

RESOLUTION 20-__

**A RESOLUTION OF THE TOWN OF FAIRFAX
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in November 2006, the State of California enacted the Digital Infrastructure and Video Competition Act ("DIVCA"), which superseded local governments' authority to negotiate cable television franchises and to negotiate for franchise fees.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. 847 the Town of Fairfax 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 Fairfax 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 introduced and adopted at a meeting of the Town Council of the Town of Fairfax held in said Town on the ___ day of April 2020 by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

RENEE GODDARD, Mayor

ATTEST:

Michele Gardner, Town Clerk