

**City of Durham**  
**CITY COUNCIL MINUTES**  
**January 23, 2018**

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- A. OPEN REGULAR COUNCIL MEETING.** Mayor Schirado opened the Durham City Council meeting at 7:30 PM at Durham City Hall.
- B. ROLL CALL.** *Council Present:* Gery Schirado, Leslie Gifford, Keith Jehnke, Chris Hadfield, and Chuck Van Meter  
*Staff Present:* City Administrator Linda Tate and Administrative Assistant Lynn Schroder
- C. ELECTION OF MAYOR AND COUNCIL PRESIDENT FOR 2018.** Councilors voted for the position of Mayor and Council President for 2018 using paper ballots. City Administrator Tate collected and tallied the votes. Councilors elected Gery Schirado to serve as Mayor and Chris Hadfield to serve as Council President for 2018.
- D. DECEMBER 19, 2017 COUNCIL MINUTES.** Councilor Van Meter moved to approve the minutes of the December 19, 2017 City Council meeting. Councilor Hadfield seconded the motion. The minutes were approved unanimously (5-0). **MO 012318-1**
- E.** Mayor Schirado read the **CALENDAR OF MEETINGS.**  
Tuesday, **February 6, 2018**, Regular Meeting of the Planning Commission  
Tuesday, **February 27, 2018**, Regular Meeting of the City Council at 7:30 pm, Durham City Hall  
City Hall will be closed Monday, February 19<sup>th</sup> for President's Day.
- F. PUBLIC FORUM.** None.
- G. REAPPOINTMENT OF TERESA BRAUN TO A THREE-YEAR TERM ON THE BUDGET COMMITTEE.** Councilor Van Meter moved to reappoint Teresa Braun to the Budget Committee for an additional 3-year term. Councilor Gifford seconded, and the motion passed (5-0). **MO 012318-2**
- H. REAPPOINTMENT OF BRAD HENRY TO A THREE-YEAR TERM ON THE BUDGET COMMITTEE.** Councilor Gifford moved to reappoint Brad Henry to the Budget Committee for an additional 3-year term. Councilor Van Meter seconded, and the motion passed (5-0). **MO 012318-3**
- I. PLANNING COMMISSION UPDATE.** No comments were made.
- J. DISCUSSION OF OPTIONS FOR REGULATION OF WIRELESS IN RIGHTS OF WAY.** City Attorneys Nancy Werner and Spencer Parsons joined the meeting by conference call to discuss options for regulating small cell wireless facilities in the City.

Werner began by stating that cities are probably required to accommodate small cell wireless facilities within their jurisdictions. She stated that federal laws on small cell facilities are in flux right now. She stated that they are two longstanding federal laws that apply to small cell wireless facilities – a law that deals with wireless facilities on private property regulating the facilities in the land use context and a law that deals with traditional, wired telecommunications facilities in the ROW. These federal laws converge on the new small

cell wireless technology. She stated that it is not clear which statute should apply to these facilities. There is little guidance on how cities should approach regulating these facilities. Both statutes state that cities cannot effectively prohibit services. Providers should be allowed to place facilities to eliminate gaps in service. Cities can require providers demonstrate that the facility is necessary to eliminate a gap in coverage and that it is the best alternative to address the gap. Cities have some control over the placement of the facilities and aesthetics.

The federal laws preserve the City's zoning authority to limit placement on private property. The City can implement zoning restrictions with a goal of limiting them in residential zones, but jurisdictions cannot effectively prohibit these facilities or discriminate between functionally equivalent services. Cities can regulate the facilities more stringently in residential zones than in commercial zones. The City can impose design standards and require that the facilities be placed underground. However, providers must be allowed to install facilities to eliminate a gap in coverage.

Federal law requires that new installations have a 150-day approval process and co-located facilities have a 90-day approval process. Currently, the City does not have an application process for these facilities.

Cities cannot deny, and must approve, requests to modify an existing base station. Providers who choose to co-locate additional facilities on previously sited facilities must be allowed. The requirement does not apply to city-owned base stations (such as streetlights) or if the originally approved design standards would be substantially modified. Werner recommends that design standards be included in franchise agreements such that subsequent modifications would be limited. The ADA and safety considerations should be included as well. She stated that the City could require that the facilities be placed underground to the extent possible. The City can require that the facilities be removed if they are not being used.

Federal law preempts local jurisdictions from regulating the health concerns associated with the small cell towers. Local governments can only require that the towers comply with FCC RF emission standards.

The City can approach regulation by a franchise agreement, ordinance, license, or land use code. Werner did not recommend a land use approach. Werner stated that franchise agreement allows more flexibility to negotiate requirements. A license agreement would have general requirements and a fee that the city would charge to use the ROW. Werner recommends that the City outline wireless facility standards in an ordinance and require a franchise agreement with negotiated terms. She also recommended that the City charge an attachment fee if the facility is located on a City-owned streetlight.

The City Council requested that Werner draft a wireless facility ordinance and a franchise application process for consideration.

**K. DISCUSSION OF DRAFT PARK PLAN.** Tate presented the draft Park Plan to the Council. She stated that the next step after the Council's review is a public hearing in May. The City Council would consider final adoption in June.

Councilor Hadfield commented that the park play equipment is outdated. He would like to replace the equipment with newer and more interesting equipment for children to play on.

Other members of the City Council agreed. Tate stated that the Park plan was based upon survey results and included the possibility for play structure replacement. She recommended that a citizen's committee to choose any new park equipment but it should follow the public hearing on the Park Plan.

Hadfield stated that he agreed that the path lights in Heron Grove should be modified so that the lights do not blind people when they walk on the path at night. Councilor Van Meter stated he would contact the manufacturer to find out if the lights could be modified so that they shine more directly on the path.

**L. ADMINISTRATOR'S REPORT.** Tate did not have any additional items to report.

**M. FINANCIAL REPORTS.** Councilor Gifford moved to approve the financial reports for December 2017, payroll checks 530-531, vendor checks 16134 to 16150, and electronic fund transfers totaling \$5,153.30. Councilor Van Meter seconded, and the motion passed (5-0) **MO 012318-4**

**N. COUNCIL COMMENTS.** Councilor Hadfield asked for an update on the water agreement. Tate stated that she had not received an update from Tigard.

**O. ADJOURN.** Councilor Gifford moved to adjourn the regular Council meeting. Councilor Jehnke seconded the motion, and the motion passed (5-0). **MO 012318-5**

Mayor Schirado adjourned the regular meeting at 9:10 pm.

**Approved:**

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**GERY SCHIRADO, MAYOR**

**Attest:**

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**LINDA TATE, CITY ADMINISTRATOR/RECORDER**