



City Council

Approval of an Ordinance Granting the Renewal of a Franchise Agreement with Comcast for Use of City Rights-of-Way to Operate and Maintain a Cable Communication System

Agenda Date: 2/2/2021
Agenda Item Number: 4.K
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Type: ordinance **Version:** 2 **Status:** Passed

Title

Approval of an Ordinance Granting the Renewal of a Franchise Agreement with Comcast for Use of City Rights-of-Way to Operate and Maintain a Cable Communication System

Recommended Action

Committee Recommendation:

Not referred to a committee.

City Manager Recommendation:

Move to approve the ordinance on second reading.

Report

Issue:

Whether to approve the Ordinance on second reading.

Staff Contact:

Kellie Purce Braseth, Director of Strategic Communications, Executive, 360-753-8361

Presenter(s):

None. Consent Item Only.

Background and Analysis:

Background and analysis has not changed from first to second reading.

The City of Olympia's 2009 franchise agreement with Comcast Cable Communications Management, LLC, expired in March 2019. The City notified Comcast of its intention to begin the renewal process in December 2017, and in March 2018 entered in an interlocal agreement with Thurston County and the cities of Lacey and Tumwater to jointly negotiate the renewal of the cable franchise agreement, as had been done with the 2009 agreement.

Together, the four jurisdictions retained Ken Fellman of Kissinger & Fellman, P.C., an attorney with significant experience negotiating cable franchise agreements and who the jurisdictions had retained to negotiate the 2009 franchise agreement. The length of the negotiations required extensions of the 2009 agreement, the last to expire on December 31, 2020. The attached draft agreement was negotiated through the interlocal process. The proposed franchise agreement went before the City of Tumwater on January 5 and will go before the Thurston County Commissioners on January 13. The City of Lacey will hold public hearings on the proposed franchise on January 21.

The proposed cable franchise agreement is for non-exclusive use of city rights-of-way to operate and maintain a cable communication system in Olympia. It is based on Olympia's 2009 franchise, but updated to address new technologies, to reflect changes in the legal and regulatory environment and to align with the language of other recent franchise agreements Comcast has entered into in Washington state and Colorado.

It is important to understand the legal limitations related to cable franchising. Specifically, the cable franchise can only address the provision of cable (video) service in Olympia. Federal and state law prohibits the City from collecting franchise fees on Comcast's non-cable service revenue, such as telephone services and broadband internet.

The new 10-year cable franchise proposal seeks to accomplish four things:

1. Maintain the benefits of the 2009 agreement.
2. Eliminate provisions in the 2009 agreement that were no longer relevant.
3. Update and clarify Comcast's obligations around maintaining financial records on franchise fee calculations and payments.
4. Develop franchise language to obtain High Definition (HD) channels and a level of capital cost support for PEG expenditures.

Some issues of interest in the new franchise:

Franchise Fees and the Definition of Gross Revenues: Comcast will continue to pay the City franchise fees in an amount equal to five (5) percent of gross revenues of cable services in Olympia (currently approximately \$300,000 annually). Through the negotiations, the definition of "gross revenues" was amended to ensure the five (5) percent fee generates the most revenue allowed under federal law (see Franchise Section 1.28).

Audit/Financial Review: Following a franchise fee audit by the jurisdictions' consultant, new language was added to the proposed agreement to ensure Comcast conducts more accurate and record-based evaluations of future franchise fee payments. (See, Franchise Section 3.6)

PEG (Public, Educational and Government Access) Issues: The new proposed franchise agreement will add HD channels to the City's PEG operations. PEG programming is currently only available on standard definition (SD) channels. As more residents move to HD television, SD-only programming will not serve them well. The agreement provides for government and other PEG programming to be shown simultaneously on the HD channels and SD PEG channels. It also maintains the ability of the residents of all the jurisdiction to watch the local PEG content of other jurisdictions.

As part of previous franchise agreements, Comcast has leased studio space at 440 Yauger Way to Thurston County Media (TCM) for \$1/year. However, Comcast is not required to do so under current

law. In the process of the renewal negotiations, Comcast notified the jurisdictions of their intention to no longer support the TCM studio space with the \$1/year lease as of December 1, 2021.

On January 12, a public hearing was held and the ordinance was approved on first reading and forwarded to second reading.

Neighborhood/Community Interests (if known):

Members of the community are impacted daily by the need for and use of cable service in their homes and businesses.

Options:

1. Approve the Ordinance on second reading.
2. Do not approve the Ordinance on second reading.

Financial Impact:

The City of Olympia continues to receive 5 percent franchise fees (approximately \$300,000 annually) and PEG capital contribution of approximately \$45,000 annually.

Attachments:

Ordinance and Agreement