

ORDINANCE NO. 27956

**AN ORDINANCE OF THE CITY OF SAN JOSE
ALLOWING THE USE OF THE CITY'S RIGHT OF WAY BY
PROVIDERS OF VIDEO SERVICES UNDER CERTAIN
SPECIFIED CONDITIONS**

WHEREAS, Assembly Bill 2987 ("AB2987") was passed by the California Legislature on August 31, 2006 and became effective on January 1, 2007; and

WHEREAS, AB2987 provides for the issuance of a state franchise allowing the construction and operation of a system to provide video services anywhere in the State, and

WHEREAS, Pacific Bell Telephone Company, a California corporation doing business as "AT&T California" ("AT&T") desires to upgrade existing equipment and services in San José in order to provide video services to San José residents;

WHEREAS, in addition, the City of San José ("City") and AT&T want to bring the benefits of AT&T's video services product and video services competition to City residents as soon as possible; and

WHEREAS, City has determined that it is in the best interests of the residents of the City that video service providers, such as AT&T, begin the installation of video services equipment in the City as soon as possible and prior to the receipt of the State franchise; and

WHEREAS, there is a dispute as to whether the services planned include cable service and therefore are within the application of Chapter 15.28 of the San José Municipal Code, which requires a cable franchise as a prerequisite to the provision of the video services proposed by AT&T; and

WHEREAS, in order to permit AT&T and other providers of video services to commence construction and operation of such systems in the City, using the City's public right of way, in advance of the grant of the State franchise pursuant to AB2987, this Council wishes to enact by ordinance an alternative to the franchise procedures specified in Chapter 15.28;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

- A. Notwithstanding the provisions of Chapter 15.28 of the San José Municipal Code, the City may, by franchise or agreement, allow the construction and operation of a system to provide Video Services using the City's right of way if all of the following conditions specified in Subsection B are met. Capitalized words shall have the meaning prescribed to such terms in AB2987.

- B. The City and the Provider of Video Services enter into an agreement or the City grants a franchise setting forth the terms and conditions under which the Provider of Video Services shall be permitted to construct and operate the Video Services system. The terms shall at a minimum include:
 - 1. Compliance with the provisions of AB2987 related to franchise fees, PEG support, emergency alerts, encroachment permits, and customer service and customer protection.

 - 2. Schedule for activation of PEG Channels and interconnection with existing PEG Channels.

 - 3. A term of the agreement shall not extend beyond January 1, 2008.

4. Such other and further requirements as the City deems necessary to protect the public interest.

B. This ordinance shall sunset and be of no further force or effect as of January 1, 2008, unless further action is taken by ordinance of the City Council prior to that date.

PASSED FOR PUBLICATION of title this 9th day of January, 2007, by the following vote:

AYES: CAMPOS, CHIRCO, CONSTANT, CORTESE, LICCARDO,
NGUYEN, PYLE, WILLIAMS; REED

NOES: NONE

ABSENT: NONE

DISQUALIFIED: NONE

VACANT: DISTRICT 4, DISTRICT 6

CHUCK REED
Mayor

ATTEST:

LEE PRICE, MMC
City Clerk