STATEMENT ON THE SUBJECT:
The City Council will consider a Resolution reauthorizing Public, Educational, and Governmental access television fees (PEG fees) for state video franchise agreements in compliance with Public Utilities Code, Division 2.5 and Chapter 11.40 of the West Hollywood Municipal Code (Telecommunications Regulatory Ordinance).

RECOMMENDATIONS:
1. Adopt Resolution No. 18 - "A RESOLUTION OF THE CITY OF WEST HOLLYWOOD REAUTHORIZING ORDINANCE NO. 08-791U AND PUBLIC, EDUCATIONAL AND GOVERNMENTAL ACCESS TELEVISION FEES (PEG FEES) OF 1% FOR STATE VIDEO FRANCHISE AGREEMENTS".
2. Direct staff to send copies of the adopted Resolution to Charter Communications and other parties as appropriate.

BACKGROUND / ANALYSIS:
In 2007, the California Public Utilities Commission (CPUC) established a new state video franchise process, which implemented the Digital Infrastructure and Video Competition Act (DIVCA) of 2006 (AB 2987: Núñez, Chapter 700, Statutes of 2006).

State video franchising allows video service companies to provide service to the residents of cities such as the City of West Hollywood with a state franchise rather than a local franchise. It also allows an incumbent video service provider to obtain a state franchise and terminate its existing local franchise agreement under certain circumstances. DIVCA requires state franchise holders to offer at least three Public, Educational, and Governmental access channels (PEG channels) to each community in which they operate. DIVCA also authorizes cities to adopt an ordinance imposing a fee on state franchise holders to support PEG programming facilities.
On July 21, 2008, the City Council adopted urgency ordinance No. 08-791U establishing video franchise fees, PEG fees, penalties and other related matters for State Video Franchise agreements. Said ordinance also established section 11.40.155 entitled “State Video Franchisees” and set the PEG fee at one (1%) of gross revenues, as defined by the WHMC and in accordance with Public Utilities Code section 5870(n).

On January 2, 2018, Charter Communications obtained a state franchise from the CPUC, which allows the company to serve the City of West Hollywood. Therefore, in order for the City to continue collecting PEG fees, staff recommends the City Council adopts the proposed resolution reauthorizing existing ordinance No. 08-791, which set the PEG fee at 1%.

CONFORMANCE WITH VISION 2020 AND THE GOALS OF THE WEST HOLLYWOOD GENERAL PLAN:
This item is consistent with the Primary Strategic Goal(s) (PSG) and/or Ongoing Strategic Program(s) (OSP) of:

- PSG-3: Fiscal Sustainability.
- OSP-1: Adaptability to Future Change.

In addition, this item is compliant with the following goal(s) of the West Hollywood General Plan:

- G-2: Maintain transparency and integrity in West Hollywood’s decision-making process.

EVALUATION PROCESSES:
N/A

ENVIRONMENTAL SUSTAINABILITY AND HEALTH:
N/A

COMMUNITY ENGAGEMENT:
City staff will post a community update regarding PEG fee reauthorization on the City’s website www.weho.org.

OFFICE OF PRIMARY RESPONSIBILITY:
COMMUNICATIONS DEPARTMENT
FISCAL IMPACT:
PEG Revenues have been budgeted at $150,000 in Fiscal Year 2017-18. To date, the City has received $70,696.32, or 47% of budget. No additional revenues are anticipated as a result of adopting the ordinance.

ATTACHMENTS:
Attachment A: "A RESOLUTION OF THE CITY OF WEST HOLLYWOOD REAUTHORIZING ORDINANCE NO. 08-791U AND PUBLIC, EDUCATIONAL AND GOVERNMENTAL ACCESS TELEVISION FEES (PEG FEES) OF 1% FOR STATE VIDEO FRANCHISE AGREEMENTS."
Attachment B: ORDINANCE NO. 08-791U
A RESOLUTION OF THE CITY OF WEST HOLLYWOOD REAUTHORIZING ORDINANCE NO. 08-791U AND PUBLIC, EDUCATIONAL AND GOVERNMENTAL ACCESS TELEVISION FEES (PEG FEES) OF 1% FOR STATE VIDEO FRANCHISE AGREEMENTS

THE CITY COUNCIL OF THE CITY OF WEST HOLLYWOOD DOES HEREBY RESOLVE AS FOLLOWS:

WHEREAS, In 2007, the California Public Utilities Commission (CPUC) established a new state video franchise process, which implemented the Digital Infrastructure and Video Competition Act (DIVCA) of 2006 (AB 2987: Nuñez, Chapter 700, Statutes of 2006); and

WHEREAS, state video franchising allows video service companies to provide service to the residents of cities such as the City of West Hollywood with a state franchise rather than a local franchise. It also allows an incumbent video service provider to obtain a state franchise and terminate its existing local franchise agreement under certain circumstances; and

WHEREAS, DIVCA requires state franchise holders to offer at least three Public, Educational, and Governmental access channels (PEG channels) to each community in which they operate. DIVCA also authorizes cities to adopt an ordinance imposing a fee on state franchise holders to support PEG programming facilities; and

WHEREAS, On July 21, 2008, the City Council adopted urgency ordinance No. 08-791U establishing video franchise fees, PEG fees, penalties and other related matters for State Video Franchise agreements; and

WHEREAS, ordinance No. 08-791U also established section 11.40.155 entitled “State Video Franchisees” and set the PEG fee at one percent (1%) of gross revenues, as defined by the WHMC and in accordance with Public Utilities Code section 5870(n); and

ATTACHMENT A
WHEREAS, On January 2, 2018, Charter Communications obtained a state franchise from the CPUC, which allows the company to serve the City of West Hollywood; and

NOW THEREFORE BE IT RESOLVED that the City Council of the City of West Hollywood reauthorizes ordinance 08-791U and PEG fees of one percent (1%) per Public Utilities Code section 5870(n) and the above-referenced ordinance.

PASSED, APPROVED AND ADOPTED THIS ____ day of _____, 20__.

__________________________________________
MAYOR

ATTEST:

__________________________________________
City Clerk
ORDINANCE NO. 08-791U

AN ORDINANCE OF THE CITY OF WEST HOLLYWOOD ESTABLISHING VIDEO FRANCHISE FEES, PEG FEES, PENALTIES AND OTHER RELATED MATTERS FOR STATE VIDEO FRANCHISE AGREEMENTS AND AMENDING THE WEST HOLLYWOOD MUNICIPAL CODE AND DECLARING THE URGENCY THEREOF.

THE CITY COUNCIL OF THE CITY OF WEST HOLLYWOOD DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1: Section 11.40.160 "Defined Terms and Phrases," subsection "a," of the West Hollywood Municipal Code is amended by adding thereto the definition of "State Franchisee" as a new subsection 21, to read as follows, with a renumbering of the subsequent subsections:

"State Franchisee" means any holder of a State-issued video franchise operating in the City, as defined in Public Utilities Code section 5830(p).

SECTION 2: A new section 11.40.155 entitled "State Video Franchisees" is hereby added to Title 11, Chapter 11.40, Part 4 of the West Hollywood Municipal Code to read as follows:

11.40.155. State Video Franchisees

a. PEG Fee Established. In accord with Public Utilities Code section 5870(n), any Grantee of a Franchise, or State Franchisee, must pay to the City a fee for the support of PEG channel facilities.

1. The amount of the PEG Fee established by this section is one percent (1%) of Gross Revenues, as defined in this Code, the applicable City-issued franchise, or Public Utilities Code section 5860(d).

b. Franchise Fee Established. For any State Franchisee, the amount of the franchise fee imposed by Public Utilities Code section 5840(q) shall be five percent (5%) of Gross Revenues, as defined in Public Utilities Code section 5860(d).

c. Notices from State Franchisees. Any notice a State Franchisee is required to deliver to the City by Public Utilities Code Section 5840(m) must be delivered to the Cable Franchise Administrator.

ATTACHMENT B
d. Nothing in this Chapter is intended to limit or restrict in any way the imposition of any existing or future generally applicable, nondiscriminatory, competitively neutral tax, fee, or charge to a State Franchisee, City franchisee or the services the franchisees provide.

e. Customer Service Provisions for State Franchisees
1. All State Franchisees must comply with all applicable State and Federal laws and local regulations regarding customer service and customer protection.

2. The Cable Franchise Administrator may review the performance of State Franchisees for compliance with the customer service requirements specified in Public Utilities Code section 5900 (the "Customer Service Standards").

3. If the City believes a material breach of the Customer Service Standards has occurred, the Cable Franchise Administrator shall give the State Franchisee written notice of any alleged material breach(es). The State Franchise shall remedy the specified material breach(es) no later than thirty (30) days from receipt of the notice.

4. If the State Franchisee fails to remedy the specified material breach(es) within 30 days, the Cable Franchise Administrator may impose monetary penalties on the following schedule:

   a. Up to five hundred dollars ($500) for each day of each material breach, not to exceed one thousand five hundred dollars ($1,500) for each occurrence of a material breach.

   b. For a second material breach of the same nature within 12 months, up to one thousand dollars ($1,000) for each day of each material breach, not to exceed three thousand dollars ($3,000) for each occurrence of the material breach.

   c. For a third or further material breach of the same nature within 12 months, up to two thousand five hundred ($2,500) for each day of each material breach, not to exceed seven thousand five hundred ($7,500) for each occurrence of the material breach.

5. Any monetary penalty imposed under this section may be appealed by the State Franchisee to the City Council. Appeals must be received in writing by the City Clerk within sixty (60) days of imposition of the penalty. The State Franchisee may present any relevant written or oral evidence of its choice. The City Council may uphold or reverse, in whole or in part, the imposition of the monetary penalties.
f. For the duration of any City-issued franchise, if that Franchisee has existing unsatisfied obligations under the franchise to pay to the City any cash payments for the ongoing costs of public, educational, and government access channel facilities or institutional networks, the fee payable by each City and State Franchisee shall be the Franchisee's pro rata per subscriber share of the cash payment required to be paid by the City franchisee to the City for the costs of PEG channel facilities.

1. Within 45 days of receipt of the notice required by Public Utilities Code section 5840(n), each City and State Franchisee must provide to the Cable Franchise Administrator a written statement of the number of its subscribers within the Franchisee's service area in the City.

2. Within 45 days of receipt all Franchisee subscriber number statements, the Cable Franchise Administrator must calculate the division of the cash payments among all City and State Franchisees, and provide written notice to each Franchisee of the Franchisee's share of the cash payment. This amount may expressed as a percentage of gross revenue or as an amount per subscriber, per month, or otherwise.

g. Interconnection. To properly serve the City's interest in PEG programming, each State Franchisee and City Franchisee must comply with the PEG system interconnection requirements of Public Utility Code section 5870. The City Manager, or his or her designee, may make any interconnection determinations of the City under Public Utility Code section 5870, including requiring interconnection where the City Franchisee and State Franchisee fail to reach a mutually acceptable interconnection agreement.

SECTION 3: Repeal or amendment of any provision of the West Hollywood Municipal Code herein will not affect any penalty, forfeiture, or liability incurred before, or preclude prosecution and imposition of penalties for any violation occurring before, this Ordinance's effective date. Any such repealed part will remain in full force and effect for sustaining action or prosecuting violations occurring before the effective date of this Ordinance.

SECTION 4: If any part of this Ordinance or its application is deemed invalid by a court of competent jurisdiction, the city council intends that such invalidity will not affect the effectiveness of the remaining provisions or applications and, to this end, the provisions of this Ordinance are severable.

SECTION 5: The City Clerk is directed to certify the passage and adoption of this Ordinance; cause it to be entered into the City of West Hollywood’s book of original ordinances; make a note of the passage and adoption in the records of this meeting; and, within fifteen (15) days after the passage and adoption of this Ordinance, cause it to be published or posted in accordance with California law.
SECTION 6: Purpose and findings: Urgency. The City has received notice that one or more video service providers intend to immediately serve customers in the City of West Hollywood and have applied for or received a State Franchise. These ordinance amendments are necessary to ensure that the West Hollywood Municipal Code complies with State and Federal law and that State Franchise video service providers comply with franchise fees, PEG fees, customer service and consumer protection standards and related requirements. The City Council believes that it is necessary to urgently enact regulations, consistent with State and Federal law, governing video service providers to ensure that West Hollywood video service subscribers are protected and hard-fought consumer protections will continue to apply to any video service provider operating in the City. This ordinance is adopted pursuant to California Government Code Section 36937 and shall take effect immediately upon adoption by a four-fifths vote of the City Council.

PASSED, APPROVED AND ADOPTED by the City Council of the City of West Hollywood at a regular meeting held this 21st day of July, 2008 by the following vote:

AYES: Councilmember: Duran, Guarriello, Heilman, Mayor Pro Tempore Land, and Mayor Prang.
NOES: Councilmember: None.
ABSENT: Councilmember: None.
ABSTAIN: Councilmember: None.

JEFFREY PRANG, MAYOR

ATTEST:

THOMAS R. WEST, CITY CLERK
STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES  
CITY OF WEST HOLLYWOOD  

I, THOMAS R. WEST, City Clerk of the City of West Hollywood, do hereby certify that the foregoing Ordinance No. 08-791U was duly passed, approved and adopted by the City Council of the City of West Hollywood at a regular meeting held on the 21st day of July, 2008.

I further certify that this ordinance was posted in three public places as provided for in Resolution No. 5, adopted the 29th day of November, 1984.

WITNESS MY HAND AND OFFICIAL SEAL THIS 22nd DAY OF JULY, 2008.

Thomas R. West, City Clerk