

ORDINANCE NO. _____ (N.S.)

AN ORDINANCE AMENDING THE SAN DIEGO REGULATORY CODE DIVISION 2, TITLE 2,
CHAPTER 2 AND DIVISION 1, TITLE 2, CHAPTER 16

The Board of Supervisors of the County of San Diego ordains as follows:

Section 1. Division 1, Title 2, Chapter 16 of the San Diego County Regulatory Code is amended to read as follows

SEC. 21.1601. PURPOSE AND INTENT.

~~The County has issued licenses to cable television operators pursuant to Government Code sections 53066 et seq. Under the California Digital Infrastructure and Video Competition Act of 2006, (Division 2.5 of the -Public Utilities Code, commencing with section 5800), which became effective January 1, 2007, all video service providers are required to operate under a State or local franchise. All County issued franchise agreements have expired or were terminated. Any person or corporation wishing to provide video service in the unincorporated County must now obtain a franchise from the State. Licenses the County issued will not be renewable after January 1, 2008. Counties will no longer issue cable television licenses and the Public Utilities Commission will issue State franchises to cable television operators and other video service providers. This chapter, to the extent allowed by State and federal law, regulates cable television operators video service providers continuing to operate under County licenses and video service providers who have obtained a franchise from the State, to the extent they are subject to County regulation to provide video services in the unincorporated County.~~

SEC. 21.1602. DEFINITIONS.

The following definitions shall apply to this chapter:

~~(a) "Cable Act" means the federal "Cable Communications Policy Act of 1984" (47 U.S.C. § 521 et seq.), as amended and modified by legislation such as the federal "Cable Television Consumer Protection and Competition Act of 1992" and the federal "Telecommunications Act of 1996" and as may be subsequently amended or modified.~~

~~—(b) "Cable television system" has the same meaning as "cable system", as defined in the Cable Act or rules or regulations promulgated by the FCC in accordance with the Cable Act.~~

~~—(c) "Commission" means the Cable Television Review Commission of San Diego County or its successors.~~

~~—(d) "Commission staff" means the County Department of Media and Public Relations.~~

~~(e) "FCC" means the Federal Communications Commission.~~

~~(f) "Franchise" has the same meaning as the term "franchise" in Public Utilities Code section 5830(f).~~

~~(g) "Gross revenues" has the same meaning as the term "gross revenues" in Public Utility Code section 5860(d).~~

~~(h) "License" means the authorization granted by the County pursuant to this chapter to construct, operate and maintain a cable television system in a right of way or other public place in the unincorporated area of the County.~~

~~—(i) "Licensee" means the person to whom a license has been granted under this chapter.~~

~~(j) "Normal business hours" mean those hours during which most similar businesses in the community are open to service customers. In all cases, "normal business hours" shall include some evening hours at least one night per week and/or some weekend hours.~~

~~(k) "Normal operating conditions" mean those service conditions which are within the control of the cable operator. Conditions which are not within the control of the cable operator include, but are not~~

limited to, natural disasters, civil disturbances, power outages, and severe or unusual weather conditions. Conditions which are ordinarily within the control of the cable operator include, but are not limited to, special promotions, pay-per-view events, rate increases, regular peak or seasonal demand periods, and maintenance or upgrade of the cable system.

(~~lf~~) "Service interruption" means the loss of picture and/or sound on one or more ~~cable~~ channels.

(~~mg~~) "Subscriber" means any person who lawfully receives signals from a cable television system or other video service system.

(~~nh~~) "Video service" has the same meaning as the term "video service" in Public Utilities Code section 5830(s).

SEC. 21.1603. ~~LICENSE OR FRANCHISE REQUIRED.~~

It shall be unlawful for any person, in the unincorporated area of the County, ~~to provide cable television service without a license issued by the County or~~ to provide video service without a franchise issued by the State.

SEC. 21.1604. ~~LICENSE DURATION.~~

~~—A license issued by the County shall expire as provided under the terms of the license agreement. If a license expires before January 2, 2008, the licensee shall be entitled to renew the license until January 2, 2008, provided the licensee intends to apply for a State franchise. The license may be terminated by the licensee as provided by Public Utilities Code section 5840(o)(3) or by the County pursuant to Public Utilities Code section 5930(e). The licensee and the County may also mutually agree to terminate the license.~~

SEC. 21.1605. ~~LICENSE AND FRANCHISE FEES.~~

~~Licensees operating under a license issued by the County shall pay the County the license fee as provided in the license agreement. All franchisees operating under a State franchise shall pay the County the franchise fee as provided by Public Utilities Code sections 5800 et seq.~~

SEC. 21.1606. ~~RATE CONTROL REGULATIONS.~~

~~—The Commission shall have the power to regulate and establish rates and charges by licensees for cable service, and for installation and equipment charges in accordance with the requirements of 47 U.S.C. 543 and the rules and regulations prescribed by the FCC. Whenever a licensee requests an increase of any rate or charge requiring County approval the Commission shall hold a public hearing to determine whether the increase is justified. The Commission shall provide a procedure at the hearing to hear and consider the views of interested parties.~~

SEC. 21.1607. TECHNICAL STANDARDS.

(a) All ~~licensees and~~ franchisees shall comply with the minimum technical standards established by the FCC relating to the cable systems technical operations and signal quality.

(b) ~~Licensees and f~~Franchisees shall upgrade their systems and services to accommodate newer or different technologies while meeting or exceeding customer service and consumer protection standards established by State and federal law and regulations.

(c) ~~Licensees shall also comply with any additional terms relating to service and technical standards required by their licenses.~~

~~—(d)—The Commission~~ County may conduct periodic checks on cable systems, to insure compliance with this section.

~~SEC. 21.1608. INVESTIGATION AND RESOLUTION OF SUBSCRIBER COMPLAINTS.~~

~~—(a) A licensee shall keep a record of all subscriber complaints. Investigation and resolution of complaints shall be effected at the earliest possible time after receipt of complaint. The record shall indicate the date, time and corrective action taken by the licensee. The licensee shall retain the subscriber complaint record for at least three years. A copy of the subscriber complaint record shall be submitted to the Commission staff upon request.~~

~~—(b) If a subscriber is unable to obtain satisfactory resolution of a complaint filed with a licensee, the subscriber may notify the Commission in writing, stating the subscriber's name and address, the licensee involved, the nature of the complaint and the action taken to secure resolution of the complaint by the licensee.~~

~~SEC. 21.1609. REDISTRIBUTION OF CABLE TELEVISION SERVICE.~~

~~—A licensee shall not provide cable television service to any person who redistributes the service to another person, unless the licensee retains all responsibilities and obligations under State law and this chapter to the County and the ultimate recipient of the service.~~

~~SEC. 21.1610. SERVICES TO PUBLIC BUILDINGS.~~

~~—A licensee shall, at its own expense and at the request of a public agency, provide and maintain facilities and service as follows:~~

~~—(a) One cable television connection to each public elementary school site, public secondary school site, community and state college and university site, and public educational administrative building within its authorized service area. A licensee shall not be required to provide the distribution system within the facilities.~~

~~—(b) One cable television connection to each County unit such as Sheriff's stations, fire stations, public libraries, and other County facilities within its cable television service area. A licensee shall not be required to provide the cable television distribution system within the facilities.~~

~~—(c) A licensee shall not charge the County or public schools any fee for providing the distribution of visual images or audio signals to any of the buildings connected pursuant to this section, except the pay services requested by the user.~~

~~—(d) In the event that the public agency desires additional services, a licensee shall provide these services, charging the recipient of the service the actual variable cost to the licensee for the services.~~

~~—(e) For good cause shown, the County may waive the connection requirements under this section or grant extensions of time to comply.~~

~~SEC. 21.1611. UNDERGROUNDING CABLE TELEVISION SYSTEMS.~~

~~Unless specifically exempted by the County a licensee or franchisee shall install cable television system lines underground in all subdivision areas in which the County requires utilities to be placed underground.~~

~~SEC. 21.1612. PROPERTY DISPOSITION UPON LICENSE EXPIRATION.~~

~~—Upon the expiration or forfeiture of the license, the County, at its option, may acquire all or any part of a licensee's lines and equipment.~~

~~SEC. 21.1613. OTHER LICENSE TERMS AND CONDITIONS.~~

~~—A licensee is required to comply with the following additional requirements:~~

~~—(a) A licensee shall have no right to sell its subscribers' mailing lists and consumer surveys, unless a subscriber requests that his name be included in the mailing lists.~~

~~—(b) A licensee that provides channels that carry sexually explicit programming shall notify its customers by written notice at the time of connection to the cable system and at least once every year, and that it will block out all sexually explicit channels upon request at no cost to the subscriber. The licensee may select the method to block out the channel, but the channel must be totally blocked out without negative effects on other channels.~~

~~SEC. 21.1614. SERVICE AREA AND SERVICE EXTENSION TIMETABLES.~~

~~—Once a year the Commission staff may request a licensee provide a service area map and service extension timetable showing the areas to be provided cable television service for the next year.~~

SEC. 21.1615. SUBSCRIBER SERVICE OBLIGATIONS.

A licensee-franchisee shall meet or exceed the following subscriber service and promptness standards:

(a) Maintain a local, toll-free or collect call telephone access line which shall be available to its subscribers 24 hours a day, seven days a week that provides:

(1) Trained company representatives to respond to subscriber telephone inquiries during normal business hours.

(2) An access line after normal business hours that shall be answered by a service or an automated response system. The licensee-franchisee shall respond to inquiries received after normal business hours on the next business day.

(3) Sufficient personnel and telephone lines so that under normal operating conditions:

(A) Telephone answer time by a customer representative, including wait time, shall not exceed 30 seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed 30 seconds. These standards shall be met no less than 90 percent of the time, measured on a quarterly basis.

(B) A subscriber receives a busy signal less than three percent of the time.

(b) Perform installations and service calls, under normal operating conditions, 95 percent of the time, measured on a quarterly basis, as follows:

(1) Complete standard installations within seven business days after an order has been placed. Standard installations are those that are located within 125 feet from the existing distribution system.

(2) Begin working on a service interruption promptly and in no event more than 24 hours after it is aware of the interruption. The licensee-franchisee shall also begin correcting any other service problem the next business day after it is aware of the problem.

(3) Offer appointment window alternatives for installations, service calls, and other installation activities at either a specific time or, at maximum, a four-hour time block during normal business hours. The licensee-franchisee may also schedule service calls and other installation activities outside of normal business hours if convenient to subscribers.

(4) Not engage in the practice of cancelling an appointment with a customer after the close of business on the business day prior to the scheduled appointment.

(5) Contact a subscriber if its representative will be late for a service appointment. If the appointment has to be rescheduled the licensee-franchisee shall reschedule the appointment at a day and time convenient to the subscriber.

(c) Require employees and agents who contact subscribers or potential subscribers outside the licensee's-franchisee's office to wear clothing or have in their possession a form of identification, indicating their affiliation with the licensee-franchisee.

(d) Notify subscribers:

(1) When service begins, annually and any time upon request, of the following information:

(A) Products and services offered;

(B) Prices and options for programming services and conditions of subscription to programming and other services;

(C) Installation and service maintenance policies;

(D) Instructions on how to use the cable service;

(E) Channel positions and programming carried on the system; and

(F) Billing and complaint procedures, including the address and telephone number of the licensee's local office.

(2) A minimum of 30 days in advance of any changes in rates, programming services, channel positions or the information in subsection (d)(1) above, unless circumstances beyond the ~~franchisee~~ licensee's control preclude the ~~franchisee~~ licensee from giving 30 days' notice, in which case the ~~licensee-franchisee~~ shall give notice as soon as practicable. A ~~licensee-franchisee~~ shall provide the notice required under this subsection by announcements on the cable system and in writing.

(e) Follow the below billing rules:

(1) Bills shall be clear, concise, understandable and fully itemized, with itemizations including, but not limited to, basic and premium service charges and equipment charges. Bills shall also delineate all activities during the billing period, including optional charges, rebates, and credits.

(2) In case of a billing dispute, the ~~licensee-franchisee~~ shall respond to a written complaint from a subscriber within 30 days.

(f) A ~~licensee-franchisee~~ shall issue refund checks as follows:

(1) At the subscriber's next billing cycle following resolution of the request or ~~30-45~~ days, whichever is earlier.

(2) Within ~~30-45~~ days after the ~~licensee-franchisee~~ recovers the equipment it supplied to the subscriber if service is terminated.

(3) For a security deposit, after one year of timely payments. In the alternative, the ~~licensee-franchisee~~ may notify the subscriber on every billing statement that the subscriber has the right to request return of the deposit after one year of timely payments.

(g) A ~~licensee-franchisee~~ shall issue credits for service no later than the subscriber's next billing cycle following the ~~licensee's-franchisee's~~ determination that a credit is warranted.

(h) The ~~licensee-franchisee~~ shall allow a subscriber who pays his bill directly to the ~~licensee-franchisee~~, at least 15 days from the date the bill for services is mailed to the subscriber to pay the listed charges, unless the ~~licensee-franchisee~~ and subscriber have entered into a rental agreement with different terms. If the subscriber has not paid any bill when due, the ~~licensee-franchisee~~ shall not terminate service for nonpayment of a delinquent account until the ~~licensee-franchisee~~ furnishes the subscriber with a notice of the delinquency and impending termination, at least 15 days prior to the proposed termination. The notice shall be mailed to the subscriber's billing address. The notice shall not be mailed until the 16th day after the date the bill for services was mailed to the subscriber. The notice of delinquency and impending termination may be part of a billing statement. No ~~licensee-franchisee~~ shall assess a late fee any earlier than the 22nd day after it mailed a bill.

(i) Every notice of termination of service sent pursuant to subdivision (h) shall include all of the following information:

(1) The name and address of the subscriber whose account is delinquent.

(2) The amount of the delinquency.

(3) The date by which payment is required in order to avoid termination of service.

(4) The telephone number of a representative of the ~~licensee-franchisee~~ who can provide additional information and handle complaints or initiate an investigation concerning the service and charges in question.

(j) Service may only be terminated on days in which a subscriber can reach a representative of the ~~licensee-franchisee~~ either in person or by telephone. Any service termination without good cause shall be

restored without charge for the service restoration. Good cause includes, but is not limited to, failure to pay, payment by check for which there are insufficient funds, theft of service, abuse of equipment or system personnel, or other similar subscriber actions.

(k) Subscriber service centers and bill payment locations shall be open during normal business hours and be conveniently located.

SEC. 21.1616. FORFEITURE OF LICENSE DUE TO NONCOMPLIANCE.

~~—A license issued under this chapter shall be subject to forfeiture for failure to comply with the requirements of this chapter or the terms of the license, unless the licensee is able to demonstrate that any noncompliance is beyond its reasonable control. If the Commission staff determines a licensee is not complying with this chapter or its license, it shall proceed as follows:~~

~~—(a) The Commission staff shall serve the licensee with written notice of each violation the licensee is committing. The notice shall notify the licensee that it has 30 days from the date of receiving the notice to remedy the violations and that if the licensee fails to remedy the violations within 30 days, the Commission staff will refer the matter to the Commission for a public hearing to determine whether the license should be forfeited.~~

~~—(b) If the licensee fails to remedy the violations identified in the notice served pursuant to subsection (a) above, the Commission staff shall request the Commission hold a public hearing to determine whether the license should be forfeited.~~

~~—(c) If the Commission determines the licensee is not complying with this chapter or its license, it may declare a forfeiture of the license or it may allow the licensee to continue operating subject to certain conditions. If the licensee fails to comply with conditions imposed by the Commission, the Commission shall declare a forfeiture of the license. After a declaration of forfeiture the licensee shall cease all construction under the license and within 30 days after the declaration of forfeiture, conclude all operations and business under the license, unless the licensee appeals the forfeiture declaration. An appeal stays the operation of this subsection until the Board of Supervisors renders a decision on the appeal.~~

~~—(d) The Commission's declaration of forfeiture or other determination under this section shall be in writing and served on the parties.~~

~~—(e) A licensee may appeal the Commission's declaration of forfeiture under this section to the Board of Supervisors by filing a notice of appeal with the Clerk of the Board of Supervisors within 30 days from the date of the declaration of forfeiture.~~

SEC. 21.1617. RECORDS.

~~—The Commission staff shall have the right to inspect a licensee's facilities and a licensee's business records during normal business hours. The Commission staff shall also have the right to require a licensee to produce copies of any communications between the licensee and any federal or State regulatory agency having jurisdiction over the licensee's cable television system.~~

SEC. 21.1618. LICENSEE TRANSFERS.

~~—(a) A cable television license shall only be sold, transferred, leased, assigned or disposed of as provided in a license agreement and with the County's consent.~~

~~—(b) Requests for the County's consent pursuant to subsection (a) above shall be filed with the Commission. The Commission shall hold a public hearing 30 days after receiving a request under this section and shall evaluate a proposed transferee's technical, financial and managerial ability to take over the license. At least 10 days before the hearing the Commission shall give notice to the licensee and the proposed successor licensee and publish notice of the hearing.~~

~~SEC. 21.1619. FISCAL COMPLIANCE AND ANNUAL AUDITS.~~

~~—The County Auditor and Controller shall have the right to conduct periodic audits of the financial records of a licensee to determine if a licensee is remitting the proper fees due the County. If the Auditor and Controller determines a licensee has not paid the County all fees owed to it for a specific time period, the Auditor and Controller shall have the right to conduct additional audits to determine if a licensee has paid all fees due the County for other time periods.~~

~~SEC. 21.1620. PERIODIC REVIEW IN PUBLIC HEARING.~~

~~—(a) A licensee's performance under the terms of a license shall be subject to periodic review by the Commission in a public hearing at least every five years. The Commission shall report its findings in writing within 15 days of the hearing.~~

~~—(b) In the event the Commission holds a public hearing on any other matter related to a license, it may review the licensee's performance at the same time as long as the notice of the public hearing identifies the scope of the hearing.~~

~~SEC. 21.1621. ALLOCATION OF ACCESS TIME ON EDUCATIONAL ACCESS CHANNELS.~~

~~The San Diego County Board of Education and its representative, the County Superintendent of Schools, is designated as the trustee of cable television allocations for educational access channels for the purpose of assuring fair and equitable distribution of channel space resources among the various school districts.~~

~~SEC. 21.1622. ALLOCATION OF ACCESS TIME ON GOVERNMENT ACCESS CHANNELS.~~

~~The San Diego County Board of Supervisors and its representative, the Chief Administrative Officer, is designated as the trustee of cable television allocations for government access channels for the purpose of assuring fair and equitable distribution of channel space resources.~~

~~SEC. 21.1623. ALLOCATION OF ACCESS TIME ON PUBLIC ACCESS CHANNELS.~~

~~The San Diego County Board of Supervisors and its representative, the Chief Administrative Officer, is designated as the trustee of cable television allocations for public access channels for the purpose of assuring fair and equitable distribution of channel space resources.~~

~~SEC. 21.1624. COMMISSION HEARINGS, DECISIONS AND APPEALS.~~

~~—If the Commission is required to hold a hearing under this chapter, the Commission shall not hold a hearing unless it gives at least 10 days notice of the hearing to a licensee whose license is the subject of the hearing and all other interested parties. Notice of the hearing shall be served on the interested parties pursuant to section 11.112 of this code and shall also be published pursuant to Government Code section 6061. Whenever the Commission is required or authorized to render a decision or finding pursuant to this chapter, the decision or finding may be appealed to the Board of Supervisors as provided in this chapter. Any decision made by the Commission shall be in writing and shall also be served on the parties pursuant to section 11.112.~~

~~SEC. 21.1625. REQUESTS FOR COMMISSION ACTION.~~

~~—A request for action by the Commission shall be filed with the Commission staff. Not later than 30 days after the Commission staff receives a request to take action under this chapter the Commission staff shall determine whether the request contains sufficient information to require the Commission to take action. If the Commission staff determines the request does not contain sufficient information, it shall send written notice to the person making the request advising what additional information is required before the Commission can act on the request.~~

~~SEC. 21.1626. SCHEDULING REQUESTS FOR COMMISSION ACTION.~~

~~—Not later than 35 days after the Commission staff receives a request that contains sufficient information for Commission to consider, the Commission staff shall:~~

- ~~—(a) Place the request on the Commission's agenda for consideration at the next regular meeting; and~~
- ~~—(b) Give notice of the hearing as provided under section 21.1624.~~

~~SEC. 21.1627. HEARING ON REQUEST FOR SALE OR TRANSFER.~~

~~—(a) Notwithstanding any other provision of this chapter, if the Commission receives a request to approve the sale or other transfer of a license that contains sufficient information on which the Commission may act, a final decision on the request, including any appeal, shall be completed within 120 days of the request, unless the requesting party and the Commission staff agree to an extension of time.~~

~~—(b) If no extension has been agreed to, the Commission shall conduct a hearing within 40 days after the Commission staff received a request that contains sufficient information. Within 10 days after the completion of the hearing the Commission shall issue and serve a written decision. The Commission's decision under this section shall be final within 10 days of the written decision unless it is appealed to the Board of Supervisors. If the Commission denies the request to approve the sale or other transfer, the licensee or proposed transferee may appeal to the Board of Supervisors by filing a notice of appeal with the Clerk of the Board of Supervisors with 10 days of the date of the Commission's written decision. The Board shall hear the appeal within 50 days after the notice of appeal is filed and shall announce its decision at the completion of the appeal hearing. The Board's decision shall be final.~~

~~SEC. 21.1628. COMMISSION DECISIONS.~~

~~—Except for a hearing on a sale or transfer of a license under section 21.1627, the Commission shall issue a written decision within 15 days of the hearing, which shall be served on the parties to the hearing.~~

~~SEC. 21.1629. EFFECTIVE DATE OF COMMISSION DECISION.~~

~~—Except as provided in section 21.1627, a decision rendered by the Commission shall become effective 30 days after the date of the decision unless the decision is appealed to the Board of Supervisors. If all parties to a decision agree in writing, a decision may become effective earlier than 30 days from the date of the decision.~~

~~SEC. 21.1630. APPEAL TO THE BOARD OF SUPERVISORS.~~

~~—(a) Except as provided in section 21.1627, a party to a Commission decision may appeal the decision to the Board of Supervisors by filing a notice of appeal to the Clerk of the Board within 30 days of the Commission's oral decision. The notice of appeal under this section shall:~~

- ~~—(1) Be accompanied by a copy of the Commission's written decision;~~
- ~~—(2) Contain a concise statement of the grounds for appeal including any errors the appellant alleges the Commission committed; and~~
- ~~—(3) Contain an address within the County of San Diego to which the County may send written notices related to the appeal.~~

~~—(b) The Clerk of the Board shall schedule the appeal for a hearing before the Board within 60 days from the date the appeal is filed. The Clerk shall provide each appellant with at least 10 days written notice of the hearing.~~

~~SEC. 21.1631. REVIEW BY BOARD OF SUPERVISORS.~~

~~The Board of Supervisors may adopt the Commission's decision, modify the Commission's decision or reverse the Commission's decision or refer the matter back to the Commission for further hearing, specifying issues requiring additional evaluation. If the Board adopts, modifies or reverses the Commission's decision following a hearing, the Board's decision shall be final on the date it is orally announced.~~

SEC. 21.1632. FRANCHISEES TO PROVIDE PEG CHANNELS.

(a) Within three months after receiving a State franchise to provide video programming within the unincorporated area of the County, a franchisee shall provide on its network one public access channel, one educational channel and one government channel. A franchisee shall not, however, be obligated to provide PEG channels before the date it begins providing service to any subscriber. The PEG channels shall comply with Public Utilities Code section 5870 and shall be for the exclusive use of the County or its designee.

(b) After receiving notice that a franchisee has been issued a State franchise to provide video service within the unincorporated area of the County, the County will send written notice to the franchisee reminding the franchisee of its obligation under subsection (a) above to provide PEG channels.

(c) A franchisee issued a State franchise shall pay the County a fee of one percent of its gross revenues to support the PEG channels. The obligation to pay the fee under this subsection shall begin on the effective date of this subsection or the date the franchisee begins providing video service, whichever is later. A franchisee shall remit the PEG fee to the County quarterly, within 45 days after the end of the quarter for that calendar quarter. Each payment shall be accompanied by a summary explaining the basis for the fee calculation. If the franchisee does not pay the PEG fee when due, the franchisee shall pay a late payment charge at a rate per year equal to the legal rate of interest. If the franchisee has overpaid the PEG fee, it may deduct the overpayment from its next quarterly payment.

SEC. 21.1633. ENCROACHMENT PERMIT AND APPEAL RIGHTS.

(a) A franchisee shall obtain an encroachment permit from the County in accordance with Title 7 of the County Code before it engages in any excavation, construction or installation of any cable, equipment or any other thing in a County right of way.

(b) A franchisee, who is denied an encroachment permit after submitting a completed application for the permit, shall have the right to appeal the denial by filing a notice of appeal with the Clerk of the Board of Supervisors within 15 days from the notice of denial. The notice of appeal under this section shall:

- (1) Be accompanied by a copy of the written decision denying the permit, if any;
- (2) Contain a concise statement of the grounds for appeal including any errors the appellant alleges were committed; and
- (3) Contain an address within the County of San Diego to which the County may send written notices related to the appeal.

(b) The Clerk of the Board shall schedule the appeal for a hearing before the Board within 60 days from the date the appeal is filed. The Clerk shall provide each appellant with at least 10 days written notice of the hearing.

SEC. 21.1633.1 REVIEW BY BOARD OF SUPERVISORS.

The Board of Supervisors may adopt the decision denying the permit, modify the decision or reverse the decision or refer the matter back to the responsible department for further hearing, specifying issues requiring additional evaluation. If the Board adopts, modifies or reverses the decision following a hearing, the Board's decision shall be final on the date it is orally announced. The Clerk shall schedule an appeal hearing with a County Hearing Officer appointed pursuant County Administrative Code sections 650 et seq. within 10 days after a franchisee files a notice of appeal. The Clerk shall assign the matter to a

~~hearing officer by selecting a hearing officer on a rotating basis from the list of appointed hearing officers.~~

SEC. 21.1634. FRANCHISEE TO COMPLY WITH SUBSCRIBER SERVICE AND PROTECTION STANDARDS.

(a) In addition to complying with subscriber service, consumer protection standards and privacy standards required by Public Utilities Code section 5900(a) and (b), a franchisee shall also comply with the County ~~promptness standards for responding to subscriber installation, service and complaint calls in~~ section 21.1615.

(b) If a franchisee commits a material breach of any of its obligations under subsection (a) above, the County shall give the franchisee notice that identifies each material breach and allows the franchisee 30 days from the receipt of the notice to remedy the breach. If the franchisee fails to remedy the material breach within the time allowed, the County may assess monetary penalties against the franchisee. For purposes of this section a material breach has the same meaning as the term "material breach" in Public Utilities Code section 5900(j).

(c) The penalty for a material breach that a franchisee fails to remedy within 30 days after receiving notice of the breach under this section shall be fined \$500 a day for each day of each material breach up to a maximum of \$1,500 for each occurrence of a material breach. If, however, a penalty has been assessed against a franchisee for a material breach and the franchisee commits a subsequent material breach of the same nature within 12 months, which it fails to remedy within 30 days after receiving notice, the penalty shall be \$1,000 a day for each day of each material breach up to a maximum of \$3,000 for each occurrence of the material breach. If the franchisee commits a third or further material breach of the same nature within 12 months, which it fails to remedy after receiving notice and after being assessed penalties at least twice, the penalty shall be \$2,500 a day for each day of material breach up to a maximum of \$7,500 for each occurrence of the material breach.

Section 2. Division 2, Title 2, Chapter 2 of the San Diego County Regulatory Code is amended to read as follows

SEC. 22.201. TITLE.

This chapter shall be known as the Transient Occupancy Tax Ordinance of the County of San Diego.

SEC. 22.202. DEFINITIONS.

The following definitions shall apply to this chapter:

(a) "Hotel" means any structure or any portion of any structure, space, lot, area or site which is occupied, intended or designed for occupancy by transients for lodging or sleeping purposes, and includes, but is not limited to, any hotel, inn, bed and breakfast, tourist home or house, timeshare, motel, mobilehome, ~~or manufactured home~~, trailer, campground, recreational vehicle park or other lodging. "Hotel" does not include the right of an owner, or "guest of the owner," in a timeshare estate, in a room or rooms in a timeshare project, or the owner, or "guest of the owner," of a membership in a camping contract in a camping site at a campground. "Guest of the owner" shall be defined as provided in California Revenue and Taxation Code section 7280(b)(3).

(b) "Occupancy" means the use or possession, or the right to use or possess a room, any portion of a room or any other living space in a hotel for dwelling, lodging or sleeping purposes. The right to use or possess includes any nonrefundable deposit or guaranteed no-show fee paid, whether or not the use or possession is exercised.

(c) "Transient" means a person who exercises occupancy or is entitled to occupancy, of a hotel, pursuant to a concession, permit, right of access, ~~license~~license, or other agreement for a period of 30 consecutive days or less, counting portions of days as full days, this includes campground day use of

amenities, including but not limited to, hiking trails and pools. A person so occupying a space in an establishment shall be deemed a transient until the period has expired, or until the date, within the first 30 days, that a person enters into a written agreement between the operator and the person for a longer period of occupancy greater than 30 days. This agreement must be acknowledged by the person and the operator on an Over Thirty Stay Agreement form provided by the Tax Collector.

(d) "Rent" means the monetary value of the consideration charged, whether or not received, for the occupancy of living space in a hotel, whether to be received in money, goods, labor or otherwise, including all receipts, cash, credits, property and services of any kind or nature, without any deduction. Services include, but are not limited to, reservation fees, campground day use fees, cleaning fees, pet fees, extra person fees, cancellation fees, rollaway bed fees and early check-in and late check-out fees. "Rent" is also the regular value of the room provided to a guest that receives a free or complimentary room that is not exempt under section 22.204. "Rent" shall not include charges for personal services or any other charges otherwise subject to California taxes.

(e) "Operator" means the person or entity who is the proprietor of the hotel, whether as an owner, lessee, sublessee, mortgagee in possession, licensee, or in any other capacity. Where an operator engages a managing agent who is a person, other than an employee, the managing agent shall also be deemed an operator for the purposes of this chapter and shall have the same duties and liabilities as the agent's principal. Compliance with this chapter by either the principal or by the managing agent shall, however, be considered to be compliance by both.

(f) "Tax Collector" means the Tax Collector of the County of San Diego.

SEC. 22.203. TAX IMPOSED.

For the privilege of providing lodging in any hotel located in the unincorporated area of the County, an operator is subject to and shall pay a tax in the amount of eight percent of the rent charged by the operator. The tax constitutes a debt owed by the operator to the County which is extinguished only by payment to the County. Payment of the tax shall be as provided in section 22.207.

SEC. 22.204. EXEMPTIONS.

No tax shall be due for hotel occupancy:

- (a) By any person as to whom, or any occupancy as to which, it is beyond the power of the County to impose the tax in this chapter;
- (b) By any federal or State of California officer or employee on official business;
- (c) By any foreign government officer or employee exempt under federal law or international treaty;
- (d) Where the regular rent is at the rate of four dollars per day or less;
- (e) By any person who receives a free or complimentary room where the only consideration the operator receives is publicity value for the hotel.

No exemption shall be granted except upon a claim made at the time rent is collected, under penalty of perjury, and upon a form prescribed by the Tax Collector.

SEC. 22.205. OPERATOR'S DUTIES.

(a) An operator shall collect the tax imposed by this chapter in the same manner and at the same time as the operator collects rent from a transient.

(b) The operator shall hold all taxes it collects under this chapter in trust for the County until the operator remits the taxes to the Tax Collector.

(c) The operator shall provide a statement to the transient that separates that amount of tax due from the rent due and shall provide the transient with a payment receipt. The operator shall retain a duplicate copy of the payment as required by section 22.211.

(d) It shall be unlawful for an operator to advertise or state in any manner, whether directly or indirectly, that the operator will not charge the tax or any part of it or that the operator will assume, absorb or refund the tax or any part of it.

SEC. 22.206. REGISTRATION.

(a) Within 30 days after commencing business, ~~and annually thereafter in July of each year,~~ an operator of a hotel renting occupancy to transients shall register the hotel with the Tax Collector and obtain a transient occupancy registration certificate from the County. The operator shall post the certificate in a conspicuous place on the inside of the hotel. The certificate shall include, among other things, the following:

- (1) The operator's name and address for notice;
- (2) The name and address of the hotel;
- (3) The date the certificate was issued;
- (4) The certificate number;
- (5) The required reporting period;

(6) A statement that provides, "This Transient Occupancy Registration Certificate signifies that the person named on the face of the certificate has registered with the County Tax Collector and is authorized to collect the San Diego County Transient Occupancy Tax. This certificate is not a permit to operate and does not excuse the person named from the requirement to obtain any other permits required by State or County laws."

(b) It shall be unlawful for any person to operate a hotel after being in business for more than 30 days, without the registration certificate required by this section.

(c) The certificate shall not be transferable, and shall become void upon the change of name, sale or transfer of the hotel or its operations, or cessation of business.

SEC. 22.207. REPORTING AND REMITTING.

On or before the last day of the month following the close of each calendar quarter, or at the close of any shorter reporting period which the Tax Collector may establish, an operator shall file a return with the Tax Collector and remit the full amount of transient occupancy tax the operator was responsible to collect during the reporting period. The returns shall be on a form provided by the Tax Collector. If there is a change of name, sale or transfer of the hotel or its operations or an operator ceases operating a hotel for any reason, the return and taxes are due within 30 days after that date. An operator is responsible to comply with the requirements of section 22.214, and a purchaser is responsible to comply with the requirements of section 22.215. Returns or taxes not received by the Tax Collector or sent by first class mail or Express Mail, with sufficient prepaid postage and postmarked by the due date are delinquent. If the Tax Collector determines that an operator has not filed a complete return by the due date, the Tax Collector may consider the return delinquent.

SEC. 22.208. PENALTIES AND INTEREST.

(a) Penalty for Delinquency. An operator who fails to remit any tax imposed by this chapter by the due date shall be liable for a five percent penalty of the tax due, in addition to the amount of the tax.

(b) Penalty for Continued Delinquency. An operator who is delinquent under subsection (a) above, who fails to remit a delinquent payment on or before the first day of the next calendar month following the date the remittance first became delinquent shall be liable for a second delinquency penalty of an additional five percent of the unpaid tax in addition to the amount of the tax and the original five percent penalty imposed under subsection (a).

(c) **Penalty for Fraud.** If the Tax Collector determines that an operator failed to remit any tax due under this chapter due to fraud, the Tax Collector shall assess a 25% penalty of the amount of the tax in addition to the penalties assessed in subsections (a) and (b) above.

(d) **Interest.** In addition to the penalties imposed under this section, an operator who fails to remit any tax imposed by this chapter shall also pay interest at the rate of one percent per month or portion of a month on the unpaid tax calculated from the date the tax first became delinquent.

(e) **Penalties and Interest Merged With Tax.** Penalties imposed and the interest on unpaid taxes and penalties shall become a part of the tax due under this chapter.

(f) **Application of Penalties and Interest due to Audit.**

If the Tax Collector determines from an audit that an operator has not paid the full amount of taxes due, the Tax Collector shall notify the operator of the amount of the taxes the operator owes and any applicable delinquency penalties and interest. If the operator fails or refuses to pay the deficient taxes and applicable penalties and interest within 14 days from the date of the Tax Collector's notice, the penalties prescribed in subsection (b) above shall apply, using the 15th day after the date of the Tax Collector's notice as the date when the penalty for continued delinquency shall be imposed, unless the operator requests a hearing before the Tax Collector pursuant to section 22.209(c). The Tax Collector's notice under this section shall comply with section 22.209(c). If the operator requests a hearing under this subsection, section 22.209(d) and (e) shall also apply.

SEC. 22.209. FAILURE TO COLLECT AND REPORT TAX. DETERMINATION OF TAX BY TAX COLLECTOR.

(a) If an operator fails to collect the tax imposed under this chapter, fails to file a return, fails to pay all taxes when due or fails to maintain adequate records to reflect the taxes due the Tax Collector shall have the right to conduct an investigation to determine the taxes owed by the operator.

(b) If the Tax Collector reasonably believes that an operator has failed to fulfill any of the operator's obligations under this chapter, the Tax Collector shall have the right to inspect the operator's records. It is a violation of this chapter for an operator to refuse to make records available when requested by the Tax Collector.

(c) If the Tax Collector determines pursuant to this section that an operator has not paid the County all taxes the operator owes, the Tax Collector shall serve the operator with a Notice of Proposed Assessment for the taxes, penalties and interest the Tax Collector proposes to assess against the operator. The notice shall state that the operator has 21 days from the date of the notice to make a written request for an informal hearing before the Tax Collector. The notice shall also state that if the operator fails to timely request an informal hearing within the time allowed, the Tax Collector's estimation of taxes, interest and penalties is final, and immediately due and payable.

(d) If the operator makes a timely request for an informal hearing to contest the proposed assessment, the Tax Collector shall schedule an informal hearing and give the operator at least 14 days' notice of the hearing. A hearing under this section shall be informal and need not follow any formal rules of evidence. The Tax Collector shall designate a person in the department to conduct the hearing who was not involved in the Tax Collector's determination in subsection (c) above. At the hearing, the operator may present evidence to contest the Tax Collector's determination.

(e) After the hearing the Tax Collector shall make a final determination of the taxes, penalties and interest the operator owes and serve the operator with a notice of the Tax Collector's final determination. The notice shall also state the amount due and that it is payable within 14 days of the notice unless the operator appeals pursuant to section 22.210.

SEC. 22.210. APPEAL.

An operator may appeal a Tax Collector's decision only if the operator requested a hearing before the Tax Collector pursuant to section 22.208(f) or 22.209(c). An operator who receives a notice under

section 22.209(e) may appeal by filing a notice of appeal with the Clerk of the Board of Supervisors within 14 days from the date of the notice. The Clerk shall schedule an appeal hearing with a County hearing officer appointed pursuant to County Administrative Code sections 650 et seq. and shall assign the matter by selecting a hearing officer on a rotating basis from the list of appointed hearing officers. The operator shall receive at least 10 days' notice of the appeal hearing. The hearing officer shall render a written decision that shall be served on the operator. If the hearing officer finds the operator owes any taxes, penalties or interest, any amount determined due shall be due and payable in full within 10 days from the date the hearing officer's decision was served.

SEC. 22.211. RECORDS.

An operator liable for the collection and payment of the tax imposed by this chapter shall retain, at minimum, the following records for three years: rent receipts ledger, guest folios, duplicate copies of payment receipts given to transients, documents verifying a transient's exemption under section 22.202(c) or 22.204, booking, registration and occupancy records, room logs, gross receipts records, records used to calculate the amount of rent and occupancy tax due separately, and any other business, banking and tax records that show when rooms in the hotel were occupied, and the rent and tax amounts collected and paid. The Tax Collector shall have the right to inspect the records during normal business hours. Performance of an audit does not waive the Tax Collector's right to any tax or the requirement to retain records for three years.

SEC. 22.212. REFUNDS AND CREDITS.

(a) Whenever any tax, penalty or interest has been overpaid, paid in error or erroneously collected or received by the County under this chapter a person who paid the tax, penalty or interest may file a written claim with the Tax Collector within three years of the date of payment, as provided in subsections (b) or (c) of this section. The claim shall be filed on a form furnished by the Tax Collector.

(b) An operator may claim a refund, or obtain a credit against unpaid taxes, for the amount the operator paid that the Tax Collector determines was not due the County. An operator may not claim a refund or a credit under this section unless the operator has made a full refund or given a credit to any transient from whom the operator collected the occupancy tax for which the operator requests the refund or credit.

(c) A person other than an operator who overpaid an occupancy tax, paid an occupancy tax in error or from whom an occupancy tax was erroneously collected or received by the County may file a claim as provided in subsection (a) above. A person may only file a claim under this subsection, however, if the person paid the tax (1) directly to the Tax Collector or (2) directly to an operator and establishes to the Tax Collector's satisfaction that the person claiming the refund has been unable to obtain a refund from the operator who collected the tax.

(d) No person shall be entitled to a refund or credit under this section unless the person can support the claim.

SEC. 22.213. ACTIONS TO COLLECT.

(a) Any tax required to be paid by any transient under the provisions of this chapter shall be deemed a debt owed by the transient to the County. Any tax due, whether or not collected, by an operator under this chapter, which the operator has not paid to the County, shall be deemed a debt the operator owes to the County. The County may bring a civil action against an operator who fails to pay the County an amount due under this chapter.

(b) If any person fails to pay any taxes, penalty or interest owed to the County under this chapter when due, the Tax Collector may within four years from date payment was first due record a certificate of taxes, penalty and interest due with the San Diego County Recorder. The certificate shall state the amount of tax, ~~penalties~~ penalties, and interest due, the operator's name and last known address and that the Tax

Collector has determined the amount due pursuant to this chapter. From the time the certificate is recorded the amount due at the time the certificate is recorded plus any accrued interest constitutes a lien upon all real and personal property located in San Diego County owned by the operator named in the certificate. The lien also attaches to any property the operator acquires after the certificate is recorded until the lien expires. The lien has the force, effect and priority of a judgment lien and shall continue for 10 years from the time the certificate is filed unless the lien is released or discharged.

(c) At any time within the three years after the Tax Collector has recorded a certificate under subsection (b) the Tax Collector may issue a warrant for the enforcement of any liens and for the collection of any amount required to be paid to the County under this chapter. The warrant shall be directed to any sheriff and shall have the same effect as a writ of execution. The warrant shall be levied and sale made pursuant to it in the same manner and with the same effect as a levy of and a sale pursuant to a writ of execution. The Tax Collector may pay or advance to the sheriff the same fees, commissions and expenses for his services as are provided by law for similar services pursuant to a writ of execution.

(d) In lieu of issuing a warrant under subsection (c), at any time within the three years after the Tax Collector has made a determination of taxes, penalties and interest due under section 22.208 or 22.209 or recorded a certificate under this section the Tax Collector may collect the amount owed the County by seizing or causing to be seized any real or personal property owned by the operator liable and sell the property, or a sufficient part of it, at public auction to pay the amount due together with any interest due on the unpaid amount and any costs incurred on account of the seizure and sale. Any seizure made to collect taxes due shall be only of property of the operator not exempt from execution under the provisions of the Code of Civil Procedure.

SEC. 22.214. DUTY OF PURCHASER.

If an operator who is liable for taxes, penalties or interest under this chapter sells, transfers or otherwise disposes of its interest in a hotel, the purchaser shall notify the Tax Collector of the date of sale at least 30 days before the sale or, if the agreement to sell the hotel provides for a sale date sooner than 30 days, the purchaser shall notify the Tax Collector immediately after entering the sales agreement. The purchaser shall withhold a portion of the purchase price at the time of sale that is sufficient to pay the Tax Collector the full amount the operator owes unless the operator produces a receipt from the Tax Collector showing that the tax, penalty or interest has been paid in full or produces a certificate from the Tax Collector stating that no amount is due.

SEC. 22.215. LIABILITY OF PURCHASER FOR FAILURE TO WITHHOLD.

If the purchaser of a hotel fails to withhold from the purchase price an amount sufficient to pay an operator's liability for unpaid taxes, penalties or interest, the purchaser shall become jointly and severally liable for the amount owed the County by an operator. Within 90 days after the Tax Collector receives a written request from the purchaser for a certificate of registration the Tax Collector shall either issue the certificate or send notice to the purchaser of the amount that the purchaser shall pay in order for the Tax Collector to issue the certificate; or request the current owner of the property to make available the records for the purpose of conducting an audit regarding the transient occupancy taxes that may be due and owing. The Tax Collector shall complete the audit on or before 90 days after the date that the current or former owner's records are made ~~available, and~~ available and issue a tax clearance certificate within 30 days of completing the audit.

SEC. 22.216. VIOLATIONS.

It shall be unlawful for any person to:

- (a) Fail or refuse to file any return due under this chapter; or
- (b) Fail or refuse to collect any tax due under this chapter; or
- (c) Fail or refuse to pay any tax when due under this chapter; or

- (d) File a false or fraudulent return due under this chapter; or
- (e) Fail or refuse to comply with any other requirement of this chapter.

Section 3. This ordinance shall take effect and be in force thirty days after its passage, and before the expiration of fifteen days after its passage, a summary hereof shall be published once with the names of the members of this Board voting for and against it in a newspaper of general circulation published in the County of San Diego.

APPROVED AS TO FORM AND LEGALITY
COUNTY COUNSEL

BY: Rachel H. Witt, Chief Deputy County Counsel