



Legislation Text

File #: 18-0043, **Version:** 1

TO:

Honorable Mayor and Members of the City Council

THROUGH:

Bruce Moe, City Manager

FROM:

Sanford Taylor, Information Technology Director
George Gabriel, Management Analyst

SUBJECT:

Ordinances to Reauthorize Public, Educational, and Governmental (PEG) Programming Support Fees Pursuant to the Digital Infrastructure and Video Competition Act (DIVCA) (Information Technology Director Taylor).

a) **ADOPT URGENCY ORDINANCE NO. 18-0003-U**

b) **INTRODUCE ORDINANCE NO. 18-0004**

RECOMMENDATION:

Staff recommends that City Council adopt Urgency Ordinance No. 18-0003-U and introduce Ordinance No. 18-0004 reauthorizing Public, Educational, And Governmental (PEG) programming support fees pursuant to the Digital Infrastructure and Video Competition Act (DIVCA).

FISCAL IMPLICATIONS:

The City receives significant annual PEG fees from cable franchises. Adopting both ordinances ensures that the City continues to receive fees from Charter Communications to support broadcast services on the City's Local Access Channel titled "MBTV." In the past three years, the City has received \$180,136 in PEG fees from cable franchises. If the City does not reauthorize the PEG fees by adopting Ordinance No 18-0003-U and No. 18-0004 Charter Communications will not be required to remit fees to the City.

BACKGROUND:

Cable television Local Access Channels are mandated by the Federal Communications Commission (FCC). Local Access Channels include Public, Education and Government (PEG) channels. Pursuant to Section 611 of the Communications Act, local franchising authorities (such as the City) may require cable operators to set aside channels for PEG use with the following definitions:

- Public access channels are available for use by the general public. They are usually administered either by the cable operator or by a third party designated by the franchising authority.
- Educational access channels are used by educational institutions for programming. Time on these channels is typically allocated among local schools, colleges and universities by either the franchising authority or the cable operator.

- Government access channels are used for programming by local governments. In most jurisdictions, the local government directly controls these channels. In Manhattan Beach, these are Charter Spectrum Channel 8 and Frontier Communications Channel 35.

The channels broadcast government meetings live via Manhattan Beach Local Community Cable, Channel 8 (Chapter Spectrum), Channel 35 (Frontier Communications), and Live Streaming Video. In the past, California local governments entered into individual franchise agreements with local cable providers which required PEG channels, defined franchise fees and PEG fees to be paid, in-kind support (such as studio space for original content production and assistance with broadcasting of meetings and events), and other matters deemed to be of local interest and control.

By 2006, the City of Manhattan Beach had two companies franchised to provide cable television service - Time Warner and Verizon. At that time, the local PEG revenues and in-kind support provided a certain level of local cable television programming on Government Access Channels, not only in Manhattan Beach, but in communities across the State.

However, the landscape changed dramatically in 2006 when the State Legislature adopted AB 2982, the Digital Infrastructure and Video Competition Act (DIVCA). This act pre-empted local cable franchising rights and replaced it with a State Franchise for each provider. DIVCA defined a fixed and uniform level of franchise fee, 5% of gross revenues, and while still requiring PEG channels, allowed local jurisdictions to levy a PEG fee of an additional 1% without a requirement for any in-kind services (in 2008, the City adopted Ordinance 2116 which conformed the City's cable requirements to those of the State Franchise and imposed the local option 1% PEG fee).

The requirement for PEG channels under DIVCA stated that the PEG channels shall be for the exclusive use of the local entity or its designee to provide public, educational, and government channels. The PEG channels shall be used only for noncommercial purposes. However, advertising, underwriting, or sponsorship recognition may be carried on the channels for the purpose of funding PEG-related activities.

As DIVCA was implemented, cities across the State began to modify their cable television activities in response to less funding being available and the withdrawal of in-kind services by the cable companies as local franchise agreements expired and the State Franchises became effective.

DISCUSSION:

California cities, including Manhattan Beach, need to take action once again to reauthorize their Public, Educational, and Governmental (PEG) programming support fees from Charter Communications.

When the Digital Infrastructure and Video Competition Act (DIVCA) was enacted a decade ago, it authorized cities to adopt an ordinance imposing a fee (typically equal to 1% of a video franchisee's gross revenue) to support PEG programming facilities (see Pub. Util. Code Section 5870). Manhattan Beach adopted such an ordinance. DIVCA also provides, however, that an ordinance adopting a PEG fee, "shall expire, and may be reauthorized, upon the expiration of the state franchise."

Manhattan Beach adopted its PEG fee ordinances in June 2008 when the first state franchises had expired. Manhattan Beach must readopt and reauthorize its PEG fee, or risk a gap in PEG fee payments by Charter Communications.

PUBLIC OUTREACH/INTEREST:

After analysis, staff determined that public outreach was not required for this issue.

LEGAL REVIEW

The City Attorney has reviewed this report and determined that no additional legal analysis is necessary.

Attachments:

1. Urgency Ordinance No. 18-0003-U
2. Ordinance No. 18-0004