



MEMORANDUM

TO: CITY COUNCIL

FROM: JAMES BERGMAN, CITY MANAGER

BY: HEATHER WHITHAM, CITY ATTORNEY

SUBJECT: CONSIDERATION OF ADOPTION OF AN ORDINANCE AMENDING SECTION 5.25.070 OF TITLE 5 OF THE ARROYO GRANDE MUNICIPAL CODE TO REAUTHORIZE THE PUBLIC, EDUCATIONAL, AND GOVERNMENT ACCESS FEE ON STATE CABLE FRANCHISES OPERATING WITHIN THE CITY

DATE: SEPTEMBER 11, 2018

SUMMARY OF ACTION:

The Ordinance will reauthorize a fee to support Public, Education, and Government (PEG) access that will apply to Charter Communications as it provides service under its State Video Franchise.

IMPACT ON FINANCIAL AND PERSONNEL RESOURCES:

There is no fiscal impact associated with the recommended action. Estimated annual revenue collected from PEG fees is approximately \$35,000, which is used to support the City's PEG channel and programming.

RECOMMENDATION:

It is recommended the City Council adopt an Ordinance amending Section 5.25.070 of Title 5 of the Arroyo Grande Municipal Code (AGMC) to reauthorize the Public, Educational and Government (PEG) fee on State cable franchisees operating with the City.

BACKGROUND:

On August 28, 2018, the City Council introduced an Ordinance, without modification, amending Section 5.25.070 of Title 5 of the Arroyo Grande Municipal Code (AGMC) to reauthorize the Public, Educational and Government (PEG) fee on State cable franchisees operating with the City.

ANALYSIS OF ISSUES:

The Ordinance is now ready for adoption. The Ordinance will become effective thirty days after final passage of the Ordinance.

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ALTERNATIVES:

The following alternatives are provided for the Council's consideration:

1. Adopt the Ordinance,
2. Modify and re-introduce the Ordinance,
3. Do not adopt the Ordinance, or
4. Provide direction to staff.

ADVANTAGES:

Reauthorization of the PEG fee will allow the City to continue to collect PEG fees to support its PEG programming; which is essential to providing City residents with access to important civic programming, including the broadcasting of public meetings, community news, alerts, and announcements.

DISADVANTAGES:

No disadvantages have been identified associated with the recommended action.

ENVIRONMENTAL REVIEW:

No environmental review is required for this item.

PUBLIC NOTIFICATION AND COMMENTS:

The Agenda was posted at City Hall and on the City's website in accordance with Government Code Section 54954.2. At the time of report publication, no comments have been received.

ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ARROYO GRANDE AMENDING SECTION 5.25.070 OF TITLE 5 OF THE ARROYO GRANDE MUNICIPAL CODE TO REAUTHORIZE THE PUBLIC, EDUCATIONAL, AND GOVERNMENT (PEG) FEE ON STATE CABLE FRANCHISEES OPERATING WITHIN THE CITY

WHEREAS, the City Council previously adopted Ordinance No. 664 enacting Arroyo Grande Municipal Code Section 5.25.070, which establishes public, educational and governmental (“PEG”) access and imposes a PEG fee on state cable franchisees operating with the City, as authorized in the Digital Infrastructure and Video Competition Act of 2006 (“DIVCA”); and

WHEREAS, DIVCA established a state video franchising system that replaced local cable franchising, but also recognized the continued need to protect local revenues and control of public rights of way; and

WHEREAS, DIVCA provides that state video franchises are issued by the California Public utilities Commission (“CPUC”) and have a stated term of ten (10) years; and

WHEREAS, Ordinance No. 664 has never been repealed and did not have an expiration date, but was intended to apply to and regulate current and future franchises; however, California Public Utilities Code Section 5870(n) states that such ordinances shall expire, and may be reauthorized, upon the expiration of the state franchise; and

WHEREAS, the City desires at this time to reauthorize Ordinance No. 664 and the PEG fee imposed by Arroyo Grande Municipal Code Section 5.25.070; and

WHEREAS, CCO SoCal I, LLC, dba Charter Communications, currently holds a state franchise for services within the City of Arroyo Grande.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF ARROYO GRANDE DOES ORDAIN AS FOLLOWS:

SECTION 1. The above recitals and findings are true and correct and are incorporated herein by this reference.

SECTION 2. Section 5.25.070 of the Arroyo Grande Municipal Code is hereby amended in its entirety to read as follows:

5.25.070 - Public, educational and government access and PEG fee.

A. PEG Channel Capacity.

1. A state franchise holder shall designate a sufficient amount of capacity on its network to allow the provision of at least three PEG channels to satisfy the requirement of state law, within the time limits specified by state law. This section shall serve as the request for PEG channels required by California Public Utilities Code subsection 5870(a).

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2. A state franchise holder shall provide an additional PEG channel when the standards set forth in subsection 5870(d) of the California Public Utilities Code are satisfied by the city or any entity designated by the city to manage one or more of the PEG channels.
- B. PEG Fee. As provided in CPUC subsection 5870(n), the city hereby establishes a fee of one percent of a franchise holder's gross revenues to support PEG facilities, to be paid by any franchise holder operating within the boundaries of the city of Arroyo Grande in accordance with the following:
1. The fee shall be payable to the city quarterly, and shall be paid no later than June 1, September 1, December 1 and March 1 for the preceding calendar quarter for which the payment is due.
 2. As permitted by CPUC subsection 5870(o), any franchise holder operating in the city may recover the PEG fees required herein as a separate line item on the regular bill of each subscriber.
- C. The PEG fee authorized by subsection B, above, is hereby reauthorized to the extent required by Section 5870(n) of the California Public Utilities Code. As such, all state franchisees operating within the City whose franchise is renewed shall continue to collect and remit the PEG channel facilities fee as set forth in this section, and such fee shall be automatically reauthorized as to each affected state video franchise holder upon the expiration of any state video franchise. Any and all reauthorizations shall be effective for as long as such reauthorization is required by law.

SECTION 3. This Ordinance is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guideline Section 15061(b)(3) because it can be seen with certainty that there is no possibility that the Ordinance may have a significant effect on the environment.

SECTION 4. A summary of this Ordinance shall be published in a newspaper published and circulated in the City of Arroyo Grande at least five (5) days prior to the City Council meeting at which the proposed Ordinance is to be adopted. A certified copy of the full text of the proposed Ordinance shall be posted in the office of the City Clerk. Within fifteen (15) days after adoption of the Ordinance, the summary with the names of those City Council members voting for and against the Ordinance shall be published again, and the City Clerk shall post a certified copy of the full text of such adopted Ordinance. This Ordinance shall take effect and be in full force and effect thirty (30) days after its passage.

SECTION 5. This Ordinance shall take effect and be in full force and effect thirty (30) days after its passage.

SECTION 6. If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each and every section, subsection, sentence, clause, or phrase not

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declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

On motion by Council Member _____, seconded by Council Member _____, and by the following roll call vote to wit:

AYES:

NOES:

ABSENT:

the foregoing Ordinance was adopted this ____ day of _____, 2018.

JIM HILL, MAYOR

ATTEST:

KELLY WETMORE, CITY CLERK

APPROVED AS TO CONTENT:

JAMES A. BERGMAN, CITY MANAGER

APPROVED AS TO FORM:

HEATHER K. WHITHAM, CITY ATTORNEY