

City of Springfield
Regular Meeting

MINUTES OF THE SPECIAL REGULAR MEETING OF
THE SPRINGFIELD CITY COUNCIL HELD
MONDAY, NOVEMBER 29, 2004

The City of Springfield council met in special regular session in the Council Meeting Room, 225 Fifth Street, Springfield, Oregon, on Monday, November 29, 2004, at 7:00 p.m., with Council President Fitch presiding.

ATTENDANCE

Present were Councilors Lundberg, Fitch, Ralston, Pishioneri and Woodrow. Also present were City Manager Mike Kelly, Assistant City Manager Cynthia Pappas, City Attorney Joe Leahy, City Recorder Amy Sowa and members of the staff.

Mayor Leiken and Councilor Ballew were absent (excused).

PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Council President Fitch.

SPRINGFIELD UPBEAT

CONSENT CALENDAR

IT WAS MOVED BY COUNCILOR WOODROW WITH A SECOND BY COUNCILOR LUNDBERG TO APPROVE THE CONSENT CALENDAR. THE MOTION PASSED WITH A VOTE OF 5 FOR AND 0 AGAINST (1 ABSENT – BALLEW).

1. Claims
2. Minutes
 - a. August 18, 2004 – TEAM Springfield Meeting
 - b. November 8, 2004 – Work Session
3. Resolutions
4. Ordinances
 - a. ORDINANCE NO. 6101 – AN ORDINANCE VACATING A REMAINING FRAGMENT OF RIGHT-OF-WAY IDENTIFIED AS OLD COUNTY ROAD 221, LOCATED ADJACENT TO 42ND STREET SOUTH OF INDUSTRIAL AVE.
5. Other Routine Matters
 - a. Approve the November 2, 2004 General Election Report of Board of Canvassers and Proclamation for Ballot Measures 20-91 and 20-92, Springfield City Council Position for Ward 6 and Springfield Utility Board Position Numbers 1 and 5.

ITEMS REMOVED FROM THE CONSENT CALENDAR

PUBLIC HEARINGS - Please limit comments to 3 minutes. Request to speak cards are available at both entrances. Please present cards to City Recorder. Speakers may not yield their time to others.

1. Utility Tax.

ORDINANCE NO. 2 – AN ORDINANCE AMENDING THE SPRINGFIELD MUNICIPAL CODE TO PROVIDE FOR LICENSING OF UTILITIES, IMPOSING A PRIVILEGE TAX UPON UTILITIES DOING BUSINESS IN THE CITY, AMENDING SECTIONS 4.600 THROUGH 4.716, ADDING SECTIONS 4.800 THROUGH 4.807, AND SETTING AN EFFECTIVE DATE. (FIRST READING)

ORDINANCE NO. 3 – AN ORDINANCE AMENDING THE SPRINGFIELD MUNICIPAL CODE TO REGULATE ENCROACHMENT INTO, USE AND OCCUPATION OF THE PUBLIC WAYS, AMENDING SECTIONS 3.224 AND 3.226 AND SETTING AN EFFECTIVE DATE. (FIRST READING)

Technical Services Manager Len Goodwin presented the staff report on this item. Mr. Goodwin said the record before the council, the Council Briefing Memorandum, and the comments from the industry included in the agenda packet are complete and adequate to provide an appropriate explanation of the history of this proposed tax. He noted that council had seen this in draft form as one ordinance in the past. A continual source of confusion among the industry and others is the relationship of the proposed Utility Tax to activities in the right-of-way. This tax is not related to use of the right-of-way, but is a tax on the privilege of doing business in the city. To reduce the level of confusion, he drafted two ordinances – one that takes the provisions from our current telecommunications licensing ordinance that related to activities that are limited to those who work in the right-of-way and move those into Chapter 3 of the Municipal Code with the rest of the provisions regulating how one works in and uses the right-of-way. This leaves only provisions which relate to licensing and taxation of all utilities in Chapter 4 of the Municipal Code. He hopes this would relieve some of the confusion of those who continue to think this is a tax for use of the right-of-way.

Mr. Goodwin reminded council that this was a tax on utilities, not one that singles out telecommunications. He referred to a similar ordinance that Portland was proposing.

Council President Fitch opened the public hearing to hear testimony on both ordinances.

1. Nancy Judy, 902 Wasco Street, Hood River, OR. Ms. Judy was representing the Sprint Corporation. Ms. Judy submitted written testimony for the record. Ms. Judy said it is important to remember where the existing tax came from, which was use of right-of-way. Costs are incurred to maintain that right-of-way and the city is entitled under the law for compensation for that use. That is why cell phone providers were never taxed because they did not use right-of-ways. She felt there were better ways to address budget shortfalls that are more equitable than this tax. She discussed the number of people on fixed incomes that depend on cell phones as an alternative to land lines and/or medical alert. Cell phones are a

cost effective alternative. Just taxing cell phone users and telecommunication users does not cover the broad service companies that would make it more equitable. She said the impact on the average residential customer will be from the \$5 to \$20 range, including internet access. She urged the council to consider other alternatives

2. Fred Simmons, 312 S. 52nd Place, Springfield, OR Mr. Simmons complimented Mr. Goodwin on his staff report and the process to find an alternative revenue stream for the city. He is, however, opposed to this Utility Tax. The city has four things going on including Riverbend, Royal Caribbean, Glenwood Urban Renewal and the Utility Tax. He feels this tax will cost ratepayers a phenomenal amount of money and will be expensive to users. He recognizes the need for the money, but this is such an intensive tax. He said he would oppose this tax. The city needs to look very carefully because no one can figure out how much each person would pay each month. He supported the city on the Qwest issue, but this goes too far and would have too much of an impact on low income people. The businesses can deduct that fee, but citizens cannot. He might be able to accept it if Utility Taxes were an income tax deduction.
3. Gary Bauer, NW Natural Gas, 220 NW 2nd Avenue, Portland, OR. Mr. Bauer thanked council for the opportunity to speak tonight. Mr. Bauer said written comments were provided to Mr. Goodwin in May 2004. NW Natural Gas does have a current franchise agreement with the city in effect until 2009. Part of their concern is sorting out how the franchise agreement goes forward with the changes in this new tax. The franchise agreement is a contract between NW Natural Gas and the city so those terms and conditions apply. At the same time, they have concerns regarding the new definition of gross revenue that is different than that in their contract. As Mr. Goodwin said, this is not going to relate to use of right-of-way, but is a tax on utilities. He noted that Mr. Goodwin has chosen the definition from ORS 757, which defines investor owned utilities. Mr. Bauer said they are concerned when a different form of taxation does not apply to all other competitors. Others sell different commodities, but they do the same thing. They are moving into a tax structure and should apply to all energy suppliers. He said that if council had further questions, to please call him. They are not trying to get out of their current agreement with the city because it has worked well in the past. There are still a lot of questions with the new tax.
4. Mike Dewey, Oregon Cable Telecommunications Association, 1249 Commercial Street, Salem, OR. Mr. Dewey commended Mr. Goodwin for the communication with their office. Their office provided some technical comments and still has some concerns on a technical basis. Their major competitor, the satellite companies, does not pay any fees at all. Cable fees have been based on the regulation, franchise and use of right-of-way. They also have other fees and taxes to pay and satellite companies pay nothing. Costs for the cable companies are an additional seven percent. The proposed Utility Tax is not an equitable tax and is a regressive tax. It is not based on ability to pay and is not widespread. Income and property taxes are based on the ability to pay. Many cities are looking for ways to tax cell phones, cable modem and other telecommunications because it is easy. Cable companies that operate in different cities in Oregon will have different rates in different jurisdictions making it difficult for companies regarding administration. This tax also includes cable modem service and they would argue that it should not be included because it is not a telecom service, but is an information service. The cable company would not want to litigate and that should be taken out as it was in Portland. If council does move forward with this, he feels it

should go to a vote. On the technical side, they would be happy to continue to work with Mr. Goodwin.

Council President Fitch closed the public hearing.

Councilor Lundberg asked Mr. Goodwin if the state was considering looking at a utility tax outside of the cities.

Mr. Goodwin said to the best of his knowledge, the state legislature has not suggested that they would be favorably inclined toward any form of taxation. He has heard in the last twenty four hours that there are representatives of some members of the telecommunications industry urging the state legislature to consider such a tax. He could not say whether or not those efforts would be successful.

Councilor Ralston referred to the handout in the record from Cingular. He asked if internet access, software games, ring tones, music download, etc. would be included in this tax. He asked what the boundaries would be.

Mr. Goodwin said the tax definition for gross revenue is very broad and is the standard definition of revenue from the Statement of Financial Accounting Concepts of the Financial Accounting Standards Board. It probably would include such things as DSL or internet access in the form of telecommunication services necessary to reach a point of presence. The congress recently passed an amended version of Senate Bill 150 which has been submitted to the President for his signature. Mr. Goodwin has not fully examined the text of the legislation as passed by both houses. There are some that suggest it continues a moratorium through 2007 on taxation of internet access. If we are prohibited from taxing internet access, the city would have to comply with the restrictions of Federal Law.

Councilor Pishioneri asked Ms. Judy if their company had repeater stations in Springfield or the urban growth boundary (UGB).

Ms. Judy said she did not know, but would find out and get that information to him.

Councilor Woodrow asked Mr. Goodwin if the tax under consideration would have a deduction for those already paying a franchise fee. Mr. Goodwin said that is correct. Councilor Woodrow asked if the taxes on the wireless would be for uses that are currently being taxed. We would not be imposing a new tax on things that are already being taxed.

Mr. Goodwin said that may not be completely correct. He also corrected his earlier statement and noted that those already paying a franchise fee would receive a credit, not a deduction. He gave the example with Qwest. Cities are limited to only charging local access charges. Those local access charges represent one third to one half of Qwest's gross revenue. The other revenues are generated by such things as caller identification, directory assistance and other long distance services offered. In situations such as Qwest, there is such a disparity between what the revenue limitation is in current law and the revenue definition in the utility tax, a Qwest customer might see additional charges if the company chooses to pass those costs along to the customer.

Councilor Ralston asked if the tax would be applied on a call from Texas by someone using a cell phone based out of Springfield.

Mr. Goodwin said that was true. Under Federal Law, the Mobile Telecommunications Sourcing Act, if anyone imposes a tax on mobile telephones, they are required to impose the tax based on the primary place of use, which is defined as the billing address of the customer.

Councilor Ralston asked if a call from someone living in Texas to someone in Springfield was taxed.

Mr. Goodwin said it would depend on where their cell phone was based. If the cell phone was based in Springfield, it would be subject to the tax.

Councilor Ralston asked if the person receiving the call would be taxed.

Mr. Goodwin said the person receiving the call could be subject to the tax to the extent that their cellular company imposes a charge for incoming calls.

Councilor Ralston asked about interstate commerce.

Mr. Goodwin said it would not affect interstate commerce in general, but there were exceptions. He used Qwest as an example and described the minimum tax applied for use of right-of-way.

Councilor Pishioneri asked Mr. Goodwin if propane and heating oil suppliers would be affected by this.

Mr. Goodwin said they would not. The tax defines the tax base as public utilities and other utilities providing telecommunications services. Public utility is defined in state law to include electric, steam, natural gas and a couple of other utilities, but not propane and heating oil.

NO ACTION REQUESTED. FIRST READING ONLY.

2. Ballot Measure 37 Ordinance.

ORDINANCE NO. 6102 – AN ORDINANCE CONCERNING REAL PROPERTY COMPENSATION; ADOPTING PROCEDURES FOR PROCESSING DEMANDS; ADDING TO CHAPTER 2 “GOVERNMENT AND ADMINISTRATION” OF THE SPRINGFIELD MUNICIPAL CODE, SECTION 2.900 ET SEQ. “DEMANDS FOR REAL PROPERTY COMPENSATION” DECLARING AN EMERGENCY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Ms. Pappas noted that a piece of correspondence from 1000 Friends of Oregon had been submitted to the council. Another correspondence from the HomeBuilders' Association had also been received and would be distributed to council. Both correspondence items would be entered into the record.

City Attorney Joe Leahy and Development Services Director Bill Grile presented the staff report on this item. The City of Springfield, like Eugene, Lane County and other cities and counties throughout Oregon is considering whether to enact an ordinance to implement Ballot Measure 37 which would require under certain specific circumstances payment of compensation to present owners of real property if government land use regulations reduce the fair market value of their

property. The City Attorney's office, together with representatives of the Development Services Department and the Public Works Department, has prepared a draft ordinance for Council discussion and consideration. BM 37 contains some very specific requirements, however, it does not specify the process, the funding, and leaves open a number of other questions. In the absence of any interpretation by the Oregon legislature or case law, the proposed ordinance attempts to address issues of process, funding and other unanswered questions. There is no guarantee that any approach enacted will withstand judicial scrutiny or be consistent with any enactment of the Oregon legislature. Undoubtedly there will be further revisions and refining required.

Identified financial impacts include but are not limited to processing the Ballot Measure 37 Demand, paying Ballot Measure 37 claims, impact of property values/real property taxes, if any, on properties which are the basis of Ballot Measure 37 Demands and neighboring properties, and potential attorney fees and court costs. Pursuant to council instruction, the Ballot Measure 37 Demand Processing Fee is a nominal fee designed to partially defray initial processing and notice and publication costs.

Mr. Leahy noted that if council chose to adopt the ordinance as proposed tonight, the opportunity to make significant changes to the ordinance could not occur. If there are significant changes council would like to make, this would need to be delayed until the December 6 council meeting. The difficulty with that is that the Ballot Measure 37 becomes effective December 2 and there would be a window of opportunity for individuals to file claims before an ordinance was in effect.

Mr. Leahy said that since the last council work session, staff had met again and made amendments to the ordinance as directed by council. He discussed two of those changes. The first was to set a \$500 fee for filing of the application. A process was set for the city to monitor the cost associated with processing the application. If the costs were to exceed the amount of \$500, the owner would be billed and if the processing costs were less than the \$500, the owner would receive a refund. Pursuant to council direction, if the owner makes their case with a valid claim, the owner will receive a refund of any application fee. The second change was directed at the circumstance where an owner was awarded the claim and then sold the property. The opportunity for the waiver of the fee would remain in effect; therefore the owner would not be deprived. If there was a law change and the owner was fraudulent, there is a mechanism for changing the waiver on the property. The property does not become nonconforming as a result of ownership change and it does not become illegal and subject to abatement as a result of ownership change. Council felt that was the spirit of the act.

Mr. Leahy said he talked with Roxie Cuellar from the HomeBuilders' Association and she had some suggestions. The first was in section 2.980 which outlines the "Private Cause of Action" that surrounding properties may have. If the neighbor is victorious showing there is a diminution in their property, the neighbor's are awarded attorney's fees. Ms. Cuellar had suggested to Mr. Leahy on behalf of the HomeBuilders' Association, that it be a unilateral right to attorney's fee, for whoever is victorious in that litigation. Mr. Leahy explained to Ms. Cuellar the difficulty that caused in passing the ordinance tonight and she agreed that this could be addressed in January or February when staff brought the ordinance back for some housekeeping items.

Mr. Leahy discussed the suggested changes by Lauri Segel from the 1000 Friends of Oregon. Mr. Leahy asked Planning Manager Mel Oberst to forward to Ms. Segal that her suggestions would also be revisited in January or February for consideration. One of her suggestions is already incorporated under the "Private Cause of Action". Her other suggestions are more of

housekeeping items. Mr. Leahy said he and City Planner Gary Karp would be attending a meeting on Wednesday morning in Portland to learn more about Ballot Measure 37. More meetings will likely occur after the first of the year as well.

Mr. Grile commended the City Attorney for doing a lot of work in a short amount of time. He said that Mr. Leahy had put together an ordinance that would allow the city to fairly and reasonably respond to any demands under Ballot Measure 37. Staff heard council's direction to make the ordinance and process fair. It was also clear by the number of voters who voted for this measure that it is something the citizens want.

Mr. Leahy said staff would be happy to respond to any specific questions of council.

Council President Fitch opened the public hearing.

No one appeared to speak.

Council President Fitch closed the public hearing.

Councilor Pishioneri asked about the email from Ms. Segel which referred to Section 2.930 (7) and her request that the appraiser is not a business partner or family member of any owner of the property for which the claim is being submitted.

Mr. Leahy said that is a good idea in principal, but did not feel it was necessary to specify that because there is a stipulation in the ordinance that the appraiser must be a MAI or certified appraiser and none of them would accept the job if there were a family conflict. It would be a professional ethics issue.

IT WAS MOVED BY COUNCILOR WOODROW WITH A SECOND BY COUNCILOR LUNDBERG TO ADOPT ORDINANCE NO. 6102. THE MOTION PASSED WITH A VOTE OF 5 FOR AND 0 AGAINST (1 ABSENT – BALLEW).

Council President Fitch thanked Mr. Leahy for drafting a good ordinance to address this issue.

Mr. Leahy acknowledged that it was a team effort with good people in the Planning Department and Public Works Department. This will continue to be a work in progress.

BUSINESS FROM THE AUDIENCE

1. Curtiss Greer, 357 55th Street, Springfield, OR Mr. Greer referred to an article in the Register Guard on November 20 which was ahead of time. He said he did not force the Springfield School District or Willamalane Parks and Recreation District to do anything. He asked those public agencies to obey laws. He said that the comment by Police Chief Jerry Smith that was printed in the Register Guard was the same as that of the Police Chief in Kennisaw regarding enforcement of a law. He discussed the law in Kennisaw and asked council to look at it logically. Willamalane uses this principal to keep firearms out of their parks. Criminals are not afraid of police, but fear armed private citizens. He discussed having the citizens of the community armed. It is not the responsibility of government or the police to deter crime. He concluded by saying that this type of ordinance does not cost the city money and has been proven to work for twenty two years. He said he would be happy to meet with any council

member at any time to discuss this statute, but not openly public because that would serve to defeat the purpose of this.

2. Fred Simmons, 312 S. 52nd Place, Springfield, OR Mr. Simmons said he has raised issues regarding Urban Renewal in the past and he appreciates staff's response to those issues. One of the problems with the Glenwood process is that as we grow our costs increase. He said in talking about the Urban Renewal process in improving Glenwood, there are some significant problems with proper representation of the cost of providing service to Glenwood versus the revenue received. It is going to impact the people of Springfield. He said that when the city puts future issues on the ballot, it is only fair to disclose both the costs and benefits in the process and be open. Glenwood residents are concerned about the Urban Renewal District (URD). The city staff has done an excellent job in working with the citizens, but there are flaws and the plan is too global. He feels the city is understating what it will cost to serve Glenwood. Money has already been spent and it would be good to know that amount in staff time and costs. He is skeptical of the urban renewal process because of the issue of amalgamation and condemnation and he feels the city will lose some court battles.

COUNCIL RESPONSE

CORRESPONDENCE AND PETITIONS

1. Correspondence from Curtiss Greer, 357 55th Street, Springfield, OR Regarding his Crime Reduction Proposal.
2. Correspondence from Scott Farley, 524 33rd Street, Springfield, OR Regarding the Candy Store and other Adult Businesses in Springfield. (Please see attached memos from City Attorney Joe Leahy.)
3. Correspondence from John McNamara, Regional Tax Director of AT&T, 1875 Lawrence Street, Denver, CO Regarding the Proposed Ordinance for a Utility Tax.

IT WAS MOVED BY COUNCILOR WOODROW WITH A SECOND BY COUNCILOR LUNDBERG TO ACCEPT THE CORRESPONDENCE FOR FILING. THE MOTION PASSED WITH A VOTE OF 5 FOR AND 0 AGAINST (1 ABSENT – BALLEW).

BIDS

ORDINANCES

BUSINESS FROM THE CITY COUNCIL

1. Business from Council
 - a. Committee Reports
 1. Councilor Woodrow reminded the council that the Springfield Holiday Parade was scheduled for Saturday, December 4. A Tuba Concert was scheduled to start at 1:00pm in the Museum Parking lot and the parade was scheduled to start at 2:00pm. Both are free to everyone.

BUSINESS FROM THE CITY MANAGER

BUSINESS FROM THE CITY ATTORNEY

1. Mr. Leahy referred to Mr. Simmons concerns regarding cost and benefit regarding the Urban Renewal District. The city tried to put into the public information what we knew in terms of information and costs. There are limitations set by the ten, twenty and ninety word limit on the Ballot Title. Everything sent out to the public went to the Secretary of State's office for review to insure it was neutral.

Mr. Kelly commented on this issue as well. In Springfield, because of our Charter requirement, we are required to have a vote of our citizens for any districts that are formed. In other communities, council would create an Urban Renewal Plan, create a project list and bring that forward to a public hearing. Springfield is new to this and wanted to be sure the voters approved of the district before a lot of time and effort was spent on the details. Staff gathered preliminary information to present to the voters an indication of what the district would probably do and what it would look like. That is an issue that Springfield faces that other Oregon communities do not. The city will get better over time, but this is the reason we did not have a lot of the details in place prior to the vote.

ADJOURNMENT

The meeting was adjourned at 7:44 p.m.

Minutes Recorder Amy Sowa

Sidney W. Leiken
Mayor

Attest:

City Recorder