

ORDINANCE NO. 07-09

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF RANCHO SANTA MARGARITA, CALIFORNIA, ESTABLISHING FEES FOR STATE FRANCHISED VIDEO SERVICE PROVIDERS, ESTABLISHING A SCHEDULE OF PENALTIES FOR MATERIAL BREACH OF CERTAIN PROVISIONS OF PUBLIC UTILITIES CODE SECTION 5900, AND AMENDING SECTION 11.07.130 OF CHAPTER 11.07 (ENCROACHMENT EXCAVATION, FILLING AND OBSTRUCTION OF HIGHWAYS) OF THE RANCHO SANTA MARGARITA MUNICIPAL CODE TO PROVIDE REGULATIONS FOR PROCESSING APPEALS FROM DENIAL OF ENCROACHMENT PERMIT APPLICATIONS BY CABLE OPERATORS AND VIDEO SERVICE PROVIDERS.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF RANCHO SANTA MARGARITA DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Findings. The City Council of the City of Rancho Santa Margarita hereby finds that:

1. Effective January 1 2007, the Digital Infrastructure and Video Competition Act of 2006, AB 2987 ("the Act") authorized the State of California to grant state franchises for the provision of video services including cable television video service providers and open video systems.

2. Pursuant to the Act, the City acquires certain rights and responsibilities with respect to state video service franchise holders ("State Franchisees"), including the right to collect a state franchise fee ("Franchise Fee") as compensation for the use of the public rights of way for the provision of video services.

3. The Act authorizes the City to adopt an ordinance establishing a fee for the support of public, educational and government ("PEG") access channel facilities ("PEG Access Fee".)

4. The Act also authorizes the City to adopt a schedule of penalties for material breaches of the customer service and protection standards contained in the California Public Utilities Code.

SECTION 2. Pursuant to Public Utilities Code sections 5840(q)(1) and 5860(a), state franchise holders that offer video service within the jurisdictional boundary of the City shall calculate and remit to City, a Franchise Fee equal to five

percent (5%) of gross revenues, as defined in Section 5860(d), to be used for any lawful purpose.

SECTION 3. Pursuant to Public Utilities Code section 5870(n), state franchise holders that offer video service within the jurisdictional boundaries of the City shall calculate and remit to City a PEG Access Fee equal to one percent (1%) of gross revenues, as defined in Public Utilities Code section 5860(d), to be used to support PEG channel activities.

SECTION 4. Pursuant to Public Utilities Code section 5900, the following schedule of penalties shall apply for any material breach by a state franchise holder of the service quality and other standards specified in Section 5900(a). "Material breach" means a substantial and repeated failure to comply.

(1) For a first material breach: Five Hundred Dollars (\$500) for each day of each material breach, not to exceed One Thousand Five Hundred Dollars (\$1,500) for each occurrence of a material breach.

(2) For each subsequent material breach of the same nature occurring within 12 months of the first breach for which notice had been provided and a fine assessed: One Thousand Dollars (\$1,000) for each day of each material breach, not to exceed Three Thousand Dollars (\$3,000) for each occurrence of the material breach.

(3) For a third or further material breach of the same nature occurring within 12 months of the original material breach for which notice had been provided and a fine assessed: Two Thousand Five Hundred Dollars (\$2,500) for each day of each material breach, not to exceed Seven Thousand Five Hundred Dollars (\$7,500) for each occurrence of the material breach.

SECTION 5. Section 11.07.130 (Issuance of Permit) of Chapter 11.07 (Encroachment Excavation, Filling and Obstruction of Highways) is amended to add subsection (c) as follows:

(c) If an application submitted by a state franchised video service provider or cable operator is denied, the City Engineer shall provide a detailed explanation of the reason for denial. Within ten (10) days of the date of notice of denial, the applicant may file a written appeal with the City Clerk. The City Clerk shall schedule an appeal hearing before the City Manager to be held within thirty (30) days of receipt of the request. If the City Manager upholds the decision to deny the application, within ten (10) days of the date of notice of denial, the applicant may file a written appeal with the City Clerk. The City Clerk shall schedule a hearing on such appeal before the City Council to be held within sixty (60) days of receipt of the request. The decision of the City Council shall be final.

SECTION 6. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or any part hereof, for any reason is held to be

unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance or any part hereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase hereof irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional or invalid or ineffective.


SECTION 7. This Ordinance shall take effect thirty (30) days after its adoption. The City Clerk or his or her duly appointed deputy shall certify to the adoption of this Ordinance and shall cause this Ordinance to be published as required by law.

PASSED, APPROVED, AND ADOPTED this 9th day of January, 2008, by vote as follows:

AYES: 4 COUNCIL MEMBERS: Beall, Thor, Mayor Pro Tempore Thompson, and Mayor Blais

NOES: 0 COUNCIL MEMBERS: None

ABSENT: 1 COUNCIL MEMBERS: Holloway


Neil C. Blais, Mayor

Attest:


Molly McLaughlin, City Clerk

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss
CITY OF RANCHO SANTA MARGARITA)

I, Molly McLaughlin, City Clerk of the City of Rancho Santa Margarita, California, DO HEREBY CERTIFY that the foregoing Ordinance No. 07-09 was regularly introduced and placed upon it first reading at a regular meeting of the City Council on the 12th day of December, 2007, and that thereafter, said Ordinance was duly adopted and passed at a regular meeting of the City Council on the 9th day of January, 2008.



Molly McLaughlin, City Clerk