

ORDINANCE NUMBER O- 15719 (NEW SERIES)

DATE OF FINAL PASSAGE FEB 26 2008

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO AMENDING CHAPTER 7, ARTICLE 3, OF THE SAN DIEGO MUNICIPAL CODE BY CREATING A NEW DIVISION 2 TITLED "VIDEO SERVICE PROVIDER FEES AND CUSTOMER SERVICE REGULATIONS FOR STATE FRANCHISED VIDEO SERVICE PROVIDERS."

WHEREAS, effective January 1, 2007, pursuant to the Digital Infrastructure and Video Competition Act of 2006 ("Act"), the California Public Utilities Commission has the authority to grant state franchises for the provision of video service including cable television service and open-video systems; and

WHEREAS, pursuant to the Act, the City of San Diego shall have the right to receive a state franchise fee as compensation for the use of the public rights-of-way for the provision of video services; and

WHEREAS, pursuant to the Act, local entities may, by ordinance, establish a fee for the support of public, educational, and government access ("PEG") channel facilities; and

WHEREAS, the Act provides that the City may examine the business records of a state video franchise holder to the extent reasonably necessary to ensure accurate payment of compensation; and

WHEREAS, the Act provides that the City is to enforce all customer service and protection standards applicable under law with respect to complaints received from residents within the City's jurisdiction; and

WHEREAS, pursuant to the Act, the City shall, by resolution or ordinance, provide a schedule of penalties for any material breach of any applicable customer service and protection standards by a holder of a state franchise; NOW, THEREFORE,

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

Section 1. That the title of Chapter 7, Article 3, of the San Diego Municipal Code is amended to read as follows:

Article 3. "Cable Television and Video Service Providers"

Section 2. That Chapter 7, Article 3, of the San Diego Municipal Code is amended to add Division 2, which will read in full as follows:

Division 2: Video Service Provider Fees and Customer Service Regulations

**§ 73.0201 Definitions**

For purposes of this Division:

- (a) "Franchise Fee" means the fee paid to the City pursuant to Section 73.0202(a).
- (b) "Gross Revenue" means the same as it does in Section 5860 of the California Public Utilities Code.
- (c) "Material Breach" means any substantial and repeated failure of a State Franchisee to comply with service quality and other standards specified in Section 73.0204(a).
- (d) "PEG" means public, educational and governmental access channels.

- (e) “*PEG Support Fee*” means the fee paid to the City pursuant to Section 73.0202(b).
- (f) “*State Franchisee*” means the holder of a California state franchise for the provision of video services as provided for under Section 5800 et seq. of the California Public Utilities Code.

**§ 73.0202 State Video Franchise Fees**

- (a) Each *State Franchisee* that operates within the jurisdictional boundaries of the City of San Diego shall pay to the City, in accordance with the schedule described in Section 73.0202(c), below, a fee equal to five percent (5%) of its *Gross Revenues* (“*Franchise Fee*”).
- (b) Each *State Franchisee* that operates within the jurisdictional boundaries of the City will pay to the City, in accordance with the schedule described in Section 73.0202(c), below, a fee equal to one percent (1%) of the *State Franchisee’s Gross Revenues* (“*PEG Support Fee*”). The City shall use the *PEG Support Fee* in a manner consistent with state and federal law.
- (c) The *Franchise Fee* and *PEG Support Fee* shall be paid to the City on a quarterly basis within 45 days after the end of each quarter for that calendar year. Each payment shall be accompanied by a detailed summary explaining the basis for the calculation of the *Franchise Fee* and *PEG Support Fee*. Payments shall be sent to the Office of the City Treasurer.
- (d) A late payment charge equal to the highest prime lending rate during the period of delinquency plus one percent (1%) will be applied to any

payment made by a *State Franchisee* for *Franchise Fees* and *PEG Support Fees* not received when due under Section (c) above.

**§ 73.0203 Audit Authority**

Not more than once annually, the City may examine, and perform an audit of, the business records of a *State Franchisee* to the extent reasonably necessary to ensure compliance with Section 73.0202.

**§ 73.0204 Customer Service Penalties for State Video Franchisees**

**(a)** State Video Franchisees shall comply with all applicable state and federal consumer service and consumer protection standards including:

- (1) California Government Code Sections 53055, 53055.1, and 53055.2 (Cable Television and Video Provider Customer Service and Information), and 53088.2 (Video Customer Service),
- (2) California Penal Code Section 637.5 (Subscriber Privacy) and the privacy standards contained in Section 631 of the federal Cable Act (47 U.S.C. Sec. 551 et. Seq.),
- (3) Federal Communications Commission Rules and Regulations Part 76.309 (Customer Service Obligations),
- (4) any other customer service standards pertaining to the provision of video service established by federal law or regulation or adopted by subsequent enactment of the California Legislature.

**(b)** All customer service and consumer protection standards under this section shall be interpreted and applied to accommodate newer or different

technologies while meeting or exceeding the goals of the standards in relation to customer protection.

- (c) The City will provide any state franchised video provider written notice of any material breaches of applicable customer service standards and allow the *State Franchisee* thirty (30) days from receipt of the notice to remedy the specified material breach. The City may assess the following monetary penalties for any material breach of customer service and consumer protection standards not remedied within the thirty (30) day time period:

- (1) Up to Five hundred dollars (\$500) for each day of each material breach, not to exceed a total of one thousand five hundred dollars (\$1,500) for each occurrence of a material breach.
- (2) If a subsequent material breach of the same nature occurs within 12 months following previous notice and any assessment of penalties or fines, a fine of up to one thousand dollars (\$1,000) shall be imposed for each day of the material breach stays in effect, not to exceed three thousand dollars (\$3,000) for each occurrence of the material breach.
- (3) If a third or further material breach of the same nature occurs within the same 12 months following previous notice and any assessment of penalties or fines, a fine of up to two thousand five hundred dollars (\$2,500) shall be imposed for each day of each

material breach, not to exceed a total of seven thousand five hundred dollars (\$7,500) for each occurrence of a material breach.

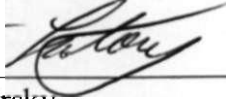
- (d) A material breach for the purposes of assessing penalties under this Section 73.0204 shall be deemed to have occurred for each day, following the expiration of the notice/remedy period of Section 73.0204(c), that any material breach has not been remedied by the *State Franchisee*, irrespective of the number of customers affected.
- (e) The City shall submit one-half of any penalties assessed and received to the Digital Divide Account established under Section 280.5 of the California Public Utilities Code.
- (f) A *State Franchisee* may appeal a penalty assessed under this Division in accordance with the appeal procedures set forth in Division 5, Article 2, Chapter 1 of the San Diego Municipal Code (beginning with Section 12.0501.)

Section 3. 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 4. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of the ordinance.

Section 5. This ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: MICHAEL J. AGUIRRE, City Attorney



Steven Lastomirsky  
Deputy City Attorney

SL:sc  
05/04/07  
10/10/07 REV.  
Or.Dept.: CIO  
O-2007-118

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of FEB 19 2008.

ELIZABETH S. MALAND  
City Clerk

By   
Deputy City Clerk

Approved: 2-26-08  
(date)

  
JERRY SANDERS, Mayor

Vetoed: \_\_\_\_\_  
(date)

\_\_\_\_\_  
JERRY SANDERS, Mayor

**STRIKEOUT ORDINANCE**

**OLD LANGUAGE: STRIKEOUT**  
**NEW LANGUAGE: UNDERLINE**

(O-2007-118 REV.)

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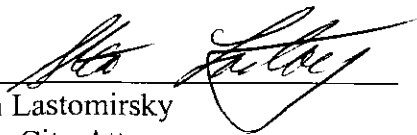
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