

**ORDINANCE NO. 33-2008**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ELK GROVE  
AMENDING ITS CABLE TELEVISION FRANCHISE AND LICENSE ORDINANCES  
TO ADD ARTICLE 5D TO CHAPTER 5.50 AND AMEND SECTION 5.50.108C TO THE  
ELK GROVE MUNICIPAL CODE TO IMPLEMENT THE DIGITAL INFRASTRUCTURE  
AND VIDEO COMPETITION ACT OF 2006 AND DELEGATE TO THE SACRAMENTO  
METROPOLITAN CABLE COMMISSION AUTHORITY TO ADMINISTER AND  
ENFORCE THE ACT**

The City Council of the City of Elk Grove does ordain as follows:

Section 1: Purpose and Authority

The purpose and authority of this ordinance is to amend the Cable Television Franchise and License ordinances to add article 5D to Chapter 5.50 and amend section 5.50.108C to implement the Digital Infrastructure and Video Competition Act of 2006 (the "Act") and delegate to the Sacramento Metropolitan Cable Commission authority to administer and enforce the Act to provide for Public, Educational, and Governmental (PEG) Channels, PEG Channel Facilities Fees, and Franchise and License Fees applicable to local and state franchises and to establish penalties for violation of the Act, including but not limited to customer service requirements.

In support of this ordinance, the Council finds and declares as follows:

WHEREAS, the City of Elk Grove is a member of the Sacramento Metropolitan Cable Television Commission, a joint powers agency ("SMCTC"); and

WHEREAS, SMCTC has entered into franchises and licenses for the provision of cable television services for areas that include the County and the cities of Citrus Heights, Folsom, Galt, Rancho Cordova, Sacramento and Elk Grove; and

WHEREAS, such franchises and licenses are currently held by Comcast, SureWest Televideo and STI; and

WHEREAS, the California State Legislature passed and the Governor signed the Digital Infrastructure and Video Competition Act of 2006 (AB 2987, the "Act"), effective January 1, 2007, which provides for state video franchises; and

WHEREAS, AT&T has applied for and obtained a state video franchise which includes the Sacramento area and SMCTC and the City/County anticipate that others will also apply for state franchises to provide video programming services with the County and the cities that are members of SMCTC; and

WHEREAS, the County and the cities have previously delegated to SMCTC the authority to administer and enforce cable and video franchises and licenses within the

County and the cities and the Video Customer Service Act.

NOW THEREFORE, it is the intent of the City Council of the City of Elk Grove, in enacting this ordinance to maintain a positive relationship with the Sacramento Metropolitan Cable Television Commission and continue as a member agency.

Section 2: Additions

SECTION 2. Article 5d, Sections 5.50.975 through 5.50.979, is hereby added to Chapter 5.50, Title 5, of the Elk Grove Municipal Code to read as follows:

**Article 5-d  
Local Administration and Enforcement of Provisions of the  
Digital Infrastructure and Video Competition Act of 2006**

**5.50.975 Delegation of Powers.**

Except as otherwise expressly provided in any action of the Elk Grove City Council pursuant to its reserved powers under section 5.50.042 of Chapter 5.50, all powers, rights, duties and obligations of the City pursuant to the provisions of the Digital Infrastructure and Video Competition Act of 2006 (the "Act"; Public Utilities Code section 5800 et seq.) as it exists now or should hereafter be amended, is hereby delegated to and conferred upon the Board of Directors of the Sacramento Metropolitan Cable Television Commission as to any video provider included within the scope of the Act, including, without limitation, the Act's provisions for customer service regulation and enforcement, establishment of the percent of franchise fees, provision of PEG channels, carriage and channel facilities fees and enforcement of the Act.

**5.50.977 Implementation Actions.**

Consistent with the delegation of powers provided in Section 5.50.975 and without limiting this delegation of powers, the following implementation actions provided for under the Act are hereby confirmed, ratified and delegated to the SMCTC:

A. Franchise Fee. As provided in the current cable franchise and license ordinances and established by SMCTC, the franchise or license fee established within the area covered by SMCTC, including the County, for cable franchises and/or licenses is five percent (5%) of gross revenues. Said franchise or license fee amount shall also apply to holders of state franchises under the Act who provide services within the county/city.

B. PEG Channels.

1. The current cable franchise designates seven channels for Public, Educational and Government PEG programming. Local franchisees and holders of state franchises under the Act shall provide seven PEG channels.

2. All state franchisees shall comply with the provisions of the Act related to PEG channels. Without limiting the foregoing, the PEG channels shall all be carried on the basic service tier. To the extent feasible, the PEG channels shall not be separated numerically from other channels carried on the basic service tier and the channel numbers for the PEG channels shall be the same channel numbers used by the incumbent cable operator unless prohibited by federal law. After the initial designation

of PEG channel numbers, the channel numbers shall not be changed without the agreement of the local entity unless the change is required by federal law. The PEG access capacity provided shall be of similar quality and functionality to that offered by commercial channels on the lowest cost tier of service unless the signal is provided to the holder at a lower quality or with less functionality.

3. A state franchise holder shall have three months from the date SMCTC requests the PEG channels to designate the capacity. However, the three-month period shall be tolled by any period during which the designation or provision of PEG channel capacity is technically infeasible, including any failure or delay of the incumbent cable operator to take adequate interconnection available, as required by the Act. Any state franchise holder who believes that the designation or provision of PEG channel capacity is technically infeasible, shall provide to SMCTC, in writing, its reasons therefor and its plan for correcting or solving the infeasibility. SMCTC may hold a hearing on the claim of infeasibility and, thereafter, take such action as SMCTC deems proper to require the designation and provision of the PEG channels on the state franchise holder's system.

C. PEG Channel Facilities Fee.

1. In December 2006, pursuant to its delegated authority, the SMCTC imposed a PEG Channel Facilities Fee ("PEG Fee") in the amount of three percent (3%) of gross revenues of the franchisee or licensee per subscriber but delayed collection of that fee. Pursuant to its delegation of authority, SMCTC is hereby authorized to commence collection of a PEG Fee, a separate fee to support PEG channel facilities and equipment, of up to three percent (3%) of gross revenues applicable to state and local franchisees and licensees, in the manner and at the time SMCTC determines. This fee shall apply to all video franchisees, whether local or state granted, within the County. Use of the PEG Fees shall be consistent with applicable state and federal law. Any PEG Fee required to be collected may be shown as a separate line item on the regular bill of each subscriber.

2. Any franchisee or licensee that believes that it is exempt from said PEG Fee or subject to a different or lower fee may file a written request for a determination of the applicability of the PEG Fee with the SMCTC. Said request shall be filed within thirty days of the effective date of this ordinance or within thirty days of commencement of video services within the City, whichever occurs last. Said request shall be heard by the SMCTC.

a. Exemptions claims may be based on state or federal law, or on the provisions of existing franchise agreements.

b. Additional exemptions for claims for and action on claims for reduction in the PEG Fee to be paid to the SMCTC may be based on monetary or in kind PEG financial support provided by the claimant based, for example, on agreements between SMCTC and the franchisee or licensee for support of PEG facilities and equipment and/or institutional network facilities and support provided by the franchisee or licensee.

**5.50.979 Customer Service and Protection; Monetary Penalties.**

A. Local franchisees and licensees and holders of state franchises under the Act shall comply with the provisions of section 637.5 of the Penal Code and the privacy standards contained in Section 631 of the federal Cable Act. (47 U.S.C. section 551 et

seq.) Local franchisees and licensees and the holders of state franchises shall comply with the provisions of Sections 53055, 53055.1, 53055.2, and 53088.2 of the Government Code, and any other customer service standards pertaining to the provision of video service established by federal law or regulation or adopted by subsequent enactment of the Act. Local franchisees and licensees shall comply with any customer services standards included in the franchise and license agreements. SMCTC, and/or the County, shall enforce, in the manner set forth in the Act, all customer service and protection standards contained in section 5900 of the Act, including without limitation those standards set forth in section 5900(c). SMCTC has been and hereby is authorized to impose penalties for any material breach of the Act, as set forth herein.

B. The maximum monetary penalties set forth in Public Utilities Code section 5900 are hereby adopted and enacted as the applicable schedule of penalties for the material breach of the Act, including but not limited to section 5900 of the Act, by a holder of a state franchise, as follows:

1. Five hundred dollars (\$500) per day for each material breach, not to exceed one thousand five hundred dollars (\$1,500) for occurrence of a material breach.

2. If a material breach has occurred and notice has provided and a fine or penalty has been assessed, for any subsequent breach of the same nature within twelve (12) months, shall be subject to a penalty of up to one thousand dollars (\$1,000) for each day of each material breach, not to exceed three thousand dollars (\$3,000) for each occurrence of the material breach.

3. If a third or further material breach of the same nature occurs within those same twelve (12) months, and notice has provided and a fine or penalty has been assessed; the penalties shall be increased to a maximum of two thousand five hundred dollars (\$2,500) for each occurrence of the material breach, not to exceed seven thousand five hundred dollars (\$7,500) for each occurrence of the material breach. As used herein, "Material Breach" is defined as set forth in the Act, Public Utilities Code Section 5900.

### Section 3: Amendments

SECTION 3. Section 5.50.108 of Chapter 5.50, Title 5, of the Elk Grove Municipal Code is hereby amended to read as follows:

The purposes of the Cable Television Commission shall be as follows:

a. To administer pursuant to the terms and conditions of the Franchise Documents, the Initial CATV Franchise and any franchise subsequently issued pursuant to the provisions of this Chapter;

b. To exercise any and all other powers conferred by the Franchise Documents;

c. To administer and enforce the Digital Infrastructure and Video Competition Act of 2006.

Section 4: No Mandatory Duty of Care.

This ordinance is not intended to and shall not be construed or given effect in a manner that imposes upon the City or any officer or employee thereof a mandatory duty of care towards persons and property within or without the City, so as to provide a basis of civil liability for damages, except as otherwise imposed by law.

Section 5: Severability.

If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable. This City Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the ordinance be enforced.

Section 6: Effective Date and Publication

This Ordinance shall take effect thirty (30) days after its adoption. In lieu of publication of the full text of the ordinance within 15 days after its passage, a summary of the ordinance may be published at least five days prior to and fifteen (15) days after adoption by the City Council and a certified copy shall be posted in the office of the City Clerk, pursuant to GC 36933(c)(1).

**ORDINANCE:** 33-2008  
**INTRODUCED:** June 25, 2008  
**ADOPTED:** July 9, 2008  
**EFFECTIVE:** August 8, 2008

  
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GARY DAVIS, MAYOR of the  
CITY OF ELK GROVE

ATTEST:

  
\_\_\_\_\_  
SUSAN J. BLACKSTON, CITY CLERK

APPROVED AS TO FORM:

  
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SUSAN COCHRAN, CITY ATTORNEY

Date signed: July 21, 2008

**CERTIFICATION**  
**ELK GROVE CITY COUNCIL ORDINANCE NO. 33-2008**

STATE OF CALIFORNIA        )  
COUNTY OF SACRAMENTO    )     ss  
CITY OF ELK GROVE         )

*I, Susan J. Blackston, City Clerk of the City of Elk Grove, California, do hereby certify that the foregoing ordinance, published and posted in compliance with State law, was duly introduced on June 25, 2008 and approved, and adopted by the City Council of the City of Elk Grove at a regular meeting of said Council held on July 9, 2008 by the following vote:*

**AYES :**        **COUNCILMEMBERS:**     *Davis, Hume, Scherman, Leary, Cooper*

**NOES:**       **COUNCILMEMBERS:**     *None*

**ABSTAIN:**   **COUNCILMEMBERS:**     *None*

**ABSENT:**    **COUNCILMEMBERS:**     *None*

*A summary of the ordinance was published pursuant to GC 36933(c) (1).*

  
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**Susan J. Blackston, City Clerk**  
**City of Elk Grove, California**