 103, 103.1, 104 and 105 of the Charter of The City of San Diego and under no other authority.

Section 26. EFFECTIVE DATE OF ORDINANCE

This ordinance shall take effect and be in force on the thirty-first day from and after its passage. Passed and adopted by the Council of The City of San Diego on February 9, 1971, by the following vote:
YEAS: Cobb, Loftin, Williams, Martin, Martinet, Schaefer.

NAYS: None.

ABSENT: Landt, Hitch, Curran.

AUTHENTICATED BY:

FRANK CURRAN,
Mayor of The City of San Diego, California.
JOHN LOCKWOOD,
City Clerk of The City of San Diego, California.
By ELFA F. HAMEL,
Deputy.

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on January 28, 1971, and on February 9, 1971.

I FURTHER CERTIFY that the reading of said ordinance in full was dispensed with by a vote of not less than a majority of the members elected to the Council, and that there was available for the consideration of each member of the Council and the public prior to the day of its passage a written or printed copy of said ordinance.

JOHN LOCKWOOD,
City Clerk of The City of San Diego, California.
By ELFA F. HAMEL,
Deputy.