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**CITY OF DANA POINT
AGENDA REPORT**

DATE: JUNE 19, 2007

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: CITY ATTORNEY'S OFFICE

**SUBJECT: SECOND READING AND ADOPTION OF AB 2987 – THE STATE VIDEO
FRANCHISE LAW ORDINANCE**

RECOMMENDED ACTION:

That the City Council hold second reading and adopt an ordinance entitled:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, IMPLEMENTING AB 2987 WITHIN THE CITY REGARDING VIDEO FRANCHISE FEES, CUSTOMER SERVICE AND OTHER VIDEO-RELATED MATTERS

ISSUE:

Should the City Council adopt an ordinance implementing AB 2987 in order to obtain franchise and PEG fees from state video franchises and establish customer service enforcement rules?

BACKGROUND:

The City Council, at its regular meeting of May 15, 2007, introduced the proposed ordinance for its first reading. Staff is bringing back the proposed ordinance for adoption at this time.

DISCUSSION:

AB 2987, the new state video franchising statute which became effective January 1, 2007, authorizes the California Public Utilities Commission (the "CPUC") to issue statewide video franchises to, among others, telephone companies wishing to enter the video business. The City of Dana Point (the "City") will acquire certain rights and responsibilities with respect to state video franchise holders. These include the receipt of a franchise fee and a fee for Public, Educational and Government ("PEG") purposes, both based on a percentage of the gross revenues of state franchise holders, as well as the establishment and enforcement of penalties for violations of customer service rules.

Much of AB 2987 is self implementing. However, in order to ensure collection of the five percent (5%) Franchise Fee, the one percent (1%) PEG Fee, and to enforce the state-mandated customer service standards, local government must undertake certain formal adoptions pursuant to the statute. Although some of these requirements can be implemented by resolution and others by ordinance, staff has chosen to include all of the implementation measures in a single ordinance for ease of adoption.

One of the most important provisions of the proposed ordinance is the imposition of a one percent (1%) PEG Fee which can be collected in addition to the five percent (5%) Franchise Fee. AB 2987 has not changed existing law which allows the entirety of the Franchise Fee to be utilized for general fund purposes. However, the one percent (1%) PEG Fee can only be utilized for PEG-related purposes in a manner consistent with federal and state law and should be treated as a segregated fund with use restrictions.

Upon the effective date of the Ordinance, the statewide franchisee will be required to collect the one percent (1%) PEG Fee in addition to the five percent (5%) Franchise Fee, and may, and probably will, list it as a line item upon the subscriber's bill. Unless the City Council adopts an ordinance imposing the one percent (1%) PEG Fee, it will not be collected by the statewide franchisee. In communities which already impose PEG Fees in excess of one percent (1%), those cities are entitled to impose a higher PEG Fee upon a statewide franchisee up to a maximum of three percent (3%) of gross revenues.

FISCAL IMPACT:

Increased potential revenues from the franchise fee and PEG fee.

FOLLOW UP/NOTIFICATION:

The Ordinance will be published in accordance with state and local regulations.

ACTION DOCUMENTS:

A. [Ordinance.....3](#)

ORDINANCE NO. 07-**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, IMPLEMENTING AB 2987 WITHIN THE CITY REGARDING VIDEO FRANCHISE FEES, CUSTOMER SERVICE AND OTHER VIDEO-RELATED MATTERS**

THE CITY COUNCIL FOR THE CITY OF DANA POINT DOES HEREBY ORDAIN AS FOLLOWS:

Section 1.00. Regulation of State Video Franchises and City Video Franchises: Under State law effective January 1, 2007, the California Public Utilities Commission ("PUC") will have the authority to grant state video franchises ("State Franchises"). The City of Dana Point (the "City") will acquire certain rights and responsibilities with respect to state video franchise holders. These include the receipt of a franchise fee and a fee for Public, Educational and Government ("PEG") purposes, both based on a percentage of the gross revenues of state franchise holders, as well as the establishment and enforcement of penalties for violations of customer service rules.

Section 1.01. State Video Franchise Fees:

(a) Any state video franchise holder ("State Franchisee") operating within the boundaries of the City of Dana Point shall pay a fee to the City equal to five percent (5%) of the Gross Revenue of that State Franchisee.

(b) Any State Franchisee operating within the boundaries of the City of Dana Point shall pay an additional fee to the City equal to one percent (1%) of the Gross Revenue of that State Franchisee, which fee shall be used by the City for PEG purposes consistent with state and federal law.

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

Section 1.02. Audit Authority: Not more than once annually, the City may examine and perform an audit of the business records of a State Franchisee to ensure compliance with Section 1.01.

Section 1.03. Customer Service Penalties Under State Franchises:

(a) The holder of a State Franchise shall comply with all applicable state and federal customer service and protection standards pertaining to the provision of video service.

(b) The City Manager, or his/her designee, shall monitor the compliance of State Franchisee(s) with respect to state and federal customer service and protection standards. The City Manager, or his/her designee, shall provide the State Franchisee(s) written notice of any material breaches of applicable customer service standards, and shall allow the State Franchisee(s) thirty (30) days from the receipt of the notice to remedy the specified material breach.

Material breaches not remedied within the 30-day time period shall be subject to the following penalties by the City Manager, or his/her designee.

(i) For the first occurrence of a violation, a fine of \$500.00 shall be imposed for each day the violation remains in effect, not to exceed \$1500.00 for each violation.

(ii) For a second violation of the same nature within 12 months, a fine of \$1,000.00 shall be imposed for each day the violation remains in effect, not to exceed \$3,000.00 for each violation.

(c) A State Franchisee may appeal a penalty assessed to the City Council within sixty (60) days. After relevant speakers are heard, and any necessary staff reports are submitted, the City Council will vote to either uphold or vacate the penalty. The City Council's decision on the imposition of a penalty shall be final.

Section 1.04. City Response to State Franchise Applications:

(a) Applicants for State Franchises within the boundaries of the City of Dana Point must concurrently provide complete copies to the City of any application or amendments to applications filed with the PUC. One complete copy must be provided to the City Clerk, and one complete copy to the City Manager.

(b) The City Manager shall provide any appropriate comments to the PUC regarding an application or an amendment to an application for a State Franchise.

Section 2: If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declared that it would have adopted this Ordinance and each section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

Section 3: The City Clerk shall certify as to the adoption of this Ordinance and shall cause a summary thereof to be published within fifteen (15) days of the adoption and shall post a certified copy of this Ordinance, including the vote for and against the same, in the Office of the City Clerk, in accordance with Government Code section 36933.

PASSED, APPROVED, AND ADOPTED this _____ day of June, 2007.

Mayor Diane L. Harkey

ATTEST:

Kathy M. Ward
City Clerk

STATE OF CALIFORNIA)
COUNTY OF ORANGE) SS
CITY OF DANA POINT)

I, Kathy Ward, City Clerk of the City of Dana Point, California, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 07-_____, introduced at a regular meeting of the City Council held on the 15th day of May, 2007, and passed and adopted at a regular meeting held the _____ day of _____, 2007, by the following roll call vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Kathy M. Ward
City Clerk

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss
CITY OF DANA POINT)

AFFIDAVIT OF POSTING
AND PUBLISHING

KATHY M. WARD, being first duly sworn, deposes, and says:

That she is the duly appointed and qualified City Clerk of the City of Dana
Point;

That in compliance with State Laws of the State of California, ORDINANCE NO. 07-____
being:

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DANA POINT,
CALIFORNIA, IMPLEMENTING AB 2987 WITHIN THE CITY REGARDING
VIDEO FRANCHISE FEES, CUSTOMER SERVICE AND OTHER VIDEO-
RELATED MATTERS**

was published in summary in the Dana Point News on the _____ day of _____, 2007, and the
_____ day of _____, 2007, and, in further compliance with City Resolution No. 91-10-08-1, on
the _____ day of _____, 2007, and the _____ day of _____, 2007, was caused to be
posted in four (4) public places in the City of Dana Point, to wit:

- Dana Point City Hall
- Capistrano Beach Post Office
- Dana Point Post Office.
- Dana Point Library

KATHY M. WARD _____
CITY CLERK
Dana Point, California