



MINUTES OF WORK SESSION OF THE COMMON COUNCIL OF YOUNGTOWN, AZ

THURSDAY, January 6, 2011, TOWN CLUBHOUSE, 12033 CLUBHOUSE SQUARE

1. Call to Order Mayor LeVault called the meeting to order at 7:00 p.m.
2. Roll Call Council present: Mayor Michael LeVault, Vice Mayor Jacob Duran, Councilmembers Margaret Chittenden, Dorena Mello, Shirley Oglesby, Susan MacKay, and Judy Johnson. Staff present: Town Manager Lloyce Robinson, Town Attorneys Susan Goodwin and Michelle Swann, Police Chief Terry McDonald, Public Works Manager Mark Hannah, Finance Officer Jackie Hoffman and Deputy Town Clerk Diane Cordova.
3. Business
 - A. Discussion Re: Resolution 11-03 Arizona Public Service Company 25 year franchise agreement and referral to the voters. (Goodwin)

Goodwin, Town Attorney

 - In your packet is the APS (Arizona Public Service) Franchise Agreement. Page 3 has a mapping requirement. Installations in the public rights-of-way, Grantee shall submit a map showing the location of such proposed installations. APS prefers a provision toward the industry's best practices which they will provide upon request. We were discussing having a mapping requirement in the Youngtown ordinances, which Council may have in the future. I'm not too sure if this is an issue. Also for discussion is the restoration of right-of-ways. Asphalt cuts when restored, should it be by industry standards or by municipality's standards? Our recommendation that it be restored in accordance to the Town's standards. APS desires that restoration be either municipal standards or industry standards. Our recommendation that it can be an and/or standard.
 - This is a 25 year franchise with the ability to terminate on the 10th anniversary.
 - It is a set franchise fee.
 - No sales tax offset.
 - Permit fees are included in the franchise fee.
 - We did add that at the beginning of each year, Town and APS will provide the other with a schedule of known construction projects.

Mayor LeVault

 - The changes being made are considered minor changes?
 - What does restore to industry standards mean?
 - What are other communities doing in regards to standards?
 - In our discussion, we also agreed to have our franchise agreement say restoration to municipal standards. If our peers are negotiating for a higher standard, we should do the same.
 - What are MAG (Maricopa Association of Government) standards?
 - So if we go with the wording, municipal standard as opposed to industry standard, is it a higher standard? We don't have a lower level bureaucratic standard. It states industry standards which vary with municipal standards. If we leave as is, industry standards win the day. The attorney has a very important point, once asphalt has been cut, it has to have an above and beyond repair. It goes beyond just laying down asphalt into the cut. The class life of that asphalt has been affected. What if we change the word "or" to the word "and?" What if we say meets or exceeds industry and towns standards?
 - Is the 2% Franchise Fee across the board the same for all communities?
 - Have we been able to isolate the amount of revenue generated from a franchise agreement that is the sales tax and the franchise fee?
 - Have we talked about a Model Option 13? If we adopt Model Option 13 it will require a change in our tax code. Will this be revenue neutral?

- Our attorney seems to disagree that this is not revenue neutral. We will not be able to resolve this tonight.
- So if there is no offset. It's a 2% franchise fee and 3% sale tax for a total of 5%, right now it's 3%.

Robinson, Town Manager

- I recall in our discussion that we adopt industry standards.
- I received the numbers today of what APS has paid. We have under \$80,000 collected from Dec. 2009 to Nov. 2010. It is collect by Arizona Department of Revenue.
- No, we have not discussed a Model Cities Tax Code Option.

Goodwin, Town Attorney

- The only requirement is the restoration of right-of-way. We recommend restoration to Town's standards. The language provided by APS is stated as "or" restoration to meet industry "or" municipals standards. It means that restoration to industry standard is adequate. Franchise agreements that we have written have restoration to municipal standards. There are MAG (Maricopa Association of Government) standards. Restoration of right-of-ways is a little different from laying down paving. I don't believe MAG standards has a standard for restoration, it a standard for paving. Restoration is when you cut into pavement. How do you have it whole? You cannot make it whole. The Town would have to adopt a municipal standard. I don't know if the town has separate standards. In our discussion with APS, they were worried about some lower level bureaucrat descending arbitrating standard; like having to pave a whole quarter of a mile. I will place in the franchise agreement standards adopted by the Council. Scottsdale states that the restoration will be to as good as condition as before as determined by the city.
- There will be a sales tax and a franchise fee. It a Model Cities Tax Code. The revenue will not be neutral. Right now you have sale tax offset the franchise fee; under the new franchise you will have franchise fee plus sales tax. We cannot have a franchise agreement that is not consistent with the Town's sale tax. This present franchise agreement does not have a sales tax offset. We will need to go back and make a change. .

Councilmember Mello

- MAG standards are non-industry standards. Industry standards change in time.
- Are we passing a tax to the people to subsidize this franchise agreement?
- How does this present franchise agreement differ from our previous franchise agreement? Does this present agreement have sales tax plus franchise fees?
- Before this goes to the ballot, I want the people to have a true understanding; prior to the ballot, are we going to have to adopt Model Cities Tax Code Option 13? The people are going to vote on this franchise agreement and they are going to vote as they see it right now, and then all of a sudden we are going to modify our tax code to add Model Cities Tax Code Option 13 and then they get hit with an increase of 2%. Voters don't understand that franchise fees are an offset.

Kendra Cea, APS Area Manager, Franchises and Technical Services

- As it relates to this specific item, lower level bureaucrat, are not my words.
- Page 6 of the Franchise Agreement under section 5 – Restoration of Rights-of-Ways, any opening or alteration whatsoever to be made for any purpose in any public right-of-way, the work shall be completed with due diligence within a reasonably prompt time. Grantee will restore the disturbed property to a condition as good as it was prior to such opening or alteration. Town agrees that this requirement shall be deemed met if the disturbed property is restored with comparable materials, so that the restoration meets or exceeds industry or Town standards adopted by the Town Council.
- You are right, anytime asphalt is cut, you have affected its class life and the look of the street. It will never be back to the condition it was before and that is the current concern from a legal perspective. There is no question that APS will work with the Town to make sure that asphalt cut is repaired in accordance with the Town's standards. The bottom line is that APS does not want to be held to a Town standard that is above an industry standard, and therefore require APS to exceed standards that will cause things to become challenging.
- We have 53 Franchise Agreements with municipalities across the state using industry standards. We just signed with Kearny, Flagstaff, Cottonwood, Carefree and Jerome.
- What you are saying is that the Town has not adopted Model Cities Tax Code Option 13.

- The sales tax and franchise fees are an offset. You have a franchise fee of 2% plus sales tax. Your sale tax is 3%. We no longer have offsets in our franchise agreements. If you don't adopt Option 13 you don't get both the franchise fee and the sale tax. So if your tax is 3% and your franchise is 2% you get a total of 5% if you've got the Model Cities Tax Code Option 13. If you don't adopt Model Cities Tax Code Option 13 what shows up in your bill is 2% franchise fee with a 1% transaction privilege tax for a total of 3% tax.
- The Town has not adopted Model Cities Tax Code Option 13, therefore it is revenue neutral. Because it is still 3%. If you adopt Option 13, you have 2% franchise fee and 3% sales tax. The offset is built into the Model Option 13 language not into the franchise agreement.
- We will need a franchise agreement by January 20th meeting as well as a Resolution due to public notice requirements. You do pass on a higher tax if you adopt Option 13. Revenue neutral is only based without Option 13. Many cities have not adopted the Model Cities Tax Code Option 13.
- APS poles can be used for street lights.

Councilmember Chittenden

- I have a hard time understanding this franchise agreement. Are we going to be passing on a higher tax to our residents?
- Will this be a voter's decision?
- Can you explain why Youngtown may use APS poles?
- Would you say that many cities have adopted Option 13?

Councilmember Johnson

- Fees would be higher.

B. Discussion Re: Resolution 11-04 Southwest Gas Corporation 25 year franchise agreement and referral to the voters (Goodwin).

Goodwin, Town Attorney

- This franchise agreement is similar to the APS franchise agreement, 25 years. Permit fee required; asphalt cut restoration; 2% franchise fee; 2% sales tax
- Southwest Gas collects 1% to be deposited into a Town capital expenditure fund. Any funds left over at the end of the year belong to Youngtown.

Mayor LeVault

- We have the same issue here in regards to the Model Cities Tax Code Option 13.

Councilmember Mello

- Southwest Gas will collect 1% for a total of 6%? Is this 1% to offset any expenses towards an industry standard?

Ann Seiden, Corporate Public Affairs, Southwest Gas

- For six to eight years now, Southwest Gas has been making changes on how we get reimbursed for franchise related work. For all of the cost incurred associated with franchise projects, for example relocation of facilities, we collect money and place it in a rate base that is spread across all customers. We are shifting from a rate base to localizing costs to the jurisdictions where they occur. We are establishing a 1% fee, which goes into an account that stays with the Town and then invoice the Town on that account for any Town-driven projects. If Southwest Gas decides to put in a new line or we make an improvement, we are not talking about getting reimbursed for that, we are taking about if the Town decides to widen a road and Southwest Gas is force to relocate lines, we feel that should be reimbursed out of the jurisdiction where it has occurred. We started this mechanism due to the Light Rail construction. We realized we had to move tons of facilities which cost lots of money. Southwest Gas would have to borrow the money and our customers would have carried the burden of the cost of borrowing. We believe it is fairer to localize costs incurred to a jurisdiction. Youngtown would only pay for expenses related to Youngtown.
- Shifting from the rate base to the 1% on jurisdictions has saved Youngtown customers \$18,000 in rates. This has been one of the costs incurred by the Light Rail.
- We do charge 2% on larger communities. We have looked at the smaller communities not having major projects which then we decided on a 1% tax. Here in Youngtown would be around \$5,000. We are very sensitive to our customers, we don't want any increases. One major project and the \$5,000 is absorbed very quickly.
- At the end of the year the money in the account belongs to the Town, which the Town can use upon its discretion.

Mayor LeVault

- Does the money in the account accrue from year to year or is it swept?
- This Council has a great sensitivity on being transparent to our residents. We don't want to increase the financial burden to them through a side door. If we are going to ask for more money, we want it to be transparent and out in the open. They our residents get a chance to vote yes or no.
- This is more transparent than the rate base across the board.

Councilmember Chittenden

- We collect this money, placed into an account and it belongs to the Town? What if we don't have any major improvements?
- Has it always been 1% or can it be less than 1%?

Councilmember Johnson

- This does appear to be more transparent and fairer.

Regular Council Meeting: Thursday, January 6, 2011 immediately following Work Session.

Adjournment.

**Motion to adjourn – Vice Mayor Duran
Second – Councilmember Olgesby
Meeting adjourned at 7:47 p.m.**



Michael LeVault, Mayor

Attest:



Diane Cordova, Deputy Town Clerk

Minutes approved at the January 20, 2011 Regular Meeting.