



City of San Leandro

Meeting Date: March 20, 2017

Staff Report

File Number: 17-132

Agenda Section: ACTION ITEMS

Agenda Number: 10.C.

TO: City Council

FROM: Chris Zapata
City Manager

BY:

FINANCE REVIEW: Not Applicable

TITLE: Staff Report for an Urgency Ordinance to Reauthorize the City's Public, Educational and Government Fee as Provided in Section 5-7-115 of the San Leandro Municipal Code

RECOMMENDATIONS

Staff recommends that the City Council waive reading, introduce, and adopt the attached urgency ordinance reauthorizing the City's public, educational, and government ("PEG") fee as provided in Section 5-7-115 of the San Leandro Municipal Code.

SUMMARY AND BACKGROUND

In accordance with state law, the City imposes a one percent (1%) PEG channel facilities fee on all state-franchised video service providers operating within the City to support PEG programming. State law provides that a city's PEG fee ordinance must be reauthorized upon expiration of a state franchise. AT&T's state franchise expires on March 30, 2017.

Under Section 5-7-115 of the San Leandro Municipal Code, the City's PEG fee is automatically reauthorized unless a franchise holder gives 60-days' prior written notice to the City that its state franchise will expire. AT&T did not provide the required 60-days' notice to the City. Therefore, under the City's Municipal Code, the City's PEG fee ordinance will be automatically reauthorized when AT&T receives its new or renewed state franchise.

Although staff believes that the City's PEG fee will be automatically reauthorized under the terms of the City's Municipal Code, to account for inherent uncertainty related to the state franchise renewal process, and to ensure continuity in PEG funding if or when AT&T's franchise is renewed, staff recommends that the City Council adopt an urgency ordinance specifically declaring that the City's PEG fee is reauthorized. The urgency ordinance will take effect and be enforced immediately upon the commencement of AT&T's new or renewed state franchise under the Digital Infrastructure and Video Competition Act of 2006.

Approval of the urgency ordinance requires a 4/5 vote and specific findings pursuant to State law. Staff recommends that the City Council adopt the urgency ordinance based upon the following findings and declarations: 1) It is necessary for the immediate preservation of the public peace, health, and safety; 2) Section 5870(n) of the California Public Utilities Code provides that a PEG fee ordinance must be reauthorized upon expiration of an applicable state franchise; 3) AT&T, Inc. operates within the City under a state franchise that expires on March 30, 2017; 4) It is in the public interest to take every measure to ensure that there is no lapse in the collection and remittance of PEG fees, which supports public, educational, and governmental channels, including channels that may provide critical emergency or other public safety-related information and maintaining stable funding for PEG channels is vital to the public peace, health, and safety of the City of San Leandro.



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Urgency Ordinance

File Number: 17-133

Agenda Section: ACTION ITEMS

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TO: City Council

FROM: Chris Zapata
City Manager

BY:

FINANCE REVIEW: Not Applicable

TITLE: Urgency ORDINANCE to Reauthorize the City's Public, Educational and Government Fee as Provided in Section 5-7-115 of the San Leandro Municipal Code

WHEREAS, the City Council previously adopted Section 5-7-115 of the San Leandro Municipal Code ("SLMC"), which imposes a public, educational, and governmental ("PEG") fee on state cable franchisees operating within the City as authorized in the Digital Infrastructure and Video Competition Act of 2006; and

WHEREAS, Section 5870(n) of the California Public Utilities Code states that a PEG fee ordinance must be reauthorized upon expiration of an applicable state franchise; and

WHEREAS, SLMC Section 5-7-115(c) provides that, notwithstanding Section 5870(n) of the California Public Utilities Code, upon the expiration of any state franchise, the City's PEG fee is automatically reauthorized unless the franchise holder has given the City 60-days' written notice prior to the expiration of its state franchise that the City's fee authorization will expire; and

WHEREAS, AT&T, Inc. operates within the City under a state franchise that expires on March 30, 2017; and

WHEREAS, the City received no timely written notice from AT&T, Inc. of the expiration of its state franchise pursuant to SLMC Section 5-7-115(c); and

WHEREAS, therefore, pursuant to the provisions of Section 5-7-115(c), the City's PEG fee is automatically reauthorized with regard to AT&T, Inc.; and

WHEREAS, notwithstanding the automatic reauthorization of the City's PEG fee as described above, the City Council wishes to adopt an ordinance expressly declaring that the City's PEG fee is reauthorized.

NOW, THEREFORE, the City Council of the City of San Leandro does hereby ordain as follows:

Section 1. **PEG Fee Reauthorization.** The City's PEG channel facilities fee authorized in Section 5-7-115 of the San Leandro Municipal Code is hereby reauthorized to the extent required by Section 5870(n) of the California Public Utilities Code. All state franchisees operating within the City shall continue to collect and remit the PEG channel facilities fee as required in SLMC Section 5-7-115.

Section 2. **No Change to Municipal Code.** Section 5-7-115 of the San Leandro Municipal Code shall remain unchanged and in full force and effect.

Section 3. **Urgency Findings and Declaration.** The City Council finds and declares that this Ordinance must be adopted as an urgency matter because it is necessary for the immediate preservation of the public peace, health, and safety. The following facts and circumstances support such necessity: Section 5870(n) of the California Public Utilities Code states that a PEG fee ordinance must be reauthorized upon expiration of an applicable state franchise. AT&T, Inc. operates within the City under a state franchise that expires on March 30, 2017. Although SLMC Section 5-7-115 provides for continuity in PEG funding, it is in the public interest to take every measure to ensure that there is no lapse in the collection and remission of PEG fees, which supports public, educational, and governmental channels, including channels that may provide critical emergency or other public safety-related information. Maintaining stable funding for PEG channels is therefore vital to the public peace, health, and safety of the City of San Leandro. Without the enactment of this Ordinance as provided herein, a lapse in the collection and remittance of the PEG fee could potentially occur, endangering the stability of PEG program funding within the City.

Based on said findings, facts and circumstances, the City Council finds that this Ordinance should be adopted as an urgency ordinance for the immediate preservation of the public peace, health and safety, and that it is necessary that this Ordinance should go into effect as described below.

Section 4. **Severability.** The provisions of this Ordinance are severable and if any provision, clause, sentence, word or part thereof is held illegal, invalid, unconstitutional, or inapplicable to any person or circumstances, such illegality, invalidity, unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, clauses, sentences, sections, words or parts thereof of the ordinance or their applicability to other persons or circumstances.

Section 5. **Publication and Effective Date.** Following adoption by at least a four-fifths vote of the City Council, this Ordinance shall take effect and be enforced immediately upon the commencement of AT&T's new or renewed state franchise under the Digital Infrastructure and Video Competition Act of 2006. The City Clerk shall cause this ordinance to be published or posted in at least three (3) public places in the City in accordance with Section 36933 of the Government Code of the State of California.