

CITY OF OAKLAND



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May 30, 2006

HONORABLE CITY COUNCIL
Oakland, California

President De La Fuente and Members of the City Council:

**Subject: Comcast of California/Colorado, LLC v. City of Oakland, et al.
United States District Court, Northern District of California Case No.
06-2163 MJJ
City Attorney File No. X02822**

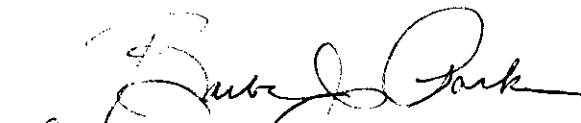
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Pursuant to Section 401 of the Charter, the City Attorney has prepared a resolution approving the settlement of the above-captioned matter.

This action arises from the passage of Ordinance No. 12728, Proprietary Interest Franchise Labor Requirements – Card Check, Procedure for Determining Employee Preference on Representation By Labor Organization. The Ordinance applies to franchises in which the City has a proprietary interest, namely any non-regulatory interest of the City in a franchise agreement for the provision of utility services or for the use of public streets or places.

Comcast has a cable franchise under which it pays franchise fees for providing cable services in Oakland. Comcast brought suit challenging the Ordinance alleging that the City does not have a sufficient proprietary interest its franchise and that the Ordinance is preempted by federal labor laws. In exchange for repealing the Ordinance, Comcast has agreed to dismiss the lawsuit and waive any attorneys' fees and costs it may be entitled to as a result of bringing the lawsuit.

Respectfully submitted,


JOHN A. RUSSO
City Attorney

Attorney Assigned:
Jennifer A. Chin


Oakland City Attorney's Office

OAKLAND CITY COUNCIL

RESOLUTION No. _____ C.M.S.

RESOLUTION APPROVING COMPROMISE AND SETTLEMENT OF COMCAST OF CALIFORNIA/COLORADO, LLC v. CITY OF OAKLAND, UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF CALIFORNIA, CASE NO. 06-02163 MJJ, WHICH CALLS FOR REPEAL OF ORDINANCE NO. 12728 (PROPRIETARY INTEREST FRANCHISE LABOR REQUIREMENTS – CARD CHECK, PROCEDURE FOR DETERMINING EMPLOYEE PREFERENCE ON REPRESENTATION BY LABOR ORGANIZATION) AND DISMISSAL OF THE LITIGATION

WHEREAS, in February of this year, the City Council adopted Ordinance No. 12728, entitled Proprietary Interest Franchise Labor Requirements – Card Check, which provides a procedure for determining employee preference on representation by a labor organization, if the employees so request; and

WHEREAS, the Ordinance applies to franchises in which the City has a proprietary interest, namely any non-regulatory interests of the City in a franchise agreement for the provision of utility services or for the use of public streets or places, such as receipt of franchise fees or other cash payments, capital facilities improvements or grants, equipment and/or support for public education and governmental channels, or other in kind contributions such as communication services to community service facilities, that could be adversely affected by labor/management conflict or consumer boycotts potentially resulting from a union organizing campaign; and

WHEREAS, Comcast, of California/Colorado has a cable franchise agreement with the City under which Comcast pays the City franchise fees for operating its cable services in Oakland, and

WHEREAS, Comcast filed a complaint against the City in federal court alleging that the City does not have a proprietary interest in the Comcast franchise and that the City's card check ordinance is preempted by federal labor laws; and

RESOLVED: That, as directed by City Council, the City Attorney has negotiated an Agreement to compromise and settle Comcast of California/Colorado, LLC v. City of Oakland, United States District Court, Northern District of California, Case No. 06-02163 MJJ, City Attorney's File No. X02822; and be it

FURTHER RESOLVED: That the Agreement calls for the City Council to repeal Ordinance No. 12728 (Proprietary Interest Franchise Labor Requirements – Card Check, Procedure for Determining Employee Preference on Representation by Labor Organization) and dismissal of the litigation; and be it

FURTHER RESOLVED: That the Agreement is approved and that the City Attorney is further authorized and directed to take whatever steps that may be necessary to effect said settlement.

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

AYES- BRUNNER, KERNIGHAN, NADEL, QUAN, BROOKS, REID, CHANG, and
PRESIDENT DE LA FUENTE

NOES-

ABSENT-

ABSTENTION-

ATTEST: _____
LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California