

**ORDINANCE NO. 14-016**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PACIFIC GROVE  
DELETING SECTIONS OF PACIFIC GROVE MUNICIPAL CODE CHAPTER 21.12  
PREEMPTED BY THE DIGITAL INFRASTRUCTURE AND VIDEO COMPETITION  
ACT OF 2006**

**FINDINGS**

WHEREAS, the Digital Infrastructure and Video Competition Act of 2006 (DIVCA), California Public Utilities Code sections 5800, *et seq.*, took effect January 1, 2007, and established a State regulatory structure administered by the California Public Utilities Commission (CPUC). DIVCA established the CPUC as the sole authority vested with authority to grant franchises, regulate build-out and non-discrimination standards, impose user and application fees, and establish franchise fees for video service providers; and,

WHEREAS, Pacific Grove Ordinance 09-025 incorporated DIVCA into the Pacific Grove Municipal Code (PGMC) at section 21.12.270; and,

WHEREAS, at the time Ordinance 09-025 was adopted, the preempted sections of PGMC chapter 21.12 were not ripe for repeal, but those preempted provisions are no longer needed and due to preemption can have no operative effect; and,

WHEREAS, this Ordinance repeals preempted sections of PGMC Chapter 21.12, and renumbers the remaining section for clarity; and,

WHEREAS, this Ordinance does not constitute a project under the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines section 15378.

**NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF PACIFIC GROVE  
DOES ORDAIN AS FOLLOWS:**

SECTION 1. The above findings and recitals are true and correct and are incorporated as though fully set forth herein.

SECTION 2. The following sections of Chapter 21.12 of the Pacific Grove Municipal Code are hereby repealed in their entirety:

- 21.12.010,
- 21.12.020,
- 21.12.030,
- 21.12.040,
- 21.12.050,
- 21.12.060,
- 21.12.070,
- 21.12.080,
- 21.12.090,

21.12.100,  
21.12.110,  
21.12.120,  
21.12.130,  
21.12.150,  
21.12.160,  
21.12.170,  
21.12.220,  
21.12.240,  
21.12.250,  
21.12.260.

SECTION 3. Chapter 21.12 of the Pacific Grove Municipal Code shall be amended as follows:

Section 21.12.270 shall be renumbered as Section 21.12.010;  
Section 21.12.140 shall be renumbered as Section 21.12.020;  
Section 21.12.180 shall be renumbered as Section 21.12.030;  
Section 21.12.190 shall be renumbered as Section 21.12.040;  
Section 21.12.200 shall be renumbered as Section 21.12.050;  
Section 21.12.210 shall be renumbered as Section 21.12.060; and  
Section 21.12.230 shall be renumbered as Section 21.12.070.

SECTION 4. The newly renumbered Section 21.12.010(b) of the Pacific Grove Municipal Code (former Section 21.12.270(b)) shall be amended by deletion of all text shown in ~~strikeout text~~ and the addition of all text shown in bold, italic, underscored text (***bold, italic, underscored text***), as follows:

(b) Definitions Generally – Interpretation of Language. For purposes of this section, the following terms, phrases, words, and their derivations shall have the meaning given in this subsection. Unless otherwise expressly stated, words not defined in this section shall be given the meaning set forth in ***DIVCA***. ~~PGMC 21.12.020 as may be amended from time to time, unless the context indicates otherwise.~~ Words not defined in this subsection ~~or PGMC 21.12.020~~ shall have the same meaning as established in (1) ***DIVCA***, and if not defined therein, (2) commission rules implementing ***DIVCA***, and if not defined therein, (3) Title VI of Title 47 of the Communications Act of 1934, as amended, 47 U.S.C. Section 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. 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.

SECTION 5. The newly renumbered Section 21.12.010(e)(1) of the Pacific Grove Municipal Code former Section 21.12.270(e)(1) shall be amended by deletion of all text shown in ~~strikeout text~~ and the addition of all text shown in bold, italic, underscored text (***bold, italic, underscored text***), as follows:

(1) Except as expressly provided in this section, the provisions of PGMC 21.12.~~140020~~, 21.12.~~180030~~, 21.12.~~190040~~, 21.12.~~200050~~, 21.12.~~210060~~ and 21.12.~~230070~~ shall apply to all work performed by or on behalf of a state franchise holder on any city public rights-of-way, public property, or city easement as those terms are defined in this chapter.”

SECTION 6. The City Council declares that, should any provision, section, paragraph, sentence, or word of this ordinance be rendered or declared invalid by any final court action in a court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences, or words of this ordinance as hereby adopted shall remain in full force and effect.

SECTION 7. This ordinance shall be effective 30 days from and after the date of its passage.

SECTION 8. A summary of this ordinance shall be published at least once 5 days before adoption and at least once before the expiration of 15 days after its passage in a newspaper of general circulation.

PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE THIS 20th day of August, 2014, by the following vote:

AYES: Mayor Kampe, Councilmembers Cohen, Cuneo, Fischer, Huitt, Lucius, Miller

NOES: None

ABSENT: None

APPROVED:

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BILL KAMPE, Mayor

ATTEST:

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ANN CAMEL, Acting City Clerk

APPROVED AS TO FORM:

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DAVID C. LAREDO, City Attorney