



TOWN OF APPLE VALLEY

TOWN COUNCIL STAFF REPORT

To: Honorable Mayor and Town Council Date: October 24, 2017

From: Marc Puckett, Assistant Town Manager Item No: 9

Subject: INTRODUCE ORDINANCE NO. 494 – AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF APPLE VALLEY, CALIFORNIA, REAUTHORIZING ORDINANCE NO. 475 AND AMENDING TITLE 5, CHAPTER 5.06 REGARDING THE FEE PAID TO THE TOWN BY STATE VIDEO FRANCHISE HOLDERS TO SUPPORT PUBLIC, EDUCATIONAL, AND GOVERNMENT ACCESS (“PEG”) PURPOSES

T.M. Approval: _____ Budgeted Item: Yes No N/A

RECOMMENDED ACTION

1. Move to waive the reading of Ordinance No. 494 in its entirety and read by title only.
2. Introduce Ordinance No. 494 amending Town of Apple Valley Ordinance No. 475 and corresponding Municipal Code Title 5, Chapter 5.06, and reauthorizing that Ordinance, so that as each state video franchise expires and is renewed by the California Public Utilities Commission (“CPUC”) now and in future years, state video franchise holders continue to pay fees to the Town to support public, educational, and government access (“PEG”) purposes.

DISCUSSION

In 2006, the Digital Infrastructure and Video Competition Act was signed into law and codified at California Public Utilities Code section 5800, et seq., (“DIVCA”). DIVCA established a state video franchising system that replaced local cable franchising but left some limited local authority over state video franchise holders, including the authority to adopt a PEG fee by ordinance. In 2015, Apple Valley adopted Ordinance No. 475, establishing a PEG fee payable by state video franchise holders in the amount one percent of gross revenues.

Apple Valley currently collects PEG fees from Spectrum (formerly Charter) pursuant to the provisions of Ordinance No. 475, codified as Section 5.06.220 of the Apple Valley

Municipal Code. Apple Valley also collects PEG fees from Frontier (formerly Verizon) in fulfillment of a written commitment made by Frontier to the to pay PEG fees so long as other cable providers are subject to and paying a PEG fee. Frontier made this commitment as one of the inducements to secure the approval of the transfer of control of Verizon California Inc. to Frontier Communications Corporation in 2015.

Under DIVCA, state video franchises are issued by the California Public Utilities Commission (“CPUC”) and have a stated term of 10 years. The two (2) state video franchises held by Spectrum (formerly Charter) which cover Apple Valley will expire on January 2, 2018 and August 11, 2018, respectively.

DIVCA provisions authorizing local entities to establish a PEG fee by ordinance also include language indicating that an ordinance establishing a PEG fee shall expire, and may be reauthorized, upon the expiration of the state franchise. The statute is ambiguous and subject to different interpretations as to its meaning and application, and it is unclear if it would require the reauthorization of the PEG fee established by Apple Valley. However, Ordinance No. 475 does not specifically address reauthorization, and to the extent any action is required of Apple Valley under DIVCA, it is in the best interests of the Town to adopt an ordinance reauthorizing Ordinance No. 475, so that as each state video franchise expires and is renewed by the CPUC now and in future years, state video franchise holders continue to pay PEG fees. If approved, this ordinance will amend Ordinance No. 475 and the corresponding Municipal Code section, reauthorize Ordinance 475 as amended, and provide for future reauthorizations that are automatic without the need for additional Council action.

The proposed ordinance would be effective 30 days after adoption, while the reauthorization of Ordinance 475, as amended, would take effect January 2, 2018.

FISCAL IMPACT

Apple Valley currently receives approximately \$150,500 per year in PEG fees from Spectrum and Frontier. If the ordinance is not adopted, Spectrum may stop paying PEG fees to the Town as its state franchises expire and are renewed, based on a claim that reauthorization is required, and Frontier may stop paying based on a claim that other cable providers are no longer subject to and paying a PEG fee.

CONCLUSION

Staff recommends adoption of the attached Ordinance No. 494 to reauthorize the PEG fees to support public, educational, and government access purposes.

ATTACHEMENT:

Ordinance No. 494

ORDINANCE NO. 494

AN ORDINANCE OF THE TOWN COUNCIL OF THE TOWN OF APPLE VALLEY, CALIFORNIA, AMENDING ORDINANCE NO. 475 AND TITLE 5, CHAPTER 5.06 OF THE APPLE VALLEY MUNICIPAL CODE REGARDING THE FEE PAID TO THE TOWN BY STATE VIDEO FRANCHISE HOLDERS TO SUPPORT PUBLIC, EDUCATIONAL, AND GOVERNMENT ACCESS PURPOSES AND REAUTHORIZING ORDINANCE 475

WHEREAS, in 2006, the Digital Infrastructure and Video Competition Act was signed into law and codified at California Public Utilities Code section 5800, et seq., (“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 10 years; and

WHEREAS, DIVCA provides that a local entity may, by ordinance, establish a fee to support public access, educational, and government (“PEG”) purposes payable by state video franchise holders; and

WHEREAS, in 2015, the Town of Apple Valley (“Town” or “Apple Valley”) adopted Ordinance No. 475, which in relevant part amended Title 5 Chapter 5.06 of the Apple Valley Municipal Code (“Municipal Code”) to provide for a PEG fee payable by state video franchise holders in the amount of one percent (1%) of gross revenues; and

WHEREAS, Apple Valley currently collects PEG fees from Spectrum (formerly Charter) and Frontier (formerly Verizon); and

WHEREAS, Spectrum holds state video franchises set to expire on January 2, 2018 and August 11, 2018, respectively; and

WHEREAS, Frontier provides video service in Apple Valley under a local franchise agreement; and

WHEREAS, Apple Valley’s consent to the transfer of Verizon’s franchise to Frontier, as described in Resolution No. 2015-37, was based in part on a commitment by Frontier to pay PEG fees to the extent other cable operators serving Apple Valley are subject to and paying PEG fees; and

WHEREAS, DIVCA provides that the ordinance establishing a PEG fee shall expire, and may be reauthorized, upon the expiration of the state franchise, but there is uncertainty as to under what circumstances, if any, the provision applies to Apple Valley’s PEG fee; and

WHEREAS, to the extent any action is required of Apple Valley, it is deemed to be in the best interests of the Town to adopt an ordinance amending Ordinance No. 475 and the corresponding section of the Municipal Code, including the PEG fee, and reauthorizing Ordinance No. 475, as amended, so that as each state video franchise expires and is renewed by the CPUC now and in future years, state video franchise holders continue to pay PEG fees.

NOW THEREFORE, THE TOWN COUNCIL OF THE TOWN OF APPLE VALLEY DOES ORDAIN AS FOLLOWS:

SECTION 1. Incorporation of Recitals. The above recitals are true and correct and are incorporated herein by this reference.

SECTION 2. Section 4 of Ordinance 475, and corresponding Municipal Code Section 5.06.220, is hereby amended so that its body shall read as follows:

5.06.220 – PEG Fees

(a) Every State franchise holder operating within the boundaries of the Town shall pay a PEG fee in the amount of one percent (1%) of the State franchise holder's gross revenues.

(b) To the extent reauthorization is required by law, this chapter, including the PEG fee in the amount of one percent (1%) of the state franchise holder's gross revenues, is automatically reauthorized as to each affected state video franchise holder upon the expiration of any state franchise. Any and all reauthorizations shall be effective for so long as such reauthorization is required by law.

SECTION 3. To the extent reauthorization is required by law, Ordinance No. 475, as amended, including the PEG fee, is hereby reauthorized effective January 2, 2018.

SECTION 4. CEQA. This Ordinance is categorically exempt from the California Environmental Quality Act (CEQA) because it is not a project and there is no possibility that this Ordinance may have a significant effect on the environment. The Town Council, therefore, directs that a Notice of Exemption be filed with the County Clerk of the County of San Bernardino in accordance with CEQA Guidelines.

SECTION 5. Severability. If any section, sentence, clause, or phrase of this ordinance or the application thereof to any entity, person, or circumstance is held for any reason to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable. The Town Council of the Town of Apple Valley hereby declares that it would have adopted this Ordinance and each section, sentence, clause, or phrase thereof, irrespective of the fact that any one or more section, subsections, sentences, clauses, or phrases be declared invalid or unconstitutional.

SECTION 6. Effective Date. This Ordinance shall become effective thirty (30) days following its adoption.

SECTION 7. Notice of Adoption. The Town Clerk of the Town of Apple Valley shall certify to the adoption of this Ordinance and cause publication to occur in a newspaper of general circulation and published and circulated in the Town in a manner permitted under Section 36933 of the Government Code of the State of California.

SECTION 8. Except as specifically amended or revised by the provisions of this Ordinance, the provisions of the Apple Valley Municipal Code shall remain in effect.

APPROVED and **ADOPTED** by the Town Council and signed by the Mayor and attested by the Town Clerk this 14th day of November 2017.

Scott Nassif, Mayor

ATTEST:

La Vonda M-Pearson, Town Clerk

APPROVED AS TO FORM:

APPROVED AS TO CONTENT

John Brown, Town Attorney

Lori Lamson, Interim Town Manager