City Budget Office

Office for Community Technology

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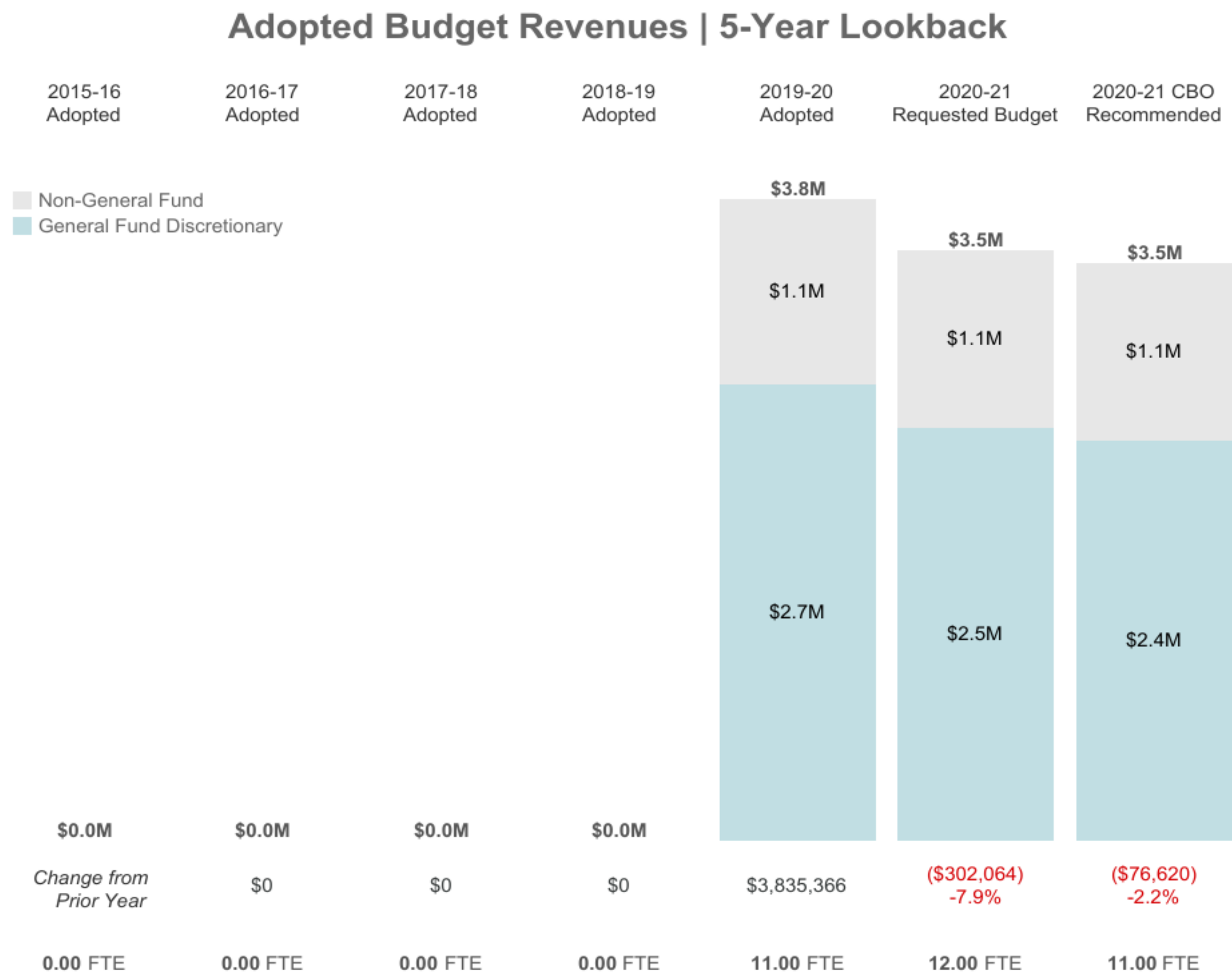

INTRODUCTION

The Office for Community Technology (OCT) was re-established as a stand-alone office in November 2018, based on policy recommendations from the Mayor's Office and an external consultant report. OCT has an overall budget of $3.5 million[1], supported by $2.4 million in General Fund resources and $1.1 million in intergovernmental revenue from the Mt. Hood Cable Regulatory Commission.

OCT has three primary functions it performs with a staff of 11.0 authorized positions:

- Franchise agreement negotiation, utility license administration, and compliance management,

[1] FY 2019-20 General Fund resources included a large one-time allocation for relocation costs; ultimately, these resources will not be needed and are expected to be returned to the General Fund in the FY 2019-20 Spring BMP.

which brings in about $88.0 million in annual franchise and license fee revenue,

- Digital Equity, which promotes access to technology for low-income and other populations, and
- Mt. Hood Cable Regulatory Commission (MHCRC) staff support, which provides direct staffing and operational management of the MHCRC's activities.

Generally, OCT has stabilized under interim leadership, but progress has been slow on key initiatives, such as the development of a strategic plan, due to staffing uncertainty in management roles and lingering questions about the division of responsibilities between OCT and the Bureau of Revenue & Financial Services. OCT plays a pivotal role in the management of the City's right-of-way (ROW), which is a topic of increasing importance given federal-level efforts to preempt local control over the ROW, resulting in potential revenue impacts to the City, and implications for the upcoming Comcast renegotiation. There are no major concerns with OCT's budget for FY 2020-21, but the program that provides staff support to the Mt. Hood Cable Regulatory Commission (MHCRC) may see major restructuring in the coming years.

OCT requested budget includes one new request for the addition of a Financial Analyst III. CBO recommends granting additional position authority but that OCT fund the position within its existing base resources.

BASE BUDGET KEY ISSUES

Risks to the Revenue Forecast

OCT negotiates and administers franchise agreements that grant access to the public ROW, managing the long-term use of the ROW, and levying taxes and fees to ensure the City is fairly compensated for use of the ROW. Utility License Fees (ULF) and franchise fees will generate an estimated $88.0 million in total revenue to the City in FY 2020-21. About 75%, or $66.0 million, of this revenue is paid by major non-communications utilities (e.g. Portland General Electric, Bureau of Environmental Services, Water Bureau) governed by City Code 7.14 Utility License Law[2], and has required relatively little monitoring and compliance work by the City, though audit work has ticked up in recent years. OCT staff spend the majority of their time negotiating and managing franchise agreements governed by City Code 7.12 Franchises and Utility Privilege Tax Law[3] and managing compliance across several hundred smaller accounts.

FY 18-19 Utility/Franchise Revenue for the City (millions)	
Utilities	
	$37.5
Cable and Communications	
	$13.7
Internal (BES, Water)	
	$25.3
All other payers (includes audit recovery)	
	$11.3
Total	**$87.8**

There are two primary risks to the City's utility license and franchise fee revenue forecast: federal-level efforts to preempt local control of the ROW and uncertainties therein, and declining cable revenues. The decline of cable franchise fee revenues has been anticipated for some time, as the 'cord-cutting' trend continues, resulting in more residents choosing to consume media via internet streaming than traditional cable services. Cable revenues from Comcast and CenturyLink declined for the first time in FY 2017-18 - the first year that the rising cost of subscriptions did not outweigh declining usership - and are forecasted to decline further in the coming years. CenturyLink is expected to end cable service in the Portland area by the end of 2020; as a result, it is expected that revenues will decline from the currently collected $7.3

[2] https://www.portlandoregon.gov/citycode/28809
[3] https://www.portlandoregon.gov/citycode/28808

million, but it is not yet clear what proportion of current CenturyLink subscribers will switch to Comcast as opposed to leave the cable market altogether.

Federal Level Preemption of Cable/Communications Franchise Fees

New Federal Communications Commission (FCC) orders regarding cable/communications franchise fee revenues will further impact franchise fee revenue from telecommunications companies and have major implications for the upcoming renegotiation of the Comcast agreement. An FCC order that went into effect in September 2019 changed the rules for the treatment of "in-kind" benefits and "mixed-use" revenues for cable companies.

- **Mixed-use Rule.** Previously, cable companies in Portland paid franchise fees totaling 5% of gross revenues on cable services and 5% on any non-cable telecommunications services (i.e. voice over internet). Under the new ruling, the City is prevented from charging cable companies any fees for non-cable services. The FY 2020-21 General Fund forecast was revised downward by $2 million to account for this change.

- **In-kind Rule**. Where the City negotiates a community benefit as part of a franchise agreement, the fair market value of this benefit (as determined by the provider) is deducted against the franchise fee payments. In Portland, the biggest current risk to revenues are the in-kind benefits provided under the Comcast franchise agreement. While Comcast has not yet provided its assessment of the fair market value of the current in-kind benefits (i.e. community media support, reduced cost data connectivity to municipal buildings on I-Net), the valuation could be substantial.

OCT projects that cable/communications revenues may decline substantially in the coming years, with the total revenue exposure to the City at about $13 million per year. The new FCC rules also set up a major tension for the upcoming Comcast renegotiation: whether to prioritize revenue generation over in-kind benefits to the community.

Other recent FCC rulings have had impacts on non-cable franchise fee revenue. As noted last year, the FCC ruling in September 2018 determined that local jurisdictions may only charge cost recovery for franchise fees and lease fees charged to private companies for installing small wireless facilities related to the rollout of 5G wireless service. The FCC provided a presumed "reasonable rate" of $270 in combined fees per small wireless cell. The City successfully negotiated a franchise agreement with AT&T prior to this ruling going into effect – and is in active litigation around this issue – but there are larger concerns about federal efforts to achieve a more universal application of a cost-recovery methodology to franchise fees. This is a concern because the City has historically charged for *access* to the ROW rather than for costs related to management of the ROW.

OCT and the Portland Bureau of Transportation (PBOT) have been working on a Right-of-Way Cost Study that would aggregate known costs for managing the ROW in order to inform a cost-recovery based methodology for charging franchise fees. Additional work will be required, beyond completion of the study itself, before a cost recovery model is applicable to franchise negotiations. The FCC has only made rulings to apply the cost recovery methodology to small cell wireless deployments, but there is the risk that the FCC will expand this cost recovery methodology (at presumed rates that are lower than current revenue streams) to other areas or that non-telecommunications franchisees may have standing to challenge their fees based on disparate treatment if they are not also based on cost-recovery. The cost study will be instrumental in defending against "reasonable rates" set by the FCC and any spillover into non-communications franchises.

Comcast Renegotiation

The Comcast franchise agreement expires in December 2021. The City is a member of the Mt. Hood Cable Regulatory Commission (MHCRC), and under the multi-jurisdictional Intergovernmental Agreement (IGA), MHCRC is the designated lead for the negotiation of cable franchises. The MHCRC is staffed by OCT, and OCT staff will play an active role in the negotiations. OCT has provided an updated timeline for the negotiations:

May 2020	Analysis of current franchise terms, compliance history, and other franchises currently or recently negotiated by similar local governments
June 2020	Community Technology Needs Study complete
June-July 2020	Hire negotiator
July- Nov 2020	Discussions with jurisdictions on franchise priorities
2020-Sept 2021	Franchise negotiations
Sept 2021	MHCRC Public Hearing on proposed public benefits
Oct 2021	MHCRC action on recommendation for renewed franchise
Oct-Dec 2021	East County Jurisdictions Approval Process
Nov 2021	Portland Temporary Revocable Permit
Nov 2021-April 2022	Portland Approval Process

As noted above, there are multiple FCC orders that may impact the renegotiation. The critical question, given the FCC's in-kind rule, will be how the MHCRC (in consultation with partner jurisdictions) addresses revenue generation and the potential preservation or expansion of community technology benefits. FCC rule allows cable providers to deduct the fair market value of in-kind community benefits from the 5% of gross revenues that local jurisdictions may charge cable providers for operating in the right-of-way. Under the current agreement, the community benefits that Comcast provides are substantial.

OCT and MHCRC are currently undertaking a Community Technology Needs Study to survey the community about technology needs and identify areas of interest, with the intent of informing the negotiations with Comcast based on the findings. It is not yet clear how MHCRC/OCT will proceed with the negotiations if jurisdictions differ in their prioritization of revenue relative to community benefits.

MHCRC's Future

Approximately four OCT staff work to support the MHCRC and manage the grant-making and compliance activities made possible under the current cable agreements. These activities are funded by MHCRC resources and by allocations from partner jurisdictions and the City through a Special Appropriation. The upcoming Comcast negotiation, along with FCC orders, will have a large impact on the role of MHCRC, its annual operations and capital budget, and its overall ability to provide community technology benefits. MHCRC's future as an organization – and the need for related OCT staff support – will be shaped in large part by the outcome of the Comcast negotiation.

DECISION PACKAGES

OCT – Financial Analyst III

9636, $76,620, 1.00 FTE

Request Summary

The OCT is requesting new ongoing General Fund resources totaling $76,620 to support the full cost of a Financial Analyst III position (estimated at $150,000).

Offset Summary

OCT identified an offset for half the cost of the position, $76,620, by reallocating resources from its General Fund-backed materials and services budget.

CBO Analysis

OCT was established as a stand-alone office in the fall of 2018 after six years of being incorporated into the Revenue Division in OMF. The consultant report and proposed staffing reorganization can be found here[4]. The Revenue Division had been providing accounting, funds management, revenue processing, forecasting, and budget development and monitoring support to OCT prior to reorganization. In FY 2019-20, OCT began contracting with OMF to continue providing those services through an interagency agreement, as there were no staff in OCT with that skill set.

OCT's current financial activities are managed by an amalgam of staff: OCT retained staff that negotiate, manage, and monitor franchise agreement compliance, the Revenue Division retained the function and staff to audit franchise agreements, and OMF-Business Operations provides accounting and budgetary support. While current City Code authorizes the Revenue Division Director to administer rules and collect revenues, there are open questions between the Revenue Division and OCT about which organization should ultimately be responsible for these duties.

Both OMF and OCT are unsatisfied with the current arrangement by which OMF provides budget development and monitoring, accounting, and funds management support to OCT via an interagency agreement.[5] The workload related to these functions is real – in particular the time spent managing the MHCRC fund and related grants. There would be particular benefit to having in-bureau financial expertise to support the Comcast renegotiation and potential changes to franchise fee generation that are on the horizon.

OCT currently has 2.0 Manager II positions, one of which is vacant. BHR classified OCT's executive level position as a Manager II, rather than a Director I; OCT can reconsider whether it requires two high level manager positions, and reclassify one of the Manager II positions to a Financial Analyst III position to provide high-level financial and operational support to OCT. However, pending final determination on the classification of executive-level position and given the significance of the pending Comcast negotiations, CBO recommends that OCT receive position authority to hire a Financial Analyst (or similar classification determined by BHR) to lead financial activities in OCT.

However, CBO does not recommend providing additional resources to support the new position. Less a $937,000 payment to Open Signal, OCT has an external materials and services budget of $634,000 for an

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[4] https://www.portlandoregon.gov/cbo/article/700380

[5] The interagency payment from OCT to OMF-Business Operations would be eliminated if OCT adds a Financial Analyst III position; OCT has already redirected this expense to external materials and services in OCT's base budget.

organization of 11.0 FTE. OCT has plans to pursue the development of a strategic plan and requires funds to pursue its legal and advocacy work on behalf of the City. In recent years, though, the office's actual (non-contracted) external materials and services spending has ranged from $200,000 - $350,000. Given the apparent flexibility in OCT's base external materials and services budget and the relative importance OCT places on adding a Financial Analyst III position to function as a self-sufficient office, CBO recommends that OCT reallocate a portion of its external materials and services budget to cover the cost of the position. Less the $150,000 cost of the position, OCT would retain $484,000 in its external materials and services budget.

CBO notes that about 40%, or $254,000, of OCT's external materials and services budget is General Fund backed and 60% is backed by intergovernmental revenue from MHCRC. Given the workload associated with MHCRC fund management, it is appropriate that MHCRC resources fund a portion of this position. However, should MHCRC revenues decline in the future, OCT would need to assess whether the position could be reduced to part time in tandem with reduced workload, or if other realignment options were appropriate.

CBO Recommendation: $0 ongoing | 1.00 FTE

SUMMARY OF REQUESTS AND RECOMMENDATIONS

Below is a summary of the Office for Community Technology's total budget.

Office for Community Technology - All Funds

		2019-20 Adopted Budget	2020-21 Requested Base (A)	Bureau Decision Packages (B)	CBO Recommended Adjustments (C)	Total Recommended Budget (A+B+C)
Expense	Personnel	$1,650,490	$1,686,753	$153,240	($3,716)	$1,836,277
	External Materials and Services	$1,647,133	$1,571,842	($76,620)	($72,904)	$1,422,318
	Internal Materials and Services	$537,743	$198,087	$0	$0	$198,087
	Total	**$3,835,366**	**$3,456,682**	**$76,620**	**($76,620)**	**$3,456,682**
Revenue	General Fund Discretionary	$2,725,820	$2,392,866	$76,620	($76,620)	$2,392,866
	Intergovernmental	$1,109,546	$1,063,816	$0	$0	$1,063,816
	Total	**$3,835,366**	**$3,456,682**	**$76,620**	**($76,620)**	**$3,456,682**