

## ORDINANCE NO. 825

### AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GRASS VALLEY REPEALING AND REPLACING CHAPTERS 5.16 ("CABLE TELEVISION FRANCHISE"), 5.18 ("CABLE SYSTEMS AND OPEN VIDEO SYSTEMS"), AND 5.19 ("STATE VIDEO FRANCHISES") OF THE GRASS VALLEY MUNICIPAL CODE REGULATING CABLE FRANCHISES AND VIDEO SERVICE PROVIDERS

**WHEREAS**, the Legislature of the State of California (the State) has adopted the Digital Infrastructure and Video Competition Act of 2006 (DIVCA) (Public Utilities Code section 5800, *et seq.*); and

**WHEREAS**, DIVCA became effective on January 1, 2007; and

**WHEREAS**, DIVCA establishes a regulatory structure for the State to issue franchises to video service providers; and

**WHEREAS**, DIVCA makes the California Public Utilities Commission the sole franchising authority for cable television video service providers and preemptively converts local cable franchises to State franchises upon expiration of existing local franchises; and

**WHEREAS**, DIVCA establishes that local entities, such as the City of Grass Valley, are responsible for administration and implementation of certain provisions of DIVCA; and

**WHEREAS**, DIVCA permits the City to establish, by ordinance, financial support provisions for Public, Educational, and Governmental Access (PEG) channel facilities; and

**WHEREAS**, DIVCA requires that the City adopt, by ordinance or resolution, a schedule of penalties for any material breach by a State video franchise holder for violation of customer service and protection standards that the City is permitted to enforce; and

**WHEREAS**, the City Council of the City of Grass Valley now finds it necessary and desirable to update its Municipal Code to conform with state law.

Be it ordained by the council of the City of Grass Valley as follows:

SECTION 1. CODE ADOPTION. Chapters 5.16 ("Cable Television Franchise"), 5.18 ("Cable Systems and Open Video Systems"), and 5.19 ("State Video Franchises") of the Grass Valley Municipal Code are hereby amended and restated as set forth in Exhibit "A" attached to this Ordinance and incorporated by reference.

SECTION 2: CEQA FINDINGS. This Ordinance maintains a fee supporting public, educational, and government (PEG) programming and certain regulations on state video service franchises. As a purely administrative and regulatory action, it will not affect the physical environment. This Ordinance is not a project within the meaning of California Environmental Quality Act (CEQA) Guidelines, California Code of Regulations, title 14, section 15378 because it has no potential to result in physical change in the environment, directly or indirectly. It is also exempt from CEQA review under CEQA Guidelines, California Code of Regulations, title 14, section 15061(b)(3) because it can be seen with certainty that there is no possibility that the Ordinance may have a significant effect on the environment.

SECTION 3. SEVERABILITY. If any section, subsection, sentence, clause, phrase or portion of this Ordinance or its application to any person or circumstance 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 or its application to other persons and circumstances. The City Council of the City of Grass Valley hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase, or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, or portions be declared invalid or unconstitutional and, to that end, the provisions hereof are hereby declared to be severable.

SECTION 4. INCONSISTENT PROVISIONS. Any provision of the Grass Valley Municipal Code inconsistent with this Ordinance, to the extent of such inconsistencies and no further, is hereby repealed or modified to the extent necessary to give effect to this Ordinance.

SECTION 5. EFFECT OF ADOPTION. It is the intent of the City Council of the City of Grass Valley that the Grass Valley Municipal Code sections affected by this Ordinance shall not be considered repealed and reenacted in their amended

form; that the portions which are not altered are to be considered as having been the law from the time when they were enacted; that the new provisions are to be considered as having been enacted at the time of the amendment; and that the omitted portions are to be considered as having been repealed at the time of the amendment.

SECTION 6. Effective Date. This Ordinance shall be in full force and effect 30 days after its adoption pursuant to Article VII, § 2 of the Grass Valley City Charter.

SECTION 7. Publication. The City Clerk shall certify to the passage and adoption of this Ordinance and shall cause the same to be published once in *The Union*, a newspaper of general circulation printed, published, and circulated within the City.

INTRODUCED and first read at a regular meeting of the city council on the 9th day of May 2023.

FINAL PASSAGE AND ADOPTION by the city council was at a meeting thereof held on the 23rd day of May 2023, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAINING:

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Jan Arbuckle, Mayor

APPROVED AS TO FORM:

ATTEST

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Michael G. Colantuono, City Attorney

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Taylor Day, City Clerk

Published on: \_\_\_\_\_

## EXHIBIT A

### Chapter 5.16: VIDEO AND CABLE SERVICES

#### 5.16.010 – Purpose.

This section is intended to apply to those awarded a state video franchise under the California Public Utilities Code, section 5800, *et seq.*, the Digital Infrastructure and Video Competition Act of 2006 (DIVCA), to serve any location(s) within the City of Grass Valley. This chapter is intended to implement within the City DIVCA and the rules of the California Public Utilities Commission promulgated thereunder applicable to a “local franchising entity” or a “local entity” as defined in DIVCA.

#### 5.16.020 – Definitions.

For the purposes of this chapter, the following terms, phrases, words, and abbreviations shall have the meanings given here. 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; words in the singular number include the plural number; and the masculine gender includes the feminine gender. The words “shall” and “will” are mandatory, and “may” is permissive. Words not defined in this article shall have the meanings provided in Division 2.5 of the California Public Utilities Code, section 5800, *et seq.*, and, if not defined there, their common and ordinary meaning. References to governmental entities or officials, whether persons or entities, refer to those entities or their successors in authority. If provisions of law referred to herein are renumbered, then the reference shall be read to refer to the renumbered provision. References to laws, ordinances, or regulations shall be interpreted broadly to cover government actions, however denominated, and include laws, ordinances, and regulations now in force or hereinafter enacted or amended.

“Access,” “PEG access,” or “PEG use” refers to the availability of a cable system or open video system for public, education or government use by various agencies, institutions, organizations, groups, and individuals, including the City and its designated access providers, to acquire, create and distribute programming not under a franchisee’s editorial control, including, but not limited to:

1. “Public access” or “public use” means access where organizations, groups, or individual members of the general public, on a nondiscriminatory basis, are the primary or designated programmers or users having editorial control over their communications;
2. “Education access” or “education use” means access where accredited educational institutions are the primary or designated programmers or users having editorial control over their communications;
3. “Government access” or “government use” means access where government institutions or their designees are the primary or designated programmers or users having editorial control over their communications.

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

“Cable communications system” refers to open video systems (OVS) and cable systems.

“Cable service” means:

1. The one-way transmission to subscribers of video programming or other programming service, and
2. Subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

“Cable system” is defined as set forth in section 522(7) of Title 47 of the United States Code. Any reference to a cable system includes the cable system as a whole, or any part of it, including all facilities, pedestals, equipment cabinets, electronic equipment, and devices appurtenant to the system.

“Cable service” is defined as the one-way transmission to subscribers of either video programming, or other programming service, and subscriber interaction, if any, that is required for the selection or use of video programming or other programming service, as set forth in section 522(6) of Title 47 of the United States Code.

“Channel” means a portion of the electromagnetic frequency spectrum which is used in a cable system or OVS and which is capable of delivering a television signal whether in analog or digital format. The definition does not restrict the use

of any channel to the transmission of analog television signals or one-way transmission.

“City” means the City of Grass Valley and all departments, divisions, and agencies of the City established by state law or by the City charter or Municipal Code.

“City Manager” means the Grass Valley City Manager or his/her designee.

“Construction, operation or repair” and similar formulations of that term mean construction, operation or repair interpreted broadly, encompassing, among other things, installation, extension, maintenance, replacement of components, relocation, undergrounding, grading, site preparation, adjusting, testing, make-ready, and excavation.

“FCC” means the Federal Communications Commission.

“Franchise” or “State franchise” refers to an authorization granted by the California Public Utilities Commission to the operator of a cable communications system giving the franchisee the non-exclusive right to occupy space, or use facilities upon, across, beneath, or over public rights-of-way in the City, and to provide specified services within a franchise area.

“Franchise area” means the area within the City that a franchisee is authorized to serve by the terms of its franchise or by operation of law.

“Franchisee” refers to a person holding a cable communications system franchise granted by the State under applicable law.

“Franchise fee” means the State franchise fee adopted pursuant to Public Utilities Code, section 5840, payable as rent or a toll for the use of the public rights-of-way.

“Gross revenues” means all revenue actually received by the holder of a State franchise, as determined in accordance with generally accepted accounting principles, that is derived from the operation of the holder’s network to provide cable or video service within the City, including all of the following:

1. All charges billed to subscribers for any and all cable service or video service provided by the holder of a State franchise, including all revenue

related to programming provided to the subscriber, equipment rentals, late fees, and insufficient fund fees;

2. Franchise fees imposed on the holder of a State franchise by this section that are passed through to, and paid by, the subscribers;
3. Compensation received by the holder of a State franchise that is derived from the operation of the holder's network to provide cable service or video service with respect to commissions that are paid to the holder of a State franchise as compensation for promotion or exhibition of any products or services on the holder's network, such as a "home shopping" or similar channel; and
4. A pro rata portion of all revenue derived by the holder of a State franchise or its affiliates pursuant to compensation arrangements for advertising derived from the operation of the holder's network to provide video service within the jurisdiction of the City. The allocation shall be based on the number of subscribers in the City divided by the total number of subscribers in relation to the relevant regional or national compensation arrangement.

"Gross revenues" do not include any of the following:

1. Amounts not actually received, even if billed, such as bad debt; refunds, rebates, or discounts to subscribers or other third parties; or revenue imputed from the provision of cable services or video services for free or at reduced rates to any person as required or allowed by law, including, but not limited to, the provision of these services to public institutions, public schools, governmental agencies, or employees except that forgone revenue chosen not to be received in exchange for trades, barter, services, or other items of value shall be included in gross revenue;
2. Revenues received by any affiliate or any other person in exchange for supplying goods or services used by the holder of a State franchise to provide cable services or video services. However, revenue received by an affiliate of the holder from the affiliate's provision of cable or video service shall be included in gross revenue to the extent that treating the revenue as revenue of the affiliate, instead of revenue of the holder, would have the effect of evading the payment of fees that would otherwise be paid to the City, or if the revenue is not otherwise subject to fees to be paid to the City;

3. Revenue derived from services classified as noncable services or nonvideo services under federal law, including, but not limited to, revenue derived from telecommunications services and information services, other than cable services or video services, and any other revenues attributed by the holder of a State franchise to noncable services or nonvideo services in accordance with Federal Communications Commission rules, regulations, standards, or orders;
4. Revenue paid by subscribers to “home shopping” or similar networks directly from the sale of merchandise through any home shopping channel offered as part of the cable services or video services. However, commissions or other compensation paid to the holder of a State franchise by “home shopping” or similar networks for the promotion or exhibition of products or services shall be included in gross revenue;
5. Revenue from the sale of cable services or video services for resale in which the reseller is required to collect a fee similar to the franchise fee from the reseller’s subscribers;
6. Amounts billed to, and collected from, subscribers to recover any tax, fee, or surcharge imposed by any governmental entity on the holder of a State franchise, including, but not limited to, sales and use taxes, gross receipts taxes, excise taxes, utility users taxes, public service taxes, communication taxes, and any other fee not imposed by state law;
7. Revenue from the sale of capital assets or surplus equipment not used by the purchaser to receive cable services or video services from the seller of those assets or surplus equipment;
8. Revenue from directory or Internet advertising revenue, including, but not limited to, yellow pages, white pages, banner advertisement, and electronic publishing;
9. Revenue received as reimbursement by programmers of specific, identifiable marketing costs incurred by the holder of a State franchise for the introduction of new programming; or
10. Security deposits received from subscribers, excluding security deposits applied to the outstanding balance of a subscriber’s account and thereby taken into revenue.



“License” refers to the legal authorization, terminable at will, to use a particular, discrete, and limited portion of the public rights-of-way of the City to construct, operate or repair a cable system.

“Operator” when used with reference to a system, refers to a person (a) who directly or through one or more affiliates provides service over a cable communications system and directly or through one or more affiliates owns a significant interest in such facility; or (b) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a facility.

“OVS” means an open video system as defined by Title 47 of the Code of Federal Regulations, section 76.1500(a). A reference to an OVS includes pedestals, equipment enclosures (such as equipment cabinets), amplifiers, power guards, nodes, cables, fiber optics and other equipment necessary to operate the OVS or installed in conjunction with the OVS.

“Person” includes any individual, corporation, partnership, association, joint stock company, trust, or any other legal entity, but not the City.

“Public property” means any property that is owned or under the control of the City that is not a public right-of-way, including, for purposes of this article, but not limited to, buildings, parks, poles, structures in the public rights-of-way such as utility poles and light poles, or similar facilities or property owned or leased by the City.

“Public rights-of-way” means the surface of and the space above and below any street, road, highway, freeway, bridge, lane, path, alley, court, sidewalk, parkway, drive, or right-of-way or easement primarily dedicated to travel, now or hereafter existing within the City, which may be properly used for the purpose of installing, maintaining, and operating a cable communications system, and any other property that a franchisee is entitled by state or federal law to use by virtue of the grant of a franchise.

“Subscriber” means the City or any person who is lawfully receiving, for any purpose or reason, any cable service via a cable communications system with franchisee’s express permission, whether or not a fee is paid for such service.

“Termination” means the conclusion of a franchise by any means, including, but not limited to, by expiration of its term, abandonment, or revocation.

“Transfer” means any transaction in which:

1. All or a portion of any facilities or any rights to use or operate facilities located in the public rights-of-way are sold, conveyed, transferred, assigned, encumbered (except as set forth in this chapter) or leased, in whole or in part, directly or indirectly, by one or more transactions to another person, whether voluntarily or by operation of law or otherwise; or
2. There is any change, acquisition, or transfer in the identity of the person in control of the franchisee, or any person that controls franchisee, including, without limitation, forced or voluntary sale, merger, consolidation, or receivership; or
3. The rights or obligations under the franchise are sold, conveyed, transferred, assigned, encumbered (except as set forth in this chapter) or leased, in whole or in part, directly or indirectly, by one or more transactions to another person, whether voluntarily or by operation of law or otherwise. It will be presumed, for purposes of clause (2) above, that any transfer or cumulative transfer of a voting interest by a person or group of persons acting in concert of 10 percent or more of franchisee, or person that controls franchisee, or any change in the managing general partners of a franchisee, is a change of control.

“Transfer” does not include:

1. A lease to an unaffiliated video programming provider pursuant to sections 532 or 573 of Title 47 of the United States Code.
2. The transmission of a commodity or electronic signal using facilities on a common-carrier basis;
3. A lease or other right to use facilities mandated pursuant to section 224 of Title 47 of the United States Code; or
4. A pledge in trust, mortgage or other encumbrance against the facilities, or any portion thereof, given to a bona fide institutional lender in connection with a loan or other financing required to secure the construction, operation, or repair of the facilities (“Loan”) provided that such Loan is subject to the rights and powers of the City pursuant to the franchise and applicable law, including, without limitation, the right of the City to approve any transfer upon foreclosure.

“Transferring” and “transferee” shall have correlative meanings.

“Unaffiliated video programming provider” or “UVPP” means any person who uses capacity on a franchised cable system to deliver cable service or other

communications service (as that term is used in section 542(h) of Title 47 of the United States Code) to subscribers and who is not an affiliate of the franchisee.

“User” means a person or the City utilizing a channel, capacity or equipment and facilities for purposes of producing or transmitting video, voice and data materials contrasted with receiving it as a subscriber.

“Video service” means video programming services, cable service, or OVS service provided through facilities located at least in part in public rights-of-way without regard to delivery technology, including Internet protocol or other technology. “Video service” does not include:

1. Any video programming provided by a commercial mobile service provider defined in section 332(d) of Title 47 of the United States Code, or
2. Video programming provided as part of, and via, a service that enables users to access content, information, electronic mail, or other services offered over the public Internet.

#### **Section 5.16.030 – Duties of state franchise holder operating within the City.**

- A. Consistent with Public Utilities Code, section 5840, the holder of a State video franchise must notify the City within 14 business days of any of the following changes:
1. Any transaction involving a change in the ownership, operation, control, or corporate organization of the franchisee, including a merger, an acquisition, or a reorganization.
  2. A change in the franchisee’s legal name or the adoption of, or change to, an assumed business name.
  3. A change in the franchisee’s principal business address or in the name of the person authorized to receive notice on behalf of the holder.
  4. Any transfer of the State franchise to a successor in interest of the franchisee. The franchisee shall identify the successor in interest to which the transfer is made.
  5. The termination of any State franchise issued under this division.  
The holder shall identify both of the following:
    - i. The number of subscribers in the service area covered by the State franchise being terminated, and
    - ii. The method by which the franchisee’s subscribers were notified of the termination.

6. A change in one or more of the service areas of the franchisee pursuant to this division that would increase or decrease the territory within the service area. The franchisee shall describe the new boundaries of the affected service areas after the proposed change is made.
- B. Prior to offering video service in the City, the holder of a State video franchise shall notify the City that the franchisee will provide video service there. The notice shall be given at least 10 days, but no more than 60 days, before the franchisee begins to offer service in the City.
- C. The holder of a state video franchise shall obtain all necessary City permits to install, construct, and maintain its video service network within public rights-of-way in compliance with Municipal Code section 5.16.070. The franchisee shall also obtain adequate indemnity and construction bonds in compliance with Municipal Code section 5.16.080.
- D. The holder of a state video franchise shall comply with all applicable state and federal customer service and protection standards pertaining to the provision of video service and shall be subject to the penalties provided under Municipal Code section 5.16.120 for material breaches of such standards.

#### **Section 5.16.040 – Failure to obtain a franchise.**

Consistent with the requirements of due process, a person's failure to obtain a State franchise as required by Public Utilities Code, section 5800, *et seq.*, may, in the City's discretion, result in:

- A. Forfeiture, by operation of law, of the person's facilities located in the public rights-of-way that are not authorized by an existing franchise; and/or
- B. A City order and/or court order that the facilities be removed, and that penalties and damages be paid as set forth in state law.

#### **Section 5.16.050 – Existing franchises.**

Franchises existing as of the effective date of this chapter shall, in addition to the obligations and duties prescribed by the terms of their existing franchises, be subject to the substantive and procedural requirements in this chapter, except as prohibited by applicable law. Nothing in this chapter is intended to invalidate a lawful, existing franchise or to waive any obligations imposed by such a franchise.

**Section 5.16.060 – Administration of ordinance; adoption of regulations.**

- A. Adoption of Regulations. The City may from time to time adopt regulations to implement this chapter.
- B. Delegation. The City Manager is hereby authorized to administer this chapter and to provide any notices (including noncompliance notices) and to take any action on the City's behalf that may be required hereunder or under applicable law.
- C. No Waiver. The failure of the City, upon one or more occasions, to exercise a right or to require compliance or performance under a franchise or any other applicable law shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance, unless such right has been specifically waived in writing.
- D. Administration of Public, Educational and Government Access. The City may designate one or more entities, including itself, to control and manage the use of public, educational and government (PEG) access channels, facilities, and equipment.

**Section 5.16.070 – Permits to install, construct, and maintain network within public rights-of-way.**

- A. State Franchise Holder Must Follow Local Rules. The construction, operation, and repair of cable communication systems shall be performed in compliance with all laws, ordinances, departmental rules, regulations, and practices affecting such system. By way of example, and not limitation, this includes zoning and safety codes, 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 rights-of-way. Persons engaged in the construction, operation, or repair of communications facilities shall exercise reasonable care in the performance of all their activities and shall use commonly accepted methods and devices for preventing failures and accidents that are likely to cause damage, injury, or nuisance to the public or to property.
- B. No Permit Without State Franchise. A State franchise granted pursuant to Public Utilities Code section 5800, *et seq.*, is required before a permit may be issued for work associated with the construction of a cable communications system. Any permit issued for such work to a person that

does not hold a State franchise 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 the City's demand.

C. Permits Must be Obtained. Construction, operation, or repair of a cable communications system shall not commence until all required permits have been obtained from the proper City officials and all required fees have been paid. All work performed will be performed in strict accordance with the conditions of the permit. Upon order of the City, any work and/or construction undertaken that is not completed in compliance with the City's requirements, or which is installed without obtaining necessary permits and approvals, shall be removed.

D. No Interference. Interference with the use of the public rights-of-ways by others, including others that may be installing cable communications systems, must be minimized. The City may require a person using the rights-of-way to cooperate with others through joint trenching and other arrangements to minimize adverse impacts on the rights-of-way.

E. Plans for and Publicizing Work. Work shall be publicized as the City may direct from time to time. The publication of work may be used to notify the public and operators of other communications systems of the impending work, to minimize inconvenience and disruption to the public.

1. Each franchisee shall provide the City a plan for any initial system construction, or for any substantial rebuild, upgrade or extension of its facility, which shall show its timetable for construction of each phase of work, and the areas of the City that will be affected.

2. The City Manager may from time to time, when the City receives application for a permit to use a particular route, or upon the City Manager's own initiative, designate by published order a route or proposed route for installation of communications facilities and may (a) require all persons who wish to place underground facilities along that route or any part thereof to install them during a specified period provided all costs are shared equitably and (b) otherwise prohibit initial placement of such facilities along the route or any part thereof for a period of time as is necessary to protect the public interest.

F. Existing Poles to be Used. To the extent possible, operators of cable communications systems shall use existing poles and conduits. Additional poles may not be installed in the right-of-way, nor may pole capacity be increased by vertical or horizontal extenders, without the permission of the City Manager. To minimize disruption of public passage or infrastructure, to forestall or relieve exhaustion of rights-of-way capacity, or to protect environmentally sensitive areas, the City Manager may require as a condition of issuing any rights-of-way permit for erection of new poles or construction of underground conduit, the installation of which requires excavation of or along any traveled way that the franchisee, licensee, or holder of the rights-of-way permit provide pole space or empty conduits in excess of its own present and reasonably foreseeable requirements to accommodate the City and/or other franchisees and licensees.

#### **Section 5.16.080 – Protection of the City and residents.**

A. Indemnity Required. No permit issued for work associated with construction of a cable communications system shall be valid or effective until and unless the City obtains adequate indemnity from the franchisee. The indemnity must:

1. Release the City from and against any and all liability and responsibility in or arising out of the construction of the cable communications system; and
2. Indemnify and hold harmless the City, its elected and appointed officers, agents, and employees, from and against any and all claims, demands, or causes of action of any kind or nature, and the resulting losses, costs, expenses, reasonable attorneys' fees, liabilities, damages, orders, judgments, or decrees sustained by the City or any third party arising out of, or by reason of, or resulting from or of the acts, errors, or omissions of the cable communications system operator, licensee, or its agents, independent contractors, or employees related to or in any way arising out of the construction of the system.

B. Construction Bonds. Every holder of a State video franchise constructing a cable communications system within the City for which a permit is required shall obtain and maintain bonds during construction of the cable system to ensure the faithful performance of its responsibilities under this article and any franchise. The amount of the performance and payment bonds shall be set by the City Manager but shall not be less than 10 percent of the estimated cost

of constructing or (in the case of existing systems) upgrading the system, and sufficient to fund the removal of facilities and/or restoration of city facilities within the right-of-way. The bond shall be in a form acceptable to the City Attorney. Bonds must be obtained before the effective date of any permit unless the City Manager specifically provides otherwise in writing.

**5.16.090 – Procedures for appeal of denial of an encroachment permit.**

- A. As provided by California Public Utilities Code, section 5885, the City shall either approve or deny an application from a State video service franchise holder for an encroachment permit within 60 days of receiving a completed application, unless the applicant and City have mutually agreed to extend this time limit.
- B. For purposes of this section, an “encroachment permit” means any permit issued by the City relating to construction or operation of facilities relating to the provision of video service under a State video service franchise in the public rights of way as governed by Chapter 12.48 of the Grass Valley Municipal Code.
- C. An application for an encroachment permit is considered complete when the applicant has complied with all statutory and City-imposed requirements for such an application, including those of the California Environmental Quality Act (Public Resources Code section 21000, *et seq.*), Title 12 of this Municipal Code, and other applicable ordinances of the City.
- D. Any City denial of an application for an encroachment permit shall be in writing and shall contain a detailed explanation of the reason for the denial.
- E. An applicant whose application for an encroachment permit has been denied may appeal the denial to the City Council by filing both a written notice of appeal and the required cash deposit with the City Clerk within 15 days after the administrative authority’s action on the permit. The City Council shall consider such appeal at its first regularly scheduled Council meeting occurring five or more business days after receipt of the appeal by the City Clerk, with or without a public hearing as the City Council deems appropriate, and may affirm, overrule, or modify the administrative authority’s determination.



#### **5.16.100 – Local franchise remittance and examination of records.**

- A. Pursuant to Public Utilities Code, section 5860, the holder of a State franchise that offers video service within the jurisdiction of the City shall calculate and remit to the City the state franchise fee adopted pursuant to Public Utilities Code, section 5840.
- B. The obligation to remit the franchise fee to the City begins immediately upon provision of video service within the City. However, the remittance shall not be due until the time of the first quarterly payment required under subdivision (E) that is at least 180 days after the provision of service began. The fee remitted to the City shall be calculated as a percentage of gross revenues from the provision of video service within the City.
- C. No fee under this section shall become due unless the City provides documentation to the holder of the State franchise supporting the percentage paid by the incumbent cable operator serving the area within the City.
- D. The fee remitted to the City pursuant to this section may be used by the City for any lawful purpose.
- E. The State franchise fee shall be remitted to the City quarterly, within 45 days after the end of the quarter. Each payment shall be accompanied by a summary explaining the basis for the calculation of the State franchise fee.
- F. If a holder of the State franchise does not pay the franchise fee when due, the holder shall pay a late payment charge at a rate per year equal to the highest prime lending rate during the period of delinquency, plus 1 percent.
- G. If the franchisee has overpaid the franchise fee, it may deduct the overpayment from its next quarterly payment upon written notice to the City.
- H. The City may examine the business records of a holder of a State franchise annually to ensure the City is obtaining its statutory franchise fee remittance. The State franchise holder shall keep all business records reflecting any gross revenues, even if there is a change in ownership, for at least four years after those revenues are recognized by the holder on its books and records. If the examination discloses that the holder has underpaid franchise fees by more than 5 percent during the examination period, the holder shall pay all of the reasonable and actual costs of the examination. If the examination discloses that the holder has not underpaid franchise fees, the City shall pay all of the reasonable and actual costs of the examination. In every other instance, each party shall bear its own costs of the examination. Any claims by the City that

compensation is not in accordance with Public Utilities Code, section 5860 and any claims for refunds or other corrections to the remittance of the holder of a State franchise, shall be made within three years and 45 days of the end of the quarter for which compensation is remitted, or three years from the date of the remittance, whichever is later. Either the City or the State franchise holder may, in the event of a dispute concerning compensation under this section, bring an action in a court of competent jurisdiction.

**5.16.110 – Fee to support Public, Educational, and Governmental Access facilities**

- A. As authorized by California Public Utilities Code, section 5870(n), the City hereby establishes a fee of 60 cents per month per subscriber to support PEG channel facilities capital support to be paid by any state video franchise holder operating in the City. The fee shall be paid quarterly no later than June 1, September 1, December 1, and March 1 for the preceding calendar quarter.
- B. The PEG capital support fees of this section are for PEG capital support and are in addition to the franchise fee to be paid to the City by the State video service franchise holders.

**5.16.120– Customer service penalties.**

- A. Any holder of a State video service franchise shall comply with all applicable state and federal customer service and protection standards pertaining to the provision of video service, including but not limited to, Government Code sections 53055, 53055.1, 53055.2, and 53088.2.
- B. The City will provide any holder of a State franchise written notice of any material breach of applicable customer service and protection standards, and will allow the franchise holder at least 30 calendar days from the receipt of the notice to remedy the specified material breach. A material breach that is not remedied by the State video franchise holder within the

remedy period shall subject the State video franchise holder to the following penalties:

1. For the first occurrence of a material breach, a penalty of not more than \$500 for each day of each material breach, not to exceed one \$1,500 for each occurrence of a material breach.
  2. For the second violation of the same nature within 12 months, a penalty \$1,000 for each day of each material breach, not to exceed \$3,000 for each occurrence of the material breach.
  3. For a third or further violation of the same nature within 12 months, a penalty of \$2,500 for each day of each material breach, not to exceed \$7,500 for each occurrence of the material breach.
- C. Any notice and any penalty may be issued or imposed by the City Manager. Any notice shall be in writing and sent to the State franchisee's address of record with the California Public Utilities Commission. Notices shall be transmitted by certified or registered mail, return receipt requested and postage prepaid, or by private commercial delivery or courier service for same day or next business day delivery with delivery and receipt signature required.
- D. The holder of a State video service franchise may appeal any finding of material breach or imposition of penalties to the City Council. Any appeal must be made within 10 calendar days of receipt by the State video service franchise holder of the finding of material breach or the imposition of penalties, and must be submitted in writing to the City Clerk and the City Manager to be placed on a City Council agenda for consideration. Any appeal must contain a detailed explanation of why the appellant believes that the finding of material breach or the imposition of penalties was inconsistent with statutory requirements.
- E. The City and any franchisee may mutually agree to extend the time periods specified herein. Any such agreement shall be in writing and executed by the City Manager and an authorized representative of the franchisee.
- F. Any penalty imposed on a franchisee shall be paid to the City. Pursuant to California Public Utilities Code, section 5900(g), the City shall submit one half of all penalties received from a franchisee for violations of customer service standards to the Digital Divide Account established by California Public Utilities Code, section 280.5.

#### **5.16.130 – Discrimination based on income prohibited.**

Pursuant to California Public Utilities Code, section 5890, a cable operator or video service provider that has been granted a State franchise may not discriminate against or deny access to service to any group of potential residential subscribers because of the income of the residents in the local area in which the group resides. The City may bring complaints to the State franchising authority if a holder does not offer video service as required by California Public Utilities Code, section 5890.

#### **5.16.140 – Connections to cable system; use of antennae.**

To the extent consistent with federal and state law, subscribers shall have the right to attach VCRs, receivers, and other terminal equipment to a franchisee's cable system. Subscribers also shall have the right to use their own remote-control devices and converters and other similar equipment.

#### **5.16.150 – Captions.**

The captions to sections throughout this chapter are for convenience of reference but shall not affect construction of this article.

#### **5.16.160 – Calculation of time.**

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

#### **5.16.170 – 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 of this chapter shall be valid in all other respects and continue to be effective. In the event of a subsequent change in applicable law so that the provision which had been held invalid is no longer invalid, such provision shall thereupon return to full force and effect without further action by the City and shall thereafter be binding on the franchisee and the City.

#### **5.16.180 – Rights reserved.**

- A. The rights reserved to the City under this chapter are in addition to all other rights of the City, whether reserved by this section or authorized by law, and no action, proceeding or exercise of a right shall affect any other rights which may be held by the City.
- B. Except as otherwise provided by state law, a State franchise shall not include, or be a substitute for:
  - 1. Compliance with generally applicable requirements for the privilege of transacting and carrying on a business within the City, including, but not limited to, compliance with the conditions that the City may establish before constructing facilities for, or providing, nonvideo services;
  - 2. Any permit or authorization required in connection with operations on or in public rights-of-way or public property, including, but not limited to, encroachment permits, street work permits, pole attachment permits, and street cut permits; and
  - 3. Any permit, agreement, or authorization for occupying any other property of the City or any private person to which access is not specifically granted by the State franchise.
- C. Except as otherwise provided in state or federal law, a State franchise shall not relieve a franchisee of its duty to comply with all laws, including the ordinances, resolutions, rules, regulations, and other laws of the City, and every franchisee shall comply with the same.
- D. Nothing contained in this section shall ever be construed exempt a franchisee from compliance with all ordinances, rules or regulations of the City now in effect or which may be hereafter adopted which are consistent with this section or California Public Utilities Code section 5800, *et seq.*