

MINUTES

**Ad Hoc Franchise Committee Meeting
Tuesday, May 10, 2016
4:30 p.m. – 5:30 p.m.
North Conference Room**

Council Members

Chair Matt Pina
Dave Kaplan
Melissa Musser

City Staff

Tony Piasecki, City Manager
Michael Matthias – Assistant City Manager/Economic
Development Director
Dan Brewer – PBPW Director
Tim George – Assistant City Attorney

Chair Pina called the meeting to order at 4:30 p.m.

1. Approval of minutes of the May 3, 2016 Committee meeting.

The minutes of the May 3rd Committee meeting were approved

2. Discussion of Staff's Discussions with District Staff and Attorney on the Eight Unresolved Issues.

The Committee and staff discussed the status of the remaining unresolved franchise agreement issues and discussions City staff have had with District staff and the Districts' attorney

Remaining Issues:

1. Relocation –

Summary of latest proposal: City proposal uses District language as template and requires communication between City and District to minimize the necessity to relocate. Also, requires City to consider alternatives to promote engineering and design solutions so relocation would not be required. Only when there is no reasonable or feasible alternative will relocation be required. When relocation is required, City offered to pay 50% when facilities are relocated within 5 years of their installation and 100% if facilities are relocated twice within 5 years. Otherwise District pays 100%. Draft proposal does not address emergency situations, supplemental proposal by the City will include language addressing emergencies.

District Response: District wants additional cost sharing on the part of the City. District indicated if City agreed to 50/50 split up to ten years they would agree and eliminate cost sharing on "major facilities" older than 10 years as well. They also wanted protections against third party utilities requiring relocation of District facilities.

Current Status: City staff preparing revised proposal addressing third party relocation requirements and emergency situations. Seeking Committee input on cost sharing.

2. **Franchise Payment –**

Summary of latest proposal: City proposal remains at 6% immediately. City agreed to remove the term limit language on the utility tax waiver (City proposal only waived it for 5 years). City included a late payment provision and also included protection if franchise payment is declared invalid.

District Response: District agreed to include late payment provision and protections for City if franchise payment is declared invalid. One District (Midway) states they cannot agree to 6% immediately for the entire term of the agreement, other two Districts appear to be close to agreement.

Current Status: District to provide additional language allowing the City to opt out if franchise payment is declared invalid. Also considering franchise payment amount.

3. **Fire Suppression Costs –**

(Highline only) District has agreed to provide draft language stating that if District bills the City for fire suppression costs then the City has the option to terminate the franchise.

OPTIONS TO CONSIDER IF NO AGREEMENT REACHED

1. Impose utility tax. Draft Ordinances are prepared. Recommendation would be to retain outside legal counsel to advise City Council on adoption of the ordinance as well as to defend likely legal challenge.
2. Enact ordinance addressing issues usually contained in franchise agreement:
 - a. Relocation
 - b. Restoration of City right of way
 - c. Abandonment
 - d. Vacation
3. Review and increase permit fees to reflect increased staff costs.
4. Pavement cutting fee ordinance.
5. Operating without franchise penalty ordinance.

3. Discussion of next steps/proposal.

The City's next proposal will contain language as outlined above.

Adjourned at 5:30 p.m.

Respectfully submitted by,

Tim George, Interim City Attorney