

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF OCEANSIDE ADDING CHAPTER 9B TO THE OCEANSIDE MUNICIPAL CODE ESTABLISHING FRANCHISE AND PEG FEES AND CUSTOMER SERVICE PENALTIES FOR STATE FRANCHISE HOLDERS PROVIDING VIDEO SERVICE WITHIN THE CITY OF OCEANSIDE

WHEREAS, a new state law, the Digital Infrastructure and Video Competition Act of 2006 (AB 2987) goes into effect January 1, 2007;

WHEREAS, under the new state law, the State of California shall have sole franchising authority for new video service providers within the City;

WHEREAS, the City of Oceanside, although not the franchising authority, will acquire certain rights and responsibilities with respect to the new state video franchise holders;

WHEREAS pursuant to AB 2987, certain rights and responsibilities must be established by local ordinance before they may become effective and enforceable against state video franchise holders;

WHEREAS, the City of Oceanside shall receive a fee of 5% of gross revenues of each state video franchisee which operates within the City of Oceanside for use of the public rights-of-way;

WHEREAS, the City of Oceanside shall receive an additional fee of 1% of gross revenues of each state video franchisee which operates within the City of Oceanside for Public, Educational and Government (PEG) purposes;

WHEREAS, the City of Oceanside may audit the business records of a state video franchisee once annually to ensure compliance with the payment of the franchise and PEG fees;

WHEREAS, the City of Oceanside may establish and enforce penalties against state video franchisees for violations of customer service rules consistent with state law;

WHEREAS, the City of Oceanside will retain authority, without change, over the City's current cable franchisee until such time as it no longer holds a City franchise, or is no longer operating under a current or expired City franchise;

1           WHEREAS, the terms “video service”, “video franchise” and “video franchisee” shall  
2 have the same meaning as the terms “cable service”, “franchise” and “franchisee” as they are  
3 used in Chapter 9A;

4           NOW, THEREFORE, the City Council of the City of Oceanside does ordain as follows:

5           SECTION 1. The following Chapter is hereby added to the Oceanside Municipal Code:

6           Chapter 9B Regulation of State Video Franchise Holders

7           Section 9B.1 “Purpose and Authority”

8           This Chapter is designed to regulate video service providers holding state video  
9 franchises and operating within the City.

10           As of January 1, 2007, the State of California will have the sole authority to grant state  
11 video franchises pursuant to the Digital Infrastructure and Video Competition Act of 2006.  
12 (“The Act”). Pursuant to The Act, the City of Oceanside shall receive a franchise fee and shall  
13 receive a fee for public, educational and government (PEG) purposes from all state video  
14 franchise holders operating within the City. Additionally, the City will acquire the responsibility  
15 to establish and enforce penalties, consistent with state law, against all state video franchise  
16 holders operating within the City for violations of customer service standards but The Act  
17 grants all authority to adopt customer service standards to the state. The Act leaves unchanged  
18 the City’s authority to regulate the City’s current cable franchise in accordance with Chapter 9A  
19 and the cable franchise currently in effect until such time as the cable franchisee no longer  
20 holds a City franchise or is no longer operating under a current or expired city franchise.

21           Section 9B.1.1 “State Video Franchise and PEG Fees”

- 22           (a)           For any state video franchise holder operating within the boundaries of the  
23                           City of Oceanside, there shall be a fee paid to the City equal to five percent of  
24                           the gross revenue of that state video franchise holder.
- 25           (b)           For any state video franchise holder operating within the boundaries of the city  
26                           of Oceanside, there shall be an additional fee paid to the City equal to one  
27                           percent of the gross revenue of that state video franchise holder, which fee  
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1 shall be used by the City for PEG purposes consistent with state and federal  
2 law.

- 3 (c) Gross revenue, for the purposes of (a) and (b) above, shall have the definition  
4 set forth in California Public Utilities Code § 5860.

5 Section 9B1.2 “Audit Authority”

6 Not more than once annually, the City Manager or his designee may examine and  
7 perform an audit of the business records of a holder of a state video franchise to ensure  
8 compliance with Section 9B1.1.

9 Section 9B1.3 “Customer Service Penalties Under State Video Franchises”

- 10 (a) The Holder of a state video franchise shall comply with all applicable state and  
11 federal customer service and protection standards pertaining to the provision of  
12 video service.
- 13 (b) The City Manager shall monitor the compliance of state video franchise holders  
14 with respect to state and federal customer service and protection standards. The  
15 City Manager will provide the state video franchise holder written notice of any  
16 material breaches of applicable customer service standards, and will allow the  
17 state video franchise holder 30 days from the receipt of the notice to remedy the  
18 specified material breach. Material breaches not remedied within the 30-day time  
19 period will be subject to the following penalties to be imposed by the City:
- 20 (1) For the first occurrence of a violation, a fine of \$500.00 shall be  
21 imposed for each day the violation remains in effect, not to exceed  
22 \$1,500.00 for each violation.
  - 23 (2) For a second violation of the same nature within 12 months, a fine  
24 of \$1,000.00 shall be imposed for each day the violation remains  
25 in effect, not to exceed \$3,000.00 for each violation.
  - 26 (3) For a third or further violation of the same nature within 12  
27 months, a fine of \$2,500.00 shall be imposed for each day the  
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1 violation remains in effect, not to exceed \$7,500.00 for each  
2 violation.

- 3 (c) A state video franchise holder may appeal a penalty assessed by the City Manager  
4 to the City Council within 60 days of the initial assessment. The City Council  
5 shall hear all evidence and relevant testimony and may uphold, modify or vacate  
6 the penalty. The City Council's decision on the imposition of a penalty shall be  
7 final.

8 Section 9B.1.4 "City Response to State Video Franchise Applications"

- 9 (a) Applicants for state video franchises within the boundaries of the City of  
10 Oceanside must concurrently provide complete copies to the City of any  
11 application or amendments to applications filed with the PUC. One complete  
12 copy must be provided to the City Manager.
- 13 (b) Within 30 days of receipt, the City Manager will provide any appropriate  
14 comments to the PUC regarding an application or an amendment to an application  
15 for a state video franchise.

16 SECTION 2. Severability.

17 If any section, sentence, clause or phrase of this Chapter is for any reason held to be  
18 invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision  
19 shall not affect the validity of the remaining portions of this Chapter. The City Council hereby  
20 declares that it would have passed this ordinance and adopted this Chapter and each section,  
21 sentence, clause or phrase thereof, irrespective of the fact that any one or more section,  
22 subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

23 SECTION 3. The City Clerk of the City of Oceanside is hereby directed to publish this  
24 ordinance, or the title hereof as a summary, pursuant to state statute, once within fifteen (15)  
25 days after its passage in the North County Times, a newspaper of general circulation published  
26 in the City of Oceanside.

27 SECTION 4. This ordinance shall take effect and be in force on the thirtieth (30<sup>th</sup>) day  
28 from and after its final passage.

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INTRODUCED at a regular meeting of the City Council of the City of Oceanside, California, held on the \_\_\_ day of \_\_\_\_\_, 2007, and, thereafter,

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Oceanside California, held on the \_\_\_ day of \_\_\_\_\_, 2007, by the following vote:

AYES:

NAYS:

ABSENT:

ABSTAIN:

MAYOR OF THE CITY OF OCEANSIDE

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
CITY CLERK

  
\_\_\_\_\_  
CITY ATTORNEY