



Agenda Report

February 27, 2017

TO: Honorable Mayor and City Council
FROM: Department of Information Technology
SUBJECT: REAUTHORIZATION OF CITY PEG FEE COLLECTION AUTHORITY UNDER STATE LAW

RECOMMENDATION:

It is recommended that the City Council:

1. Find that the following proposed action is exempt from the California Environmental Quality Act ("CEQA") pursuant to State CEQA Guidelines Section 15061 (b)(3); general rule; and
2. Direct the City Attorney to prepare an ordinance within 14 days reauthorizing the City's PEG (Public, Educational and Government Access) Fee.

BACKGROUND:

In California, franchising and regulation of cable TV and video providers is governed by the Digital Infrastructure and Video Competition Act of 2006 (DIVCA). DIVCA shifted franchising of cable TV and video operators from the local to the state level, and included a variety of provisions specifying what local agencies could require of cable TV and video providers. One provision of DIVCA allows local entities to establish by ordinance a fee equal to one percent of operators' gross revenues generated locally, which can be used solely to support Public, Educational and Government Access (PEG) capital expenditures.

The City Council amended Pasadena's Telecommunications Ordinance – Title 18 of the Municipal Code – in 2008 to incorporate requirements for video providers franchised by the state in conformance with DIVCA. The amendments included establishment of the PEG Fee for state-franchised providers.

The City collects approximately \$260,000 annually in PEG Fees, which fund capital improvements to PEG facilities and replacement of equipment for Pasadena's four PEG

channels (City channel KPAS, Pasadena Unified School District channel KLRN-TV, Pasadena City College channel PCC-TV, and the public access Arroyo Channel).

The current state-issued franchises for the two video providers operating in Pasadena – AT&T and Charter Communications (now branded as Spectrum) – expire in March, 2017 and January, 2018 respectively. AT&T applied for renewal of its state franchise in December, 2016. Following a highly streamlined procedure, the CPUC approved a new 10-year AT&T franchise term effective March 30, 2017. Staff anticipates that Charter will similarly apply for and be granted renewal of its state franchise before its initial franchise term ends.

The conclusion of the initial 10-year terms of the state franchises is significant because DIVCA states that local one percent PEG fee ordinances "...shall expire, and may be reauthorized, upon the expiration of the state franchise." At present, it is unclear whether re-authorization of the City's PEG Fee ordinance is required upon expiration of the AT&T and Charter video franchises. However, staff has observed that other local agencies, including the City of Los Angeles, have sought re-authorization of their PEG Fee ordinances as AT&T's initial statewide franchise comes to an end.

Although a reasonable argument may be made that DIVCA's expiration language does not apply, there is the possibility that substantial PEG funding could be lost unless the fee is reauthorized. As such, staff recommends the City Council direct the City Attorney's Office to prepare an ordinance within 14 days to reauthorize the PEG Fee.

COUNCIL POLICY CONSIDERATION:

The proposed action supports the City Council Strategic Goal to "Maintain fiscal responsibility and stability" by facilitating continued City collection of revenue that supports PEG-related capital expenditures.

ENVIRONMENTAL ANALYSIS:

The proposed action is exempt from the California Environmental Quality Act (CEQA) per section 15061 (b)(3), the General Rule. The General Rule can be applied when it can be seen with certainty that the activity will not have a significant effect on the environment.

FISCAL IMPACT:

There is no fiscal impact related to carrying out the recommended action and it will not have any indirect or support cost requirements.

However, there could be a negative fiscal impact to the City (and other local PEG channel operators) if the City fails to act. Pasadena collects approximately \$260,000 in PEG fees from AT&T and Charter annually. Failure to reauthorize the PEG Fee through adoption of a new ordinance could put these revenues, and the PEG-related capital expenditures they support, in jeopardy. Absent this revenue, the City, Pasadena Unified School District, and Pasadena City College would have to find different funding sources within budgets that are already constrained, or forgo PEG facility improvements and technology replacement projects.

Respectfully submitted,



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