CITY COUNCIL OF THE CITY OF SONORA
STAFF REPORT

MEETING DATE: AUGUST 5, 2019

TO: SONORA CITY COUNCIL

FROM: DOUGLAS L. WHITE, CITY ATTORNEY

SUBJECT: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SONORA AMENDING SECTION 4.04.020, FRANCHISE REQUIRED, OF THE MUNCIPAL CODE AND ADDING CHAPTER 4.11, STATE VIDEO FRANCHISES, TO THE MUNCIPAL CODE

RECOMMENDATION:

Motion to approve first reading and introduction of Ordinance No. 859, reading by title only, and waiving further reading of an Ordinance of the City Council of the City of Sonora to amend Section 4.04.020, Franchise required, of the Sonora Municipal Code and adding Chapter 4.11, State Video Franchise, to the Sonora Municipal Code.

BACKGROUND:

Currently, the City of Sonora ("City") requires anyone who wishes to construct or operate a cable system to obtain a franchise from the City. In 2006, however, the Governor signed the Digital Infrastructure Video Competition Act ("DIVCA"), which went into effect on January 1, 2007. DIVCA established state video franchising and replaced local cable franchising. This prevents the City from requiring state video franchises holders to obtain a franchise from the City. DIVCA, however, permits the City to establish a fee to support Public, Educational, and Governmental ("PEG") programming and allows the City to enforce penalties against state video franchise holders who violate customer service and protection standards set forth in state and federal law.

DISCUSSION:

The proposed ordinance implements DIVCA by amending Section 4.04.020 to eliminate the requirement that state video franchise holders obtain a franchise from the City and bring the City into compliance with DIVCA.

The proposed ordinance further brings the City into compliance with DIVCA by adding Chapter 4.11 to the Municipal Code. The Chapter will allow the City to charge the maximum PEG fee to holders of a state video franchise allowed under the DIVCA. The City will therefore collect from state video franchise holders a fee of 1% of gross revenues. The Chapter also allows the City to enforce penalties against state video franchise holders who violate customer service and protection standards set forth in state and federal law by establishing fines. The fines under the ordinance are the maximum permitted by DIVCA.

FISCAL IMPACT

The ordinance establishes a new one percent (1%) PEG fee on state video franchise holders that will enable the City to support PEG programming. There may be a fiscal impact from enforcing customer service and protection standards. Costs from enforcing those standards, however, may be offset from collecting fines from violators.

ENVIRONMENTAL

The proposed ordinance does not constitute a "project" under the California Environmental Quality Act (CEQA) because it does not have the potential to cause a significant effect on the environment.

THE CITY COUNCIL
OF THE CITY OF SONORA

ORDINANCE NO. 859

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SONORA AMENDING SECTION 4.04.020, FRANCHISE REQUIRED, OF THE MUNICIPAL CODE AND ADDING CHAPTER 4.11, STATE VIDEO FRANCHISES, TO THE MUNCIPAL CODE

WHEREAS, in 2006, the Digital Infrastructure and Video Competition Act ("DIVCA") was signed into law and codified as California Public Utilities Code section 5800, et seq.; and

WHEREAS, DIVCA established state video franchising that replaced local cable franchising; and

WHEREAS, DIVCA provides that a local entity may by ordinance establish a fee to support Public, Education, and Government programming payable by state video franchise holders ("PEG Fee"); and

WHEREAS, the City of Sonora ("City") finds that it is in the best interest of public health, safety, and general welfare, to implement the DIVCA, and establish a PEG fee.

NOW, THEREFORE THE CITY OF SONORA CITY COUNCIL DOES ORDAIN AS FOLLOWS:

SECTION 1: Section 4.04.020, Franchise required, of the Sonora Municipal Code shall be amended to read as follows:

4.04.020 Franchise required.

No person may construct or operate a cable communications system in the city of Sonora without first obtaining a city franchise, provided that the following shall not be required to obtain a franchise under this title:

A. A UVPP that is only delivering cable service or other communication services (as the term is defined in 47 U.S.C Section 542 (h)) to subscribers.
B. A holder of a state video franchise, as provided under California Public Utilities Code section 5840.

SECTION 2: A new Chapter 4.11 of the Sonora Municipal Code, entitled "State Video Franchises" is hereby added to provide as follows:

Chapter 4.11

STATE VIDEO FRANCHISES

Sections

4.11.010 Purpose and application.

4.11.020 PEG support fees.

4.11.030 Audit Authority.

4.11.040 Customer service penalties.

4.11.050 Public rights-of-way.

4.11.060 Police powers.

4.11.010 Purpose and application.

The State of California, through the Public Utilities Commission, is the sole authority with power to grant state video franchises pursuant to the Digital Infrastructure and Video Competition Act of 2006 ("DIVCA"), as codified at Public Utilities Code Section 5800 et seq. at the time of enactment of this Chapter. The purposes of this Chapter are to implement DIVCA in the City of Sonora ("City") and to regulate, consistent with DIVCA and the implementing rules issued by the California Utilities Commission, video service provides holding state video franchises and operating within the City pursuant to that franchise. This Chapter shall be applied to and interpreted consistently with any amendments to, or recodification of, DIVCA that may be made from time to time.

4.11.020 PEG support fees.

A. Any state video franchise holder operating within the boundaries of the City shall pay a PEG fee to the City or the City's designee for capital support of public, educational, and/or governmental ("PEG") purposes that is consistent with state and federal law in the amount of one percent (1%) of gross revenues, as defined by Section 5870 (n) of the California Public Utilities Code.

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 reauthorization shall be effective for so long as such reauthorization is required by law.

4.11.030 Audit authority.

Not more than once annually, the City Administrator, or designee, may examine and perform an audit of business records of a holder of a state video franchise operating within the boundaries of the City to ensure compliance with Section 4.11.020.

4.11.040 Customer service penalties.

A. The holder of a state video franchise shall comply with all applicable state and federal customer service and protection standards pertaining to the provision of the video service.

B. The City Administrator or designee shall monitor the compliance of state video franchise holders operating within the boundaries of the City with respect to state and federal customer service protection standards. The City Administrator or designee will provide the state video franchise holder written notice of any material breaches of applicable customer service standards and will allow the state video franchise holder thirty (30) days from the receipt of the notice to remedy the specified material breach. Material breaches not remedied within the thirty (30) day time period will be subject to the following penalties to be imposed by the City:

1. For the first occurrence of a violation, a fine of up to five hundred ($500) dollars may be imposed for each day the violation remains in effect, not to exceed one thousand five hundred dollars ($1,500) for each violation.

2. For a second violation of the same nature within twelve (12) months, a fine of up to one thousand dollars ($1000) for each day the violation remains in effect, not to exceed three thousand dollars ($3000) for each violation.

3. For a third or further violation of the same nature within (12) months, a fine of up to two thousand five hundred dollars ($2,500) may be imposed for each day the violation remains in effect, not to exceed seven thousand five hundred dollars ($7,500) for each violation.

C. A state video franchise holder may appeal a penalty assessed by the City Administrator to the City Council within sixty (60) days of the initial assessment. The City Council shall hear all evidence and relevant testimony and may uphold, modify, or vacate the penalty. The City Council imposition of a penalty shall be final.

D. As used herein, "material breach" is defined as set forth in Public Utilities Code Section 5900.

4.11.050 Public rights-of-way.

For the purpose of operating and maintaining a television system in the City, a state video franchise holder may erect, install, construct, repair, replace, reconstruct, and retain in, on, over, under, upon, across, and along the public rights-of-way and public cables, conductors, ducts, conduits, manholes, amplifiers, property, and equipment as are

necessary and appurtenant to the operations of the cable system. The state video franchise holder shall comply with all applicable City construction codes and procedures.

The City maintains the right to perform any public work or public improvement of any description, including, without limitation, all work authorized by applicable law. In the event that the state video franchise holder's system interferes with the construction, operation, maintenance, or repair of any such public work or improvement, the state video franchise holder, after reasonable notice from the City, shall, at its own cost and expense, promptly protect, alter or relocate the system, or any part thereof, as directed by the City.

In the event that the state video franchise holder refuses or neglects to so protect, alter or relocate all or any part of its system, the City shall have the right in connection with the performance of such public work or public improvement to break through, remove, alter, or relocate all or any part of the system without any liability to the state video franchise holder except for the City's willful misconduct and the state video franchise holder shall promptly pay to the City the costs incurred by such breaking through, removal, alteration, or relocation.

4.11.060 Police powers.

The rights of a state video franchise holder operating within the boundaries of the City are subject to the police power of the City to adopt and enforce general ordinances necessary to the health, safety, and welfare of the public, and each state video franchise holder shall comply with all applicable general laws and ordinances enacted by the City pursuant to such power.

SECTION 3: If any section, subdivision, sentence, clause, phrase, or portion of this Ordinance is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

SECTION 4: This Ordinance shall become effective thirty (30) days from and after its final passage and adoption, provided it is published in a newspaper of general circulation at least fifteen (15) days prior to its effective date or a summary of the Ordinance is published in a newspaper of general circulation at least five (5) days prior to adoption and again at least fifteen (15) days prior to its effective date.

SECTION 5. CERTIFICATION OF COUNCIL ADOPTION AND APPROVAL. This Ordinance was introduced and approved by Ordinance No. 859 at a regular meeting of the City Council of the City of Sonora held on the ____, of _____, 2019 by the following vote:

AYES:
NOES:
ABSENT:
ABSTAINED:

APPROVED:

_____
James M. Garaventa
Mayor of the City of Sonora

ATTEST:

_____
Colette Such
City Clerk Pro Tem of the City of Sonora

APPROVED AS TO FORM:

_____
Douglas L. White
City Attorney of the City of Sonora