

(O-2002-79)

ORDINANCE NUMBER O-19057 (NEW SERIES)

ADOPTED ON MAY 14 2002

AN ORDINANCE AMENDING CHAPTER 2, ARTICLE 2, DIVISION 30, OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING SECTION 22.3001; BY RENUMBERING EXISTING SECTION 22.3002 TO SECTION 22.3003; BY ADDING NEW SECTION 22.3002; AND, BY AMENDING SECTION 22.3003 (PREVIOUSLY NUMBERED SECTION 22.3002), ALL RELATING TO CONTRACTS.

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

Section 1. That Chapter 2, Article 2, Division 30, of the San Diego Municipal Code is amended by amending Section 22.3001, to read as follows:

**Division 30: Contract Definitions, Competitive Bidding Procedures,  
and Contract Alterations**

**§ 22.3001 Purpose and Intent; Scope of Division**

The purpose of this Division is to provide uniform definitions for Divisions 30, 31, 32, 33, and 34 of Article 2, Chapter 2 of the Municipal Code; to provide a comprehensive, clear procedure for competitively bidding Contracts and Public Works Contracts; and, to provide clarity and consistency in the City's alteration of contracts.

Section 2. That Chapter 2, Article 2, Division 30, of the San Diego Municipal Code is amended by renumbering existing Section 22.3002 to Section 22.3003.

Section 3. That Chapter 2, Article 2, Division 30, of the San Diego Municipal Code is amended by adding new Section 22.3002, to read as follows:

**§22.3002 Relationship to State Law**

- (a) Pursuant to section 1100.7 of California's Public Contract Code, the City Council declares that the City's Public Contracts Code, or any portion thereof, is expressly exempt from the California Public Contracts Code.
- (b) In the interest of ensuring an expeditious and fair procedure for administering the award of its public contracts, the City in its discretion may follow portions of the California Public Contract Code, but absent a judicial finding that a particular aspect of local public contracting is a matter of statewide concern, the City is not required to do so.

Section 4. That Chapter 2, Article 2, Division 30, of the San Diego Municipal Code Section 22.3003 (previously numbered Section 22.3002), is amended to read as follows:

**22.3003 Definitions**

Terms defined in Chapter 2, Article 2, Divisions 30, 31, 32, 33, and 34 are indicated by initial capital letters. For purposes of Chapter 2, Article 2, Divisions 30, 31, 32, 33, and 34:

“Agency” and “Brand Name” [No change in text]

“City's Public Contracts Code” includes the City's Charter, Municipal Code, Council policies, administrative regulations, past practices, current practices, or any portion of those laws, polices, regulations, or practices, pertaining to contracts or

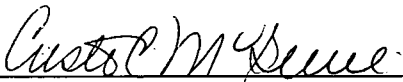
agreements between the City and another party.

“Consultant” through “Task Order” [No change in text]

Section 5. That a full reading of this ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the City Council and the public a day prior to its final passage.

Section 6. This ordinance shall take effect and be in force on the thirtieth day from and after its passage.

APPROVED: CASEY GWINN, City Attorney

By   
Cristie C. McGuire  
Deputy City Attorney

CCM:vl  
03/12/02  
Or.Dept:E&CP  
O-2002-79  
Form=codeo.frm

ORDINANCE NUMBER O-19058 (NEW SERIES)

ADOPTED ON MAY 14 2002

AN ORDINANCE OF THE CITY OF SAN DIEGO AMENDING  
THAT FRANCHISE GRANTED IN ORDINANCE NO. O-12543

WHEREAS, The City of San Diego [City] has by Ordinance No. O-12543 [Cable Franchise] granted to Mission Cable TV, Inc. the non-exclusive right, privilege and franchise to lay and use lines, wires, coaxial cable and appurtenances for transmitting, distributing and supplying radio and cable television service along, across and upon public streets, ways, alleys and places within certain areas of the City;

WHEREAS, the City has by Ordinance No. O-15085 consented to the transfer of the Cable Franchise to Cox Communications San Diego, Inc.;

WHEREAS, Cox Communications San Diego, Inc. has merged into CoxCom, Inc.; and

WHEREAS, the City of San Diego and CoxCom, Inc. desire to amend the terms of Ordinance No. O-12543 to extend the term thereof and to otherwise amend the franchise as hereinafter set forth.

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

Section 1. That subsection (b) of Section 7 of Ordinance No. O-12543 shall be amended to read:

SECTION 7. DURATION OF GRANT

- (b) The term of the Franchise shall be forty (40) years, commencing on the effective date of the Franchise as provided in paragraph (a) of this section and expiring on January 31, 2019; provided, however, that the term of this Franchise may be extended in accordance with the procedures set forth below:

Section 2. That subsection (a)(1) of Section 10 of Ordinance No. O-12543 shall be amended to read as follows:

SECTION 10. SERVICES TO CITY

- (a)(1) Grantee shall provide one cable television connection to each City-owned unit designated by the City Manager such as police stations, fire stations, public libraries and other City-owned facilities within Grantee's authorized service area that require an aerial drop of 150 feet or underground drop of 50 feet or less from the existing cable television distribution system. Grantee shall not be required to provide or maintain the cable television distribution system within said facilities. In addition, Grantee shall provide one cable television connection to each City unit designated by the City Manager in locations where the City leases office space, subject to the following conditions: (i) the City shall be responsible for obtaining written authorization from the building owner to allow

Grantee to enter the leased building at no cost to Grantee to provide cable service; and (ii) the City shall pay Grantee's construction costs to provide service to any City office located in a leased building, including, without limitation, the costs to extend Grantee's plant to such location.

Section 3. That subsection (d) of Section 10 of Ordinance No. O-12543 shall be amended to read:

SECTION 10. SERVICES TO CITY

- (d)(1) Grantee shall provide without cost to the City one (1) analog channel for use by local governments for the distribution of non-commercial programming in the public interest. Grantee shall provide interconnection of such channel with all other Cable Television Systems operating pursuant to a franchise granted by City, provided however, that the receiving Cable Television System shall bear the full cost of receiving Grantee's transmission of such channel. If Grantee operates a remote or permanent vehicle and equipment for telecasting and videotaping, Grantee shall provide origination service to City at such reasonable times and costs as are mutually agreed upon.
- (2) At any time after the first anniversary of the effective date of Ordinance No. **19058**, and upon the City's request, the Grantee shall provide, without cost to the City, one (1) digital channel for

use by the City for the distribution of non-commercial programming in the public interest, and to provide internal training for City employees. Grantee shall also provide one (1) digital converter to each police and fire station where Grantee provides a cable television connection pursuant to Section 10(a)(1) of this Ordinance. The converters shall be provided at no cost to the City. The Grantee shall provide the digital converters to police and fire stations in equal monthly installments over a period of six (6) months (i.e., if there are sixty stations, Grantee shall provide ten stations with digital converters each month until all stations are provisioned). The City shall pay Grantee its standard service rates for any services received via the converters, other than the standard service provided by Grantee at no cost to the City pursuant to Section 10(c) of this Ordinance. Grantee shall be responsible for providing all the transmission and/or reception equipment necessary for Grantee to broadcast a digital system, and the City shall be responsible for providing any equipment to allow the City to deliver programming in a digitally compressed format, including, without limitation, digital-to-digital and/or analog-to-digital conversion and modulation equipment. City's use of said digital channel shall not interfere with any other programming or channel on Grantee's system. Should advanced technology emerge

during the term of this Franchise which would provide similar service at an equal or lesser cost to Grantee, the parties agree to meet in good faith to consider implementing the new technology.

Section 4. That subsection (e) of Section 10 of Ordinance No. O-12543 shall be amended to read as follows:

SECTION 10. SERVICES TO CITY

- (e) Grantee shall provide without cost one (1) analog channel for use by Public Schools for the distribution of non-commercial educational access programming. As required by Grantee, the Public Schools shall save and hold harmless Grantee from any uses made by the Public Schools in the distribution of programming.

Section 5. That a new subsection (h) be added to Section 10 of Ordinance No. O-12543, to read as follows:

SECTION 10. SERVICES TO CITY

- (h) In order to enable the City to purchase and/or install telecommunication capital improvements, equipment and services, including, without limitation, institutional network services and services pursuant to Section 10(a)(1), or to otherwise enable the City to meet the cable-related needs and interests of the City, the Grantee shall pay the City the following amounts: (i) one million five hundred thousand dollars (\$1,500,000) on the effective date of Ordinance No. **19058**, and (ii) one million five hundred



thousand dollars (\$1,500,000) on the first anniversary of the effective date of Ordinance No. 19058. The City shall not use such funds in any manner that would cause the funds to be deemed "franchise fees" within the meaning of 47 U.S.C. § 542(g), as it may be amended.

Section 6. That a new subsection (e) be added to Section 16 of Ordinance No. O-12543, to read as follows:

**SECTION 16. UNDERGROUND SYSTEM**

- (e) Subject to obtaining California Public Utility Commission [CPUC] approval for the City's entire undergrounding surcharge proposal, City's undergrounding program will assume responsibility for that portion of the joint trench costs related to extra depth trenching and the installation of conduit and substructures, with the balance of any undergrounding costs associated with Grantee's facilities to be paid by Grantee, without any pass-through of those costs to Grantee's Subscribers.

Section 7. That Section 19 of Ordinance No. O-12543 shall be amended to read as follows:

**SECTION 19. CHANGES REQUIRED BY PUBLIC IMPROVEMENTS**

Grantee shall, at its sole 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 Manager provided, however, that Grantee shall have the privilege and be subject to the obligation to abandon Franchise Property in place as provided in Section 18; and provided further that Grantee shall have the benefit of any local, state or federal law or regulation providing for reimbursement of or contribution toward Grantee's expense necessitated by such improvements.

Section 8. That subsection (a) of Section 21 of Ordinance No. O-12543 shall be amended to read as follows:

**SECTION 21. 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 Franchise.

Section 9. That subsection (c) of Section 21 of Ordinance No. O-12543 shall be amended to read as follows:

**SECTION 21. ANNUAL PAYMENTS TO THE CITY**

- (c) Payments made to the City by Grantee pursuant to this Section for any calendar year shall be as a rental for use of the public right of way. Any Grantor imposed fees for right of way usage [Right of Way Fee] shall be credited with consideration paid herein. Subject

to the provisions of Section 16(e), any revenues which remain after this credit of Right of Way Fees will be credited toward any additional fees Grantor imposes for inspection, trenching, cutting or deterioration of the right of way.

Section 10. That, except as amended hereby, Ordinance No. O-12543 shall remain in full force and effect and is hereby ratified and confirmed in all respects.

Section 11. That a full reading of this ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the City Council and the public a day prior to its final passage.

Section 12. That Sections 7 through 9 of this Ordinance shall take effect and be in force as of the effective date of the California Public Utilities Commission approval of the Advice Letter implementing an undergrounding surcharge as approved by the City Council.

Section 13. The Sections 1 through 6 and 10 of this Ordinance shall take effect and be in force on the thirtieth day from and after its passage.

APPROVED: CASEY GWINN, City Attorney

By

  
Deborah L. Berger  
Deputy City Attorney

DLB:jc

4-22-02

4-26-02 Cor. Copy

Or.Dept:IT&C

Aud.Cert:N/A

O-2002-114 Cor. Copy

Form=o&t.frm