



Legislation Details (With Text)

**File #:** 11402      **Version:** 1      **Name:** 4399chap36  
**Type:** Ordinance      **Status:** Passed  
**File created:** 7/23/2008      **In control:** COMMON COUNCIL ORGANIZATIONAL COMMITTEE (ended 4/2017)  
**On agenda:** 9/2/2008      **Final action:** 9/2/2008  
**Enactment date:** 9/18/2008      **Enactment #:** ORD-08-00106  
**Title:** Repealing and recreating Chapter 36 of the Madison General Ordinances to update the City's ordinances pertaining to cable television franchises and video service providers.  
**Sponsors:** Judy Compton  
**Indexes:**  
**Code sections:**  
**Attachments:**

Date	Ver.	Action By	Action	Result
9/2/2008	1	COMMON COUNCIL	Adopt	Pass
9/2/2008	1	COMMON COUNCIL ORGANIZATIONAL COMMITTEE (ended 4/2017)	RECOMMEND TO COUNCIL TO ADOPT - REPORT OF OFFICER	Pass
8/21/2008	1	BROADBAND TELECOMMUNICATIONS REGULATORY BOARD (prior to 9-18-2008)		
8/5/2008	1	COMMON COUNCIL ORGANIZATIONAL COMMITTEE (ended 4/2017)	Refer	
8/5/2008	1	COMMON COUNCIL	Refer	
7/23/2008	1	Attorney's Office/Approval Group	Referred for Introduction	

**Fiscal Note**

This ordinance change has no immediate fiscal impact on the City of Madison's collection of PEG or franchise fees. The current state statute does, however, eliminate the PEG fee after January 10, 2011. The elimination of the PEG fee will have a fiscal impact on the City.

**Title**

Repealing and recreating Chapter 36 of the Madison General Ordinances to update the City's ordinances pertaining to cable television franchises and video service providers.

**Body**

DRAFTER'S ANALYSIS: This amendment is necessitated by recent state legislation that replaces local cable television franchising authority with statewide Video Provider Franchises. The new state law preempts the City's authority in several regards. This revision eliminates ordinance language that would otherwise conflict with the new legislation. This ordinance revision also exercises regulatory authority over video service providers and cable television operators in those areas where the City's limited home rule authority has not been affected by the statewide franchising legislation.

\*\*\*\*\*

The Common Council of the City of Madison do hereby ordain as follows:

Chapter 36 entitled "Broadband Telecommunications Franchise Enabling Ordinance" of the Madison

General Ordinances is hereby repealed and recreated to read as follows:

**“CHAPTER 36  
VIDEO AND CABLE TELEVISION SERVICE PROVIDERS**

Section

- 36.01 General Provisions.
- 36.02 Definitions.
- 36.03 Video Service Provider Fee and PEG Channel Monetary Support.
- 36.04 PEG Channel Requirements.
- 36.05 Police Powers, Design/Construction Standards & Rights of Ways.

**36.01 GENERAL PROVISIONS.** The provisions of sec. 66.0420, Wis. Stats., are hereby incorporated as though fully set forth herein. The additional provisions of this Chapter supplement those provisions of the state statutes and constitute an expression of the City’s home rule authority. Any person who owns, leases, operates, controls, constructs or maintains a video service or cable television service shall comply at all times with the provisions herein when constructing, operating or maintaining a video service or cable television service in the City.

**36.02 DEFINITIONS.** The terms used in this chapter shall have the same meaning as those terms are defined in sec. 66.0420(2), Wis. Stats., which is incorporated by reference as though fully set forth herein.

**36.03 VIDEO SERVICE PROVIDER FEE AND PEG CHANNEL MONETARY SUPPORT.**

- (1) Video Service Provider Fee. Video Service Providers and Cable Operators shall pay, in addition to the PEG Support Fee set forth in sub. (2) below, a Video Service Provider fee to the City in an amount equal to five percent (5%) of the providers gross receipts.
- (2) Public, Educational, and Government (PEG) Channel Monetary Support. Video Service Providers and Cable Operators shall pay, in addition to the Video Service Provider Fee set forth in sub. (1) above, a monthly fee of sixty-three cents (\$ .63) per subscriber which payment shall be used to fund PEG access related external costs. The allocation of the PEG Channel Monetary Support fee between public access and government access activities/channels shall be at the sole discretion of the City and which allocation the City may alter at any time and without notice.
- (3) Supporting Documentation. Payment of the fees set forth in sub. (1) and (2) above shall be accompanied by documentation verified by an agent or officer with the authority to legally bind the provider that is sufficient for the City to verify the accuracy of the fees being paid by the provider. The failure to provide such documentation shall subject the provider to a forfeiture of not less than \$100 nor more than \$5,000 per day until such time the documentation is provided to the City.

**36.04 PEG CHANNEL REQUIREMENTS.**

- (1) Number of PEG Channels. Video Service Providers and Cable Operators shall provide capacity for four PEG channels. These channels shall be allocated as follows: one channel dedicated for use by Madison City Channel which is operated by the City as a governmental access channel; one channel dedicated for use by WYOU, which is operated as a public access channel by WYOU Community Television, Inc., and; two channels dedicated for use as educational access channels by the Madison Metropolitan School District.
- (2) Location of PEG Channels. PEG channels must be carried on any service tier that is viewed by more than fifty percent (50%) of the video service provider’s or cable operator’s customers. Video service provider’s or cable operator’s may not charge an extra fee nor require the rental of special equipment in order for their customers to view such PEG channels if such fees or equipment are not required to view any of the non-PEG channels on such service tiers.
- (3) Quality of PEG Channels. Video Service Providers and Cable Operators shall not carry a PEG television signal in a lesser format or lower resolution than that afforded to a non-broadcast digital programmer carried on the video or cable system. The signal quality of PEG channels shall be indistinguishable or better than the signal of other non-PEG channels carried by the video service provider or cable operator.
- (4) Drops/Origination Points. Video service providers and cable operators shall supply and

maintain upstream capacity from all current origination points, (a/k/a “live drops”) and shall provide sufficient capacity for carriage of a television signal from each of these origination points at all times. These origination points are all located in the City of Madison as follows:

- (a) Madison Municipal Building, Room 210 215 Martin Luther King, Jr. Boulevard;
- (b) City-County Building, Room 201, 210 Martin Luther King, Jr. Boulevard;
- (c) Overture Center, 201 State Street;
- (d) Monona Terrace Community and Convention Center, 1 John Nolen Drive;
- (e) Madison Public Library, Central Library, 201 W. Mifflin Street;
- (f) WYOU Studios at 609 E. Washington Avenue;
- (g) Madison Metropolitan School District, 545 W. Dayton Street.

(5) Substantial Utilization of PEG Channels and PEG Programming.

- (a) Procedures for Disconnection Due to Failure to Substantially Utilize PEG Channel.
  - 1. Written Notice of Objection to Program as Not Locally produced. A Video Service Provider or Cable Operator must provide written notice to the PEG Channel Director within ten days of the first or original airing of any program that the Video Service Provider or Cable Operator is objecting to the program as having not been locally produced. Such notice shall describe with particularity the program being objected to, the date and time the program was first aired and the factual basis supporting the objection. Failure to timely provide this notice waives the objection and therefore, such program will be counted towards the determination of whether said PEG channel is being substantially utilized.
  - 2. Written Notification of Failure to Substantially Utilize Channel. A Video Service Provider or Cable Operator must provide written notification to any PEG channel Director within 10 days following any week in which the Video Service Provider or Cable Operator objects that the PEG Channel has not been substantially utilized. Such notice shall describe with particularity the time period being objected to, the dates and times during the week in which qualifying programming was not aired and the factual basis supporting the objection. Failure to timely provide this notice waives this objection and therefore, such programming period will be counted towards the determination of whether said PEG channel is being substantially utilized.
  - 3. Written Notification of Intention to Disconnect, Reprogram or Drop PEG Channel. A Video Service Provider or Cable Operator must provide 120 Days advance written notification to any PEG channel Director that the Video Service Provider or Cable Operator intends to disconnect, reprogram or drop. A video Service Provider or Cable Operator may not disconnect, reprogram or drop any PEG channel that it has not timely provided with such written notice. Furthermore, should any PEG channel Director provide the Video Service Provider or Cable Operator with a written response that the PEG channel was substantially utilized during the time period in question or will be substantially utilized by the municipality, the video service provider or cable operator shall not disconnect, reprogram or drop the PEG channel.
  - 4. Penalty for Failing to Provide Notice(s). If any Video Service Provider or Cable Operator disconnects, reprograms or drops any PEG Channels without providing the notice(s) as required in subs. a through c above, the video service provider or cable operator shall be subject to the following:
    - a. Immediate reinstatement of the PEG channel to its location in the channel line-up prior to the disconnection, reprogramming or dropping of the channel.
    - b. A forfeiture of not less than \$1,000 nor more than \$10,000 for each day that the PEG channel is disconnected, reprogrammed or dropped.
- (b) Locally Produced Programming. Locally produced programming shall include all programming produced by any PEG channel and shall include all programming that has

not been commercially aired. "Locally produced programming" includes any program that was in part produced for original airing in the broadcast market in which it was produced either in part or in whole. The term "locally produced" shall not require that the programming was created, filmed or produced in the Madison or Dane County area. PEG stations may share and exchange programming content in order to meet the substantial utilization requirements of sec. 66.0420(5)(b), Wis. Stats.

- (7) Underwriting of Programming. PEG channels may transmit non-commercial programming to subscribers generally or to specific recipients of video service providers or cable operators. Nothing herein shall in anyway prohibit or prevent PEG channels from accepting grants or sponsorships in support of such programming nor shall PEG channels be prohibited from acknowledging such grants or sponsorships before, during or immediately after such PEG programming has been broadcast in such a manner that is similar to the manner in which the Public Broadcasting System (PBS) acknowledges the substantially similar support of its programming content. Such acknowledgements shall comply with the requirements of 47 USC § 399b as though the PEG channel were a public broadcast station.
- (8) Notice of Intention to Move PEG Channel Locations/Designations. Any Video Service Provider or Cable Operator who intends to move any PEG Channel from the channel designations in effect at the time this ordinance is enacted may only make such a change after providing 60 days advance written notice to the affected PEG channel(s). Additionally, such Video Service Provider or Cable Operator shall engage in a public education program of such intensity and duration as to reasonably inform the general public of the proposed PEG channel designations.

### **36.05 POLICE POWERS, DESIGN/CONSTRUCTION STANDARDS & RIGHTS OF WAYS**

- (1) Subject to Police Powers. Video Service Providers and Cable Operators are subject to the police power of the City to adopt and enforce general ordinances necessary to the safety, health and welfare of the public. The grant of a statewide video or cable franchise, does not render or to any extent lose, waive, impair or lessen the lawful powers and rights, now or hereafter vested in the City under the Constitution and statutes of the State of Wisconsin to regulate the use of streets and public ways or to regulate any matter affecting the safety, health and welfare of the public. The City shall make the video service providers and cable operators history of compliance with such codes and ordinances available to the Department of Financial Institutions so that the Department may determine the provider or operators legal, financial and technical qualifications to provide video services.
- (2) Design, Permits, Construction and Excavation. Video Service Providers and Cable Operators shall comply with all applicable City codes and ordinances including, without limitation by expression herein, Chapter 6 Fire Department and Fire Regulations; Chapter 10, Streets, Alleys, Sidewalks and Gutters; Chapter 17, Radio, Television and Electronics Code; Chapter 18, Plumbing Code; Chapter 19, Electrical Code; Chapter 29, Building Code; Chapter 30, Heating, Ventilating, Air Conditioning of the Madison General Ordinances and shall be subject to any forfeitures so specified for any violations thereof. The City shall make the persons history of compliance with such codes and ordinances available to the Department of Financial Institutions so that the Department may determine the provider or operators legal, financial and technical qualifications to provide video services."