

1 Depoe Bay City Council  
2 Regular Meeting  
3 Tuesday, August 16, 2016 - 7:00 PM  
4 Depoe Bay City Hall

5  
6 PRESENT: Mayor A.J. Mattila, C. Bates, J. Fisher-Brown, R. Gambino, J. Grant, J. Wiseman  
7 (arr 7:14 PM)

8  
9 VACANCY: 1 vacant seat

10  
11 STAFF: City Recorder P. Murray, City Superintendent B. Weidner, Recording Secretary  
12 E. LuMaye, City Attorney P. Gintner

13  
14 I. PLEDGE OF ALLEGIANCE

15 Mayor Mattila called for all to stand for the Pledge of Allegiance.

16  
17 II. CALL TO ORDER

18 Mayor Mattila called the meeting to order at 7:13 PM and established a quorum.

19  
20 III. APPROVE MINUTES: August 2, 2016 Regular Meeting and Executive Session

21 Motion 1: Gambino moved to approve the minutes of both the Executive Session and Regular City  
22 Council meeting of August 2. Wiseman seconded the motion.

23  
24 Mayor Mattila called for the question.

25  
26 Vote: Motion 1 passed.  
27 Ayes: Bates, Gambino, Grant, Mattila  
28 Abstain: Fisher-Brown, Wiseman

29  
30 IV. ACCOUNTS PAYABLE

31 Motion 2: Gambino moved to approve the Accounts Payable as presented. Fisher-Brown seconded the  
32 motion.

33  
34 Mayor Mattila called for the question.

35  
36 Vote: Motion 2 passed.  
37 Ayes: Bates, Fisher-Brown, Gambino, Grant, Wiseman  
38 Abstain: Mattila

39  
40 V. SPECIAL ORDERS

41 A. Presentation – Lions Club International 101 on 101: The Ride for Sight and Sound – Pat Dunlop  
42 and Jill Smart  
43 Pat Dunlop 1275 Walking Wood and Jill Smart 315 Fogarty Avenue addressed the Council regarding a  
44 Lions Club event on October 1, 101 on 101 (copy of flyer attached to original of these minutes). The  
45 event is a 101 kilometer bicycle ride from Lincoln City to Yachats. They asked if there were any permits  
46 they needed to get from the City, noting the Yachats Lions Club has \$1 million liability insurance and  
47 the City will be covered as a co-insured. There were no permits required by the City. More information  
48 is available at [www.101onthe101.com](http://www.101onthe101.com).

49

1 Motion 3: Grant moved that the City not only consents but celebrates the idea of having a bike ride  
2 through the City of Depoe Bay. Gambino seconded the motion.

3  
4 Mayor Mattila said it was moved and seconded, and called for the question.

5  
6 Vote: Motion 3 passed.

7 Ayes: Bates, Fisher-Brown, Gambino, Grant, Mattila, Wiseman

8  
9 B. Interview/Appoint Applicants to Fill Vacancy – City Council Position #2

10 Murray reported Mr. Lazarony withdrew his application (copy of withdrawal letter attached to original  
11 of these minutes), and applicant Rick Laughlin was not present. Applicant Jan Rustenhoven was present  
12 and came forward to tell about herself and why she was interested in participating, and answered  
13 questions from the Council regarding her qualifications and application. (Copy of applications attached  
14 to original of these minutes.)

15  
16 Ballots were filled out, signed, and handed in. Murray tallied the votes (copy of ballot attached to  
17 original of these minutes) and announced the results. The vote to appoint Jan Rustenhoven to City  
18 Council Position #2 was unanimous.

19  
20 Motion 4: Gambino moved to approve the tally of votes and appoint Janette to the Council. Bates  
21 seconded the motion.

22  
23 Mayor Mattila called for the question.

24  
25 Vote: Motion 4 passed.

26 Ayes: Bates, Fisher-Brown, Gambino, Grant, Mattila, Wiseman

27  
28 VI. REPORTS OF OFFICERS, BOARDS, OR STANDING COMMITTEES

29 There were no reports.

30  
31 VII. PUBLIC COMMENTS

32 There were no public comments.

33  
34 VIII. UNFINISHED BUSINESS

35 A. Request to Waive Requirement to Connect to City Sewer System – 900 SE Hwy 101

36 Weidner reported he had information from a contractor who does boring, and had quotes from three  
37 different people interested in tying sewer to the lot in question. He suggested the applicant, Paul, get a  
38 contractor's quote for boring under the water mains. There was lengthy discussion. Weidner said  
39 modern equipment can bore through anything, even solid rock. Paul said the 300 foot sewer hookup was  
40 required unless it was impractical, and the County said if the City would sign off on impracticality they  
41 would issue a permit for replacement of the septic tank. He said he got a quote for \$23,000, which was  
42 impractical. Weidner encouraged him to get another quote, saying the ones he saw were around \$5,000.  
43 Grant asked Paul to provide estimates from three companies for the record, to show that with today's  
44 technology it is still impractical to make the connection.

45  
46 Motion 5: Grant moved that we, for the present time, table this. There was discussion, during which the  
47 applicant said he would be willing to explore a couple more bids and get more information to  
48 substantiate one way or the other. Fisher-Brown said she also wanted written backup in the record, and  
49 seconded the motion.

1 Discussion included a concern about potential liability if the City doesn't follow the County's  
2 guidelines, and an admonition of "buyer beware" when a property is bargain priced.

3  
4 Vote: Motion 5 passed.

5 Ayes: Bates, Fisher-Brown, Gambino, Grant, Mattila Wiseman  
6

7 B. Parking Lot Acquisition Project

8 Motion 6: Grant moved that we go forward with the determinations that we made on the three issues at  
9 hand and discussed in Executive Session. Wiseman seconded the motion.

10  
11 Mayor Mattila called for the question.

12  
13 Vote: Motion 6 passed.

14 Ayes: Bates, Fisher-Brown, Gambino, Grant, Mattila

15 Abstain: Wiseman  
16

17 IX. NEW BUSINESS

18 A. Proposed Ordinance #308 – An Ordinance Providing Consent and Approval of the Assignment  
19 and Transfer of Telecommunications Franchise from CoastCom, Inc. to Astound Broadband,  
20 LLC, a Wholly Owned Direct Subsidiary of Wave Division Holdings, LLC; and Declaring an  
21 Emergency

22 Grant asked who wrote the Ordinance (copy attached to original of these minutes), and wondered if it  
23 was CoastCom and Wave. Murray said they provided a draft, which City Staff then revised. Grant  
24 expressed concern over the losses of revenue the City will incur through this merger, and asked if that  
25 could be mitigated. Murray noted Fred Miller from Wave and Matt Updenkelder from CoastCom were  
26 present and available to answer any questions the Council might have. Gambino said he inquired about  
27 the loss of revenue, and it was a question of mathematics. Grant asked if the City currently has a  
28 franchise agreement with both entities, and how long they are effective; Murray responded the  
29 CoastCom franchise is a seven-year telecommunications agreement that we are three years into, and the  
30 Wave Broadband franchise is for cable TV and the agreement expired about five years ago. The City has  
31 been in negotiations with Wave to renew that franchise since that time. She further explained that  
32 CoastCom is asking for the City's consent to assign their franchise to Astound/Wave. Grant asked for  
33 clarification that Wave does not currently have a franchise to provide internet service; Murray said that  
34 is correct. Gintner said there's a Federal law on internet service, and that subject would best be  
35 discussed in Executive Session. Grant referred to Murray's memo dated 8/12/16 (copy attached to  
36 original of these minutes), noting the approximate \$8,000 in franchise fee revenue, and asked why Wave  
37 doesn't have a franchise agreement for data services. Gintner referred to Item 7 of the proposed  
38 Ordinance, saying there are two important court cases, one with the State of Oregon City of Eugene, and  
39 one Federal, and their claim is because they're internet service providers (ISPs), any telecomm that  
40 happens on those lines is without franchise. He said there is a Federal law that says ISPs can't be taxed,  
41 and that could in theory include everything that goes on that pipeline. He said that to explain even  
42 simply would take hours in Executive Session, and he did not feel that the loss of revenue was great  
43 enough to warrant extensive legal fees. Item 7 addresses recapturing revenue after a period of two years  
44 has passed since the adoption of the Ordinance. He said that some companies are charging their  
45 customers franchise fees, while others like Wave and Comcast are not. Gambino said most of these laws  
46 are done in court much higher than ours, and we can't touch internet right now; he said there's nothing  
47 we can do about it right now.  
48

1 Motion 6: Gambino moved that we proceed with the adoption of the Ordinance with the first reading.  
2 Fisher-Brown seconded the motion.

3

4 Discussion: Grant asked Gintner to clarify whether he would recommend an Executive Session to  
5 answer some of his questions. Gintner replied this was the best deal the City could get at the moment.  
6 He did not say an Executive Session was necessary to vote on the Ordinance. Grant questioned whether  
7 the franchise could be negotiated to continue to receive the franchise fees for a period of five years.  
8 Murray said the reason for the loss of revenue is because CoastCom's biggest customer is Wave, so  
9 when Wave owns the franchise agreement, they're not going to bill themselves. Gintner suggested  
10 revisiting the agreement in two years.

11

12 Vote: Motion 6 passed.

13 Ayes: Bates, Fisher-Brown, Gambino, Mattila, Wiseman

14 Noes: Grant

15

16 Murray reviewed the motion, then asked for a motion to read the Ordinance by title only at the first and  
17 second readings.

18

19 Motion 7: Gambino moved to read the first and second readings of the Ordinance by title only. Wiseman  
20 seconded the motion.

21

22 Discussion: Grant said he's seen other Ordinances written by people that benefit from them, and he  
23 doesn't like it. He said our attorney didn't have much to do with the Ordinance because it was written by  
24 them, and asked the Council who they thought it benefits.

25

26 Vote: Motion 7 passed.

27 Ayes: Bates, Fisher-Brown, Gambino, Mattila, Wiseman

28 Noes: Grant

29

30 Murray performed the first reading of Ordinance #308 by title only, and called for questions or  
31 comments from the audience. Fred Miller with Wave/Astound said the agreement is for 7%, the  
32 maximum franchise fee allowed by State law. He praised Murray and Gintner for doing a good job,  
33 noting that Gintner had required a not-to-exceed 5% fee for the cable franchise, which will result in  
34 about \$5,700 increase in revenues from the cable franchises. He said Gintner made a lot of revisions to  
35 the draft and did a good job of negotiating on the City's behalf. Matt Updenkelder with  
36 CoastCom/Astound said he's still committed to the community, that he will continue to work with all  
37 the CoastCom staff, that Astound is signing extended leases in Newport and will maintain the Newport  
38 operation, and he will maintain his current staff. He was present as a representative for both CoastCom  
39 and Astound. Murray called for further questions or comments; there were none. She said no written  
40 comments were received.

41

42 Motion 8: Gambino moved that we adopt Ordinance #308 at the first reading. Fisher-Brown seconded  
43 the motion.

44

45 Mayor Mattila called for discussion; there was none.

46

47 Vote: Motion 8 passed.

48 Ayes: Bates, Fisher-Brown, Gambino, Mattila, Wiseman

49 Noes: Grant

1 Murray said the motion passed, but not unanimously, so the next reading will be held over to the next  
2 Council meeting.

3  
4 B. Proposed Resolution #452

5 Murray said the proposed Resolution (copy attached to original of these minutes) was the result of Tina  
6 French's request for a CPI rate increase of .425%, to be effective September 1.

7  
8 Motion 9: Gambino moved that we approve and adopt Resolution #452, A Resolution Setting Solid  
9 Waste Removal Fees Pursuant to Ordinance #277, as Amended; Superseding Resolution #436. Wiseman  
10 seconded the motion.

11  
12 Mayor Mattila called for discussion; there was none.

13  
14 Vote: Motion 9 passed.

15 Ayes: Bates, Fisher-Brown, Gambino, Grant, Mattila, Wiseman

16  
17 X. CORRESPONDENCE

18 There was no correspondence.

19  
20 XI. CITY STAFF REPORT

21 Murray reminded everyone the election is in November, and the filing deadline is coming up August 30.

22  
23 Weidner: 1) The Water Management and Conservation Plan is complete and has been filed and  
24 approved. 2) Provided an update on the ODOT water main project. 3) The reservoir is clean. The  
25 expected amount of silt was 2,000 cubic yard, and 6,000 cubic yards is what came out. 4) Devils Lake  
26 Rock is set to begin the Coast Avenue water line project after Labor Day. He anticipates the project will  
27 be complete in early December.

28  
29 XII. COUNCIL COMMENTS

30 Fisher-Brown appreciates all the work Weidner has done and feels honored to be a part of the changes.

31  
32 Wiseman agreed with Fisher-Brown.

33  
34 Gambino also agreed.

35  
36 Grant also agreed.

37  
38 XIII. ADJOURN

39 There being no further business, the meeting was adjourned at 8:47 PM.

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43  
44 \_\_\_\_\_  
A. J. Mattila, Mayor

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46  
47 \_\_\_\_\_  
48 Emma LuMaye, Recording Secretary