



Agenda Item No. 11.

Staff Report Addendum

Date: April 16, 2020

To: Mayor Brekhus and Councilmembers

From: Joe Chinn, Town Manager

Subject: Town Council consideration of adoption of Resolution No. 2154 authorizing the Marin General Services Authority (MGSA) to collect franchise and PEG access fees from cable television providers and to exercise all powers and functions associated with the Digital Infrastructure and Video Competition Act; and Introduction and First Reading of Ordinance No. 706, an Ordinance of the Town of Ross repealing Chapter 5.26 “Telecommunications Ordinance” of the Ross Municipal Code and to terminate the Marin Telecommunications Agency (MTA)

Recommendation

It is recommended that the Town Council take the following actions:

1. Adopt Resolution No. 2154 authorizing the Marin General Services Authority (MGSA) to collect franchise and PEG Access fees from cable television providers on behalf of the City/Town/County, and exercise all of the functions previously performed by the Marin Telecommunications Agency (MTA).
2. Introduce by title only and waive further reading of Ordinance No. 706, an ordinance to terminate the MTA by Repealing Chapter 5.26 of the Town Code.

Background and Discussion

The MTA was formed in 1997 as a Joint Powers Authority (JPA) with the adoption of a “Telecommunications Ordinance” by each of its member agencies. Originally, the members hoped that the MTA could negotiate local franchises for all types of telecommunications facilities, thus the name of the organization was changed from the “Marin County Cable Rate Regulation Joint Powers Authority” to MTA. Subsequent to the formation of the MTA, changes to state and federal law eliminated local franchise authority over telecommunications entirely, however, leaving the MTA in much more limited role. At this point in time, the MTA’s role is primarily administrative; transitioning of MTA functions to the MGSA will result in greater efficiency and, in the long run, reduced overhead costs associated with the MTA and a larger proportion of franchise fees returning to the Town.

In 2006, the State of California passed the Digital Infrastructure and Video Competition Act (“DIVCA”), which preempted local cable television franchises and moved cable television providers to a state franchise system. With this change, MTA went from negotiating local cable franchises to simply serving as the “local entity” authorized to collect state-mandated franchise and PEG fees. Additional changes to state and federal law have continued to erode local government regulatory control and oversight of telecommunications. Currently, the MTA’s primary purposes are to collect franchise and PEG fees on behalf of the member agencies, oversee its designated PEG access provider agreement with Community Media of Marin County (CMCM), and to audit state franchise holder records as appropriate. There is no need for a separate JPA to perform these functions.

In November 2019, the MTA Board directed staff to begin examining alternatives to its current structure, including total dissolution (with each member agency assuming responsibility for collecting franchise fees and providing PEG access), contracting with one of the MTA’s member agencies, or transitioning its functions to another JPA, the Marin General Services Authority (MGSA). After analysis, transitioning MTA into MGSA was determined to be the most viable, efficient, and financially beneficial option, and on February 12, 2020 the MTA Board of Directors voted 9 – 0, with one member absent, to initiate the transition by June 30, 2020.

On March 12, 2020 the MGSA Board of Directors unanimously voted to introduce a Public, Education and Government (PEG) Fee Ordinance that will allow the MGSA to collect PEG fee revenues on behalf of participating member agencies starting July 1, 2020. The MGSA also unanimously passed a resolution to provide notice to member agencies of its intent to amend its Joint Powers Agreement to include the Cable Television Franchise and Public, Educational, and Government Access as a program under MGSA. The attached Resolution authorizes the MGSA to collect franchise fees and perform all other functions previously performed by the MTA on the Town’s behalf. The repeal of the ordinance that originally formed the MTA is necessary in order to terminate the MTA under its agreement of formation (please note that the repealed ordinance does not impact the Town’s zoning regulations regarding telecommunications facilities). Both must be adopted in order to effectuate the termination of the MTA and the transfer of its powers and obligations to MGSA.

With the resignation and planned departure of the current Executive Officer effective June 30, 2020, the MTA Board asked staff to consider options for transitioning the MTA from its current structure into other alternative arrangements. The Board referred the detailed consideration of options to its Finance and Policy (F&P) Committee members, comprised of Chair Barbara Coler, Vice Chair Sashi McEntee, Andrew McCullough, Dennis Rodoni and David Kulik. The F&P Committee met on December 12, 2019 to discuss possible transition options, including the following:

- a. Retain Existing MTA Structure and Recruit a New Executive Officer.
- b. Retain Existing MTA Structure and Contract with a Member Agency for Operations, such as the County of Marin or the City of San Rafael.

- c. Dissolve MTA and transfer its functions, which are now primarily administrative, to the MGSA.
- d. Dissolve the MTA entirely, allowing individual member agencies to collect franchise fees under DIVCA and separately contract for PEG services.

Of the four options listed, the F&P Committee members determined that transferring the MTA's statutory, administrative, financial, and contract management functions into MGSA was its preferred option. Retaining the existing MTA structure, then contracting with a member agency for operations was determined to be a more expensive option to run the Agency. Nevertheless, the F&P Committee asked staff to contact the County of Marin and City of San Rafael to determine any interest. After reviewing the legal memo prepared by MTA and internal conversations, the jurisdictions did not express any interest given other viable options, particularly the transfer of functions to MGSA.

With the Committee's authorization, staff also discussed options with MGSA Executive Officer Michael Frank, who shared the information with the MGSA Board of Directors. The Marin Managers Association (MMA) was also approached regarding their input and any concerns they might have. MTA Chair Coler spoke with CMCM Executive Officer Michael Eisenmenger to let him know about the possible changes, since CMCM holds a key stakeholder role with the MTA. The Committee asked staff to report on the information gathered to the MTA Board.

The F&P Committee members briefly discussed the full dissolution of the MTA and return of its functions back to the individual member agencies and determined that this option would result in increased individual costs, administrative burden, and loss of economies of scale, making it a more cumbersome option for the member jurisdictions.

If the transfer of responsibilities to MGSA was not feasible, the F&P Committee was leaning towards the hiring of a new Executive Officer.

The preferred option of consolidating MTA functions into the MGSA program structure has been discussed and considered periodically over the past several years. The issue arose again with a 2019 Civil Grand Jury report suggesting such a consolidation take place. As discussed in the Grand Jury response, the proposition was not possible at the time. Those impediments no longer exist.

The collective financial benefit to member jurisdictions in dissolving the MTA and transferring its functions to the MGSA is significant. While expenses the first fiscal year will most likely remain the same, future years should generate annual savings in the \$100,000 range as elements of MTA's work program become fully incorporated into the program structure of MGSA. Any savings will be realized by the member agencies as it will reduce the overhead deductions from disbursed franchise fees (keeping in mind that such fees are expected to decrease for a variety of reasons).

Additionally, multiple shared service levels are already occurring with MGSA and MTA. The two JPAs coordinate and/or have the same office space, accounting and financial staff, office furnishings and equipment, records management systems, internet provider, phone system, insurance providers and independent auditors. The MTA Executive Officer and the MGSA Executive Officer also provide general administrative backup to each other and share some limited clerical support.

If the recommendation described above is approved by a majority of member jurisdictions, the last meeting of the MTA Board would likely occur on Wednesday, June 10, 2020 to close out the MTA and complete the transfer of functions to MGSA. In addition, the subsequent tasks that need occur are described below.

- The Designated Access Provider Agreement between MTA and the Community Media Center of Marin (CMCM) will be transferred to MGSA for future management, and to assure continuation of the community media services that the MTA jurisdictions have enjoyed for many years (approved by MTA Board on April 8, 2020).
- MTA and MGSA will working with the County of Marin and other member agencies to develop a seamless transition of financial and administrative functions from MTA to MGSA.
- MTA and MGSA will coordinate to assign or transition all contracts to MGSA (approved by MTA Board on April 8, 2020).
- MTA and MGSA will prepare a joint estimated Fiscal Year 2020/21 budget for the Program which will both continue the administrative/financial/contract functions of MTA while also providing transition funding to complete the process over the next six to 12 months.
- The MTA's PEG fee ordinances for Comcast, AT&T and Horizon will be transferred to MGSA for future management.

Fiscal, resource and timeline impacts

It is projected that with the transfer of MTA services to MGSA will save approximately \$100,000 in costs annually. MTA currently allocates their expenses to each of their member agencies by reducing the amount of cable franchise fees each entity collects. Thus, with the transfer of these services there will be approximately \$100,000 more of franchise fees to be allocated to each of the participating agencies based on their pro-rated share of the revenue.

With Council approval, the second reading of Ordinance No. 706 would occur at the May 14 Town Council meeting. On June 30, 2020 MGSA will take over the MTA services if the participating agencies agree to the transfer of services.

Attachments:

1. Resolution No. 2154
2. Ordinance No. 706

ATTACHMENT 1

TOWN OF ROSS

RESOLUTION NO. 2154

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF ROSS AUTHORIZING THE MARIN GENERAL SERVICES AUTHORITY TO COLLECT FRANCHISE AND PEG ACCESS FEES FROM CABLE TELEVISION PROVIDERS AND TO EXERCISE ALL POWERS AND FUNCTIONS ASSOCIATED WITH THE DIGITAL INFRASTRUCTURE AND VIDEO COMPETITION ACT

WHEREAS, in 1998, the Cities of Belvedere, Larkspur, Mill Valley, and San Rafael, the Towns of Corte Madera, Fairfax, Ross, San Anselmo, Sausalito, and Tiburon, and the County of Marin adopted an ordinance and entered into a formation agreement establishing a joint powers authority, the Marin Telecommunications Agency (MTA), to oversee and regulate a variety of telecommunications services, including cable television and video services.

WHEREAS, the MTA is governed by a board of directors composed of elected members of the member agency's legislative bodies.

WHEREAS, the MTA evolved from the Marin County Cable Rate Regulation Joint Powers Authority, which was formed in 1994 to administer cable television services in the County.

WHEREAS, the Marin Telecommunications Agency was created in response to Telecommunications Act of 1996. At that time, local agencies anticipated that local franchise authority could expand to include other forms of telecommunications, however, this did not occur as evolving state and federal law preempted local control over the public rights-of-way.

WHEREAS, prior to November 2006, the MTA negotiated and approved franchise agreements with cable video service providers, including the predecessors to Comcast, AT&T, and Horizon.

WHEREAS, in November 2006, the State of California enacted the Digital Infrastructure and Video Competition Act ("DIVCA"), which superseded local governments' authority to negotiate cable television franchises and to negotiate for franchise fees.

WHEREAS, despite its current name, the MTA's role is limited to overseeing *cable* television franchises and it does not have the authority to take a policy role on broader telecommunications issues.

WHEREAS, DIVCA sets the maximum amount of franchise fees and Public, Education and Government ("PEG") access fees that local governments can collect.

WHEREAS, in June 2008, the MTA entered into a Dedicated Access Provider (DAP) Agreement with the Community Media Center of Marin (CMCM), based in San Rafael, to deliver PEG access programming and services within the MTA service area. In accordance with CMCM's

bylaws, the MTA appoints two members to the board of directors of CMCM, usually one city/town manager and one elected official.

WHEREAS, since, 2009, CMCM has broadcasted PEG programs, provided equipment (through PEG access fees) for recording government meetings and other capital expenditures, and provided classes, training, and a media center from which remote and on-site locally produced programs could be delivered.

WHEREAS, in June 2011, the MTA converted its local cable television franchises to state franchises under DIVCA.

WHEREAS, in 2012, a dispute arose with Comcast over the payment of PEG fees after MTA's transition from local franchise to DIVCA, the MTA and Comcast entered into a settlement agreement whereby the MTA agreed to split PEG fees until Comcast was able to recover \$3.1 million that Comcast had paid under the local franchise agreement.

WHEREAS, in order to compensate for the loss of PEG revenues to CMCM as a result of the settlement agreement, in May 2014, MTA and CMCM approved an amendment to the DAP agreement to provide one-time bridge funding to CMCM to cover the shortfall in PEG revenue under the mutual understanding that this was a one-time request.

WHEREAS, in 2015, the City of Larkspur withdrew from the MTA, leaving the ten current member agencies: County of Marin, City of Belvedere, Town of Corte Madera, Town of Fairfax, City of Mill Valley, Town of Ross, Town of San Anselmo, City of San Rafael, City of Sausalito, and Town of Tiburon ("MTA Member Agencies"). The MTA subsequently entered into an agreement with Larkspur to provide PEG access.

WHEREAS, subsequent to the adoption of DIVCA and other changes to state and federal law further limiting the ability of local governments to regulate telecommunications facilities, the MTA no longer takes the active policy role that it did prior to the adoption of DIVCA.

WHEREAS, the MTA's role has become primarily administrative in that it collects and distributes franchise fees to the member agencies, transfers PEG access fees to CMCM and oversees its operations, and reviews and audits the payment of such fees by state-franchised cable television providers.

WHEREAS, the Marin General Services Authority ("MGSA") is a joint powers authority formed on October 1, 2005, by the City of Belvedere, Town of Corte Madera, Town of Fairfax, City of Larkspur, City of Mill Valley, City of Novato, Town of Ross, Town of San Anselmo, City of San Rafael, City of Sausalito, Town of Tiburon, County of Marin, Bel Marin Keys Community Services District, and Marinwood Community Services District, for the purpose of financing, implementing, and managing the various municipal services assigned to the Authority.

WHEREAS, the MGSA has a staff-level board and administers a number of programs in Marin County. The MGSA performs primarily administrative functions, avoiding significant

involvement in policy decisions (significant or contentious policy considerations are generally directed back to its member agencies).

WHEREAS, DIVCA authorizes a “local entity” to perform certain functions including but not limited to the collection of state franchise fees, examine the records of state franchise holders, designate the PEG channels operator, and adopt an ordinance to establish and collect PEG access fees. It is not necessary to maintain a joint powers authority specifically for these functions. “Local entity” is defined by Public Utilities Code Section 5830(j) as a “city, county, city and county, or joint powers authority within the state within whose jurisdiction a holder of a state franchise under [DIVCA] may provide cable service or video service.”

WHEREAS, since 2008, the MTA Board and Finance and Policy Committee has engaged in strategic planning discussions regarding the future of the MTA. Since 2016, the MTA has discussed delegating or transitioning the duties and functions of the MTA to another agency.

WHEREAS, these discussions were recently revisited when the Executive Officer of the MTA announced her intent to resign effective June 30, 2020.

WHEREAS, the MGSA is willing to function as the “local entity” and incorporate oversight of cable television franchise authority and PEG access oversight as a program under its joint powers agreement, and to assume the role previously performed by the MTA. The MGSA is willing to administer the functions of the MTA, including but not limited to ensuring the continuation of the PEG access channels, the collection of PEG access and franchise fees (including the adoption of a PEG fee ordinance), overseeing the DAP agreement (including renewing and renegotiating as needed), auditing the records of state franchise holders, maintaining memberships in organizations that are knowledgeable about legislation or changes to the law affecting local regulation of cable television, working with the local agencies and the DAP provider to direct any significant or contentious policy matters back to the affected member agencies, ensuring that a city/town manager and elected official are designated to serve on the board of directors of CMCM, and other functions of the MTA.

WHEREAS, to avoid confusion about the extent of the MGSA’s role in telecommunications policy, the MGSA intends to title the aforementioned program the “Cable Television Franchise and Public, Educational, and Governmental Access Program.”

WHEREAS, the termination of the MTA and delegation of authority to the MGSA to perform the functions spelled out by DIVCA will take advantage of economies of scale, will reduce the administrative burdens associated with maintaining the MTA as a separate agency, and is likely to result in long term cost savings to the member agencies while continuing to ensure the continuation of PEG access services, the collection of franchise fees, and the performance of other functions pursuant to DIVCA and related to cable franchises generally.

NOW, THEREFORE, BE IT RESOLVED:

Section 1. Termination of the MTA. With the adoption of Ordinance No. 706, the Town of Ross is taking action to terminate the MTA pursuant to the terms of its formation

agreement, contingent on the adoption of this resolution authorizing the MGSA to perform all of the functions and assume all of the duties and responsibilities previously performed or assumed by the MTA.

Section 2. Delegation of Authority to MGSA. The Town of Ross hereby authorizes the MGSA to perform all functions and duties on its behalf pursuant to DIVCA. The MGSA shall act as the “local entity” as defined by DIVCA under Public Utilities Code Section 5830(j) with regard to state-franchised cable television providers operating within the jurisdiction of the Town, and shall perform all of the functions and assume all of the obligations previously performed on its behalf by the MTA with respect to DIVCA, including, but not limited to, the collection of PEG access fees and franchise fees, the distribution of PEG fees to the designated PEG access provider and the franchise fees to the Town, the oversight of the designated PEG access provider under the DAP Agreement, the examination and audit of state franchise holders’ records, and the legal defense or settlement of disputes related to the payment of PEG or franchise fees. The MGSA is further authorized to take any actions or exercise any other powers related to the provision of cable television that are authorized under the MGSA’s joint powers agreement and state and federal law.

Section 3. Operative Date. The intent of this Resolution is to smoothly transition the functions and powers previously exercised by the MTA to the MGSA without any interruption in those functions. Therefore, this Resolution shall take effect on the later of the following two dates: (1) the date upon which a majority of MTA Member Agencies has adopted a resolution substantially identical to this action, authorizing the MGSA to collect franchise and PEG access fees and exercise all powers and functions associated with DIVCA, as well as an ordinance of termination substantially identical in form pursuant to Paragraph 13 of the Agreement of Formation of the MTA and such ordinance of termination is fully effective; or (2) July 1, 2020.

The foregoing resolution was duly and regularly adopted by the Ross Town Council at its regular meeting held on the 16th day of April 2020, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Elizabeth Brekhus, Mayor

ATTEST:

Linda Lopez, Town Clerk

ATTACHMENT 2

TOWN OF ROSS

ORDINANCE NO. 706

AN ORDINANCE OF THE TOWN OF ROSS

PROVIDING FOR THE TERMINATION OF THE MARIN TELECOMMUNICATIONS AGENCY AND REPEALING THE TELECOMMUNICATIONS ORDINANCE CODIFIED IN CHAPTER 5.26 OF THE TOWN CODE

WHEREAS, in 1997, the Town Council of the Town adopted Ordinance No. 540, approving an Agreement of Formation of the Marin Telecommunications Agency (“MTA”), a California joint powers agency pursuant to the provisions of Title 1, Division 7, Chapter 5 of the Government Code (commencing with Section 6500), and adding Chapter 5.26 to the Municipal Code.

WHEREAS, the current member agencies of the MTA are: the Cities of Belvedere, Mill Valley, and San Rafael, the Towns of Corte Madera, Fairfax, Ross, San Anselmo, Sausalito, and Tiburon, and the County of Marin (“MTA Member Agencies”).

WHEREAS, in 2006 the California Legislature approved and the Governor enacted the Digital Infrastructure and Video Competition Act of 2006 (“DIVCA”), creating a process for the issuance of franchises by the California Public Utilities Commission and superseding locally issued franchises.

WHEREAS, subsequent to the adoption of DIVCA and other changes to state and federal law further limiting the ability of local governments to regulate telecommunications facilities, the MTA no longer takes the active policy role that it did prior to the adoption of DIVCA.

WHEREAS, the MTA Member Agencies find it desirable to terminate the MTA and delegate its duties to the Marin General Services Agency (“MGSA”), a California joint powers authority that was formed on October 1, 2005, by the City of Belvedere, Town of Corte Madera, Town of Fairfax, City of Larkspur, City of Mill Valley, City of Novato, Town of Ross, Town of San Anselmo, City of San Rafael, City of Sausalito, Town of Tiburon, County of Marin, Bel Marin Keys Community Services District, and Marinwood Community Services District.

WHEREAS, Paragraph 13 of the Agreement of Formation of the MTA provides that the MTA may be terminated by the enactment of an ordinance in substantially identical form by the majority of the MTA Member Agencies specifying such termination, with each such ordinance being adopted within no more than ninety days of each other. Upon such action, the MTA will be deemed terminated.

NOW, THEREFORE THE TOWN COUNCIL OF THE TOWN OF ROSS DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Recitals. The above recitals are true and correct and are hereby incorporated by reference.

Section 2. Termination of MTA. Pursuant to Paragraph 13 of the Agreement of Formation, the Town Council declares that this Ordinance is intended to serve to terminate the Agreement of Formation and the MTA.

Section 3. Repeal of Chapter 5.26 as of Operative Date. Chapter 5.26, “Telecommunications Ordinance,” of the Municipal Code is hereby repealed, effective as of the Operative Date. The repeal of Chapter 5.26 shall not affect the Town’s consent to the termination of the Marin County Cable Rate Regulation Joint Powers Agency (“MCCRRJPA”) or the actual termination of MCCRRJPA, as provided for in Section 5.26.320 of the Municipal Code.

For purposes of this section, the “Operative Date” shall mean the later of the following two dates: (1) July 1, 2020; or (2) the date upon which a majority of the MTA Member Agencies has adopted a resolution authorizing the MGSA to collect franchise and PEG access fees and to exercise all powers and functions associated with DIVCA, as well as an ordinance of termination substantially identical in form pursuant to Paragraph 13 of the Agreement of Formation of the MTA and such ordinance of termination has become effective.

Section 4. Effective Date and Publication. This Ordinance shall be effective 30 days following its adoption by the Town Council. A summary of this Ordinance shall, within fifteen (15) days after passage, be published in accordance with Government Code Section 36933, with the names of the Councilmembers voting for and against it.

THE FOREGOING ORDINANCE was first read at a regular meeting of the Ross Town Council on the 16th day of April 2020, and was adopted at a regular meeting of the Ross Town Council on the ___th day of _____ 2020, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Elizabeth Brekhus, Mayor

ATTEST:

Linda Lopez, Town Clerk