

To: Mayor and Members of the City Council
Via: James C. Hardy, City Manager
From: Steve Toler, Administrative Services Director
Date: November 5, 2007
Re: Revisions to Title 14 "Public Utilities", Chapter 14.01 "Governing the Provision of Cable Services in the City", of the Foster City Municipal Code; Adoption of Revised Telecommunications Policy

RECOMMENDATION

Staff recommends that the City Council introduce and pass to second reading, an ordinance of the City of Foster City amending Chapter 14.01, Governing the Provision of Cable Services in the City, of Title 14, Public Utilities, of the Foster City Municipal Code. It is further recommended that the City Council approve the attached resolution adopting the revised Foster City Telecommunications Policy.

EXECUTIVE SUMMARY

In September 2006, the Governor signed into law the Digital Infrastructure and Video Competition Act of 2006 ("DIVCA") that allows video service providers to obtain a state-issued franchise to provide video services in a local community. Foster City's Municipal Code Chapter 14.01, which governs the provision of cable and video services in the City, was updated in 2005, prior to DIVCA's enactment.

The amendments to the ordinance proposed herein will put Foster City municipal code into compliance with State law.

Additionally, the Foster City Telecommunications Policy, originally adopted in 2000, is in need of revision to reflect changes in State law indicated above, as well as changes in the methods and means of delivering telecommunications services to the residents and businesses in Foster City.

BACKGROUND

Municipal Code

The City has had a section of its municipal code, Chapter 14.01, on the books since 1991 that governs how cable service providers provide services in Foster City. Up until 2006, the City was the sole local franchising authority for those companies wishing to provide cable services using City rights-of-way. With the passage of AB 2987 and the signing of DIVCA into law in September 2006, cable / video service providers can now obtain a franchise to provide video services in a local jurisdiction from the State of California. As the Council is aware, AT&T is providing video services now in Foster City under a state franchise agreement.

Chapter 14.01 of the Municipal Code was last amended in December 2005 in conjunction with the approval of a successor cable franchise agreement with Comcast. Given the adoption of DIVCA into state law, however, the City's ordinance needs to be amended to reflect the state law and the fact that a video service provider can provide services in Foster City either under a state or a local franchise.

Telecommunications Policy

On February 22, 2000, the City Council adopted the City's first Telecommunications Policy. The purpose of the Policy is to define the City's goals and policy objectives in addressing the complex area of advanced telecommunications services. While the Policy itself remains effective in providing policy direction on how the City handles telecommunications issues, changes have occurred in the delivery of such services, the nature of the services themselves, and the federal and state laws which impact those policy objectives. Accordingly, revisions to the policy are necessary in the policy to reflect these changes in the environment affecting telecommunications services.

ANALYSIS

Municipal Code

The changes to the municipal code were performed in conjunction with assistance from Brian Grogan, Attorney with Moss & Barnett LLP. Mr. Grogan assisted the City in its negotiations with Comcast for a successor franchise agreement in 2005, in drafting the amendments to Chapter 14.01 as part of the Comcast franchise renewal, and provided legal advice as we negotiated the so-called Gap Agreement with AT&T in 2006 that allowed them to provide video services in Foster City prior to the implementation of DIVCA. Mr. Grogan is well versed in the City's existing franchise agreements and the provisions of DIVCA.

The changes to the ordinance can best be summarized as follows:

- Recognize that cable, video, and such services are entitled “cable services” and “video services” for purposes of the ordinance
- Reflect the fact that video service providers may obtain either a locally issued franchise or a state franchise under the terms of current state and federal law
- Reflect the provisions of DIVCA that impact state franchise holders and how their franchise agreements play into the City’s ordinance provisions
- Allow existing local franchise agreements and ordinance provisions to remain intact as originally enacted in 2005
- Reasserts a Franchise Fee of 5% of gross revenues, existing on the books and in compliance with DIVCA provisions
- Establishes a Public, Education and Government Fee of 1% of gross revenues in accordance with DIVCA provisions

Of key concern to all cities as part of the enactment of DIVCA was a city’s right to protect and dictate the circumstances of use of the rights-of-way. This ordinance, in Section 14.01.060, refers to “all applicable laws”, which by reference includes the provisions of Title 12, Chapter 12.40 “Work Within Public Places”, and Title 15, Chapter 15.04, “Building Code”, which sets forth the circumstances under which a video service provider is allowed to use our rights-of-way through encroachment permit processes, building permitting, etc. As such, this key interest is maintained in the amended ordinance.

In regards to the PEG Fee of 1%, the City will not realistically collect those fees until such time as the Comcast franchise agreement is terminated by either 1) Comcast’s abrogation of the agreement in deference to a state franchise, or 2) the term of the agreement is reached. DIVCA only provides that any additional service providers (in this case, AT&T) are required to share in the unremitted financial obligations of the incumbent franchise holder. As such, AT&T will only have to remit to the City their pro-rata share of Comcast’s existing obligations under their franchise agreement which expires in 2020. Nevertheless, the City feels it is important to capture the 1% PEG Fee so that all current and potential video service providers understand the expectation of the City in terms of PEG contributions.

Telecommunications Policy

The Policy adopted in February 2000, in retrospect, was very useful in assisting the City Council, City Staff, and the Information Technology Advisory Committee, in evaluating, negotiating, recommending and implementing major changes in the City’s telecommunications services and infrastructure in the past 7 years. The upgrade of Comcast’s cable system, the entry of AT&T into the marketplace as a video provider, the agreement with MetroFi to provide wi-fi internet services in Foster City ... these

and many more issues were successfully addressed through the Telecommunications Policy.

The goals and objectives and policy statements in the existing Telecommunications Policy remain substantially intact, and as such have not been changed. Changes to the Telecommunications Policy document are summarized here:

- The existing Policy was the first of its kind for Foster City. The document has been changed to reflect it as a revised Policy document.
- Reflection of changing regulatory environment due to federal and state (DIVCA) legislation.
- Reflection of the changing technology, telecommunications and economic environment now and over the next five years.
- Reflection of the positive impact of the Policy on the implementation of telecommunications services since its existence.
- Use of City-Owned Property (Property included) – amended to reflect that City property may include mounting assets for wireless services such as lightpoles or radio tower such as the one out on E. Third Avenue.
- Use of City-Owned Property (Private organizations) – amended to reflect that the City may elect, at its sole discretion, to allow private organizations to lease property providing that there is an expected benefit to the community for the use of such property. An example of this is Gilead Sciences, which has paid the City for a private encroachment across City streets to interconnect their facilities. The benefit derived is that Gilead was successfully able to build their campus network which inhabits over half of the Vintage Park development area, and their fiber backbone supported the use of all of those facilities.

Information Technology Advisory Committee Input

The Information Technology Advisory Committee has been an invaluable resource in assessing the existing telecommunications condition of Foster City and in tracking the passage of DIVCA in 2006. ITAC discussed the content of this staff report at its October 9, 2007 regular meeting. Their recommendations to the City Council are as follows:

“The Information Technology Advisory Committee recommends that the City Council adopt the changes to the Foster City Telecommunications Policy as submitted as part of this Staff Report” (6-0-0)

And

“The Information Technology Advisory Committee recommends that the City Council adopt the changes to the Foster City Municipal Code, Title 14, concerning Cable and Video Services as submitted as part of this Staff Report” (4-0-2, Koss and Roth abstaining)

RECOMMENDATION

Staff recommends that the City Council:

1. Introduce and pass to second reading, an ordinance of the City of Foster City amending Chapter 14.01, Governing the Provision of Cable Services in the City, of Title 14, Public Utilities, of the Foster City Municipal Code.
2. Approve the attached resolution adopting the revised Foster City Telecommunications Policy.

Staff will be available to answer any questions the Council may have during the public hearing and deliberation of these items.

ATTACHMENTS:

- Ordinance of the City of Foster City amending Chapter 14.01, Governing the Provision of Cable Services in the City, of Title 14, Public Utilities, of the Foster City Municipal Code
- Resolution Adopting the Revised Foster City Telecommunications Policy
- Foster City Telecommunications Policy dated November 5, 2007

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF FOSTER CITY
ADOPTING THE REVISED FOSTER CITY TELECOMMUNICATIONS POLICY

CITY OF FOSTER CITY

WHEREAS, the City adopted a Telecommunications Policy on February 22, 2000 that sets policy in creating a telecommunications infrastructure and environment that benefits the entire community; and,

WHEREAS, the Policy has successfully guided the City in its decisions pertaining to telecommunications regulations, advocacy, negotiations with services providers, and implementation of those services in the community; and,

WHEREAS, significant changes in the regulatory and technological environment have taken place over the past seven years that warrant revisions to the Telecommunications Policy.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Foster City that the revised Foster City Telecommunications Policy dated October 15, 2007 is hereby approved and adopted.

PASSED AND ADOPTED as a resolution of the City Council of the City of Foster City at the _____ held on the _____ day of _____, 2007, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

RON COX, MAYOR

ATTEST:

THERESE L. CALIC, CITY CLERK