TO: HONORABLE CITY COUNCIL

FROM: CITY MANAGER DEPARTMENT: ADMINISTRATIVE SERVICES

DATE: JUNE 18, 2007 CMR: 273:07

SUBJECT: ADOPTION OF AN ORDINANCE AMENDING CHAPTERS 18.76 AND 18.77 OF TITLE 18 OF THE PALO ALTO MUNICIPAL CODE TO CONFORM THE ARCHITECTURAL REVIEW PROCESS TO THE REQUIREMENTS OF THE CALIFORNIA DIGITAL INFRASTRUCTURE AND VIDEO COMPETITION ACT OF 2006

RECOMMENDATION

Staff and the Planning and Transportation Commission recommend that the Council adopt an ordinance amending Chapter 18.76 and 18.77 of Title 18 of the Palo Alto Municipal Code to conform the Architectural Review Process to the requirements of the California Digital Infrastructure and Video Competition Act of 2006.

BACKGROUND

On September 29, 2006, Governor Schwarzenegger signed into law Assembly Bill 2987, the Digital Infrastructure and Video Competition Act of 2006 (DIVCA). The purpose of DIVCA was to create a streamlined process for the granting of video service franchises in an effort to foster the rollout of technology, encourage competition, and expand customer choice. This new law permanently changes the franchising and regulatory structure for the provision of cable television and other video services in California. Under DIVCA, video service franchises are now granted exclusively by the California Public Utilities Commission (Commission) rather than by local franchising entities. Although the City will no longer be the franchising authority, it will acquire certain rights and responsibilities under DIVCA with respect to any holder of a state franchise.

DISCUSSION

Under DIVCA, a holder of a state franchise is subject to local encroachment permit requirements and the California Environmental Quality Act (CEQA) when installing, constructing, and maintaining facilities in the public rights-of-way. DIVCA requires the City to act on completed encroachment permit applications within 60 days of filing. An application is complete when the applicant has complied with all statutory requirements including CEQA. This requires the City to approve or deny permit applications for both architectural review and street work permits within this 60-day limit unless extended by mutual agreement. DIVCA also requires the City to
provide applicants with an appeal process to the Council for any adverse initial decisions on permit applications. Staff has modified its development review and street work permit application process to ensure it complies with this new 60-day rule.

On April 9, 2007 Council approved amendments and additions to several chapters of Title 2 (Administrative Code) and Title 12 (Public Works and Utilities Code) of the Palo Alto Municipal Code to make it consistent with DIVCA (CMR:171:07). The changes to Title 2 cover the City’s ability to regulate the use of the public rights-of-way by video service providers that hold franchises issued by the Commission. Among other things, the Title 2 changes include the establishment of a franchise fee and Public, Educational, and Government Access fee requirement for state franchise holders. The Title 12 changes conform the City’s permitting and public rights-of-way provisions to the requirements of DIVCA. The Title 12 changes include the requirement to approve or deny encroachment permits within 60-days and the right of appeal to Council.

The proposed amendments to Chapters 18.76 and 18.77 conform the Architectural Review Process to the requirements of DIVCA. The changes codify staff’s approach of requiring minor architectural review for above ground facilities proposed by video service providers.

Within the past three months, staff has approved two applications for minor architectural review filed by a state franchise holder (AT&T) for the installation of utility cabinets within the public right-of-way. In processing these applications for minor architectural review, staff has required review by a landscape architectural consultant and the Public Works Managing Arborist to ensure that each proposed cabinet location is placed in a location with the least impact on street trees and visual quality of a neighborhood. Staff has conditioned the approvals to require the applicant to provide notice and more recently, staff has begun providing courtesy notices to neighbors. Staff finds that the minor architectural review process has been an effective method of reviewing such proposed facilities.

BOARD AND COMMISSION REVIEW AND RECOMMENDATIONS
On May 3, 2007 the Architectural Review Board (ARB) reviewed the proposed DIVCA amendments to Title 18. With the understanding it had no purview to recommend alternatives to the proposed ordinance, the ARB declined to recommend the ordinance but did unanimously recommend that staff explore the idea of placing telecommunications cabinets underground when possible and report back to the Board. On May 9, 2007, the Planning and Transportation Commission (PTC) reviewed the proposed DIVCA amendments along with two statements adding sustainability items to the same zoning ordinance chapters. Staff decided to bring the DIVCA and sustainability changes to the Council for approval as two separate items. The PTC voted unanimously to recommend approval of the DIVCA ordinance. As part of its recommendation, the PTC requested staff to provide an annual list of ARB-approved cabinets for holders of state franchises. This would give the PTC an opportunity to modify the ARB process and criteria for granting approval of the proposed facilities if needed. Staff agreed to provide this information to the PTC on an annual basis.
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ATTACHMENTS:
Attachment A: Ordinance
Attachment B: PTC Staff Report
Attachment C: Excerpt of PTC Minutes