

ORDINANCE NO. NS-906

**AN ORDINANCE OF THE BOARD OF SUPERVISORS
OF THE COUNTY OF SANTA CLARA
ADDING A NEW CHAPTER III TO DIVISION B10 OF THE SANTA CLARA
COUNTY ORDINANCE CODE ADOPTING LOCAL REGULATIONS
APPLICABLE TO HOLDERS OF STATE VIDEO FRANCHISES ISSUED BY
THE CALIFORNIA PUBLIC UTILITIES COMMISSION PURSUANT TO THE
DIGITAL INFRASTRUCTURE AND VIDEO COMPETITION ACT OF 2006,
CODIFIED IN CALIFORNIA PUBLIC UTILITIES CODE SECTION 5800 *ET*
*SEQ.***

SUMMARY

This ordinance adds a new Chapter III to Division B10 of the Santa Clara County Ordinance Code to implement the provisions of the Digital Infrastructure and Video Competition Act of 2006, codified in California Public Utilities Code section 5800 *et seq.*, which the County is required to administer and enforce.

**THE BOARD OF SUPERVISORS OF THE COUNTY OF SANTA CLARA
ORDAINS AS FOLLOWS:**

SECTION 1: Division B10 of the Santa Clara County Ordinance Code is amended by adding a new Chapter III to read as follows:

**CHAPTER III
STATE VIDEO FRANCHISE HOLDERS**

ARTICLE 1. GENERAL PROVISIONS

Sec. B10-135. Purpose.

This Chapter is applicable to all video service providers who are eligible for, and have been awarded, a state video franchise under the California Public Utilities Code Section 5800 *et seq.* (the Digital Infrastructure and Video Competition Act of 2006), to provide cable or video services in any unincorporated portion of the County.

Sec. B10-136. Rights Reserved.

The rights reserved to the County under this Chapter III are in addition to all other rights of the County whether reserved by this Chapter III or authorized by other

applicable law, and no action, proceeding or exercise of a right shall affect any other rights which may be held by the County.

Sec. B10-137. Compliance with Chapter III.

Nothing contained in this Chapter III exempts a state franchise holder from compliance with all ordinances, rules or regulations of the County now in effect or which may be hereafter adopted which are not inconsistent with this Chapter or California Public Utilities Code Section 5800 *et seq.*, or obligations under any franchise previously issued by the County, insofar as those may be enforced under California Public Utilities Code Section 5800.

Sec. B10-138. Definitions.

- (a) The definitions set forth in this Article shall govern the application and interpretation of this Chapter.
- (b) When not inconsistent with the context, words used in the present tense include the future tense; words in the plural number include the singular number; and words in the singular number include the plural number; and the masculine gender includes the feminine gender.
- (c) Subject to the provisions of Section A1-23 of the County Ordinance Code, the words “shall” and “will” are mandatory, and “may” is permissive.
- (d) Words not defined in this Chapter shall have the same meaning as in the Digital Infrastructure and Video Competition Act of 2006, Division 2.5 of the California Public Utilities Code, section 5800 *et seq.* (“DIVCA) in effect on the effective date of the ordinance enacting this Chapter, and, if not defined therein, their common and ordinary meaning.
- (e) References to governmental entities (whether persons or entities) refer to those entities or their successors in authority.
- (f) If specific provisions of law referred to herein are renumbered, then the reference shall be read to refer to the renumbered provision.
- (g) Unless otherwise specified, references to "applicable law" shall be interpreted broadly to include government actions, however nominated, and include all lawfully adopted and applicable Federal State and County laws, ordinances, codes, rules, regulations, orders, written policies, and practices now in force or hereinafter adopted or amended.

Sec. B10-139. Access channel.

“Access channel” means any channel on a cable system or video system set aside by a state franchise holder for public, educational, or governmental use.

Sec. B10-140. Affiliate.

“Affiliate” means a person who, directly or indirectly, owns or controls, is owned or controlled by, or is under common ownership or control with, another person.

Sec. B10-141. Applicant.

"Applicant" means any person submitting any application required under Division 2.5 of the California Public Utilities Code.

Sec. B10-142. Board of Supervisors

“Board of Supervisors” means the Board of Supervisors of the County of Santa Clara.

Sec. B10-143. Cable service.

“Cable service” shall have the same meaning as in Title VI of Title 47 of the United States Code, as amended from time to time.

Sec. B10-144. Construction, operation or repair.

“Construction, operation or repair” and similar formulations of that term means the named actions interpreted broadly, encompassing, among other things, installation, extension, maintenance, replacement of components, relocation, undergrounding, grading, site preparation, adjusting, testing, make-ready, excavation, the management of the cable system and its operations and work performed in connection with the same including but not limited to restoration of property affected by the construction, operation or repair of a network. The term “operation” does not encompass or regulate the provision of services, but refers to activities affecting rights-of-way and other property subject to the jurisdiction of the County.

Sec. B10-145. County.

“County” means the County of Santa Clara and all officers, boards, departments, divisions, and agencies thereof; except that, when used to describe a geographic area, the term refers to the boundaries of the County of Santa Clara, California, as they exist now or may exist in the future.

Sec. B10-146. County Executive.

“County Executive” shall mean the County Executive of the County of Santa Clara and designees of the County Executive.

Sec. B10-147. Director.

“Director” means the Director of the County Roads and Airports Department or the Director’s authorized representative.

Sec. B10-148. DIVCA.

“DIVCA” means the Digital Infrastructure and Video Competition Act of 2006, Division 2.5 of the California Public Utilities Code, section 5800 et seq., as may be amended from time to time.

Sec. B10-149. Gross revenues.

“Gross revenues” means any and all revenue, of any kind, nature or form, of a state franchise holder or its affiliates in any way derived from its operations within the County, whether derived from revenue sources existing as of the effective date of this ordinance or revenue sources that may develop in the future.

Sec. B10-150. Incumbent Cable Operator.

“Incumbent cable operator” shall have the same meaning as in DIVCA.

Sec. B10-151. Network.

“Network” shall have the same meaning as in DIVCA.

Sec. B10-152. Person.

“Person,” unless it otherwise appears from the context as used, means and includes any person, individual, firm, organization, corporation, partnership, association, limited liability company, joint stock or other company, business or other trust, public agency, school district, the State of California, its political subdivisions and/or instrumentalities, or any other legal entity, but does not include the County.

Sec. B10-153. Public rights-of-way.

“Public rights-of-way” shall have the same meaning as in DIVCA.

Sec. B10-154. State franchise.

“State franchise” means a franchise issued by the California Public Utilities Commission to provide cable service or video service, as those terms are defined in DIVCA, within any portion of the County.

Sec. B10-155. State franchise holder.

"State franchise holder" means a person who holds a state franchise

Sec. B10-156. Subscriber.

“Subscriber” means the County or any person within the unincorporated portions of the County who is lawfully receiving, for any purpose or reason, any cable service or video service from a state franchise holder.

Sec. B10-157. Video Service.

“Video Service” shall have the same meaning as in DIVCA.

Sections B10-158 – B10-164 Reserved.

ARTICLE 2. FEES

Section B10-165. State franchise fees.

Subject to any limitations imposed under state or federal law, any state franchise holder operating within the County shall pay to the County a state franchise fee equal to 5% of the gross revenues of it or any affiliate that is subject to a franchise fee under California Public Utilities Code Section 5860.

Section B10-166. Public, Education and Government (PEG) access channel fees.

Any state franchise holder operating within the County shall pay to the County a PEG fee equal to (a) 88 cents per Subscriber, or (b) if 88 cents per Subscriber is less than 1% of gross revenues the payment shall be 1% of gross revenues, and if 88 cents per Subscriber is more than 3% of gross revenues the payment shall be 3% of gross revenues. The gross revenues are those of the state franchise holder or any affiliate that are subject to a franchise fee under California Public Utilities Code Section 5860.

Section B10-167. Payment of fees.

The state franchise fee required pursuant to Section B10-165, and the PEG fee required pursuant to Section B10-166, shall each be paid to the County quarterly, in a manner consistent with California Public Utilities Code section 5860. The state franchise holder shall deliver to the County, by check or other means specified by the County, a payment for the state franchise fee and a separate payment for the PEG fee not later than

forty-five (45) days after the end of each calendar quarter. Each payment made shall be accompanied by a report, detailing how the payment was calculated, containing such information as the County Executive may require, consistent with DIVCA. Unless the County Executive provides otherwise, the summary statement shall identify:

(a) revenues received from subscribers, by category, with service revenues broken out by service levels;

(b) any charges to subscribers for which revenues were received, but on which a franchise fee was not paid;

(c) where the fee is paid on an allocated portion of revenues received, the total revenues received; the allocation factor; and how the allocation factor was calculated.

Section B10-168. Audits.

The County may examine the business records of the holder of a state franchise in a manner consistent with California Public Utilities Code section 5860(i).

Section B10-169 Late payments.

In the event a state franchise holder fails to make payments required by this Chapter on or before the due dates specified in this Chapter, the County shall, to the extent consistent with DIVCA, impose a late charge at the rate per year equal to the highest prime lending rate during the period of delinquency, plus one percent (1%).

Section B10-170. Lease of County-owned network.

In the event a state franchise holder leases access to a network or any other facility owned by the County, the County may set a fee for access to the County-owned network or facility separate and apart from the franchise fee charged to state franchise holders pursuant to Section B10-165.

Sections B10-171- B10-179 Reserved.

ARTICLE 3. CUSTOMER SERVICE

Section B10-180. Customer service and consumer protection.

Each state franchise holder shall comply with all applicable customer service and consumer protection standards, including, to the extent consistent with California Public Utilities Code Section 5900, all existing and subsequently enacted customer service and consumer protection standards established by state and federal law and regulation.

Section B10-181. Penalties for violations of standards.

- (a) The County shall enforce the provisions of Section B10-180.
- (b) For material breaches, as defined in California Public Utilities Code Section 5900, by a state franchise holder of applicable customer service and consumer protection standards, the County may impose the following penalties:
 - (1) For the first occurrence of a material breach, a fine of \$500.00 may be imposed for each day the violation remains in effect, not to exceed \$1,500.00 for each violation.
 - (2) For a second material breach of the same nature within 12 months, a fine of \$1,000.00 may be imposed for each day the violation remains in effect, not to exceed \$3,000.00 for each violation.
 - (3) For a third material breach of the same nature within 12 months, a fine of \$2,500.00 may be imposed for each day the violation remains in effect, not to exceed \$7,500.00 for each violation.
- (c) Any penalties imposed by the County shall be imposed in a manner consistent with California Public Utilities Code Section 5900.
- (d) The County Executive is authorized to provide any notices required in California Public Utilities Code Section 5900. The County Executive shall coordinate with the Division of Ratepayer Advocate to protect consumers in the County.

Sections B10-182- B10-189 Reserved.

ARTICLE 4. RIGHT-OF-WAY MANAGEMENT PROVISIONS

Sec. B10-190. Authorization required.

No person may construct, operate or repair a network in the unincorporated portions of the County without first obtaining a state franchise or other authorization required under applicable state and federal law, or a County franchise pursuant to the terms and provisions of the County Charter and Chapter II of this Division. Any permit issued for such work to a person that does not hold a state franchise or other authorization shall vest no rights in the permittee; the permit may be revoked at will, and the permittee shall remove all facilities installed under the permit upon and in full compliance with the County's demand.

Section B10-191. Application of Division B17.

Except as expressly provided in this Chapter III, the provisions of Division B17 of this Code, and all County administrative rules and regulations developed pursuant to

Division B17, as now existing or as hereafter amended, shall apply to all work performed by or on behalf of a state franchise holder in any public rights-of-way.

Section B10-192. Permits.

- (a) Prior to commencing any work for which a permit is required by Division B17 of this Code, a state franchise holder shall apply for and obtain a permit in accordance with the provisions of Division B17. A permit application is complete when the state franchise holder has complied with all applicable laws, including but not limited to all County administrative rules and regulations, and all applicable requirements of Division 13 of the California Public Resources Code, section 21000, *et seq.* (the California Environmental Quality Act).
- (b) The Director shall either approve or deny a state franchise holder's application for any permit required under Division B17 within sixty (60) days of receiving a complete permit application from the state franchise holder.
- (c) If the Director denies a state franchise holder's application for a permit, the Director shall, at the time of notifying the applicant of denial, furnish to the applicant a detailed explanation of the reason or reasons for the denial.
- (d) The decision of the Director may be appealed to the County Executive as provided in Section B17-45 of this Code. A state franchise holder that has been denied a permit by final decision of the County Executive following such appeal, may appeal the denial to the Board of Supervisors. The request for the appeal must be filed with the Clerk of the Board of Supervisors within ten calendar days after the decision of the County Executive, and must state the specific grounds for appeal. Upon receiving a notice of appeal, the Clerk shall set the matter for a public hearing before the Board of Supervisors.
- (e) The issuance of a permit is not a franchise, and does not grant any vested rights in any location in the Public rights-of-way, or in any particular manner of placement within the rights-of-way. Without limitation, a permit to place cabinets and similar appurtenances aboveground may be revoked and the permittee required to place facilities underground, upon reasonable notice to the permittee.

Sec. B10-193. General conditions upon construction, operation and repair.

- (a) The construction, operation, and repair by a state franchise holder of a network shall be performed in compliance with all applicable laws affecting such system. Any requirements that would apply to any network subject to California Public Utilities Code Section 7901 shall also apply to the network of a state franchise holder. By way of example, and not limitation, this includes the Santa Clara County Zoning Ordinance; Chapter 2 of Division B17 of the County of Santa Clara Ordinance Code pertaining to obstructions and encroachments in streets and

highways; all other ordinances, regulations and policies to preserve or protect the public safety; construction standards; regulations for providing notice to persons that may be affected by system construction; and directives governing the time, place and manner in which facilities may be installed in the public rights-of-way.

Sections B10-195 -- B10-204 Reserved.

ARTICLE 5. MISCELLANEOUS PROVISIONS

Section B10-205. Emergency Alert Systems.

Each state franchise holder shall comply with the emergency alert system requirements of the Federal Communications Commission in order that emergency messages may be distributed over the state franchise holder's network.

Section B10-206. Interconnection for PEG Programming.

Each state franchise holder, and each incumbent cable operator shall negotiate in good faith to interconnect their networks for the purpose of providing PEG programming. Interconnection may be accomplished by any means authorized under Public Utilities Code Section 5870(h). Each state franchise holder and incumbent cable operator shall provide interconnection of PEG channels on reasonable terms and conditions and may not withhold the interconnection. If a state franchise holder and an incumbent cable operator cannot reach a mutually acceptable interconnection agreement, the County may require the incumbent cable operator to allow the state franchise holder to interconnect its network with the incumbent cable operator's network at a technically feasible point on the state franchise holder's network as identified by the state franchise holder. If no technically feasible point for interconnection is available, each state franchise holder shall make an interconnection available to each channel originator providing PEG programming to an incumbent cable operator, and shall provide the facilities necessary for the interconnection. The cost of any interconnection shall be borne by the state franchise holder requesting the interconnection unless otherwise agreed to by the state franchise holder and the incumbent cable operator.

Section B10-207. Notices.

- (a) Each state franchise holder or applicant for a state franchise shall file with the County a copy of all applications or notices that the state franchise holder or applicant is required to file with the Public Utilities Commission.
- (b) Unless otherwise specified in this chapter, all notices or other documentation that a state franchise holder is required to provide to the County under this Chapter 3 or the California Public Utilities Code shall be provided to the County Executive

Sec. B10-208. Captions.

The captions to Sections throughout this Chapter are intended solely to facilitate reading and reference to the Sections and provisions of this Chapter. Such captions shall not affect the meaning or interpretation of this Chapter.

Sec. B10-209. Calculation of time.

Unless otherwise indicated, when the performance or doing of any act, duty, matter, or payment is required under this Chapter and a period of time or duration for the fulfillment of doing thereof is prescribed and is fixed herein, the time shall be computed so as to exclude the first and include the last day of the prescribed or fixed period of time.

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Sec. B10-210. Severability.

If any term, condition, or provision of this Chapter shall, to any extent, be held to be invalid or unenforceable by a valid order of any court or regulatory agency, the remainder hereof shall be valid in all other respects and continue to be effective. In the event of a subsequent change in applicable laws so that the provision which had been held invalid is no longer invalid, said provision shall thereupon return to full force and effect without further action by the County.

PASSED AND ADOPTED by the Board of Supervisors of the County of Santa Clara, State of California, on June 24, 2009, by the following vote:

AYES: Gage, Kniss, Shirakawa

NOES: None

ABSENT: Cortese, Yeager

ABSTAIN: None

Liz Kniss, President
Board of Supervisors

Signed and certified that a copy of this document has been delivered by electronic or other means to the Chair, Board of supervisors.

ATTEST:

Maria Marinos
Clerk of the Board of Supervisors

APPROVED AS TO FORM AND LEGALITY:

Elizabeth G. Pianca
Deputy County Counsel