

ORDINANCE NO. _____

AN ORDINANCE ADDING ARTICLE III TO CHAPTER 8 OF THE SONOMA COUNTY GOVERNMENT CODE, WHICH IMPLEMENTS THE PROVISIONS OF THE DIGITAL INFRASTRUCTURE AND VIDEO COMPETITION ACT OF 2006, CODIFIED IN CALIFORNIA PUBLIC UTILITIES CODE SECTION 5800 ET SEQ., WHICH THE COUNTY IS REQUIRED TO ADMINISTER AND ENFORCE THROUGHOUT THE UNINCORPORATED AREAS OF THE COUNTY.

The Board of Supervisors for the County of Sonoma, State of California, ordains as follows:

SECTION I: FINDINGS AND PURPOSE.

The Sonoma County Board of Supervisors finds and determines:

- (1) In September 2006, the Governor signed into law the Digital Infrastructure and Video Competition Act of 2006 (DIVCA), Section 5800 et seq. of the California Public Utilities Code, that allows video service providers to obtain a state-issued franchise to provide video services in a local community.**
- (2) Section 5885(a) of the DIVCA requires the County of Sonoma to allow the holder of a state franchise under the DIVCA to install, construct and maintain a network within public rights-of-way under the same time, place, and manner as the provisions governing telephone corporations under applicable state and federal law.**
- (3) It is necessary to incorporate certain requirements of the DIVCA into the Sonoma County Code in order to comply with the DIVCA.**

SECTION II: AMENDMENTS TO THE SONOMA COUNTY CODE.

Article III is added to Chapter 8, Article XX, of the Sonoma County Code to read as follows:

ARTICLE III. STATE VIDEO SERVICE FRANCHISES

8-42. Purpose

This Chapter 8, Article III, of the Sonoma County Government Code is applicable to video service providers who have been 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 provide cable or video services in any location(s) within the unincorporated boundaries of the County. It is the purpose of Article III of Chapter 8 to implement within the unincorporated areas of Sonoma County the provisions of DIVCA and the

rules of the California Public Utilities Commission promulgated thereunder that are applicable to a “local franchising entity” or a “local entity” as defined in DIVCA.

8-43. Rights Reserved.

(a.) The rights reserved to the County in Article III of Chapter 8 are in addition to all other rights of the County, whether reserved by this Article III of Chapter 8 or authorized by law, and no action, proceeding or exercise of a right shall affect any other rights which may be held by the County.

(b.) Except as otherwise provided by DIVCA, a state franchise shall not include, or be a substitute for:

i. Compliance with applicable requirements for the privilege of transacting and carrying on a business within the County, including, but not limited to, compliance with the conditions that the County may establish before facilities may be constructed for, or providing, non-video services;

ii. 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

iii. Any permit, agreement, or authorization for occupying any other property of the County or any private person to which access is not specifically granted by the state franchise.

(c.) No permit issued by the County to a state franchise holder is itself a franchise, nor shall any permit create a vested right that would prohibit the County from revoking or amending the permit.

8-44. Compliance with County Ordinances.

Nothing contained in Article III, Chapter 8, shall be construed so as to exempt a state franchise holder from compliance with all ordinances, rules, or regulations of the County now in effect or which may be hereafter adopted which are consistent with this Article III, Chapter 8, or California Public Utilities Code section 5800 *et seq.*, or any obligations under any franchise issued by the County insofar as those obligations may be enforced under California Public Utilities Code section 5800 *et seq.*

8-45. Definitions

(a.) Definitions Generally -- Interpretation of Language. For purposes of this Article III of Chapter 8, the following terms, phrases, words, and their derivations shall have the meaning given in this Section 8-45. Unless otherwise expressly stated, words not defined in this Section 8-45 shall be given the meaning set forth in Chapter 8, Section 8-1, Sonoma County Government Code as may be amended from time to time, unless the context indicates otherwise.

Words not defined in this Section 8-1 shall have the same meaning as established in: (1) DIVCA, and if not defined therein, (2) California Public Utilities Commission rules implementing DIVCA, and if not defined therein, (3) Title VI of Title 47 of the Communications Act of 1934, as amended, 47USC § 521 et. seq., and if not defined therein, (4) their common and ordinary meaning. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, words in the singular number include the plural number, and "including" and "include" are not limiting. The words "shall" and "will" are always mandatory, but the use of those terms grants no private rights to any person with respect to the County. References to governmental entities (whether persons or entities) refer to those entities or their successors in authority. If specific 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 nominated, and include laws, ordinances and regulations now in force or hereinafter enacted or amended.

(i.) "Gross revenues" means all revenues actually received by the holder of a state franchise or its affiliates that are derived from the operation of the holder's network to provide cable service or video service within the unincorporated areas of the County.

(ii.) "PEG access," or "PEG" means the availability of a cable or state franchise holder's system for public, educational, or governmental use by various agencies, institutions, organizations, groups, and individuals, including organizations, groups, or individual members of the general public, educational institutions, and the County and its designated access providers, to acquire, create, and distribute programming not under a state franchise holder's editorial control.

(iii.) "State franchise holder" means a cable operator or video service provider that has been issued a franchise by the California Public Utilities Commission to provide cable service or video service, as those terms are defined in California Public Utilities Code section 5830, within any portion of the unincorporated areas of the County.

8-46. Franchise Fees

(a) State Franchise Fees. Any state franchise holder operating within the unincorporated areas of the County shall pay to the County a state franchise fee equal to five percent (5%) of gross revenues that may be subject to a franchise fee under California Public Utilities Code section 5860.

(b) Payment of Franchise Fees. The state franchise fee required pursuant to this Section 8-46 (a) shall be paid quarterly, in a manner consistent with California Public Utilities Code section 5860. The state franchise holder shall deliver to the County, by check or other means, which shall be agreed to by the County, a separate payment for the state franchise fee not later than forty-five (45) days after the end of each calendar quarter. Each payment made shall be accompanied by a report, detailing how the payment was calculated, and shall include such additional information on the appropriate form as designated by the County.

(c) Examination of Business Records. The County may examine the business records of the holder of a state franchise in a manner consistent with California Public Utilities Code Section 5860(i).

(d) Late Payments. In the event a state franchise holder fails to make payments required by this Section 8-46 on or before the due dates specified herein, the County shall impose a late charge at the rate per year equal to the highest prime lending rate during the period of delinquency, plus one percent (1%).

8-47. Customer Service

(a) Customer Service Standards. A state franchise holder shall comply with Sections 53055, 53055.1, 53055.2 and 53088.2 of the California Government Code; the FCC customer service and notice standards set forth in Sections 76.309, 76.1602, 76.1603, and 76.1619 of Title 47 of the Code of Federal Regulations; Section 637.5 of the California Penal Code; the privacy standards of Section 551 of Title 47 of the United States Code; and, to the extent consistent with DIVCA, all other applicable state and federal customer service and consumer protection standards pertaining to the provision of video service, include any such standards hereafter adopted. In case of a conflict, the stricter standard shall apply. All customer service and consumer protection standards under this paragraph shall be interpreted and applied to accommodate newer or different technologies while meeting or exceeding the goals of the standards.

(b) Penalties for Violations of Standards. The County shall enforce the compliance of state franchise holders with respect to the state and federal customer service and consumer protection standards set forth in this Section 8-47. The County will provide a state franchise holder with a written notice of any alleged material breaches, as defined in California Public Utilities Code section 5900, of applicable customer service or consumer protection standards, and will allow the state franchise holder 30 days from the receipt of the notice to remedy the specified material breach. Material breaches not remedied by a state franchise holder within the 30-day time period, irrespective of the number of customers affected, will be subject to the following penalties to be imposed by the County:

(i.) For the first occurrence of a material breach, a fine of \$500 may be imposed for each day the violation remains in effect, not to exceed \$1,500 for each violation.

(ii.) For a second material breach of the same nature within 12 months, a fine of \$1,000 may be imposed for each day the violation remains in effect, not to exceed \$3,000 for each violation.

(iii.) For a third material breach of the same nature within 12 months, a fine of \$2,500 may be imposed for each day the violation remains in effect, not to exceed \$7,500 for each violation.

(c) Any penalties imposed by the County shall be imposed in a manner consistent with California Public Utilities Code section 5900.

8-48. Permits and Construction

(a) Except as expressly provided in this Section 8-48 all provisions of Chapter 15 (Highways, Road, and Bridges), Sections 8-22 and 8-23 (“Bond Requirements- Insurance - Indemnification”), 8-3 (“Location and construction of facilities generally, undergrounding”), 8-7 (“Changes required by public improvements”), 8-8 (“Effect of failure to perform required street, etc., work; shielding, filtering and grounding”) and 8-6 (“Removal and Abandonment of Facilities”) of the Sonoma County Government Code, and all County administrative rules and regulations developed to any of these provisions, as now existing or as hereafter amended, shall apply to all work performed by or on behalf of a state franchise holder on any County public rights-of-way, public property, or County easement.

(b) Permits. Prior to commencing any work for which a permit is required by Chapter 15, a state franchise holder shall apply for and obtain a permit in accordance with the provisions of Chapter 15 and shall comply with all other applicable laws and regulations, including but not limited to all applicable requirements of Division 13 of the California Public Resources Code, Section 21000, *et seq.* (the California Environmental Quality Act).

(c) The Director of Transportation and Public Works shall either approve or deny a state franchise holder's application for any permit required under Section 8-48(a) within sixty (60) days of receiving a completed permit application from the state franchise holder. The Director of Transportation and Public Works may delegate his or her duties under this paragraph to the Director of the Permit and Resource Management Department.

(d) If the Director of Transportation and Public Works or the Director of the Permit and Resource Management Department, as applicable, denies a state franchise holder's application for a permit, the applicable officer shall, at the time of notifying the applicant of denial, furnish to the applicant a detailed explanation of the reason or reasons for the denial.

(e) A state franchise holder that has been denied a permit by final decision of the Director of Transportation and Public Works or the Director of the Permit and Resource Management Department, as applicable, may appeal the denial to the County Board of Supervisors by filing a written notice of appeal in duplicate with the Clerk within 10 working days of the mailing or posting of the final decision. The notice shall state clearly the reasons why the denial decision should be overturned. The Board shall only hear the appeal if the notice is filed and all required fees are paid within the 10-day appeal period. Once a notice of appeal has been filed, it may be withdrawn by the state franchise holder prior to the distribution of public hearing notices, but not thereafter.

(f) The clerk shall set the hearing of the appeal and shall give notice of such hearing to the applicant, County Administrator and Board of Supervisors, and by posting in the manner required for appeals. In addition, the County Board of Supervisors may give notice of the hearing in such other manner as it wishes. The Board may continue from time to time any hearing held by it.

(g) The Director of Transportation and Public Works or the Director of the Permit and Resource Management Department, as applicable, shall transmit the entire record concerning the permit application to the Board.

(h) In rendering its decision on the appeal, the County Board of Supervisors shall not hear or consider any argument or evidence of any kind other than the record of the matter received from the Director of Transportation and Public Works or the Director of the Permit and Resource Management Department, as applicable, unless the County Board of Supervisors is conducting a public hearing on the matter.

(i) The issuance of a permit is not a franchise, and does not grant any vested rights in any location in the public rights-of-way, or in any particular manner of placement within the rights-of-way. Without limitation, a permit to place cabinets and similar appurtenances aboveground may be revoked and the permittee required to place facilities underground, in accordance with applicable law.

8-49. Emergency Alert System

Each state franchise holder shall comply with the emergency alert system requirements of the Federal Communications Commission in order that emergency messages may be distributed over the state franchise holder's network. To the extent consistent with Public Utilities Code Section 5880, each state franchise holder shall install and maintain an audio override on all channels for transmission of emergency messages and alerts, and shall provide for character generated "crawl" information to be superimposed on all channels for the hearing impaired, as such capability was required under local franchises in effect in the County on January 1 to December 30, 2006.

8-50. Public, Educational, And Government Access Channel Capacity

(a) A state franchise holder shall designate a sufficient amount of capacity on its network to allow the provision of at least three (3) PEG channels to satisfy the requirement of Section 5870 of the California Public Utilities Code within the time limits specified therein.

(b.) A state franchise holder shall provide an additional PEG channel when the standards set forth in Section 5870(d) of the California Public Utilities Code are satisfied by the County or any entity designated by the County to manage one or more of the PEG channels.

8-51. Public, Educational, And Government Access Support

(a.) Amount of PEG Support Fee. Any state franchise holder shall pay to the County -- or if directed by the County, to the County's designated PEG provider -- a PEG fee equal to one percent (1%) of gross revenues.

(b.) The PEG support fee shall be used for PEG purposes in a manner that is consistent with state and federal law.

(c.) A state franchise holder shall remit the PEG support fee quarterly, within forty-five days after the end of each calendar quarter. Each payment made shall be accompanied by a summary, detailing how the PEG support fee was calculated.

(d.) In the event that a state franchise holder fails to pay the PEG support fee when due, or underpays the proper amount due, the state franchise holder shall pay interest at the rate per year equal to the highest prime lending rate during the period of delinquency, plus one percent (1%), or the maximum rate specified by state law.

8-52. PEG Carriage and Interconnection.

(a.) As set forth in Sections 5870(b) and 5870(g)(3) of the California Public Utilities Code, state franchise holders shall ensure that all PEG channels are receivable by all subscribers, whether they receive digital or analog service, or a combination thereof, without the need for any equipment other than that needed to receive the lowest cost tier of service. PEG access capacity provided by a state franchise holder shall be of similar quality and functionality to that offered by commercial channels (unless the PEG signal is provided to the state franchise holder at a lower quality or with less functionality), shall be capable of carrying a National Television System Committee (NTSC) television signal, and shall be carried on the state franchise holder's lowest cost tier of service. To the extent feasible, the PEG channels shall not be separated numerically from other channels carried on the lowest cost tier of service and the channel numbers for the PEG channels shall be the same channel numbers used by any incumbent cable operator, unless prohibited by federal law. After the initial designation of the PEG channel numbers, the channel numbers shall not be changed without the agreement of the County unless federal law requires the change.

(b.) Where technically feasible, each state franchise holder and each incumbent cable operator shall negotiate in good faith to interconnect their networks for the purpose of providing PEG programming. Interconnection may be accomplished by any means authorized under Public Utilities Code Section 5870(h). Each state franchise holder and incumbent cable operator shall provide interconnection of PEG channels on reasonable terms and conditions and may not withhold the interconnection. If a state franchise holder and an incumbent cable operator cannot reach a mutually acceptable interconnection agreement for PEG carriage, the County may require the incumbent cable operator to allow each state franchise holder to interconnect its network with the incumbent cable operator's network at a technically feasible point on the state franchise holder's network as identified by the state franchise holder. If no technically feasible point of interconnection is available, each state franchise holder shall make interconnection available to each PEG channel originator programming a channel in the County and shall provide the facilities necessary for the interconnection. The cost of any interconnection shall be borne by each state franchise holder requesting the interconnection unless otherwise agreed to by the parties.

8-53. Notices

(a) Each state franchise holder or applicant for a state franchise shall file with the County a copy of all applications or notices that the state franchise holder or applicant is required to file with the California Public Utilities Commission.

(b) Unless otherwise specified in this Article III of Chapter 8, all notices or other documentation that a state franchise holder is required to provide to the County under this Article or the California Public Utilities Code shall be provided to both the County Administrator and the County staff person in charge of cable and telecommunications, or their successors or designees.

SECTION III. If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be unconstitutional and invalid, such decision shall not affect the validity of the remaining portion of this ordinance. The Board of Supervisors hereby declares that it would have passed this ordinance and every section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional or invalid.

SECTION IV. This ordinance shall be and the same is hereby declared to be in full force and effect from and after thirty (30) days after the date of its passage and shall be published once before the expiration of fifteen (15) days after said passage, with the names of the Supervisors voting for or against the same, in *The Press Democrat*, a newspaper of general circulation published in the County of Sonoma, State of California.

In regular session of the Board of Supervisors of the County of Sonoma introduced on the ___ th day of _____, 2009, and finally passed and adopted this ___th day of _____, 2009, on regular roll call of the members of said Board by the following vote:

SUPERVISORS:

Brown_____ Kerns_____ Zane_____ Carrillo_____ Kelley_____

Ayes_____ Noes_____ Abstain_____ Absent_____

SO ORDERED.

Chair, Board of Supervisors
County of Sonoma

ATTEST:

Clerk of the Board of Supervisors