

ORDINANCE NO. 07-02

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ALBANY REGARDING STATE-FRANCHISED VIDEO SERVICE PROVIDERS AND ADDING ARTICLE VI-A TO CHAPTER 30 OF THE ALBANY MUNICIPAL CODE

THE CITY COUNCIL OF THE CITY OF ALBANY DOES ORDAIN AS FOLLOWS:

SECTION 1. Chapter VI-A is hereby added to the Albany Municipal Code to read as follows:

“CHAPTER VI-A STATE-FRANCHISED VIDEO SERVICE PROVIDERS

24-1 Definitions

Terms used in this chapter shall be defined as provided in California Public Utilities Code Section 5830.

24-2 Authority and Findings.

- A. Assembly Bill 2987 (Nunez), formally called the Digital Infrastructure and Video Competition Act of 2006 (the “Act”), became effective on January 1, 2007.
- B. The Act establishes a state franchising system administered by the Public Utilities Commission for video service providers. Under the Act, the City of Albany has limited regulatory and enforcement powers over state-franchised video service providers.
- C. The intent of this article is to exercise the City’s regulatory authority pursuant to the Act and other state and federal law.

24-3 Customer Service Standards and Penalties for Material Breach.

- A. Pursuant to California Public Utilities Code Section 5900, video service providers that have been issued a state franchise pursuant to California Public Utilities Code Section 5840 must comply with the provisions of Sections 53055, 53055.1, 53055.2, and 53088.2 of the California Government Code, and any other customer service standards pertaining to the provision of video service established by federal law or regulation and any laws subsequently enacted by the California Legislature (the “customer service standards”).
- B. The holder of a state-issued franchise shall comply with the provisions of California Penal Code Section 637.5 and the privacy standards contained in the Federal Cable Act, at 47 U.S.C. § 551, et seq.

C. The City shall enforce the customer service standards of this section with respect to complaints received from residents within the City's jurisdiction, pursuant to California Public Utilities Code Section 5900(c).

D. Prior to imposing the penalties provided by this section, the City shall notify state franchise holders in writing of any material breach of these customer service standards. The video service provider shall have thirty (30) days from the receipt of the notice to remedy the specified material breach.

E. A material breach of the customer service standards by state franchise holders is punishable by a penalty of five hundred dollars (\$500) for each day of each material breach, not to exceed fifteen hundred dollars (\$1500) for each occurrence of a material breach.

F. If a subsequent material breach of the same standard occurs within twelve (12) months, the repeat material breach is punishable by a penalty of 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.

G. If a third or further material breach of the same standard occurs within twelve (12) months of the first breach, the repeat material breach or breaches are punishable by a penalty of twenty-five hundred dollars (\$2,500) for each day of each material breach, not to exceed seventy-five hundred dollars (\$7,500) for each occurrence of the material breach.

H. Acts or omissions of a video service provider that result in breaches of two or more different customer service standards will be treated and penalized as separate material breaches of each violated standard.

I. This section shall not apply to any video service provider providing video services pursuant to a franchise agreement with the City.

24-4 Public, Educational, and Governmental (PEG) Access Fee.

A. Pursuant to California Public Utilities Code Section 5870(n), the City of Albany hereby establishes a Public, Educational, and Governmental (PEG) Access Fee.

B. Video service providers that have been issued a state franchise pursuant to California Public Utilities Code Section 5840, shall designate a sufficient amount of capacity on their networks for the provision of PEG channels as provided by Public Utilities Code Section 5870.

C. Video service providers that have been issued a state franchise must pay to the City of Albany a PEG Access Fee of one percent (1%) of the video service provider's gross revenues to support PEG channels consistent with federal law. The fee shall be remitted to the City quarterly, within forty-five (45) days after the close of each quarter, at the same time as the

video service provider remits its franchise fee pursuant to California Public Utilities Code Section 5860(h).

D. If the video service provider does not pay the PEG Access Fee when due, the video service provider shall pay a late payment charge at a rate per year equal to the highest prime lending rate during the period of delinquency, plus one percent (1%).

E. Pursuant to California Public Utilities Code Section 5860(i), the video service provider must keep records of its gross revenues for at least four (4) years after those revenues are recognized in its books. The City may review the business records of the video service provider to ensure that the PEG Access Fee is being paid properly. If an audit of the video service provider indicates that the PEG Access Fee has been underpaid by more than five percent (5%), the video service provider must pay the reasonable and actual costs of the audit, as well as the delinquent fees.

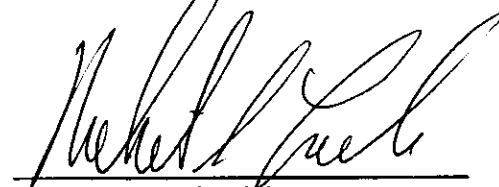
F. This Section shall not apply to any video service provider providing video services pursuant to a franchise agreement with the City.

SECTION 2. Pursuant to the California Environmental Quality Act (Public Resources Code Section 21000 et seq.) ("CEQA") and the State CEQA Guidelines (California Code of Regulations, Title 14, Section 15000 et seq.), the City Council finds that it can be seen with certainty that there is no possibility that the adoption of this ordinance will have a significant effect on the environment. Therefore, the adoption of this ordinance is exempt from CEQA pursuant to State CEQA Guidelines Section 15061(b)(3).

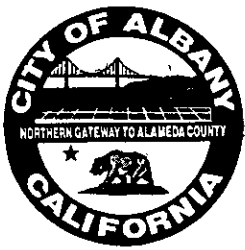
SECTION 3. The City Clerk shall cause this ordinance to be published at least once in a newspaper of general circulation published and circulated in the City within fifteen (15) days after its passage, in accordance with Section 36933 of the Government Code, shall certify to the adoption of this ordinance, and shall cause this ordinance and her certification, together with proof of publication, to be entered in the Book of Ordinances of the Council of this City. This Ordinance shall go into effect at 12:01 a.m. on the thirty-first (31st) day after its passage.

SECTION 4. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of the ordinance, and each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clause or phrases be declared invalid.

Date: July 2, 2007



Mayor Robert S. Lieber



City of Albany

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COMMUNITY DEVELOPMENT & ENVIRONMENTAL RESOURCES

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RECREATION & COMMUNITY SERVICES

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- Friendship Club/ Childcare Program
PH. (510) 524-0135
- Senior Center
PH. (510) 524-9122
FAX (510) 524-8940
- Teen Center
PH. (510) 525-0576

STATE OF CALIFORNIA)
COUNTY OF ALAMEDA) ss
CITY OF ALBANY)

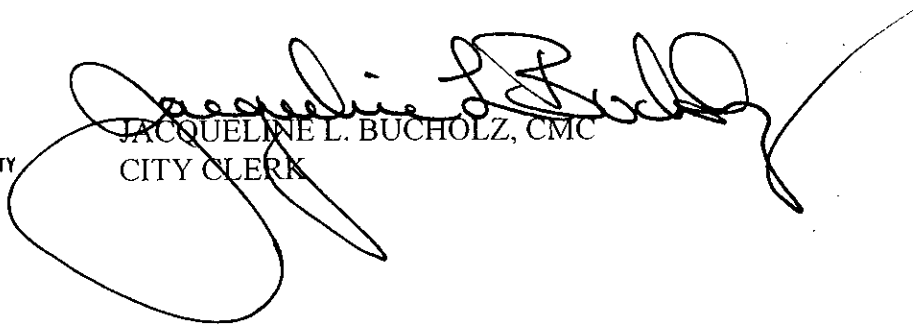
I, JACQUELINE L. BUCHOLZ, City Clerk of the City of Albany, California, do hereby certify that the whole number of members of the City Council of said City of Albany is five and that the foregoing is a true and correct copy of Ordinance No. 07-02 which was passed and adopted by the said City Council, approved and signed by the Mayor of said City, and attested by the City Clerk of said City, all at a regular meeting of the said Council on the 2nd day of July 20⁰⁷ A.D., and that the same was so passed and adopted by the following votes and duly published or posted according to State law.

AYES: Council Members Atkinson, Javandel, Okawachi, Wile & Mayor Lieber

NOES: None

ABSENT: None

In witness whereof, I have hereunto set my hand and affixed the official seal of the City of Albany, this 5th day of July, 2007.


JACQUELINE L. BUCHOLZ, CMC
CITY CLERK

The City of Albany is dedicated to maintaining its small town ambience, responding to the needs of the community, and providing a safe, healthy environment now and in the future.



PRINTED ON RECYCLED PAPER

Jackie Bucholz

To: West County Times (E-mail 2)
Subject: Publish Ord. 07-02
Importance: High

Toni:

Please publish the attached Ordinance #07-02, one time, Monday, July 9, 2007. Please furnish an affidavit of publication.
Thanks,

j



Ordinance
07-02.PDF