

**CANBY CITY COUNCIL
CITY COUNCIL WORK SESSION
November 20, 2013**

Presiding: Mayor Brian Hodson.

Council Present: Todd Rocha, Traci Hensley, Clint Coleman, Tim Dale, Greg Parker, and Ken Rider.

Staff Present: Greg Ellis, City Administrator; Joseph Lindsay, City Attorney; Haley Fish, Finance Director; and Kim Scheafer, City Recorder.

Others Present: Ron Berg.

Mayor Hodson called the Work Session to order at 6:00 p.m. in the City Hall Conference Room.

The Council met in a Work Session to discuss financial policies and the budget process.

Haley Fish, Finance Director, discussed potential recommendations for improving the budget process related to financial policies and the role of the Budget Committee. A Budget Committee Work Session will be held December 5. She explained local budgeting in Oregon, requirements of the Budget Committee, and current financial policies. One option was to enhance the Budget Committee's role to a quarterly review of the budget and to make recommendations on the City's financial policies. Another option was establishing an Audit Committee or Financial Oversight Committee that helped set policy. Based on the Council Goals and visioning, she was working on a five year Capital Improvement Plan working with department heads for projects in the next five years. The CIP would be evaluated every year and adjustments made as needed. She saw the budget as a policy tool in numbers and that they needed to first figure out what they wanted to do and then build a budget to be consistent. She reviewed the Budget Process Flow Chart for a timeline of the budget process. Last year there was a feeling on the Budget Committee that the process was rushed, and she gave suggestions for changes this year.

There was discussion regarding having an overview of the budget early on, the need to build a reserve fund, and need for a performance audit for cost effective ideas for City departments.

There was consensus to give the Budget Committee an oral overview of the budget early in May.

Ms. Fish then discussed questions that came up from last Budget Committee meetings, proposed Budget Committee Work Session Agenda for December 5, financial status update, new budget process, and suggested emailing any Budget Committee questions to her prior to the meetings.

There was discussion regarding leaving the Budget Committee as defined by budget law and creating another committee that combined the Audit and Financial Oversight Committee. The members of that committee could be made up of a few City Councilors and Budget Committee members.

Ron Berg, Budget Committee Chair, said there were qualified people on the Budget Committee who could serve on this committee.

Ms. Fish would discuss this with the Budget Committee, formalize the roles of the new committee in a resolution, and bring it back to Council in January.

Mayor Hodson adjourned the Work Session at 7:15 p.m.

**CANBY CITY COUNCIL
REGULAR MEETING MINUTES
November 20, 2013**

Presiding: Mayor Brian Hodson.

Council Present: Todd Rocha, Traci Hensley, Clint Coleman, Tim Dale, Greg Parker, and Ken Rider.

Staff Present: Greg Ellis, City Administrator; Joseph Lindsay, City Attorney; Haley Fish, Finance Director; and Kim Scheafer, City Recorder.

Others Present: Bob Cornelius, Ron Berg, Roger Reif, Paul Hauer, Bob & Sheila Tice, Karen Daniher, Alan Galloway, and Bev Doolittle.

CALL TO ORDER: Mayor Hodson called the Regular Meeting to order at 7:30 p.m. in the Council Chambers followed by opening ceremonies.

COMMUNICATIONS: Greg Ellis, City Administrator, said correspondence had been received regarding the telecommunications ordinance and representatives were in the audience that wanted to talk about it.

CITIZEN INPUT & COMMUNITY ANNOUNCEMENTS: None.

MAYOR'S BUSINESS: Mayor Hodson thanked Chief Smith and City Administrator Ellis for the help that had been given to the Oregon City Police Department. He participated in a historical tour of Canby. He congratulated the Canby Center on their grand opening, announced Nature's Pet grand opening this weekend, and Small Business Saturday on November 30. He reported on the last C4 meeting. The discussion items were high speed rail, representation for small cities on the Portland Area Commission on Transportation, a proposed utility fee for a transportation district that would impact unincorporated Clackamas County, and doubling the vehicle registration fee for road improvements.

COUNCILOR COMMENTS & LIAISON REPORTS: Councilor Rocha said the Parks and Recreation Advisory Board did not meet this month. He attended the Canby Adult Center Board Meeting and suggested a Council discussion regarding the Adult Center's one-year lease.

Councilor Hensley said the Light Up The Night event and First Friday would be held on December 6. She discussed the Who Lights Up Canby promotion and business tree decorating contest. Santa would be at the Depot Museum on December 7. There would be a School Board meeting on November 21. The Aurora Legion Spaghetti Dinner would be held on November 23 and Canby Legion Post 122 Auxiliary would be hosting a breakfast the same day.

Councilor Coleman attended the Library Board Meeting. The new book store had opened and a number of applications had been received for the Library Director position.

Mr. Ellis said they received 13 applications and interviews would be set up soon.

Councilor Coleman would be attending the Main Street meeting and a Team Track meeting next week. The Traffic Safety Commission would be meeting the first Friday of every month.

Councilor Dale attended the Friends of the Library bookstore opening and American Legion breakfast. Canby Utility started the Knights Bridge substation.

Councilor Parker attended the Canby Center dedication. The new book store at the library was terrific. The City received the Perky Preservationist Award for the Historic Review Board's work. He thought it was neat that hundreds of people were following the Canby turkeys on Facebook.

Councilor Rider attended the CopDots presentation at the Police Department. The CopDots pen created a microscopic number on any item of value that could be traced. Each number was unique to the pen.

CONSENT AGENDA: **Councilor Dale moved to adopt the minutes of the November 6, 2013 City Council Work Session and Regular Meeting. Motion was seconded by Councilor Rocha and passed 6-0.

PUBLIC HEARINGS: Fees for Telecommunications Providers Under Canby Municipal Code Chapter 12.36 –

Mayor Hodson read the public hearing script.

Staff Report: Joseph Lindsay, City Attorney, explained the proposed Registration Application Fee of \$100, Annual Registration Fee at 5% of gross revenues, Right-of-Way Fee at 7% of gross revenues, and Franchise Fee of several percent of gross revenues or \$2 per linear foot. All the current franchise fees were at 7%. The Application Fee was based on the amount of cost to process the application. The fees would take effect once the ordinance took effect, 30 days from now.

Councilor Coleman asked how the fees compared to other communities.

Mr. Lindsay said 7% was the rate allowed by law and was what a lot of other communities were charging. There was a credit against the Registration Fee for any Franchise Fee paid.

Mayor Hodson opened the public hearing at 8:03 p.m.

PROPOSERS: Roger Reif, Attorney for Canby Telcom, said they did not know if they were a proponent or opponent. He was looking for an interpretation and an understanding. He had sent a letter of specific questions and had not received an answer.

Paul Hauer, Canby Telcom President, gave a handout to the Council that outlined what the fees would be for Canby Telcom on the Franchise Fee and Registration Fee.

Mr. Reif wrote on the white board his questions about the Franchise Fee and Registration Fee. He also questioned what gross revenue meant. He thought the "or" should be taken out of the Franchise Fee of 7% gross sales "or" \$2 per linear feet and add "whichever is greater" to close an unintentional loophole.

Mr. Lindsay said the Franchise Fee could be credited against any Registration Fee. They were two different fees and could not be combined with "whichever is greater." Canby Telcom's franchise was 7% of gross revenue and he read the definition of gross revenue. The City could not charge beyond the limitations currently for the exchange access services under the right of way, but could charge a Registration Fee. ORS 221.515 did not apply to the Registration Fee as it was the cost for doing business in Canby.

Mr. Hauer said the projected cost to Canby Telcom of \$70,000 was based on the expanded revenue that was being captured in the new section of the Registration Fee.

Mr. Lindsay said the Registration Fee could be adjusted.

Karen Daniher, Wave Broadband, said for the most part they were a proponent of the ordinance. They understood the Registration Fee was for the privilege of doing business in Canby and was separate from the Franchise Fee. The language was not clear that internet services would not be part of the additional revenue. She also discussed the difference between what the incumbent was paying at 5% verses what Wave was paying at 7%.

Alan Galloway, Attorney, was speaking on behalf of Wave and tw telecom. Competitive providers had been taxed at a higher rate than incumbents. He proposed some changes to the language to make things clearer. They would like to see the definition of gross revenue moved from the resolution into the ordinance. The problem in the resolution was double taxation and he thought they should allow a back out of any wholesale fees from the gross revenue. He thought it had always been the City's plan to exclude internet, but it was not noted in the ordinance and needed to be included. He thought the franchise should control the compensation rather than the ordinance and he suggested a change to the cable service definition. For the resolution, he proposed setting all the fees at 5% to make it equitable.

Mr. Lindsay said access to the internet was not taxable under state and federal law. He wanted to be careful about putting too much in the definitions. The gross revenue was not defined in the ordinance as it was in the franchise agreements and in the resolution for those who did not have a franchise. If they were to add it to the ordinance they would be back at first reading.

OPPONENTS: None.

Mayor Hodson closed the public hearing at 8:44 p.m.

Councilor Dale said the gross revenue definition could change and they would have to change the ordinance, but if it was only in the resolution they would only have to change the resolution. Regarding internet access, it had to be excluded by law. Regarding the difference in percentage, the intent was to recognize the incumbent who made a large investment in the infrastructure whereas the reseller did not make that investment. He did not advocate for any change in the structure as proposed.

Mayor Hodson said the options for Council were to pass the ordinance and resolution as written, change the numbers of the fees, or table the items.

Fees for Payroll and Self-Employment Tax Payments Submitted Without Corresponding Tax Return -

Staff Report: Haley Fish, Finance Director, said the fee proposed was an administrative fee to process a transit tax payment that was submitted without a return. Currently there was no penalty. The intent was just to cover some of the cost and to deter people from submitting payments without a return. The return protected both the City and the payer of the tax to substantiate what was owed. This would go into effect for the year end mailing of the returns.

Mayor Hodson opened the public hearing at 8:57 p.m.

PROPOSERS: Bev Doolittle, Chamber Director, asked that notice go out to business owners so they would be aware of the change and be prepared. She was willing to work with staff in helping to get the information out.

OPPOSERS: None.

Mayor Hodson closed the public hearing at 8:59 p.m.

RESOLUTIONS & ORDINANCES: Resolution 1177 – Councilor Dale was in favor of the ordinance, but would like to change the Registration Fee from 5% of gross revenues to 4%.

Mr. Reif said Canby Telecom would agree to that change.

****Councilor Dale moved to adopt Resolution 1177, A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CANBY, OREGON, SETTING FEES FOR TELECOMMUNICATIONS PROVIDERS UNDER CANBY MUNICIPAL CODE CHAPTER 12.36 as amended. Motion was seconded by Councilor Coleman and passed 6-0.**

Resolution 1178 – ****Councilor Hensley moved to adopt Resolution 1178, A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CANBY, OREGON, SETTING FEES FOR PAYROLL AND SELF-EMPLOYMENT TAX PAYMENTS SUBMITTED WITHOUT A CORRESPONDING TAX RETURN. Motion was seconded by Councilor Rider and passed 6-0.**

Ordinance 1387 – ****Councilor Rocha moved to adopt Ordinance 1387, AN ORDINANCE AMENDING CANBY MUNICIPAL CODE CHAPTER 12, SECTION 12.36 TELECOMMUNICATIONS FACILITIES. Motion was seconded by Councilor Coleman and passed 6-0 by roll call vote.**

Ordinance 1388 – ****Councilor Dale moved to adopt Ordinance 1388, AN ORDINANCE GRANTING TO CLACKAMAS COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF OREGON, A NONEXCLUSIVE FRANCHISE TO CONSTRUCT, OPERATE & MAINTAIN A TELECOMMUNICATIONS NETWORK AND PROVIDE TELECOMMUNICATIONS SERVICES WITHIN THE CITY OF CANBY OREGON, AND DECLARING AN EMERGENCY. Motion was seconded by Councilor Rocha and**

passed 6-0 by roll call vote.

Ordinance 1389 – ****Councilor Hensley moved to adopt Ordinance 1389, AN ORDINANCE GRANTING TO TW TELECOM OF OREGON LLC (“TWTC”), A DELAWARE LIMITED LIABILITY COMPANY, A NONEXCLUSIVE FRANCHISE TO CONSTRUCT, OPERATE & MAINTAIN A TELECOMMUNICATIONS NETWORK AND PROVIDE TELECOMMUNICATIONS SERVICES WITHIN THE CITY OF CANBY OREGON, AND DECLARING AN EMERGENCY. Motion was seconded by Councilor Dale and passed 6-0 by roll call vote.**

Ordinance 1390 – ****Councilor Hensley moved to adopt Ordinance 1390, AN ORDINANCE AUTHORIZING THE MAYOR AND CITY ADMINISTRATOR TO EXECUTE A CONTRACT WITH HUBBARD CHEVROLET OF HUBBARD, OREGON; AUTO ADDITIONS OF SALEM, OREGON; AND FORD MOTOR CREDIT CORPORATION FOR THE LEASE/ PURCHASE OF TWO (2) 2014 CHEVROLET TAHOES WITH POLICE EQUIPMENT PACKAGES FOR THE CANBY POLICE DEPARTMENT; AND DECLARING AN EMERGENCY. Motion was seconded by Councilor Dale and passed 6-0 by roll call vote.**

Ordinance 1391 – Ms. Fish said most of the changes to the ordinance were administrative to clarify staff’s role and to make the process more consistent. She wanted to change the wording under Canby Municipal Code Chapter 3.24.130 E from stating the actual fee to say “a fee as set by resolution” and scratch the last sentence. That way the fee stayed within the resolution and not the ordinance.

****Councilor Dale moved to approve Ordinance 1391, AN ORDINANCE AMENDING CANBY MUNICIPAL CODE CHAPTER 3.24 PUBLIC TRANSPORTATION PAYROLL AND SELF-EMPLOYMENT TAX as amended to come up for second reading on December 4, 2013. Motion was seconded by Councilor Hensley and passed 6-0 on first reading.**

NEW BUSINESS: Memorandum of Understanding IV with Canby Livability Coalition – Bob Tice, president of the Canby Livability Coalition, gave background information about the Memorandum of Understandings that had been approved over the last several years to create an art park on the corner of Territorial and Holly. He recommended several changes in the draft including acknowledging the master park design was approved and should be placed on the Park Master Plan and that maintenance would eventually be the City’s responsibility.

Mr. Lindsay said the Council could authorize the City Administrator to sign on behalf of the City and work with Mr. Tice on the wording changes.

Mayor Hodson thought this should go to the Parks and Recreation Advisory Board first and then come back to Council.

Councilor Hensley encouraged Mr. Tice to discuss the project with the newly forming Canby Arts Alliance.

Councilor Parker said the Bike and Pedestrian Committee was very interested in getting involved as well.

Discussion Regarding a Civic Building Voter Referral – Mayor Hodson said the Urban Renewal District had conversations with the Library Board on having the project sent out for a referral vote. The next step was to ask the City Attorney to draft ballot language.

Mr. Lindsay advised honing it down to a yes or no question in order to get meaningful advice and he asked how specific the question needed to be.

Mayor Hodson thought the language should contain the price, location, and project they were proposing to do, which was a combined library and civic building on Third Avenue.

Councilor Parker asked what the Council was trying to achieve by the vote since the library was already on the Urban Renewal Plan and if it was setting a precedent for sending all Urban Renewal projects to a vote.

There was discussion regarding how divisive the issue was in the community and the motivation for the vote.

A Work Session would be scheduled for January 15, 2014, to discuss proposed ballot title language that the City Attorney would prepare. It would then come to the Council to approve at the February 5, 2014, City Council Meeting.

ADMINISTRATOR'S BUSINESS & STAFF REPORTS: Mr. Ellis stated the Urban Renewal Agency would be having an Executive Session on December 4 at 5:30 p.m. The Ford Leadership Program was looking for attendees for their next class. A yard debris brochure was being developed that the Code Enforcement Officer could hand out.

There was discussion regarding options for leaf removal and public education that the street sweeper did not remove leaves in the street.

CITIZEN INPUT: None.

ACTION REVIEW:

1. Approved the Consent Agenda.
2. Adopted Resolution 1177 amending the annual Registration Fee to 4% of gross revenues.
3. Adopted Resolution 1178.
4. Adopted Ordinance 1387.
5. Adopted Ordinance 1388.
6. Adopted Ordinance 1389.
7. Adopted Ordinance 1390.
8. Approved Ordinance 1391 to come up for second reading on December 4, 2013. Wording would be changed so the amount of the fee amount was not contained within the ordinance but set by resolution.
9. City Administrator would work with the Canby Livability Coalition on modifying language and bringing the Memorandum of Understanding IV back to Council.
10. Council will have a work session on January 15, 2014 to discuss ballot title language.

There was no Executive Session.

Mayor Hodson adjourned the meeting at 9:51 p.m.

Handwritten signature of Kimberly Scheafer in cursive script.

Kimberly Scheafer, MMC
City Recorder

Handwritten signature of Brian Hodson in cursive script.

Brian Hodson
Mayor

Assisted with Preparation of Minutes - Susan Wood

FRANCHISE FEE		REGISTRATION FEE	
ORS 221.515	No ORS 221.515	5% ORS 221.515	5% No ORS 221.515
Telecommunications "Carrier"	Telecommunications "Provider"	Telecommunications "Carrier"	Telecommunications "Provider"
Maximum of 7% on "exchange carrier services"	7% telecommunications service		
ORS 403.105			
Local access lines			
\$56,400	\$98,700 (estimate) 75% increase	\$40,285	\$70,500 (estimate) 27% increase

"Gross Revenues are defined as any and all revenues of any kind, nature or form . . . subject to all applicable limitations imposed by federal or state law."