

**COUNTY OF SONOMA
AGENDA ITEM
SUMMARY REPORT**

Clerk of the Board Use Only
 Meeting Date _____ Held Until _____
 Agenda Item No: _____ Agenda Item No: _____

Department: Transportation and Public Works

[] **4/5 Vote Required**

Contact:
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(707) 565-2231

Board Date:
09/01/09

Deadline for Board Action:

Agenda Short Title:

Digital Infrastructure and Video Competition Act of 2006 Ordinance

Requested Board Action:

Approve and pass to second reading, an Ordinance of the County of Sonoma adding Article III to Chapter 8 of the Sonoma County Government Code, which implements the provisions of the Digital Infrastructure and Video Competition Act of 2006.

CURRENT FISCAL YEAR FINANCIAL IMPACT

EXPENDITURES

ADD'L FUNDS REQUIRING BOARD APPROVAL

Estimated Cost -0-

Contingencies \$
(Fund Name:)

Amount Budgeted -0-

Unanticipated Revenue \$
(Source:)

Other Avail. Approp (Explain below) \$

Other Transfer(s) \$ _____
\$

Additional Requested \$ -0-

Add'l Funds Requested:

Prior Board Action(s): None

Alternatives - Results of Non-Approval: If the Ordinance is not approved, the County will not be able to enforce the provisions in DIVCA; and without the 1% fee, the County will need to find other funding sources to purchase new equipment to broadcast the Board of Supervisors meetings.

Background:

In September 2006, the Governor signed into law the Digital Infrastructure and Video Competition Act of 2006 (DIVCA), which allows cable service providers to obtain a state-issued franchise to provide cable service in a local community. Up until the passage of this law, cable providers were required to negotiate separate franchise agreements with local jurisdictions. DIVCA was initiated at the request of telephone companies as a method to streamline their entrance into the cable television market. They felt that negotiating independent franchise agreements with local jurisdictions would take an inordinate amount of time and would result in further losses to both the companies and consumers. The belief by the Legislature was that the consumer would benefit by price competition between the cable providers.

Under local franchise agreements, cable service providers paid local jurisdictions 5% of their gross revenues for use of the County's right-of-way (called franchise fees). In addition, local jurisdictions often negotiated to have cable providers provide other services for no or reduced charges.

Under DIVCA, local jurisdictions will continue to receive franchise fees. In Sonoma County this equates to approximately \$1.2 million annually, which is used to help fund the County's General Fund budget. However, as local franchise agreements expire and cable service providers enter into agreements with the state, the opportunity for local control and negotiated services has been reduced. In Sonoma County, Comcast was the only cable service provider that provided a number of free services. At the end of 2008 Comcast transitioned to a state franchise and no longer provides these free services. These services included: filming Board of Supervisors meetings and the monthly show "Sonoma County Today," offering free cable service to governmental and educational facilities, and maintenance on the computer fiber to the Juvenile Justice Center and Airport Boulevard. Staff has developed interim solutions associated with filming Board meetings and "Sonoma County Today" and will be returning to the Board in the future with a long-term plan to continue these tasks. Staff has also negotiated with Comcast to obtain free or significantly reduced cost cable services for various governmental and educational facilities and ISD is working with Comcast for continuing service on the computer fiber.

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Attachments: Ordinance

On File With Clerk: None

CLERK OF THE BOARD USE ONLY

Board Action (If other than "Requested")

Vote:

Since the transition away from local franchise agreements significantly decreased the amount of local control, DIVCA allows local jurisdictions to enact an ordinance that enables them to set some operational guidelines. This includes: establishment of customer service requirements of the cable providers and monetary violation fees, requirements to provide the Emergency Alert system within their franchise area, guidelines for the obtaining encroachment permits, reconfirming our ability to collect the 5% franchise fee, and maintain the ability to perform audits of their franchise fees. In addition, DIVCA allows local governments to impose a fee to support capital costs for Public, Education and Government Access (PEG) channels. This fee cannot exceed 1% of the cable operator's gross revenues. PEG channels are community channels that are used to broadcast school events, locally-generated educational programs, public comments, and governmental broadcasts, including Board of Supervisors meetings.

Of the nine cities within Sonoma County, five have already passed a DIVCA ordinance establishing a 1% fee for their residents and two more are considering it for the near future. The fee is passed through to cable subscribers. While DIVCA allows for the fee to be set at a maximum of 1% of the total cable services bill, the Board can elect to establish any fee percentage up to the 1%. In addition, the Board can rescind this fee at any time in the future through a modification to the DIVCA ordinance.

For unincorporated residents, a 1% fee would equate to an increase of approximately \$.25 to \$.85 per month on a subscriber's cable bill and would generate approximately \$230,000 in revenue. Unlike the franchise fees, this would not be general fund money. The PEG fees would need to be tracked separately and must be used to support capital costs associated with PEG channels or PEG broadcasting.

At this time, staff is recommending that the Board adopt the DIVCA ordinance, including a 1% fee for unincorporated residents. This will enable staff to meet the critical, short-term need of upgrading the audio-visual equipment in the Board of Supervisors chambers. The equipment currently used to film Board meetings is in excess of 20 years old; parts are becoming increasingly difficult to find, and reliability is of significant concern. Upgrading this equipment is critical to ensure reliable, continued filming of Board meetings. Preliminary estimates indicate that this upgrade could cost up to \$200,000.

Beyond this major upgrade, these funds can also be used to help support the media centers in the County, and may also be used for on-going costs associated with the filming of Board meetings. Staff plans to conduct further research on the possible use of these funds, needs in the community, and an equitable method for distributing these funds to media centers throughout the County. Staff will return to the Board in approximately one year with specific recommendations regarding potential long-term uses of these funds.

Sonoma County Government Code, Chapter 8 governs cable television activity in the unincorporated area of the County. The proposed Ordinance would add Section III to Chapter 8 which will allow the County to administer and enforce the provisions in the DIVCA law throughout the unincorporated areas of the County, including allowing for the assessment of the 1% fee.

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The County has an additional cable service provider in the Sea Ranch area. Central Valley Cable's current franchise agreement does not end until November 22, 2016, and at this time does not plan on applying for a state wide franchise. The residents of the Sea Ranch area will not be subject to the 1% fee imposed by the new DIVCA ordinance.

Recommendation:

Approve and pass to second reading, an Ordinance of the County of Sonoma adding Article III to Chapter 8 of the Sonoma County Government Code, which implements the provisions of the Digital Infrastructure and Video Competition Act of 2006.