

**CANBY CITY COUNCIL  
REGULAR MEETING MINUTES  
November 18, 2020**

**PRESIDING:** Mayor Brian Hodson

**COUNCIL PRESENT:** Tim Dale, Shawn Varwig, Sarah Spoon, Greg Parker, and Traci Hensley

**STAFF PRESENT:** Scott Archer, City Administrator; Joseph Lindsay, City Attorney; Ryan Potter, Senior Planner; Erik Forsell, Associate Planner; Melissa Bisset, City Recorder/ HR Manager

**CALL TO ORDER:** Mayor Hodson called the Regular Meeting to order at 7:04 p.m. in the Council Chambers followed by the opening ceremonies.

**COMMUNICATIONS:** None

**CITIZEN INPUT & COMMUNITY ANNOUNCEMENTS:** None

**MAYOR'S BUSINESS:** Mayor Hodson addressed Governor Brown's recent pause due to Covid that was now in effect. It would be complaint driven and police officers would respond as an educational piece only. Personally he thought that this pause that included the policing of who people had in their homes, how many, when, and why was a gross overreach and pushing it down to the Police Department was a wasteful and egregious use of resources and poor judgment. Another lock down on businesses was heartbreaking, especially for businesses who had not fully recovered from the last lock down. He had talked with restaurant owners and gym owners who said they had not had any customers contract Covid at their business. He questioned the scientific method that was being used. He asked everyone to use common sense and be thoughtful about how they approached family gatherings.

Mayor Hodson reported that C-4 had submitted a letter regarding the State Transportation Improvement Project list to the Oregon Transportation Commission. They had asked the Commission to focus the funding on either fixes or enhancements. The Parks and Recreation Advisory Board met last night and discussed Maple Street Park project phases, Locust Street Park playground project, and Park Master Plan update. Three candidates had applied for a vacancy on the Board. The Board also suggested a Work Session on Park SDCs.

**COUNCILOR COMMENTS & LIAISON REPORTS:**

Council President Dale gave an update on the relocation of the power lines for the S Ivy Street project. The Mayor met with Dan Murphy, General Manager of Canby Utility, and Council President Dale also talked with Mr. Murphy. Mr. Murphy checked with the County engineers and they confirmed they were not waiting for anything additional from Canby Utility. Canby Utility would be relocating the lines whether above or underground into private property easement space. Their position was that the City should pay for the undergrounding. The above

ground price would cost around \$201,000. They were willing to credit the City the amount it would cost them to go above ground towards the undergrounding. Staff was working on the undergrounding cost.

Councilor Hensley gave an update on the Suicide Prevention Task Force who would be working on a series of public service announcements. She echoed the Mayor's comments and thought it was disappointing that no one was addressing the rising rates of substance abuse, domestic violence, and suicide.

Councilor Parker said even the best intentions could sometimes miscalculate when it came to Covid and family gatherings. He had also talked with a restaurant owner who had to lay off employees and it broke his heart. The Scare Fair at the Fairgrounds was a huge success. From November 27 to Christmas there would be a Winter Fair at the Fairgrounds. He attended the last Adult Center meeting where 10 new Meals on Wheels drivers had volunteered. The Thanksgiving Dinner this year would be a drive-thru. He suggested the Parks and Recreation Advisory Board be the ones to prioritize park projects to be built and oversee parks maintenance.

Councilor Varwig congratulated Jordan Tibbals on being the fourth candidate for Council and he thanked Jason Padden for the great campaign.

**CONSENT AGENDA: \*\*Council President Dale moved to adopt the minutes of the November 4, 2020 City Council Regular Meeting. Motion was seconded by Councilor Varwig and passed 5-0.**

**PUBLIC HEARING: Text Amendment (TA) 20-01 – Telecommunications Facilities, Amending Title 16 of the Canby Municipal Code.**

Mayor Hodson read the public hearing statement and opened the hearing at 7:35 pm.

STAFF REPORT: Erik Forsell, Associate Planner, said this was a request to amend Title 16 of the Canby Municipal Code to add Chapter 16.55, Telecommunication Facilities, and to modify other chapters in the title so that they were consistent with Chapter 16.55. A written public comment was received from Kim Allen on behalf of Verizon Wireless which was submitted earlier today. Her comments stated the following: there was no opportunity to work with staff on the text amendment, the undergrounding requirements would corrode equipment and affect wireless signal, the proposed shot clocks were not consistent with federal codes, and eligible facilities were not mentioned in the new language. He had never received a communication from Ms. Allen or Verizon until today to discuss the text amendment. The undergrounding requirements were for ancillary equipment, not antennas, and then only if it was technically feasible. He thought they were following federal code for the shot clock requirements. Regarding eligible facilities, it was related to the Spectrum Act and being able to remove, modify, or fix equipment and in some instances co-located and expedited review. They were not intending to take that out of the playbook for wireless applicants. The intention was to include an option in the application form so that if there was an eligible facility they would be allowed to proceed as needed. He reviewed the seven public meetings held to date on the text amendments. He explained these changes were being brought forward now because wireless data usage was continuing to expand almost at an exponential rate and small microcell installations were one of

the methods to address the demand for increased capacity, speeds, and usage. Without design and application standards, telecommunication companies could install facilities without any review from the City. These changes were intended to institute reasonable time, place, and manner requirements on new telecommunications deployment in the City. Much of the newer generation telecommunications equipment would be deployed in the public rights-of-way on a much smaller scale than traditional cell towers. It was still unclear to what extent this might happen, but it was better to anticipate and prepare for this than be left without a way to regulate the time, place, and manner of the deployment. Federal laws and regulations severely limited a local jurisdiction from prohibiting the deployment of small microcell installations. These included the Communications Act of 1934, Telecommunications Act of 1996, provisions of the Middle-Class Tax Relief and Job Creation Act of 2012 (commonly referred to as the Spectrum Act), and FCC 18-133 (small cell order). The proposed changes would create a separate section of the Development Code specifically for all types of telecommunications facilities. The text amendments allowed the City to regulate deployment of telecommunication facilities in the public rights-of-way and on public and private real property. They were crafted to ensure code amendments were at low risk to legal challenge and were consistent with federal law and provided requirements and restrictions that allowed for deployment of new telecom facilities but also reduced impacts (visual, size, area, and location). They also included important shot clock requirements for City staff to make decisions, provided a standardized application and review process, and included severability clauses should law, rules, or precedence change. The model code was gleaned from the National Association of Cities, League of Oregon Cities, Oregon City, and Lane County. There had been multiple work sessions with the City Council and Planning Commission. Suggestions and edits were incorporated from these meetings into the proposed text amendment. He discussed the approval criteria for text amendments. The amendment was consistent with the City's Comprehensive Plan and the plans of the County, State, and local districts. Without language in place for telecommunications facilities they could potentially see deployment without any review. The text amendment was the best alternative at present. It would preserve and protect the health, safety, and general welfare of the residents in the community as it required professional engineers to state that certain requirements regarding radiation from cell towers and equipment met safety standards. The amendment was also consistent with Statewide Planning Goals. The Planning Commission voted unanimously 5/0 to recommend that the City Council adopt the proposed text amendment. Based on the findings and conclusions presented in this report and comments received in the public hearing, staff recommended the Council adopt the changes outlined in the text amendment.

Mayor Hodson clarified the design and location was the only control they had at this point. Mr. Forsell said that was correct. They could have requirements for ways to make these less visible, where they could be placed, and general size. Things that would make it so restrictive that they were not on an equal playing field with similar uses in the rights-of-way would not be allowed.

Mayor Hodson asked if there would be enough nimbleness in the language to make changes to the code if needed. Mr. Forsell thought there was flexibility in the language currently. If an applicant could not meet some of the requirements, they could ask for a built in variance which did not require them to go to the Planning Commission or Council.

PROPOSERS: None

OPPONENTS: Kim Allen, representing Verizon Wireless, said the laws were changing rapidly for telecommunications and this summer there was an order having to do with eligible facilities requests that was not included in this proposed code. There were no criteria for processing eligible facilities requests specifically in the code. Regarding the shot clocks, the City had 60 days for attachment to existing structures and 90 days for new structures in the right-of-way to process and make a final decision on the application. That clock should start not when the application was deemed materially complete but when the application was first offered to the City. Some of the processes like the variance were Type II and Type III processes and there was an appeal process as well. These processes took time and could not be accomplished within the short time that the federal government had imposed. They had only received word about this hearing last Friday. The code needed to be workable and not inhibit the ability to deploy this technology. She also had an issue with the large setbacks for the facilities and the equipment to be undergrounded. She requested continuance of the hearing to work some of these issues out.

Mayor Hodson closed the public hearing.

QUESTIONS OF STAFF: Mr. Forsell said the macro cell towers went through a regular land use review, not an expedited one, and that was why they had the setbacks. Applicants could get a deviation from the design standards if they were not technically feasible for the applicant, impeded the effective operation of the wireless facility, significantly impaired the desired network or performance objectives, conflicted with the pole owner's requirements, or materially limited or prohibited the provision of wireless service. Eligible facility was a catch-all term for certain co-locations or modifications and he thought that could be easily captured in the application form. He did not think it would gain anything to add it to the code. Regarding shot clocks, the federal regulations gave the opportunity for local jurisdictions to make a call on whether the application was materially complete or not.

Joe Lindsay, City Attorney, said they defined timelines for the shot clock pursuant to federal law. The code was not adding anything different than what was in federal law. If there was a dispute, federal law would trump any City code.

Mr. Forsell said the point of the code was not to be more restrictive than federal law. There was the opportunity within 10 days of receiving an application for the local jurisdiction to notify the applicant if it was not materially complete. If it was materially complete, it would be processed in the timeline of the shot clocks as described. He thought the concerns were addressed in the code and the code did not go beyond what was prescribed by the federal government.

Mr. Lindsay clarified that the current telecommunications code was stricter, especially for undergrounding and this new code would soften those requirements.

DELIBERATION: Council President Dale said he let Paul Howard, president of Canby Telephone Association, know this was on the agenda and his response had been forwarded to the City Recorder. After reviewing the information, Mr. Howard did not think it created any undue burden or concern for them. A macro cell tower had recently gone in and the height of the tower, setbacks, and breakpoints were an issue at that time. The Council had a good understanding of the setback issue and he did not have any concerns with the proposed code. He appreciated the

code language being modeled after language that had already been implemented by other jurisdictions. He had no concerns about the shot clock issue. They were acting in good faith, honoring federal regulations, and not trying to block installations. He did not think the hearing needed to be continued.

**\*\*Council President Dale moved to adopt Ordinance 1539, AN ORDINANCE AMENDING CANBY'S TITLE 16 OF THE CANBY MUNICIPAL CODE ADDING NEWLY CREATED CODE CHAPTER 16.55 FOR TELECOMMUNICATIONS FACILITIES AND MODIFYING EXISTING CHAPTERS IN THE TITLE TO BE CONSISTENT WITH CHAPTER 16.55 to come up for second reading on December 2, 2020. Motion was seconded by Councilor Hensley and passed 5-0 on first reading.**

**\*\*Councilor Varwig moved to approve and adopt the proposed text amendments as described in the staff report and direct staff to implement the changes to Title 16 of the Canby Municipal Code outlined in TA 20-01, Telecommunications Facilities. Motion was seconded by Council President Dale and passed 5-0.**

**ORDINANCES:** Ordinance No. 1541 – Mr. Lindsay said this was a request from the Library Board to change the attendance policy that if a member missed three meetings within a given year they could be removed from their position.

**\*\*Councilor Varwig moved to adopt Ordinance 1541, AN ORDINANCE AMENDING CANBY MUNICIPAL CODE (CMC) CHAPTER 2.20.040 REGARDING THE LIBRARY BOARD TERM OF OFFICE IN THE CITY OF CANBY to come up for second reading on December 2, 2020. Motion was seconded by Councilor Spoon and passed 5-0 on first reading.**

Councilor Hensley would like to make this consistent across all the City's Boards and Committees.

Councilor Spoon thought it should be to scale for each committee as some did not meet every month.

Councilor Varwig thought the Council liaisons should ask the committees if that was something they wanted to do. He did not think they should force a change.

Councilor Parker thought they should take a broader look at citizen involvement and what it meant to Canby.

**NEW BUSINESS:** S Ivy Street Project Undergrounding – Mayor Hodson said this project was an important project that was partially being funded through State Transportation Improvement Program funds. Plans were being finalized for the project and the conversation had been about undergrounding the overhead lines. Canby Utility was willing to contribute what they would have paid to move the power poles to the undergrounding effort.

Councilor Parker had asked staff to see if there were funds available to underground the utilities with the caveats that it would not affect City services and staff, would not impact reserves, and would not use contingency funds.

Scott Archer, City Administrator, would work with the Finance Director to identify potential savings from other projects that might not be done due to Covid and other sources that had the flexibility to spend funds in this regard. The key was determining what the cost would be for the City, but he thought there would be funds available.

Councilor Varwig thought this was a defining decision for the Council. He was in favor of spending a little extra money now and doing it right for the future. If they did not underground the utilities, he thought they would regret it.

Councilor Spoon thought it was a legacy project for the community. If they did not do it now, it would not be done for many years.

Mayor Hodson asked if Canby Utility had to replace the poles or just move them. Council President Dale did not know, but he could find out.

There was consensus for staff to move forward with looking into funding options for undergrounding.

**CITY ADMINISTRATOR'S BUSINESS & STAFF REPORTS:** Mr. Archer said the department bi-monthly reports were in the Council packets. He asked if the December 16 meeting should be canceled since nothing was currently on the agenda. If they still wanted to meet, they could hold a Work Session before the regular meeting to review the City Administrator's Work Plan.

There was consensus to cancel the December 16 meeting and to hold the Work Session on January 20.

Mr. Archer announced the League of Oregon Cities Elected Essentials Workshop in December. He gave an update on Covid protocols and directives. The Swim Center was closed, Library options would remain unchanged, there would be no in-person court proceedings, and there were new OSHA procedures. He gave an update on the S Ivy Street sanitary sewer line replacement project which would be completed in January. Finalist interviews for a new Planning Director would be held next week and there were several other recruitments in process currently. The City had been awarded a \$5,000 grant from the Ford Family Foundation for economic recovery programs. The Light up the Night event would not be the same as previous years. Wait Park would still have lights and decorations and people could view the festive display beginning December 4 at 6:30 p.m. The winner of the Who Lights Up Canby contest would be invited to turn on the lights at the park that evening. The Government Finance Officers Association had awarded the City a Certificate of Achievement for Excellence in Financial Reporting for the City's Comprehensive Annual Financial Report for fiscal year ending June 30, 2019. The City had distributed \$100,000 in resiliency grants to the Canby Center who would be distributing it for rental/housing assistance and utility assistance. The City donated \$15,000 to Kiwanis and

\$7,000 to the Canby Adult Center. To date they had received four applications for the business grants. The deadline to apply was November 30 at 5 p.m. If all of the funds for the business grants were not used, it could be redirected to non-profit aid.

Councilor Spoon asked if there was a government transparency component to the business grants to see who received the funds or how much was received. Mr. Archer said yes, there was.

**CITIZEN INPUT:** None

**ACTION REVIEW:**

1. Approved the Consent Agenda.
2. Approved text amendment TA 20-01 with the final findings to come back on December 2<sup>nd</sup>.
3. Passed Ordinance No. 1539 to a second reading for December 2<sup>nd</sup>.
4. Passed Ordinance No. 1541 to a second reading for December 2<sup>nd</sup>.

**\*\*Council President Dale moved to go into Executive Session pursuant to ORS 192.660(2)(i) Performance Evaluation of a Public Officer. Motion was seconded by Councilor Varwig and passed 5-0.**

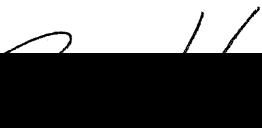
Mayor Hodson read the Executive Session statement.

Mayor Hodson recessed the Regular Meeting at 9:16 p.m. Mayor Hodson reconvened the meeting at 10:55 p.m.

**\*\*Council President Dale moved to accept the performance evaluation of the City Attorney and adjust the annual compensation to \$145,000, and leave the other contract language unchanged. Motion was seconded and passed 5-0.**



Melissa Bisset  
City Recorder



Brian Hodson  
Mayor