

WORKSHOP MEETING MINUTES
SISTERS CITY COUNCIL
520 E. CASCADE AVENUE
JUNE 24, 2020

MEMBERS PRESENT:

Chuck Ryan	Mayor
Nancy Connolly	Council President
Andrea Blum	Councilor
Richard Esterman	Councilor
Michael Preedin	Councilor

STAFF PRESENT:

Cory Miskey	City Manager
Paul Bertagna	PW Director
Joe O'Neill	Finance Director
Kerry Prosser	City Recorder
Alan Dale	City Attorney

GUESTS:

Kristin Steiner	General Manager, Republic Services
Susan Baker	Municipal Manager, Republic Services
Randy Stutzman	Finance Manager, Republic Services

Mayor Ryan called the workshop to order at 5:30 pm, and City Recorder Prosser took roll call.

1. Review the Draft Ordinance for Right of Way Licensing.

Attorney Dale reviewed a memo on the draft Utility Right of way Licensing Ordinance. He said City staff circulated the draft ordinance to utilities operating in the City for comments. The memo included a summary of small wireless facilities (SWF) and the input from the utilities.

Attorney Dale explained that cellular telecommunication companies were currently in the process of installing SWFs throughout the country. SWF equipment consists of antennae and wireless routers intended to improve 4G efficiency and support a 5G system. Cities may regulate (a) the siting and appearance of SWF equipment through development code provisions, and (b) a utility's use of the public right-of-way for SWF purposes.

On October 15, 2018, the Federal Communications Commission ("FCC") issued a Declaratory Ruling limiting local regulatory authority over zoning and right-of-way management for SWF installations. The Order limits the fees a local government may impose on a utility desiring to install SWFs in the local government's right-of-way and imposes "shot clocks" (time limits) for when a local government must respond to a SWF application.

Attorney Dale reviewed the Order was currently pending appeal in the Ninth Circuit Court of Appeals, and a ruling was expected by the end of 2020. We were monitoring the status of the Order and pending appeal.

Attorney Dale said the Ordinance was intended to be implemented consistent with the Order if the Order was in effect.

Councilor Preedin asked if the 5G system used the same systems that were currently in place. City Manager Misley replied it would be new infrastructure generally rolled out in urban areas; the broader grid would stay in effect. City Manager Misley said we had various antenna around Sisters but did not have 5G yet. Attorney Dale noted guidance continued to come out, and League of Oregon Cities had recently issued additional guidance. He said they had been working with a few cities on this topic.

Councilor Blum asked if the development code had language that regulated the aesthetics of this on private property. City Manager Misley replied our design standards would regulate private property. Councilor Blum asked if the utilities located these on private property would we have any control. City Manager Misley replied logistically it would be hard for the utility to negotiate with many property owners, and they would prefer to locate them on streetlights and power poles. He noted we might need to do some code work to have consistency in what these installations look like.

Mayor Ryan asked if the Oregon Cities who were challenging this Order were focused on timing or other aspects of the Order. Attorney Dale replied the Order was expansive, and broadly speaking, the challenge from Oregon cities was because the Order impaired our home rule ability to regulate the ROW. He said not all the pieces being challenged in this Order fall within ROW management.

Attorney Dale reviewed the City had received feedback on the proposed Ordinance from the following utilities: Central Electric Cooperative, Inc ("CEC"); CenturyLink; and TDS Broadband Service LLC, d/b/a BendBroadband ("TDS"). The feedback was summarized as follows: concerns with the application of the Ordinance on existing franchise agreements; proposed revisions to the Ordinance; and challenges to City's authority to adopt and otherwise enforce the Ordinance.

CEC requested the City revise the Ordinance so that it expressly recognized the existing rights and obligations of CEC's franchise agreement with the City. Attorney Dale said all utilities, even those operating under existing franchise agreements, must obtain a license and pay the license fee. CEC and CenturyLink asked the City to "exempt" existing franchises (and utility facilities) from the provisions of the Ordinance.

CenturyLink proposed several revisions to the Ordinance, including removing the City's authority to prescribe where (and in which right-of-way) utility facilities would be located.

revising (limiting) the definition of gross revenues; extending some notice requirements (e.g., requiring the City provide 90 (as opposed to 30) days' advance notice to a utility to relocate its facilities); and deleting the City's authority to require relocation of facilities in certain circumstances (e.g., pursuant to a beautification, streetscape, and/or other City improvement project).

TDS alleged that a separate FCC order issued in August 2019 preempts the City from imposing certain additional requirements on TDS's operations in the City beyond what the City required under the franchise agreement between TDS and the City. Specifically, TDS requests that the City revise the license fee and renewal provisions as applied to cable systems. This recent Order was appealed and is currently pending in the Sixth Circuit Court of Appeals. We were continuing to monitor the matter and analyze the application of this Order on the Ordinance.

City Manager Misley asked Council if the staff was on an appropriate path; we intend to continue to refine the Ordinance and work with our utility partners. He did not want to water down this Ordinance, it was in the City's long-term interest to move this Ordinance forward. Attorney Dale noted it was a trend towards this for uniform management of the ROW. City Manager Misley explained we might still have some franchise agreements that dealt with items like exclusivity.

Councilor Blum asked about regional conformity. City Manager Misley replied many utility carriers across the region had negotiated separate agreements with every entity.

Councilor Preedin stated every City was different, and we needed to represent Sisters, we need to do what was best for us while respecting agreements that were in place.

Mayor Ryan thought the feedback from the utilities was their sweet spot.

City Manager Misley said we had communicated to the utilities this was not a fast track, we wanted to set-up partnerships that lasted for a long time, and we would address their concerns.

Councilor Blum clarified the Ordinance would eventually supersede the Franchise Agreements. City Manager Misley said one of the Council's decision points was if the Ordinance would supersede the Franchise agreements; if it did not, we were back to square one.

Council President Connolly thought the Ordinance would prevent us from forgetting expirations of franchise agreements; it was one size fits all.

Council President Connolly was concerned about losing home rule with the regulations. City Manager Misley replied LOC was on the topic with their lobbyists, and larger cities were paving the way. Council President Connolly asked with the pending court rulings, should we wait to move forward. Attorney Dale replied staff should continue to work through the draft because it had a broader application.

Councilor Esterman asked how many franchise agreements we had, and Director Bertagna replied six. Councilor Esterman had a problem with the Ordinance superseding the previously negotiated franchise agreements.

City Manager Misley explained we would be moving towards one Ordinance that applied to all users and would get us back to uniformity. He noted as we refined the draft, we would work with the utility providers. We expected letters and testimony coming to Council from the providers. City Manager Misley said it would take months to chip away at this draft. Staff would continue to keep the Council informed on updates to the Ordinance.

2. Review Republic Services Proposed Rate Increase.

Republic Services submitted four options for Council's review.

Option #1 Original Request: 9% increase beginning Aug 1, 2020. The recycling market had plummeted, causing our financials to reflect low single-digit margins. Additionally, we had not asked for a rate increase in three years while the normal cost of business had risen.

Option #2 Original Request w/ Guarantee: 9% increase beginning Aug 1, 2020, with a guarantee of no rate increase request next year. A 9% rate increase would reflect the true cost of recycling and general operating costs and would put margins in a healthy but acceptable range. We were offering to forego a rate request next year, barring any city fee increases that would warrant further discussion.

Option #3 Split: 5% increase beginning Aug 1, 2020 and 4% beginning Jan 1, 2021. This spreads out the impact, so customers have time to adjust. However, multiple rate increases back-to-back may be perceived as worse by customers.

Option #4 Undetermined Request: 6% beginning Aug 1, 2020 w/ another undetermined request next year. This option would reduce the burden on the customer this year. It was under the assumption that we would request another rate increase next year, July 1, 2021, at an amount to cover additional rising costs, and any fee increases.

Council discussed the options.

Councilor Esterman liked option one. Council President Connolly, Councilor Preedin, and Mayor Ryan choose option two, and Councilor Blum was comfortable with option one or two. Council asked staff to move forward with option two.

3. Other Business.

The meeting adjourned at 6:34 pm.



Kerry Prosser, City Recorder



Chuck Ryan, Mayor