County of San Mateo

Inter-Departmental Correspondence

Department: PUBLIC WORKS
File #: 21-320

Board Meeting Date: 4/20/2021

Special Notice / Hearing: None
Vote Required: Majority

To: Honorable Board of Supervisors

From: James C. Porter, Director of Public Works

Subject: Reauthorizing Ordinance Codes Conforming to the California Digital Infrastructure and Video Competition Action of 2006

RECOMMENDATION:
Adopt an ordinance reauthorizing Section 5.104.040 subsection (b) of Chapter 5.104 of Title 5 of the San Mateo County Ordinance Code Governing Cable Television Franchises in conformance with the California Digital Infrastructure and Video Competition Act of 2006, previously introduced on April 6, 2021, and waive the reading of the ordinance in its entirety.

BACKGROUND:
On November 18, 2008, this Board adopted Ordinance No. 04453, which repealed and replaced Sections 5.104.010 through 5.104.060 and added Sections 5.104.070 through 5.104.120 to Chapter 5.104 of Title 5 of the San Mateo County Ordinance Code Governing Cable Television Franchises to Conform to the California Digital Infrastructure and Video Competition Act of 2006.

On December 12, 2017, this Board adopted Ordinance No. 04792, which reauthorized Section 5.104.010 Subsection (b) of Chapter 5.104 of Title 5 of the San Mateo County Ordinance Code Governing Cable Television Franchises to Conform to the California Digital Infrastructure and Video Competition Act of 2006.

On November 6, 2018, this Board adopted Ordinance No. 04806, which reauthorized Section 5.104.010 Subsection (b) of Chapter 5.104 of Title 5 of the San Mateo County Ordinance Code Governing Cable Television Franchises to Conform to the California Digital Infrastructure and Video Competition Act of 2006.

DISCUSSION:
The Digital Infrastructure and Video Competition Act of 2006 (DIVCA) was passed by the State Legislature, signed by the Governor, and chaptered into law on September 28, 2006 (AB2987). DIVCA became effective on January 1, 2007. DIVCA provides for state-wide franchising for video providers, which is administered by the California Public Utilities Commission (CPUC) with certain rights delegated to local authorities.

DIVCA was initiated at the request of the telephone industry as a method to streamline their entrance into the cable television market. Cable companies have been offering “bundled” service packs to subscribers including cable service, high speed internet, and telephone service. Without cable franchises, the telephone companies were unable to provide video service in most locations and could not match this bundling package. They were concerned that negotiating individual franchise agreements with cities, counties, and other municipalities would take an inordinate amount of time and would result in further losses to both the companies and consumers. DIVCA allows for cable providers to obtain a state-wide franchise and, to date, AT&T, Comcast, and Astound are providing these services in the County after having successfully obtained state-wide franchises.

DIVCA allows for the payment of franchise fees of up to five percent (5%) of gross revenues and Public, Education, and Governmental (PEG) support to the local authority, provided that the local authority enacts an ordinance establishing the PEG fee. The PEG fee is limited to the fee that was in place when DIVCA became effective (January 1, 2007) or upon the expiration of the local franchise agreement and is limited to the requirements of the local ordinance. The County’s local 15-year franchise agreement with Comcast for specific geographical areas of the County expired on April 4, 2021 and Comcast has informed the County that they will be providing service to these areas under a State Franchise Agreement. The local agreement included specific provisions and requirements for PEG fee payments. Because Comcast will be utilizing a State Franchise Agreement, Comcast and the other state-wide franchise holders serving the County unincorporated areas will be required to provide PEG fees consistent with the County ordinance, which is equivalent to one percent (1%) of the state franchisee’s revenue for these areas.

Section 5870 (n) of the CPUC Code requires that the local ordinance must be reauthorized upon the expiration of a local or state franchise to continue the requirement for payment of PEG fees. AT&T and Comcast have renewed their state-wide franchise agreements and adoption of Ordinance No. 4792 on December 12, 2017 addressed the continuation of PEG fee payments from these providers. The Astound state-wide franchise agreement was renewed and adoption of Ordinance No. 4806 on November 6, 2018 addressed continuation of PEG fee payments for this provider. The Department is recommending that the County ordinance related to PEG fees be reauthorized to provide for the continued payment of PEG fees by Comcast to the County due to the expiration of the County’s local franchise agreement with Comcast and because Comcast will be providing service under a State Franchise Agreement to these areas. PEG fee revenue is limited to supporting local Public, Education and Government Programming capital equipment costs.

County Counsel has reviewed the Ordinance as to form.

<u>FISCAL IMPACT</u>:
Reauthorization of this Ordinance will ensure continued payment of the PEG fees as provided by state law. There is no impact on the General Fund.