



# City of Palo Alto

## City Council Staff Report

(ID # 8643)

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**Report Type: Consent Calendar**

**Meeting Date: 12/11/2017**

**Summary Title: Adoption of Ordinance Reauthorizing Public, Education, and Government Access Fees**

**Title: Adoption of an Ordinance Amending Chapter 2.11 of Title 2 of the Palo Alto Municipal Code to Reauthorize Public, Education, and Government Access Fees That Will Apply to Comcast as it Provides Service Under its State Video Franchise**

**From: City Manager**

**Lead Department: Administrative Services**

### **Recommendation**

Staff recommends that the Council adopt an ordinance amending Chapter 2.11 of Title 2 of the Palo Alto Municipal Code to reauthorize a fee to support Public, Education, and Government (PEG) Access that will apply to Comcast as it provides service under its State Video Franchise.

### **Executive Summary**

In 2008, the Council adopted an ordinance establishing a PEG fee of \$0.88 per residential subscriber per month. The City is required to reauthorize this fee by ordinance at the expiration and renewal of each state video franchise. Comcast has notified the City that it plans to renew its state-issued franchise that expires on January 2, 2018. The proposed ordinance provides for the continued payment of a PEG fee by Comcast.

### **Background**

In 1983, the cities of Palo Alto, Menlo Park, East Palo Alto, the Town of Atherton and portions of San Mateo and Santa Clara Counties entered into a Joint Exercise of Powers Agreement (JPA) for purposes of obtaining cable television service for residents, businesses and institutions within these jurisdictions. The JPA gives the City of Palo Alto the sole authority to grant and administer the cable franchise process on behalf of its members. The JPA members continue to rely on Palo Alto for such activities as franchise and PEG fee collection, PEG oversight, customer service and the like with respect to all state franchise holders.

The Digital Infrastructure and Video Competition Act of 2006 (DIVCA) went into effect on January 1, 2007. DIVCA established a state franchising system administered by the Public Utilities Commission for video service providers. DIVCA allows the City to exact a fee from

video service providers with state-issued franchises for Public, Education, and Governmental channel purposes.

In 2008, the Council adopted an ordinance, amending Chapter 2.11 of the Palo Alto Municipal Code, to establish a PEG fee of \$0.88 per residential subscriber per month. At the time, the City had the option of selecting its existing PEG fee of \$0.88 per subscriber or establishing a fee of 1 percent of the video service provider's gross video service revenues. The City adopted the \$0.88 PEG fee because it yielded 30 percent more than the 1 percent fee.

DIVCA requires the City to reauthorize the \$0.88 PEG fee by ordinance at the expiration and renewal of each state video franchise. The term of a state franchise is 10 years. The City adopted an ordinance reauthorizing the AT&T PEG support fee at the renewal of its State Video Franchise on March 30, 2017.

### **Discussion**

The Comcast State Video Franchise is set to expire on January 2, 2018. Comcast has notified the City that it plans to renew its Franchise. Staff is proposing that the City adopt an ordinance reauthorizing a PEG support fee of \$0.88 per residential subscriber per month that will apply to Comcast under its renewed State Video Franchise.

Palo Alto has designated the Media Center, as its Community Access Organization, to operate and manage its PEG channels and to promote PEG access. The City forwards the PEG fees it receives from AT&T and Comcast (amounting to \$329,813 in 2016) directly to the Media Center. Federal law restricts the use of PEG fees to capital expenditures.

On May 10, 2016, following a review of the Cable Franchise and PEG Fee Audit, the Policy & Services Committee directed staff to work with the Media Center to ensure the PEG fee program complies with federal Cable Act provisions. The Media Center is now placing PEG fees in a restricted account that can only be used for capital expenditures. Staff plans to update Council on its work with the Media Center in the near future.

### **Resource Impact**

In 2016, the JPA received PEG fees from Comcast in the amount of \$290,327. PEG fees from both AT&T and Comcast amounted to \$329,813 in 2016. The proposed ordinance provides for the continued payment of Comcast PEG fees.

### **Attachments:**

- Attachment A - Draft PEG Fee Reauthorization Ordinance

NOT YET APPROVED

Ordinance No. \_\_\_\_\_

Ordinance of the Council of the City of Palo Alto Amending Chapter 2.11 of Title 2 of the Palo Alto Municipal Code to Amend Section 2.11.070 (Public, Education and Government Access Channel Capacity and Support) to Reauthorize Comcast's PEG Support Fee on Renewal of Its State Franchise

The Council of the City of Palo Alto does ORDAIN as follows:

SECTION 1. Findings and Declarations. The City Council finds and declares as follows:

Palo Alto requires holders of State Video Franchises to pay a fee of \$0.88 per residential subscriber per month to support Public, Education, and Government (PEG) Access.

The City is required to reauthorize this fee by ordinance at expiration and renewal of each state video franchise.

Comcast has notified the City that its state-issued franchise expires on January 2, 2018 and will be renewed thereafter. Accordingly, the City reauthorizes the support fee for PEG access according to the existing terms.

SECTION 2. Section 2.11.070 (Public, education and government access channel capacity and support) of Chapter 2.11 (Video Service Providers- Applicable Requirements) of the Palo Alto Municipal Code is hereby amended to read as follows:

**2.11.070 Public, education and government access channel capacity and support.**

(a) PEG Channel Capacity.

(1) A state franchisee shall designate and activate seven PEG channels on its network. The state franchisee shall designate and activate the seven PEG channels within three months from the date that the state franchisee receives a state franchise to provide video service in an area including the city, provided, however, that this three-month period shall be tolled for such a period, and only for such a period, during which the state franchisee's ability to designate or provide such PEG capacity is technically infeasible, as provided in Section 5870(a) of the California Public Utilities Code.

(2) A state franchisee shall provide an additional PEG channel when the standards set forth in Section 5870(d) of the California Public Utilities Code are satisfied by the city or any entity designated by the city to be responsible for PEG access channel capacity and support.

## Attachment A

### (b) PEG Support.

#### (1) Amount of PEG Support Fee.

(A) Except as provided in subparagraphs (B) and (C), every state franchisee operating within the jurisdictional boundaries of the city shall pay a PEG support fee to the city in the amount of eighty-eight cents (\$0.88) per month per subscriber within the jurisdictional boundaries of the city.

(B) Upon the expiration of the Comcast Franchise or its earlier termination pursuant to Section 5840(o)(3) of the California Public Utility Code, every state franchisee operating within the jurisdictional boundaries of the city shall pay a new PEG support fee to the city in the amount of eighty-eight cents (\$.88) per month per subscriber in the city.

(C) The PEG support fee established by the city pursuant to paragraph (b)(1)(B) shall expire with respect to a particular state franchisee upon the expiration of that state franchisee's state franchise, and the city shall, by ordinance, reauthorize the PEG support fee for that state franchisee upon such expiration.

(2) The PEG support fee shall be used by the city for PEG purposes consistent with state and federal law.

(3) A state franchisee shall remit the PEG support fee to the city quarterly, within forty-five days after the end of each calendar quarter. Each payment shall be accompanied by a summary explaining the basis for the calculation of the PEG support fee.

(4) If a state franchisee fails to pay the PEG support fee when due, or underpays the proper amount due, the state franchisee shall pay a late payment charge at an annual interest rate equal to the highest prime lending rate during the period of delinquency, plus one percent or the highest rate allowed by California law, whichever is lower.

### (c) PEG Carriage and Interconnection.

(1) State franchisees shall ensure that all PEG channels are receivable by all subscribers, whether they receive digital or analog service, or a combination thereof, without the need for any equipment other than that needed to receive the lowest cost tier of service. PEG access capacity provided by a state franchisee shall be of similar quality and functionality to that offered by commercial channels on the state franchisee's lowest cost tier of service unless the PEG signal is provided to the state franchisee at a lower quality or with less functionality.

(2) If a state franchisee and an incumbent cable operator cannot reach a mutually acceptable interconnection agreement for PEG carriage, the city shall require the

incumbent cable operator to allow the state franchisee to interconnect its network with the incumbent cable operator's network at a technically feasible point on the state franchisee's network as identified by the state franchisee. If no technically feasible point of interconnection is available, the state franchisee shall make interconnection available to the PEG channel originator and shall provide the facilities necessary for the interconnection. The cost of any interconnection shall be borne by the state franchisee requesting the interconnection unless otherwise agreed to by the parties.

(d) Institutional Network and Other In-Kind PEG Facilities and Cable Service Support Obligations. The incumbent cable operator's obligation to provide and support PEG channel facilities and institutional networks and to provide free cable service to schools and other public buildings as provided in the Comcast Franchise shall continue until July 25, 2010.

(e) PEG support fee reauthorizations.

(1) On expiration and renewal of AT&T's state franchise on March 30, 2017, the city hereby reauthorizes the PEG support fee.

(2) On expiration and renewal of Comcast's state franchise on January 2, 2018, the city hereby reauthorizes the PEG support fee.

SECTION 3. Severability. If any provision, clause, sentence or paragraph of this ordinance, or the application to any person or circumstances, shall be held invalid, such invalidity shall not affect the other provisions of this Ordinance which can be given effect without the invalid provision or application and, to this end, the provisions of this Ordinance are hereby declared to be severable.

SECTION 4. Effective Date. This ordinance shall be effective on the thirty-first date after the date of its adoption.

SECTION 5. CEQA. The City Council finds and determines that this Ordinance is not a project within the meaning of section 15378 of the California Environmental Quality Act ("CEQA") because it has no potential for resulting in physical change in the environment, either directly or ultimately. In the event that this Ordinance is found to be a project under CEQA, it is subject to the CEQA exemption contained in CEQA Guidelines section 15061(b)(3) because it

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Attachment A

can be seen with certainty to have no possibility of a significant effect on the environment in that this Ordinance simply clarifies existing local regulations.

INTRODUCED:

PASSED:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

ATTEST:

APPROVED:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
City Manager

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
Director of Information Technology

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Director of Administrative Services