



UTILITIES COMMITTEE
OCTOBER 14, 2016
4:00 P.M.
COUNCIL CHAMBERS

1. **RAINIER CONNECT – TELECOMMUNICATIONS FRANCHISE AGREEMENT**
STEVE KIRKMAN, PUBLIC AFFAIRS MANAGER
(STAFF REPORT ATTACHED)

2. **MARTIN WAY EAST ANNEXATION FOLLOW-UP**
RYAN ANDREWS, PLANNING MANAGER
(STAFF REPORT ATTACHED)



UTILITIES COMMITTEE

October 14, 2016

SUBJECT: Mashell Telecom, Inc., dba Rainier Connect, Telecommunications Franchise Application

RECOMMENDATION: Approve Mashell Telecom, Inc., dba Rainier Connect, Telecommunications Franchise Application.

STAFF CONTACT: Scott Spence, City Manager 
Liz Gotelli, Public Affairs and Human Resources Director
Steve Kirkman, Public Affairs Manager 

ORIGINATED BY: Public Affairs Department

ATTACHMENTS: 1. [Mashell Telecom, Inc., dba Rainier Connect, Telecommunications Franchise](#)

FISCAL NOTE: No fiscal impact is anticipated.

PRIOR REVIEW: October 5, 2016 - Finance Committee.

BACKGROUND:

Mashell Telecom, Inc., dba Rainier Connect, based in Pierce County currently offers high-speed internet, cable television, and telephone service to approximately 15,000 customers in Pierce, King, Lewis, and Thurston Counties.

Mashell Telcom, Inc. has contacted the city and stated it desire to expand its broad-band Internet and telecommunications services in the Lacey market area. It does not plan to offer cable television services in the local market.

Mashell Telcom, Inc. has noted it will provide service to Lacey customers on an “on demand basis,” and does not have identified service routes at this time. The company indicated it will provide route information, and apply for required right-of-way and construction permits, on a case-by-case basis in response to customer need.

Mashell Telcom, Inc. has indicated its preferred method for providing service to local market customers will be to lease existing capacity from other telecommunications carriers. If that alternative is not available, Mashell Telcom, Inc. will install wires on existing poles, or in conduit in area of the city where utilities are underground. The company has also indicated it prefers to lease existing conduit space from other telecommunications carriers.

Mashell Telcom, Inc.'s proposal to occupy the public right-of-way is regulated by Lacey Municipal Code Chapter 5.60: Telecommunications. Passed in 1999, the purpose of LMC Chapter 5.60 is to permit reasonable and fair access to public rights-of-way within the City's corporate boundaries for telecommunications purposes (i.e., voice, data, video, etc.). The City also recognized it was necessary to manage and conserve the limited physical capacity of the community's rights-of-way, and put into place reasonable regulations for the protection of the rights-of-way. Additionally, the City recognized there is a cost to manage and maintain rights-of-way, and that entities requesting access must compensate the public for use of right-of-way.

The proposed Mashell Telecom, Inc., dba Rainier Connect, Telecommunications Franchise requires that Mashell Telecom, Inc. comply with all conditions and regulations established by LMC Chapter 5.60. For example, Mashell Telecom, Inc. must carry a minimum of \$2 million in liability insurance during the term of the franchise; overhead facilities must be undergrounded if required by a public improvement project; and restoration and maintenance of the public rights-of-way must meet Lacey Development Guidelines if disturbed by the franchise holder.

In addition, Mashell Telecom, Inc. must acquire a performance bond prior to any construction in the right-of-way, which must remain in place until the Director of Public Works has approved the work.

Mashell Telecom, Inc. has paid the City's \$3,000 telecommunication franchise application fee, will be required to acquire right-of-way access permits for any work done in the public rights-of-way, and must pay all fees generally applicable to persons doing business within the City.

Mashell Telecom, Inc. will also be required to pay any applicable public utility business taxes levied by Chapter 3.01 of the Lacey Municipal Code.

The term of the franchise agreement is five years from the date of execution.

ADVANTAGES:

1. The Mashell Telecom, Inc., dba Rainier Connect franchise provides for the orderly management and regulation of the public rights-of-way, and establishes compensation to the City for the granting of the franchise.

DISADVANTAGES:

1. No disadvantages are foreseen.

MASHELL TELECOM, INC., DBA RAINIER CONNECT
TELECOMMUNICATIONS FRANCHISE AGREEMENT

THIS AGREEMENT is made and entered into this ____ day of _____, 2016, by and between the City of Lacey, a municipal corporation of the State of Washington, hereinafter called "City" and Mashell Telecom, Inc., dba Rainier Connect, a Washington corporation, hereinafter called "Rainier Connect."

WHEREAS, Rainier Connect has requested the City to grant a franchise to install facilities to provide telecommunications, internet access, and private line services to potential customers in Lacey, Washington, and

WHEREAS, the City has enacted Chapter 5.60 of the Lacey Municipal Code which provides for the requirements, conditions and procedures for installation of such facilities in the City right-of-way and the granting of a franchise for the same, and

WHEREAS, Rainier Connect has paid to the City a franchise application fee the sum of Three Thousand Dollars (\$3,000.00).

NOW, THEREFORE, IT IS HEREBY AGREED BETWEEN THE PARTIES AS FOLLOWS:

1. The City hereby grants a franchise to Rainier Connect to install facilities to provide telecommunications, internet access, and private line services to potential customers subject to the following conditions:

A. This grant and the requirements and procedures to be followed shall specifically be subject to all provisions of Chapter 5.60 of the Lacey Municipal Code and the Development Guidelines and Public Works Standards of the City.

B. The performance bond required by the terms of Lacey Municipal Code Section 5.60.140B shall be acquired and shall remain in place until the Director of Public Works has approved the work. The bond shall then be maintained for 1 year after the approval of the work.

C. Rainier Connect shall, in addition to the franchise application fee provided to the City above, pay to the City all right-of-way permits or other fees generally applicable to all other persons doing business in the City. In addition, Rainier Connect shall pay to the City that certain public utility business tax levied by Chapter 3.01 of the Lacey Municipal Code as the same now exists or may hereafter be amended.

D. Before commencing any work pursuant to this agreement, Rainier Connect shall first file with the City an application for a permit to do such work, accompanied by drawings showing the position and location of all conduit, wire, fiber or any other equipment sought to be constructed, laid, installed or erected the depth below the surface of the ground and the relative position to existing streets, other utilities and other public places or ways.

E. Rainier Connect shall, at all times, keep a complete set of plans, specifications and records showing the exact location and depth of all such facilities. These

records shall be subject to inspection by the City at any reasonable time. In addition, Rainier Connect shall provide to the City this information in the electronic format specified by the City.

F. Rainier Connect shall place any new facilities underground in areas where existing telecommunications and cable facilities are installed underground. In areas where existing facilities are installed above ground, Rainier Connect may install facilities above ground, and at such time as the City requires other utilities to install facilities in the area underground, Rainier Connect will move its facilities underground.

G. Any new facilities to be located above-ground shall be placed on existing utility poles. No new utility poles shall be installed in connection with placement of new above-ground facilities.

2. The term of this agreement shall be five (5) years from the date of execution. Such term may be extended under conditions approved by both the City and Rainier Connect, its successors and assigns.

In witness whereof, the parties have hereunto set their hands this day and date first above written.

CITY OF LACEY

MASHELL TELECOM, INC.
D/B/A RAINIER CONNECT

By: _____
Scott H. Spence, City Manager

By: _____
Its: _____

ATTEST:

Carol Litten, City Clerk

APPROVED AS TO FORM:

David Schneider, City Attorney



UTILITIES COMMITTEE
October 14, 2016

SUBJECT: Martin Way East Annexation Follow-up. Project no. 16-179.

RECOMMENDATION: Conduct a follow-up briefing on the proposed Martin Way East Annexation. No action is required as the Utilities Committee has previously recommended that the application be forwarded to the City Council for action.

STAFF CONTACT: Scott Spence, City Manager *SS*
Rick Walk, Community Development Director *RW*
Scott Egger, Public Works Director *SE*
Ryan Andrews, Planning Manager *RA*

ORIGINATED BY: Community Development Department (by private applicant)

ATTACHMENTS: 1. [Map of Water Lines and Service Area for Proposed Annexation](#)

FISCAL NOTE: None.

PRIOR REVIEW: August 12, 2016, Utilities Committee Meeting

BACKGROUND:

At the August 12, 2016, meeting of the Utilities Committee, staff provided a briefing on the notice of intent to commence annexation proceedings filed by Sigrid Esfeld, Michael L. Citrak, and Peter M. Citrak for property located north of Martin Way E between River Ridge Drive NE and Meridian Road NE. At the briefing, the Committee was made aware of a private drinking water well located behind the existing Puerto Del Sol Restaurant that serves both the restaurant and the property to the east.

At the briefing, Lacey Water Resources staff provided information that the well has been identified as a concern for potential contamination by the Washington State Department of Health—the agency that regulates the private well and associated small water system. Dan Eason, owner of the property, stated that the issue of concern is with the stormwater runoff associated with Martin Way. As described by Mr. Eason, he believes the runoff from Martin Way enters his property onto the restaurant parking lot and diverts to a low area

behind the restaurant where the well is located, thereby creating the potential contamination issue.

The questions, which were brought up as a result of the last Utilities Committee, included:

- Would the City be subject to any liability for this pre-existing issue upon annexation of the property?
- Would the City provide any corrective action to this pre-existing condition upon annexation?
- Would the City require corrective action by the property owner as a condition of annexation?

To help clarify the issue, the follow-up briefing will help answer these questions prior to going to the City Council for action.

History

Martin Way was originally constructed as State Highway 99 in the late 1930's as a multi-lane bypass to Pacific Highway (Pacific Avenue) connecting between Olympia and Tacoma. When Interstate 5 was constructed in the 1960's, the state highway designation was eliminated and ownership and maintenance was delegated to local agencies. According to Thurston County Assessor's parcel records, the building that houses the current Puerto Del Sol Restaurant was constructed in 1950. With construction of the building also came construction of the fronting parking lot, which is adjacent to Martin Way. As was standard for the day, no access control was provided to the site. This also allowed any stormwater generated from Martin Way to be directly diverted onto the subject property.

According to the property owner, the potential well contamination issue was compounded by a Thurston County project around 2005 when the Madison Apartments were constructed on the opposite side of Martin Way, which improved the roadway and raised the crown of the street. It is the property owner's assumption that this issue is compounding the potential contamination problem; however, there has been a lack of corrective action taken in the more than 10 years since the last improvements were made to Martin Way.

Recommendation

Prior to moving forward the Utilities Committee recommendation to the full Council, a follow up briefing is necessary to clarify questions raised at the last briefing:

First question: Would the City be subject to any liability for this pre-existing issue upon annexation of the property?

The stormwater and potential contamination issue has been occurring since the property was developed in the 1950's. Since the property was developed, any runoff associated with the northern half of Martin Way has been allowed to drain to Mr. Eason's property. The assertion by Mr. Eason that the issue has been compounded by the raising of the

crown of Martin Way is not a City issue because the work was completed by another agency. Therefore, the City would not be liable for these issues.

Second Question: Would the City provide any corrective action to this pre-existing condition upon annexation?

Annexation of this area does not commit the City to provide corrective action for the pre-existing issue. The issue is one that needs to be corrected by the private property owner through the protection of the well, if required to do so. As an alternative, city water is available to site. Should the well become contaminated in the future, or should the property owner choose to do so, city water service can be provided. Connection to city water service would be at the property owner's expense.

Third Question: Would the City require corrective action by the property owner as a condition of annexation?

The City would not mandate, as a condition of annexation, any action that would require Mr. Eason to address any potential concern related to contamination of his private well. As previously mentioned, alternatives exist (including connection to City water) should the property owner choose to do so.

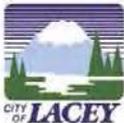
ADVANTAGES:

1. A follow up briefing will help clarify that the City has no liability should the city annex the subject property. Additionally, the City is not required to correct the pre-existing condition or mandate that any corrective action be taken as a condition of annexation.

DISADVANTAGES:

1. None identified.

Martin Way East Annexation Water Lines and Service Areas



The City of Lacey uses the most current and complete data available. However, GIS data and product accuracy may vary. GIS data and products may be developed from sources of differing accuracy, accurate only at certain scales, based on modeling or interpretation, incomplete while being created or revised, etc. The City of Lacey reserves the right to correct, update, modify, or replace, GIS products without notification. The City of Lacey cannot assure the accuracy, completeness, reliability, or suitability of this information for any particular purpose. Using GIS data for purposes other than those for which they were created may yield inaccurate or misleading results. The recipient may neither assert any proprietary rights to this information nor represent it to anyone as other than City Government-produced information. The City of Lacey shall not be liable for any activity involving this information with respect to lost profits, lost savings or any other consequential damages.

