



Legislation Text

File #: 2018-092, Version: 1

Report to Mayor and City Council

Tuesday, February 20, 2018

Consent

SUBJECT:

**REAUTHORIZATION OF CITY PEG (PUBLIC, EDUCATIONAL AND GOVERNMENT)
FEE COLLECTION AUTHORITY UNDER STATE LAW (CITY COUNCIL)**

I. SUMMARY

The Digital Infrastructure and Video Competition Act of 2006 (DIVCA AB 2987) was signed into law on September 29, 2006, creating for the first time a process for the issuance of state video franchises in California. On August 5, 2008, the City of Carson approved and adopted the DIVCA Decision, implementing DIVCA, and began accepting video franchise. The state franchise agreement has expired on December 31, 2017 and has been renewed by the state effective January 2, 2018. The City's ordinance needs to be reauthorized, upon the expiration of the state franchise. Failure to reauthorize the PEG Fee through adoption of a new ordinance will put these revenues and the PEG related capital expenditures they support in jeopardy.

II. 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.

III. ALTERNATIVES

NONE

IV. BACKGROUND

On September 29, 2006, the Legislature passed, and Governor Schwarzenegger signed into law, Assembly Bill 2987, the Digital Infrastructure and Video Competition Act of 2006 (DIVCA). Prior to DIVCA, cable television franchises were issued by cities and counties. DIVCA replaces that system with one in which video franchises are now issued by the California Public Utilities Commission (CPUC) rather than these local entities. DIVCA's goals, which the CPUC and its Communications Division staff implement, deal not only with video franchises, but with increasing the deployment of broadband infrastructure within California, particularly to unserved and underserved areas. These goals are the following:

- Create a fair and level playing field for all market competitors that does not disadvantage or advantage one service provider or technology over another
- Promote the widespread access to the most technologically advanced cable and video services to all California communities in a nondiscriminatory manner regardless of socioeconomic status
- Protect local government revenues and their control of public rights-of-way
- Require market participants to comply with all applicable consumer protection laws
- Complement efforts to increase investment in broadband infrastructure and close the digital divide

The primary goals of DIVCA is to spur investment and speed the deployment of new technology, provide more choices and benefits for consumers, create jobs and boost California's economy

The City Council amended Carson's Telecommunications Ordinance 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 \$134,000 annually in PEG Fees, which fund capital improvements to PEG facilities and replacement of equipment for Carson's PEG channel.

Annual PEG Fees Received

FISCAL YEAR		TOTAL
2013/14	\$	135,471.00
2014/15	\$	110,133.00
2015/16	\$	184,690.00
2016/17	\$	119,946.00

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 (see Exhibit No. 1, pg. 17). 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.

V. 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 if the City fails to act. The City collects approximately \$134,000 in PEG fees from AT&T and Charter annually. Failure to reauthorize the PEG Fee through adoption of a new ordinance will put these revenues and the PEG-related capital expenditures they support in jeopardy. Absent this revenue the City would have to find different funding sources within budgets that are already constrained or forgo PEG facility improvements and technology replacement projects.

VI. EXHIBITS

1. DIVCA AB 2987 Assembly Bill. (pgs. 4 - 28)

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