

A regular meeting of the Astoria Common Council was held at the above place at the hour of 7:00 pm.

Councilors Present: Jones, Price, Brownson, and Mayor LaMear

Councilors Excused: Nemlowill

Staff Present: City Manager Estes, Parks and Recreation Director Cosby, Finance Director Brooks, Fire Chief Gascoigne, Police Chief Spalding, Public Works Director Harrington, City Engineer Harrington, Library Director Pearson, and City Attorney Henningsgaard. The meeting is recorded and will be transcribed by ABC Transcription Services, Inc.

## REPORTS OF COUNCILORS

**Item 3(a):** **Councilor Jones** said the Parks and Recreation Department held a wonderful event with 600 attendees. He confirmed with Director Cosby that almost \$40,000 was raised for scholarships. He announced that since the Council voted to allow the Friends of Birch Field to work with the Parks Department and come up with an agreement, they held a Mother's Day picnic at the park and installed frisbee golf stands. They would also be installing a picnic bench. It was great to see the community taking the opportunity to improve their park.

**Item 3(b):** **Councilor Price** congratulated Parks and Recreation for selling out the Run on the River. She walked and ran in the 10K. She welcomed the students from Knappa High School attending the meeting as part of their senior project.

**Item 3(c):** **Councilor Brownson** reported his next Meet the Councilor would be on Saturday, May 21, 2018 at Three Cups of Coffee at 9:00 am.

**Item 3(d):** **Mayor LaMear** encouraged everyone to see Chitty Chitty Bang Bang at the Astoria High School. The musical is great and the students do a great job. Their shows would be on May 25<sup>th</sup> and 26<sup>th</sup> at 7:00 pm at the high school.

## CHANGES TO AGENDA

There were none.

## CONSENT CALENDAR

The following items were presented on the Consent Calendar:

- 5(a) City Council Minutes of 4/16/18
- 5(b) Boards and Commission Minutes
  - (1) Design Review Committee Meeting of 8/3/17

**City Council Action:** Motion made by Councilor Brownson, seconded by Councilor Jones, to approve the Consent Calendar. Motion carried unanimously. Ayes: Councilors Price, Jones, Brownson, and Mayor LaMear; Nays: None.

## REGULAR AGENDA ITEMS

### **Item 6(a): Second Reading and Adoption of Telecommunications Service Tax Ordinance**

The first reading of this ordinance was held at the May 7, 2018 City Council meeting. Cities are authorized by ORS Ch 221 to enter into franchise agreements and impose fees upon telecommunication, gas, and electric companies that use City rights of way to provide their service. The definition of telecommunications includes the transmission of information but excludes one-way transmission of television signals (i.e. cable TV). In

addition to a franchise agreement, cities may impose a 5 percent tax on telecommunications carriers, ORS 221.515

A Federal Law, The Cable Communication Policy Act of 1984, allows a city to enter into franchise agreements with cable TV providers and impose a fee of 5 percent on the gross revenues derived from the provision of cable TV services. This federal law allows cable TV providers to also provide telecommunications services (such as telephone and internet) but prohibits a city from requiring the cable TV provider from including income generated from telecommunications services in the 5 percent franchise fee. Cities are also prohibited from requiring that cable TV providers enter into separate franchise agreements concerning the provisions of telecommunication services. A city may, however, adopt a telecommunications tax.

As a result of the Federal Cable Act, cable providers enjoy a competitive advantage over other telecommunications carriers in cities that do not impose a telecommunications tax.

It is recommended that Council conduct the second reading and adopt the proposed ordinance.

City Attorney Henningsgaard stated this ordinance would not impose a tax on broadband internet services. Federal law supersedes the provisions of the ordinance and prevents local governments from imposing a tax on broadband. He recommended City Council adopt the ordinance as presented during the first reading.

Councilor Price asked what the tax would be levied on. She had spoken to several downtown businesses who had confirmed they purchased bundled service packages from Charter. She asked which portion of the bill would be taxed, noting she realized it would just be telephone service not be internet. She also asked if the tax would be listed as a line item on the bills. She also wanted to know how much revenue this would generate for the City.

City Attorney Henningsgaard explained the City is not entitled to the financial information from Charter until the tax goes into effect. As a residential and business customer of Charter, he confirmed that tax items were delineated on the bills. Charter has control over what they charge for phone and internet services within the purviews of State regulations and contracts with their subscribers. The tax would only be applied to the telephone portion of the bill.

Councilor Brownson stated Ms. Smith from Charter had offered additional language to clarify the understanding that the ordinance states federal guidelines would prevent the City from taxing anything other than telephone service. Charter was concerned about the City taxing their data and internet communication services.

City Attorney Henningsgaard understood that Ms. Smith was responding to Councilor Brownson's concern about taxing internet service. However, it is a fact that federal law prohibits local taxation on internet.

Councilor Jones said he read the letter and was satisfied with the City Attorney's recommendation. Councilor Brownson agreed and said it seemed like the additional language was unnecessary.

Unidentified Speaker said data was internet and asked if the word data could be removed.

Councilor Jones reiterated that he was satisfied with the City Attorney's explanation of the Code language used in various other municipalities throughout Oregon, including one that was recently upheld by the Oregon Supreme Court.

**City Council Action:** Motion made by Councilor Jones to conduct the second reading and adopt the Telecommunications Service Tax Ordinance.

Unidentified Speaker stated the issue with Eugene was that their ordinance was passed in 1997, so it was grandfathered in.

Mayor LaMear reminded that the public hearing had been closed at the previous meeting.

Director Brook conducted the second reading of the ordinance.

**City Council Action:** Motion made by Councilor Jones to adopt the Telecommunications Service Tax Ordinance as proposed by Staff; seconded by Councilor Brownson. Motion carried 3 to 1. Ayes: Councilors Jones, Brownson, and Mayor LaMear; Nays: Councilor Price.

Councilor Price said she agreed with the City Attorney's language, but did not agree with the tax.

**Item 6(b): Second Reading and Adoption of Charter Franchise Ordinance**

Included in the packet is a proposed ordinance granting Falcon Community Ventures I, known locally as Charter Communications, a renewed city franchise to locate transmission lines in City rights of way. The first reading of this ordinance was held at the May 7, 2018 City Council Meeting. It is recommended that Council conduct the second reading and adopt the proposed ordinance.

City Attorney Henningsgaard said this negotiation had been ongoing for years. He had forwarded a letter to Councilors from Charter's attorney, who proposed adding the existing equal protection language in the current franchise agreement to the new agreement. He had no opposition to that proposal. Charter's attorney also proposed their own insurance language, which he believed satisfied the purpose of the City's policy even though the language of that insurance provision differs somewhat from the language in the City's standard agreements. He had no objections to replacing the language used in the first reading of the ordinance with Charter's proposed language on insurance. If those two changes are made to the franchise agreement, Charter would sign the agreement. He confirmed that these changes would be considered material changes to the ordinance and advised on the process necessary to adopt it with changes.

Councilor Brownson recommended the changes be made to help expedite the signing of the franchise agreement.

**City Council Action:** Motion made by Councilor Brownson, seconded by Price, to amend the franchise agreement to add insurance language proposed by Charter and Section 33 – Franchise Requirements from Other Franchise Holders, and conduct the first reading of the Charter Franchise Ordinance. Motion carried unanimously. Ayes: Councilors Price, Jones, Brownson, and Mayor LaMear; Nays: None.

Councilor Brownson conducted the first reading of the ordinance as amended.

City Manager Estes confirmed the ordinance would be presented for a second reading and adoption at the next regular City Council meeting.

**Item 6(c): Resolution Transferring Appropriations within General Fund Budgets for FY2017-2018**

ORS 294.463(1) provides guidance for the transfer of appropriations within a fund, when authorized by resolution of the governing body.

At the time the budget was originally appropriated, amounts anticipated for City Attorney training and travel expenses anticipate necessary increases during for the current year by approximately \$ 200. In addition, time expended by City Attorney outside of the contracted scope of work related to Smithart communications, documents and filings amounting to \$1,600 were not anticipated in the budget. The Municipal Court Department will not require the budgeted appropriations and amounts are available to transfer to the City Attorney Department. A transfer in the amount of \$1,800 for Materials and Services from Municipal Court to City Attorney is required.

ORS 294.463(2) provides guidance for the transfer of appropriations from contingency of less than 15 percent of appropriations, when authorized by resolution of the governing body.

At the time the budget was originally appropriated, amounts anticipated for Personnel Legal Services did not anticipate additional negotiation requirements to complete four union contracts. An additional \$20,000 is required for legal services in the current budget year. A transfer in the amount of \$20,000 from contingency to Non-Departmental – Unallocated is required.

It is recommended that City Council approve the attached resolution transferring \$1,800 from Materials and Services in Municipal Court Department to Materials and Services in City Attorney Department and transfer \$20,000 from Contingency to Non-Departmental Materials and Services.

**City Council Action:** Motion made by Councilor Brownson, seconded by Councilor Price to approve the resolution transferring \$1,800 from Materials and Services in Municipal Court Department to Materials and Services in City Attorney Department and transfer \$20,000 from Contingency to Non-Departmental Materials and Services. Motion carried unanimously. Ayes: Councilors Price, Jones, Brownson, and Mayor LaMear; Nays: None.

**Item 6(d): Resolution Transferring Appropriations within Unemployment Fund Budget for FY2018-2018**

ORS 294.463(2) provides guidance for the transfer of appropriations from contingency of less than 15 percent of appropriations, when authorized by resolution of the governing body.

At the time the Unemployment Fund Budget was prepared amounts budgeted did not anticipate an increase in unemployment claims as the trend had been declining. A transfer in the amount of \$1,260 is required between Contingency and Materials and Services.

It is further recommended that City Council approve transfer of \$1,260 from the Unemployment Fund Contingency to Materials and Services.

**City Council Action:** Motion made by Councilor Price, seconded by Councilor Jones to approve transfer of \$1,260 from the Unemployment Fund Contingency to Materials and Services. Motion carried unanimously. Ayes: Councilors Price, Jones, Brownson, and Mayor LaMear; Nays: None.

**Item 6(e): Recology Rate Review for Year End December 31, 2017 for Solid Waste Collection and Transfer Station Activities**

The City's Franchise Agreement with Recology requires them to render financial statements and a rate review of the Solid Waste Collection Franchise and Clatsop Transfer & Disposal Station no later than April 30th each year. The Purpose of the annual rate review is to determine whether Recology's rate of return on their collection operation and solid waste disposal falls within the limits set by the franchise Agreement with the City. Additionally, a request was made to Recology to increase the debris box disposal ton rate by 3 percent to reflect increase in the rate charged to Recology at the Astoria Transfer Station and a plan for customer provided can elimination. A resolution reflecting the updated debris box rate is provided for Council consideration. Representatives from Recology will be on hand to answer questions and give a presentation.

It is recommended that City Council adopt the resolution to include the 3 percent increase to the debris box disposal ton rate and the proposed can elimination plan, to be effective July 1, 2018.

Carl Peters, Recology, gave a detailed PowerPoint presentation on current recycling challenges, potential changes to recycling services, Recology's efforts to maintain levels of service, and the Coastal Oregon Artisan Residence (COAR) program.

Mayor LaMear confirmed that the United States only sends a small percentage of recyclables to China.

Mr. Peters explained that China used to take about 60 percent of America's recyclables and he believed it was now down to about 20 percent. Recycling processors are not going to do business with China and will figure out other more reliable options. The most recent shut-down, which will continue through June 4<sup>th</sup>, means that all of the recycling being delivered to China is just sitting there because no one will inspect it. Inspectors will reject an entire ship if one juice box is found in a bale of materials, so the ship will have to find another port.

Councilor Price said she was on the board of Astoria Visual Arts and thanked Recology for the COAR program. The last COAR artist was Bonny Gorsuch who had a wonderful exhibit at Vintage Hardware for about a month. It was sad to hear about the recycling challenges given that Astoria just recently adopted curb side recycling. Most people are paying an additional fee for the service, so to see that services could be reduced soon is

discouraging. She believed it was encouraging to hear that China was not accepting America's garbage anymore. As more countries around the world become more developed, they would not take the garbage either. The way to reduce, reuse, recycle is to start at home. She wanted Council to begin to take a stand on reducing plastic. As leaders in the community, Councilors can help spread the word that it is costing people money and will cost more money if we do not start cutting down. She asked who would pay the 3 percent increase on the debris box.

Mr. Peters said anyone who rents a debris box would pay the fee. He added that Recology was interested in the can elimination plan because they want to work towards a container that does not use bungee cords. About three years ago, a Recology employee almost lost his eye when he touched a container, the bungee cord popped off, and hit him in the eye. Now, they require employees to wear safety glasses. However, about three weeks ago, another employee was hit by a bungee cord and he was out of work for about a week and a half. In the interest of safety, Recology proposed to reduce rates on side yard service to make it cost effective for residents to make the change without paying a penalty for employees to walk up. Recology would provide the carts so that no more employees were hurt by cans with lids. This request has been made in every rate package submitted to all of the coastal towns.

Councilor Brownson noted that glass was on Recology's list of items of concern, but he understood that glass was recyclables.

Mr. Peters explained he meant to remove glass from the list because it would be confusing. Recology does recycle glass, but not when it is comingled with other recyclables.

Councilor Brownson agreed with Councilor Price that reducing plastics was important. Plastic bags are a problem. From his house, he can see bags blow out into Young's Bay, where they go out to sea.

Mr. Peters said plastics are the most common item picked up in coastal cleanups. He added that the Recycled Art Show would be on October 13<sup>th</sup> during the Second Saturday Art Walk.

**City Council Action:** Motion made by Councilor Jones, seconded by Councilor Brownson, to adopt the resolution to include the 3 percent increase to the debris box disposal ton rate and the proposed can elimination plan, to be effective July 1, 2018. Motion carried unanimously. Ayes: Councilors Price, Jones, Brownson, and Mayor LaMear; Nays: None.

#### **Item 6(f): Column Lighting for PRIDE**

On February 18th, 2014 the Astoria City Council gave direction to the Parks and Recreation Department to limit the use of colored lighting effects at the Astoria Column to twice a year when specifically authorized by City Council.

This direction came after colored lighting effects took place for the first time at the Astoria Column in October 2013 in an event organized by Columbia Memorial Hospital, the Friends of the Astoria Column, and the Parks and Recreation Department to light the Astoria Column Pink in recognition of Breast Cancer Awareness Month. This event was followed by a partnership between the Women's Resource Center, the Clatsop County Domestic Violence Council, the Friends of the Astoria Column, and the Parks and Recreation Department to light the Astoria Column teal for the month of April 2014 in recognition of Sexual Assault Awareness & Child Abuse Awareness Month. This sequence of lighting effects has taken place over the past four years.

In 2017 and 2018 additional Astoria Column lighting requests have been received, most recently a request from Cameron Toman with the Astoria Pride Committee to utilize colored lighting effects for the month of June. When requests are received they are processed through the Parks and Recreation Department Staff. Due to the City Council direction received in February 2014 to limit the use of colored lighting effects to twice per year any additional requests received within the fiscal year have not been processed at the Staff level.

The request from the Astoria Pride Committee identified a need to review in the current policy and prompted City Council, the Friends of the Astoria Column, City Staff to reconsider the policy. The matter was discussed during the March 19, 2018 City Council meeting and concluded with the City Council accepting a proposal

from the Friends of the Astoria Column to develop policy that will be brought forward to City Council for consideration.

At the May 7, 2018 Council Meeting there was discussion regarding the status of the Friends developing a policy as the Astoria Pride Committee was interested in seeing if there was a possibility for consideration this summer.

While the Friends of the Astoria Column have begun forming a draft policy and investigating various colored LED lighting systems, it is not feasible to have a policy finalized and approved by City Council prior to the Astoria Pride Committees request of utilizing lighting effects at the Astoria Column June 3rd – 10th. Council wished to have this item scheduled at their May 21, 2018 meeting to discuss whether an exception to the Council policy should be considered.

The Friends of the Astoria Column have been briefed on this matter and are supportive of the use of lighting effects at the Astoria Column from June 3rd – 10<sup>th</sup> in recognition of Astoria Pride, as the policy is still being formulated.

It is recommended that City Council provide direction on the utilization of lighting effects at the Astoria Column from June 3rd – 10th in recognition of Astoria Pride.

Councilor Brownson said he supported lighting the column for Astoria Pride.

Councilor Price preferred the Column be treated more like the Washington Monument that is honored only with spotlights. However, she was happy to take the direction provided by the Friends.

**City Council Action:** Motion made by Councilor Price, seconded by Councilor Brownson, to allow lighting effects at the Astoria Column from June 3rd – 10th in recognition of Astoria Pride. Motion carried unanimously. Ayes: Councilors Price, Jones, Brownson, and Mayor LaMear; Nays: None.

**NEW BUSINESS & MISCELLANEOUS, PUBLIC COMMENTS (NON-AGENDA)**

Keenan Gebhart, Knappa, said direct satellite linkup (DSL) internet affects telecommunications and DSL is a phone provided service. He asked if the new tax would affect the Knappa community, noting that was their only option for internet.

Councilor Brownson answered no and explained that DSL was provided by Quest and the tax was only on phone service, not data. City Manager Estes added that Knappa was not inside Astoria city limits.

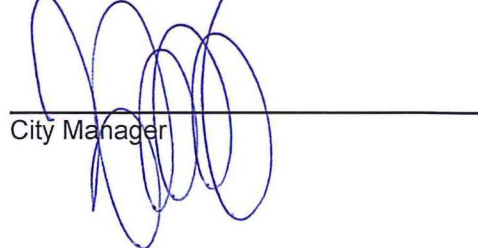
**ADJOURNMENT**

There being no further business, the meeting was adjourned at 7:51 pm.

**ATTEST:**

  
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Finance Director

**APPROVED:**

  
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City Manager