

**CANBY CITY COUNCIL  
REGULAR MEETING MINUTES  
October 5, 2011**

**Presiding:** Mayor Randy Carson

**Council Present:** Rich Ares, Traci Hensley, Brian Hodson, Walt Daniels, Greg Parker, and Tim Dale.

**Staff Present:** Greg Ellis, City Administrator; John Kelley, City Attorney; and Kim Scheafer, City Recorder.

**Others Present:** Nancy Werner, Roger Reif, Bob Cornelius, Roger Skoe, Lisa Zurcher, and Karen Daniher.

**CALL TO ORDER:** Mayor Carson called the Regular Meeting to order at 6:30 p.m. in the City Hall Conference Room.

**\*\*Councilor Daniels moved to go into Executive Session pursuant to ORS 192.660(2)(h) Pending Litigation. Motion was seconded by Councilor Ares and passed 6-0.**

**OPENING CEREMONIES:** Mayor Carson reconvened the Regular Meeting at 7:30 p.m. in the City Council Chambers followed by the opening ceremonies.

**COMMUNICATIONS:** None.

**CITIZEN INPUT & COMMUNITY ANNOUNCEMENTS:** Lisa Zurcher was concerned about the children walking to and from school on Ivy. Staff would look into what could be done since Ivy is a State road.

**MAYOR'S BUSINESS:** None.

**COUNCILOR COMMENTS & LIAISON REPORTS:** Councilor Ares would be meeting with the Canby Adult Center Board next week.

Councilor Hensley announced the upcoming events scheduled at the Library. The School District website had a survey posted regarding family planning options being offered at the student based health center.

Mayor Carson said the library had a Lego night last week. There were many children in attendance.

Councilor Daniels said the Historical Society Board met last night. The Fall Flea Market would be held on October 29.

Councilor Parker attended a meeting in Oregon City and took the CAT bus.

Councilor Dale said the Canby Utility Board had adopted their new utility rates. He attended the

Clackamas Cities Dinner in Estacada and annual Children's Center Breakfast in Oregon City.

**CONSENT AGENDA: \*\*Councilor Daniels moved to adopt the minutes of the September 21, 2011 City Council Work Session and Regular Meeting. Motion was seconded by Councilor Ares and passed 6-0.**

**RESOLUTIONS & ORDINANCES:** Ordinance 1347 – John Kelley, City Attorney, said the City had been in negotiations with Wave Broadband since May to extend the current franchise agreement for an additional six years. Wave was currently paying 4.5% in PEG fees and wanted to reduce it to 1%. The other issue was rent. Under the current agreement, Wave was to provide a studio for OCTS for free. Wave wanted to change it to make OCTS pay half of the rent. There was also a legislative change called the Cap Act and the City wanted Wave to pay a 2% fee toward the PEG fees if the Cap Act passed. The following agreement had been reached: the 4.5% PEG fee would be reduced to a 2% PEG fee for two years, and then to 1% for the remaining four years; rent would not be charged to OCTS for three years and after three years OCTS would pay 50% of the rent to Wave; and if the Cap Act was passed, Wave would pay a 2% fee. Mr. Kelley explained the difference between PEG and franchise fees. OCTS was comfortable with the agreement. If the City offered these terms to Wave, they must also offer the same terms to any competitive provider, which was Canby Telcom.

Karen Daniher, Wave Broadband Vice President, said that the component of not paying PEG fees if OCTS ceased programming had been discussed with Canby Telcom and Wave in August. They thought continuing to pay PEG fees to the City if there was no programming being offered to customers would make them liable to customers who paid for a service they were not receiving.

Nancy Werner, Attorney, had been exchanging drafts with Wave's attorney for several months and never had this language been in any of the drafts until last week. Roger Reif sent an email in August that referenced stopping payment which she interpreted that they would stop the rent payment to Wave if OCTS stopped operating there. It was never brought up to her that it included stopping payment of the PEG fee. It was required at renewal of a franchise agreement to show the need for the PEG fee. She did not know of any case where a cable company was doing something wrong by collecting money that it was contractually obligated to collect.

Mr. Kelley read an email from David Hankin, Wave Broadband Attorney, that was dated September 27 which was the first time this issue had been brought to staff's attention.

Roger Reif, Canby Telcom Attorney, was not privy to the communications between the City and Wave. He clarified the email he had sent to Mr. Kelley and Ms. Werner on August 11 regarding if OCTS ceased to exist or Canby Telcom no longer provided television services, the obligation for PEG fee payment terminated. From Canby Telcom's standpoint, they believed that the issue was raised on August 11. They had an opposition to paying PEG fees when there was no access provider.

Councilor Ares said OCTS provided two services, access for City meetings and local programming. If OCTS ceased to exist, the City intended to continue to provide the government meetings to the public. The PEG fees would cover the cost of the equipment.

Mr. Reif said if the City was providing this service, they were the access provider and Canby Telcom would pay the PEG fee.

Ms. Werner said even if Canby Telcom's position was in August, this was Wave's franchise agreement that had expired. The City could grant these changes to Wave to get the extension done. This was not an open door for Canby Telcom to come in and ask for changes. If OCTS were no longer operating, money would still need to be collected. There were some issues with Wave's proposed language regarding the PEG fees.

Bob Tanner, Chief Engineer for OCTS, said PEG access was made up of three divisions: government, educational, and community access. He explained OCTS programming, and that not all would go away if OCTS dissolved and the City would need equipment for it.

**\*\*Councilor Daniels moved to approve Ordinance 1347, AN ORDINANCE AMENDING THE CABLE TELEVISION FRANCHISE AGREEMENT BETWEEN THE CITY OF CANBY AND WAVE DIVISION VII, LLC AND DECLARING AN EMERGENCY to come up for second reading on October 19, 2011. Motion was seconded by Councilor Hodson and passed 6-0.**

Councilor Ares said the issue was the 2% PEG fee and whether or not the PEG fee would continue. There was a desire from the City that the core access items continue even if OCTS ceased to provide the service.

Ordinance 1349 – **\*\*Councilor Daniels moved to approve Ordinance 1349, AN ORDINANCE AMENDING THE CABLE TELEVISION FRANCHISE AGREEMENT BETWEEN THE CITY OF CANBY AND CANBY TELEPHONE ASSOCIATION AND DECLARING AN EMERGENCY to come up for second reading on October 19, 2011. Motion was seconded by Councilor Dale and passed 6-0.**

**NEW BUSINESS:** None.

**CITY ADMINISTRATOR'S BUSINESS & STAFF REPORTS:** Greg Ellis, City Administrator, reported on the Police Facility project and Wait Park project which were going well. There had been a few issues regarding property owner notifications.

There was discussion regarding preservation of the trees at Wait Park.

The City of Canby had received the Certificate of Achievement for Excellence in Financial Reporting for the fiscal year ending June 30, 2010.


**CITIZEN INPUT:** None.


**ACTION REVIEW:**

1. Approved the Consent Agenda.
2. Approved Ordinance 1347 to come up for second reading on October 19, 2011.
3. Approved Ordinance 1349 to come up for second reading on October 19, 2011.

There was no Executive Session.

Mayor Carson adjourned the Regular Meeting at 8:25 p.m.

  
Kimberly Scheafer, CMC  
City Recorder

  
Randy Carson  
Mayor