



CITY OF OAKLAND

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2012 SEP 13 PM 3:11

AGENDA REPORT

TO: DEANNA J. SANTANA
CITY ADMINISTRATOR

FROM: Ken Gordon

SUBJECT: PEG Fund Allocations and Distributions
to KTOP, PERALTA TV and KDOL

DATE: September 25, 2012

City Administrator

Date

Approval

9/13/12

COUNCIL DISTRICT: City-Wide

RECOMMENDATION

Approve a Resolution (1) Appropriating \$ 1.6 million for Fiscal Years 2008-2009 and 2009-2010, and approximately \$ 3.5 million total estimated for Fiscal Years 2012-2013 through 2016-2017, from funds paid by Cable and Video Franchise Holders Comcast and AT&T, ("PEG Funds"), for the Capital Expenses of Public, Education, and Government ("PEG") Cable Television Channels operating in the City of Oakland; (2) Authorizing apportionment of equal shares of the PEG Funds to PEG Channels of the City of Oakland (KTOP), of the Oakland Unified School District (KDOL), and of the Peralta Community College (Peralta TV) for their PEG Channel Cable and Video Television Facilities, subject to equal reapportionment in Fiscal Years when there are fewer or more PEG Channels operating in Oakland; and (3) authorizing the City Administrator to execute Memoranda of Understanding to effectuate the distribution of said funds.

OUTCOME

Appropriate equal apportionment of PEG Funds collected from Comcast and AT&T during Fiscal Years 2008-2009, 2009-2010 and future collections for Fiscal Years 2012-2013 through 2016-2017 to all PEG Channel participants operating in the City of Oakland. Current PEG Channel participants are KTOP, KDOL and PERALTA TV. In addition, allow for equal reapportionment of PEG Funds should the number of PEG Channels operating in the City of Oakland change from the current three channels (up to seven channels maximum are provided for in the Franchise Agreement).

BACKGROUND/LEGISLATIVE HISTORY

On February 24, 2006, State of California Assembly Bill 2987 Legislation authorized local entities to establish a fee in the amount of 1% of Franchise Holder's gross revenues to support PEG channel facilities.

Item: _____

Finance and Management Committee
September 25, 2012

On July 17, 2007, Council passed Ordinance No. 12819 C.M.S. which amended the Oakland Municipal Code to add Chapter 5.17, adopting AB 2987's Local Regulations application to Holders of State Video Franchises issued by the California Public Utilities Commission pursuant to the Digital Infrastructure and Video Competition Act of 2006, Codified in California Public Utilities Section 5800 et seq. Under the Ordinance, each State Franchise Holder operating within the City is required to pay to the City a PEG fee equal to one percent (1%) of gross revenues to fund the capital needs of the PEG channel operators (up to seven channels under the Franchise agreement. KTOP, PERALTA TV and KDOL were operating in Oakland at the time).

On February 19, 2008, Council passed Ordinance No. 12861 C.M.S., extending the Franchise for 10 years, which commenced the payment of 1% of gross revenues by State Franchise Holders AT&T and Comcast as PEG Fees.

On September 21, 2010, Council passed Resolution No. 82988 C.M.S., authorizing equal apportionment of PEG funds collected in the amount of approximately \$ 600,000.00 annually, sometimes less and sometimes more, depending on revenue collections by AT&T and Comcast, to KTOP, PERALTA TV and KDOL for Fiscal Years 2010-2011 and 2011-2012. The City of Oakland, the Oakland Unified School District, and the Peralta Community College District entered into Memoranda of Understanding regarding these PEG Funds. PEG Funds are paid to PEG Channel operators upon submission of proof of expenditure.

PEG fund collections during Fiscal Years 2008 – 2010, approximately \$1.6 million were not addressed in Resolution No. 82988 C.M.S., and a proposal for equal distribution of said funds is included in this Resolution.

ANALYSIS

State Franchise Holders AT&T and Comcast have consistently paid 1% of their gross revenues to the PEG Fund. Contributions will continue under the Franchise Agreement between the City, AT&T and Comcast until its expiration in June 30, 2017.

Distribution of PEG funds, as per State Legislation, is limited and can only be made to PEG Channels currently operating within the City (currently KTOP, PERALTA TV and KDOL). The City's Franchise Agreement provides for a maximum of seven (7) total PEG Channels.

PEG Funds from Fiscal Years 2008-2009 and 2009-2010 (a total of approximately \$1.6 million) have not been distributed, and should be apportioned and appropriated by this proposed Resolution one-third (1/3) each to KTOP, PERALTA TV, and KDOL.

PEG Funds from Fiscal Years 2010-2011 and 2011-2012 have been apportioned and appropriated pursuant to Resolution No. 82988 C.M.S.

PEG Funds for Fiscal Years 2012-2013 through 2016-2017 (projected at approximately \$700,000 per Fiscal Year or approximately \$3.5 million total for five Fiscal Years) should be apportioned and appropriated by this proposed Resolution equally between the PEG Channels operating in Oakland during each corresponding Fiscal Year.

COORDINATION

The Department of Information Technology administers all PEG distributions in close coordination with PEG Channel Operators, the City Administrator’s Office, the City Attorney’s Office, the Budget Office and the Finance and Management Agency.

COST SUMMARY/IMPLICATIONS

PEG Channel Operators	Allocations FY 08-09 and 09-10 (a total of approx. \$ 1.6 million)	Expected Allocations FY 12-13 through FY 16-17
KTOP	\$ 545,248.56	Approx. \$ 233,333.00 per year for 5 years
PERALTA TV	\$ 545,248.56	Approx. \$ 233,333.00 per year for 5 years
KDOL	\$ 545,248.56	Approx. \$ 233,333.00 per year for 5 years

1. **SOURCE OF FUNDING:**

The PEG funds are being held in the following project accounts:

- KTOP: Fund 2999 Account 41613 Project P350210
- KDOL: Fund 2999 Account 24213 Project G383410
- PERALTA TV: Fund 2999 Account 23213 Project G383510

2. **FISCAL IMPACT:**

The appropriations of PEG funds will result in new capital funding for the City’s Government channel KTOP of approximately \$ 1.7 million, which consists of the Fiscal Years 2008-2009 and 2009-2010 total allocation of approximately \$ 545,248.56 and \$ 233,333.00 per year for the next Fiscal Years 2012-2013 through 2016-2017.

SUSTAINABLE OPPORTUNITIES (Mandatory)

Economic: There are no economic opportunities.

Environmental: There are no environmental opportunities.

Social Equity: PEG fund allocations to PEG Channel Operators within the city present opportunity to broaden and maximize delivery of programs to the Oakland Community.

For questions regarding this report, please contact Ken Gordon, Interim Director, at (510) 238-2023.

Respectfully submitted,

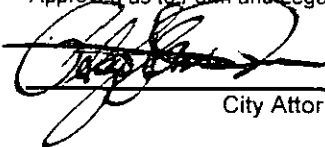


Ken Gordon
Interim Director
Department of Information Technology

Prepared by:
Esther Frazier, Administrative Analyst II
Department of Information Technology

FILED
OFFICE OF THE CITY CLERK
OAKLAND

OAKLAND CITY COUNCIL


City Attorney

RESOLUTION No. _____ C.M.S.

2012 SEP 13 PM 3:11

Introduced by Councilmember _____

RESOLUTION (1) APPROPRIATING \$ 1.6 MILLION FOR FISCAL YEARS 2008-2009 AND 2009-2010, AND APPROXIMATELY \$ 3.5 MILLION TOTAL ESTIMATED FOR FISCAL YEARS 2012-2013 THROUGH 2016-2017, FROM FUNDS PAID BY CABLE AND VIDEO FRANCHISE HOLDERS COMCAST AND AT&T, (“PEG FUNDS”), FOR THE CAPITAL EXPENSES OF PUBLIC, EDUCATION, AND GOVERNMENT (“PEG”) CABLE TELEVISION CHANNELS OPERATING IN THE CITY OF OAKLAND; (2) AUTHORIZING APPORTIONMENT OF EQUAL SHARES OF THE PEG FUNDS TO PEG CHANNELS OF THE CITY OF OAKLAND (“KTOP”), OF THE OAKLAND UNIFIED SCHOOL DISTRICT (“KDOL”), AND OF THE PERALTA COMMUNITY COLLEGE (“PERALTA TV”) FOR THEIR PEG CHANNEL CABLE AND VIDEO TELEVISION FACILITIES, SUBJECT TO EQUAL REAPPORTIONMENT IN FISCAL YEARS WHEN THERE ARE FEWER OR MORE PEG CHANNELS OPERATING IN OAKLAND; AND (3) AUTHORIZING THE CITY ADMINISTRATOR TO EXECUTE MEMORANDA OF UNDERSTANDING TO EFFECTUATE THE DISTRIBUTION OF SAID FUNDS

WHEREAS, the City’s Cable and Video Franchise Holders, Comcast and AT&T, are required to pay to the City, on a quarterly basis, 1% of their gross revenue to be used for the capital expenses (“PEG funds”) for Public, Education and Government (“PEG”) cable and video television facilities, such as those operated by the City through KTOP, by the Oakland Unified School District (“KDOL”) and the Peralta Community College District (“PERALTA TV”), collectively referred to as the “PEG Channel Operators,” pursuant to the City’s Local Cable Franchise (“Local Franchise”), State Video Service Franchises (“SVSF”) and State Video Franchise Agreement (“DIVCA”); and

WHEREAS, the PEG Fund capital support contribution made by Comcast and AT&T is 1% of their gross revenues, approximately \$ 700,000.00 annually, sometimes less and sometimes more depending on AT&T and Comcast’s revenues; and

WHEREAS, the City is required to distribute PEG Funds among the PEG Channel Operators, including KTOP, under the City’s Cable Franchise, SVSF and DVICA; and

WHEREAS, staff seeks a one-time apportionment and appropriation of PEG Funds for fiscal years 2008-2009 and 2009-2010 on account, and an ongoing, annual apportionment and appropriation for the coming five fiscal years 2012-2013 through 2016-2017, to a Public, Education and Government fiscal account in order to fund capital improvements of all current and then existing PEG Channel operators: KTOP, KDOL and PERALTA TV cable and video television facilities; and

WHEREAS, the PEG Fund contributions made by Comcast and AT&T during fiscal years 2008-2009 and 2009-2010 on account are \$ 1,635,745.69; and

WHEREAS, staff seeks authorization for apportionment and appropriation of the PEG funds on account for Fiscal Years 2008 thru 2010 to KTOP, KDOL and PERALTA TV of one-third (1/3) each, (\$ 545,248.56 each); and

WHEREAS, staff seeks authorization for apportionment and appropriation of the PEG Funds expected to be received during Fiscal Years 2012 through 2017 to be allocated in equal portions to the PEG Channels operating in Oakland during the corresponding Fiscal Year (the current operating PEG Channels KTOP, KDOL and PERALTA TV would be apportioned one-third (1/3) each, approximately \$ 233,333.00 per year); and

WHEREAS, the City wishes to enter into a Memorandum of Understanding (“MOU”) with KTOP, PERALTA TV and KDOL to memorialize the PEG Funds apportionment, use of the funds and city’s administrative functions in connection with the PEG Funds; and

WHEREAS, the City’s Department of Information Technology will be the lead Agency in coordinating the MOUs with, and distribution of funds to PEG Channels operating in Oakland, and will administer all PEG Funds for the PEG channels; and

WHEREAS, in the event that fewer or additional PEG channels exist during a particular Fiscal Year, (between 1 and 7 channels), the current PEG Channel Operators KTOP, KDOL and PERALTA TV agree to reapportionment of the PEG Funds collected during fiscal years 2012-2013 thru 2016-2017 to provide for an equal apportionment of PEG Funds among one (1) up to seven (7) PEG Channel Operators according to the number of PEG Channels operating in each Fiscal Year; and

WHEREAS, the term of the MOU will commence when KTOP, KDOL and PERALTA TV execute the MOU and will continue to June 30, 2017 or the termination of the current Franchise Agreement between the city, Comcast and AT&T; now, therefore be it

RESOLVED, That the City Council authorizes the appropriation, as specified below, of PEG Funds to Public, Education and Government fiscal Fund 2999 Account 41613 Project P350210 (KTOP), Fund 2999 Account 24213 Project G383410 (KDOL) and Fund 2999 Account 24213 Project G383510 (PERALTA TV) to be used for capital improvements of all current PEG Channel Operators; and be it

FURTHER RESOLVED, That a onetime PEG Fund appropriation on account in the amount of one-third (1/3) (approximately \$ 545,248.56) of the PEG Fund from Fiscal Years 2008 thru 2010 shall occur each to KTOP, KDOL and PERALTA TV; and be it

FURTHER RESOLVED, That, for the five Fiscal Years beginning July 1, 2012, PEG Funds for each Fiscal Year shall be apportioned equally between the PEG Channels in operation in Oakland for each corresponding Fiscal Year appropriations of approximately \$ 233,333.00 per Fiscal Year, from Fiscal Years 2012-2013 through 2016-2017 shall occur to KTOP, KDOL and PERALTA TV, so long as the number of PEG Channels operating in Oakland remains the same and subject to equal reapportionment between the PEG Channels that are operating in Oakland in a given Fiscal Year; and be it

FURTHER RESOLVED, That the City Council authorizes a appropriation of one-third (1/3) of all PEG Fund contributions annually (estimated at approximately \$ 233,333.00 per Fiscal Year), collected during Fiscal Years 2012-2013 through 2016-2017, each to KTOP, KDOL and to PERALTA TV, so long as the number of PEG Channels operating in Oakland remains the same and subject to equal reapportionment between the PEG Channels that are operating in Oakland in a corresponding Fiscal Year; and be it

FURTHER RESOLVED, . That the City Administrator is authorized to execute Memoranda of Understanding (MOU) with all participating PEG Channel operators to memorialize the PEG Fund apportionment, and terms and conditions of the PEG Fund payments; and be it

FURTHER RESOLVED, That the City Administrator is authorized to revise PEG Fund appropriation amounts without return to Council to (i) adjust PEG Fund apportionment to PEG Channels operating in Oakland in amounts to reflect an equal share of the annual 1% PEG Fund contributions in a corresponding Fiscal Year, and (ii) to reallocate PEG funds to reflect equal apportionment among PEG Channel operators in the event of changes in the number of PEG Channel operators between one (1) up to seven (7) occur; and be it

FURTHER RESOLVED: That the City Attorney will review the agreements authorized hereunder for form and legality and a copy shall be kept on file with the City Clerk.

IN COUNCIL, OAKLAND, CALIFORNIA, _____

PASSED BY THE FOLLOWING VOTE:

AYES - BROOKS, BRUNNER, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, SCHAAF and PRESIDENT REID

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____
LaTonda Simmons
City Clerk and Clerk of the Council
of the City of Oakland, California