County of San Mateo

Inter-Departmental Correspondence

Department: PUBLIC WORKS
File #: 18-942

Board Meeting Date: 10/23/2018

Special Notice / Hearing: None
Vote Required: Majority

To: Honorable Board of Supervisors

From: James C. Porter, Director of Public Works

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

RECOMMENDATION:
Introduction of 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, and waive the reading of the ordinance in its entirety.

BACKGROUND:
On November 18, 2008, your Board adopted Ordinance No. 04453, which repealed and replaced Sections 5.104.010 through 5.104.060 and added Sections 5.104.070 through 5.104.120 to Chapter 5.104 of Title 5 of the San Mateo County Ordinance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, your 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.

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 PEG support to the local authority, provided that the local authority enacts an ordinance establishing the Public, Education, and Governmental (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 currently has a local franchise agreement with Comcast for specific geographical areas of the County. The PEG fee requirement for this local franchise agreement (and geographical area covered by it) is $0.55 per month per subscriber. Other cable service providers that hold state-wide franchise agreements and provide service in these geographical areas must provide PEG fees equivalent to this amount ($0.55 per month per subscriber). Other portions of the County are only served by state-wide franchise holders and must provide PEG fees consistent with the County ordinance, which specifies a PEG fee amount equivalent to 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 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 will expire on October 26, 2018 and a similar action must be taken relative to this state-wide franchise agreement. The Department is recommending that the County ordinance related to PEG fees be reauthorized to provide for the continued payment of PEG fees to the County. 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.

Your Board’s reauthorization of this Ordinance contributes to the Shared Vision 2025 outcome of a Collaborative Community by continuing to require fees to support PEG programming for the County and PEG access providers that broadcast to the County areas.

FISCAL IMPACT:
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.