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OFFICE OF THE CITY CLERK
OAKLAND

AGENDA REPORT

2014 MAY -1 PM 3:18

TO: FRED BLACKWELL
CITY ADMINISTRATOR

FROM: Karen Boyd

SUBJECT: Ordinance Restricting 2% of the
Cable Franchise Fee Revenues
for KTOP-TV and Cable-related Activities

DATE: May 1, 2014

City Administrator
Approval

Date

5/1/14

COUNCIL DISTRICT: City-Wide

RECOMMENDATION

Staff recommends that City Council accept this report and consider adopting an ordinance to re-establish a restriction on two percent (2%) of the five percent (5%) Cable Franchise Fee revenues for KTOP-TV and cable-related expenditures.

EXECUTIVE SUMMARY

At the December 10, 2013, City Council meeting, staff was directed to present for Council consideration a draft ordinance which would restrict two percent (2%) of the five-percent (5%) Cable Television Franchise Fee for KTOP-TV and cable-related expenditures. The re-establishment of this restriction would provide a designated funding source for KTOP-TV and cable-related operations, with funds restricted to support that use. It is consistent with a key provision in Ordinance No. 10399, adopted in 1983, which established a Telecommunications Account (now called Fund 1760, the Telecommunications Reserve Fund) "designated for cable-related nonregulatory activities, including, but not limited to, funding public, educational, and government access programming."

In a recent legal opinion (issued on September 10, 2013), the City Attorney's Office advised that adoption of Ordinance No. 12861 in January 2008 removed the pre-existing legal restrictions on part of the revenues received as Cable Television Franchise Fees as provided in 1983 Ordinance No. 10399, and that the expenditure of Telecommunications Reserve Funds were limited to the definition detailed in the FY 2013-15 Adopted Policy Budget.

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OUTCOME

The purpose of this report is to provide the City Council with a draft ordinance for consideration and possible adoption that would re-establish a restriction on two-percent (2%) of the 5% Cable Franchise Fee revenues for support of KTOP-TV and cable-related expenditures as defined in Ordinance No. 10399: "cable-related nonregulatory activities, including, but not limited to, funding public, educational, and government access programming."

BACKGROUND/LEGISLATIVE HISTORY

In January 2008, the City Council authorized the 10-year extension of a Franchise Agreement with Comcast (Franchisee) to provide cable services to City residents (LegiStar File No: 07-0923). The Franchise Agreement is in effect until December 2017; it lists a number of requirements, including: payment to the City of an annual franchise fee of five percent (5%) of gross revenues; payment of an additional one-percent (1%) of gross revenues for funding of PEG channel capital expenditures; continued access to the City's three PEG channels; and free cable service for all City and school buildings.

Telecommunications Reserve Fund (1760)

In 1983, the City Council had adopted Ordinance No. 10399, requiring the cable television franchisee to pay an annual franchise fee of five percent (5%) of gross revenues and specifying that two percent (2%) of the five percent (5%) franchise fee should be placed in a separate "Telecommunications Account" (formerly known as Fund 141, currently Fund 1760, referred to as the Telecommunications Reserve Fund). According to the Ordinance, the two percent (2%) fee was to be designated for "cable-related nonregulatory activities, including, but not limited to, funding public, educational, and government access programming." The remaining three-percent (3%) of the annual franchise fee was recognized as General Purpose Fund revenue.

The five percent (5%) Cable Franchise Fee was later codified as Oakland Municipal Code section 5.16.540 on December 6, 2005, through the passage of Ordinance No. 12729 C.M.S. and remains in effect.

Subsequently, in January 2008, the City Council passed Ordinance No. 12861 eliminating the restrictions for use of two percent (2%) of the annual five percent (5%) cable franchise fee. This ordinance was a "complete restatement" of the original franchise granted under Ordinance No. 10399 C.M.S., and did not include any restrictions on the five percent (5%) cable franchise fee.

The City Attorney advised that the City is no longer obligated to allocate two-percent (2%) of the annual cable franchise fee to the Telecommunications Reserve Account, and there are no funding restrictions associated with the expenditure of funds within the Telecommunications Reserve

Account derived from 2% of gross revenues of the Cable System Franchisee since December 18, 2007.

The City Attorney further advises that: "Although the 2008 Cable Franchise Ordinance does not place any restrictions on use of the fee, the Administration must use the fees only for the purposes expressed by the City Council when the Council passed the budget. The Council demonstrated its intent to use the Telecommunications Reserve funds to fund the listed positions through passage of the budget. The Budget states that the Telecommunications Reserve is for 'operation of the City's cable television station (KTOP) and other telecommunications-related operations.' So long as an expenditure fits within that stated purpose, the expenditure is a proper use of the money." This does not impact Public Education and Government Access (PEG) funds, which are restricted by State legislation.

It should be noted that unrestricted General Purpose Fund revenues are subject to the three percent (3%) set-aside¹ calculations for the City's Kids' First! contribution. Therefore, since December 18, 2007, the entire five percent (5%) cable franchise fee derived from gross revenues of the Cable System Franchisee has been eligible for the Kid's First! set-aside, and will continue to be until the Council adopts restrictions on the revenues again.

ANALYSIS

In FY 2013-14, the five percent (5%) annual franchise fee is projected to generate \$3.7 million in revenue; the FY 2013-15 Adopted Policy Budget allocates \$1.5 million to the Telecommunications Reserve Fund and \$2.2 million to the General Purpose Fund.

The Telecommunications Reserve Fund is the primary source of funding for KTOP operations. For FY 2013-15, KTOP-TV and cable-related operations are staffed by 10.24 FTEs with a total budget of approximately \$1.5 million each fiscal year.

As stated above, revenues in the Telecommunications Reserve Fund derived from 2% of gross revenues of the Cable System Operator since December 18, 2007 are unrestricted. It is currently being used for "cable-related nonregulatory activities, including, but not limited to, funding public, educational, and government access programming" per Ordinance No. 10399, which was established in 1983. This restriction was superseded by Ordinance No. 12861, passed by Council in 2008. In the City Attorney's opinion, this fund is now no longer restricted.

At its December 10, 2013 meeting, the City Council approved staff's policy recommendation to reinstate restrictions on the Telecommunications Reserve Fund, allocating 2% of the 5% cable franchise fee to the Telecommunications Reserve Fund to provide a dedicated funding source for

¹ Oakland City Charter section 1300 "... the KIDS First! The [sic] Oakland Fund for Children and Youth ("Fund") shall receive revenues in an amount equal to three percent (3.0%) of the City of Oakland's annual actual unrestricted General Purpose Fund (Fund 1010) revenues and appropriated as specified in this Act each year, . . ."

KTOP-TV and cable-related activities, and Council passed a motion directing the administration to present legislation to that effect. The attached Ordinance to re-restrict 2% of the Cable Franchise Fee is proposed to be effective July 1, 2014.

If the proposed ordinance is passed, it will apply to Cable Franchise Fees the City receives after its effective date. All of the 5% Cable Franchise Fees received between the effective date of this ordinance and December 18, 2007, are unrestricted, whether or not they have been placed into Fund 1760. The location of the revenue does not determine its restricted or unrestricted character.

PUBLIC OUTREACH/INTEREST

This item did not require any additional public outreach other than the required posting on the City's website.

COORDINATION

This report was developed in consultation with staff in the CAO-Budget Office, KTOP-TV and the City Attorney's Office.

COST SUMMARY/IMPLICATIONS

Since revenues in the Telecommunications Reserve Fund derived from 2% of gross revenues of the Cable System Operator since December 18, 2007 are unrestricted under Ordinance No. 12861, and because such 2% revenues have mistakenly been treated as restricted revenue rather than unrestricted General Purpose Fund revenue, such revenues are subject to the Kids First! set-aside.

The financial impact of the Kids First! contribution is estimated to be \$280,000 from December 2007 through the end of FY 2013-14 (December 18, 2007, was the effective date of Ordinance No. 12861, passed in January 2008, that removed the restriction on the 2% annual cable franchise fee). Fund balance is available to make the required transfer to Kids First! A one-time true-up of amounts owed to Kids First! is an appropriate use of fund balance. Staff will include the appropriation of fund balance to transfer to Kids First! in the FY 2014-15 Midcycle Budget amendments.

By re-imposing the two-percent (2%) restriction on Cable Franchise Fee revenues, adoption of this ordinance will exempt these revenues from being subject to the 3% Kids First! set aside, thereby reducing revenues to Kids First!.

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SUSTAINABLE OPPORTUNITIES

Economic: None.

Environmental: None.

Social Equity: None.

For questions regarding this report, please contact Karen Boyd, Assistant to the City Administrator, at (510) 238-6365.

Respectfully submitted,

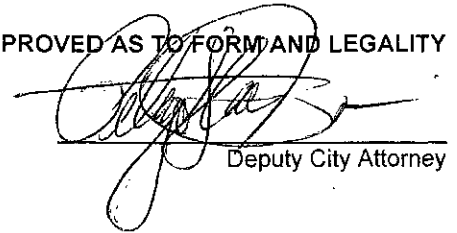


KAREN L. BOYD
Assistant to the City Administrator
City Administrator's Office

FILED
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OAKLAND

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APPROVED AS TO FORM AND LEGALITY


Deputy City Attorney

OAKLAND CITY COUNCIL
ORDINANCE No. _____ C.M.S.

AN ORDINANCE (1) RESTRICTING EXPENDITURE OF TWO PERCENT (2%) OF THE FIVE PERCENT (5%) CABLE FRANCHISE FEE REVENUES TO FUND KTOP-TV 10 AND CABLE-RELATED ACTIVITIES, AND (2) DIRECTING THAT SAID 2% BE SEGREGATED IN THE TELECOMMUNICATIONS RESERVE FUND (FUND 1760)

WHEREAS, KTOP-TV 10 is the City of Oakland's government access cable television station charged with the responsibility to provide gavel-to-gavel coverage of legislative meetings and broadcasting community-oriented television programming; and

WHEREAS, Ordinance No. 10399 C.M.S., adopted by the City Council in 1983, required cable franchisees to pay an annual franchise fee of five percent (5%) of gross revenues and specified that two percent (2%) of the franchise fee should be placed in a separate Telecommunications Account, now referred to as the Telecommunications Reserve Fund or Fund 1760; and

WHEREAS, according to Ordinance No. 10399, the two percent (2%) "shall be designated for cable-related nonregulatory activities, including, but not limited to, funding public, educational and government access programming" and

WHEREAS, the Telecommunications Reserve Fund is the primary source of funding for KTOP and cable-related activities, allocating about \$1.5 million to the KTOP budget each fiscal year; and

WHEREAS, the 5% Cable Franchise Fee was codified as Oakland Municipal Code section 5.16.540 on December 6, 2005, through the passage of Ordinance No. 12729 C.M.S. and remains in effect; and

WHEREAS, in January 2008, City Council passed Ordinance No. 12861 C.M.S., which superseded Ordinance No. 10399 C.M.S. and eliminated the requirement to segregate 2% of the 5% Cable Franchise Fee into the Telecommunication Reserve Fund, as well

as eliminated the restriction on the use of the 2% revenues, and thereby eliminated a dedicated funding source for KTOP and cable-related activities; and

WHEREAS, on December 10, 2013, the City Council was informed that Ordinance 12861 C.M.S. removed the prior restriction on 2% of the 5% Cable Franchise Fee, and then the Council passed a motion directing staff to prepare legislation that would reinstate a restriction on 2% of the 5% Cable Franchise Fee to provide a dedicated funding source for KTOP and cable-related activities; now therefore,

THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

Section 1 – (a) Henceforth, of the five-percent (5%) fee imposed on gross revenues of Cable System Operators by Oakland Municipal Code section 5.16.540 (Cable Franchise Fee), two-percent (2%) of those gross revenues shall be restricted for expenditures on KTOP Television and cable-related nonregulatory activities, including, but not limited to, funding public, educational, and government access programming; and

(b) The two-percent (2%) of gross revenues mentioned directly above shall be placed into the Telecommunications Reserve Fund, also known as Fund 1760.

Section 2.—The City Council finds and determines that the adoption of this Ordinance is exempt from the California Environmental Quality Act (“CEQA”), including under section 15061(b)(3) of the State CEQA Guidelines, and authorizes the filing of a Notice of Exemption with the Alameda County Clerk.

Section 3 – If any section, subsection, sentence, clause, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by 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 section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses, or phrases may be declared invalid or unconstitutional.

Section 4— This Ordinance shall become effective July 1, 2014.

Section 5 – This Ordinance is enacted pursuant to the City of Oakland’s general police powers, Section 106 of the Charter of the City of Oakland, and Article XI of the California Constitution.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2014

PASSED BY THE FOLLOWING VOTE:

AYES – BROOKS, GALLO, GIBSON MCELHANEY, KALB, KAPLAN, REID, SCHAAF
and PRESIDENT KERNIGHAN,

NOES –

ABSENT –

ABSTENTION –

ATTEST: _____
LATONDA SIMMONS
City Clerk and Clerk of the Council
Of the City of Oakland, California