

CITY COUNCIL AGENDA ITEM
CITY OF SHORELINE, WASHINGTON

AGENDA TITLE: Adoption of Ordinance No. 296 Extending Ronald Wastewater District's Franchise To Provide Sanitary Sewer Service.
DEPARTMENT: City Manager's Office
PRESENTED BY: Kristoff T. Bauer, Assistant to the City Manager

PROBLEM/ISSUE STATEMENT: In March of this year, Council took action to extend the Ronald Wastewater District's franchise through the end of 2001 in order to provide time for the District to complete its acquisition of Seattle Public Utilities' (SPU) service area within Shoreline and for the parties to negotiate a new agreement consistent with the terms of the interlocal agreement they executed in 1997. The District completed their acquisition effective October 1, 2001, but has requested that the work effort to develop a new agreement begin in 2002 so that they can focus on service transition issues. Council action is necessary to preserve the status quo for six months in order to give the City and the District time to develop a new agreement governing their future relationship.

ALTERNATIVES ANALYZED: Staff has analyzed the following alternatives:

1. Adopt Proposed Ordinance No. 296 extending the District's current franchise and amending the SPU franchise assumed by the District to preserve the status quo through June 30, 2002 (Recommended)
2. Take no action – The District's current franchise would expire Dec. 31, but the SPU franchise would continue. This would cause a conflict with the District.

FINANCIAL IMPACT: The proposed 2002 budget includes \$202,444 in revenue from the franchise fee payment due under the terms of the franchise granted to SPU that has been assumed by the District. Adopting the proposed ordinance will ensure that the District will provide the first six months of this revenue. If Council takes no action, then the District has stated its intention to contest their obligation to make this payment. This will delay this payment at a minimum and will increase the City's legal expenses.

RECOMMENDATION

Staff recommends that Council adopt Ordinance No. 296 Extending Ronald Wastewater District's Franchise To Provide Sanitary Sewer Service.

Approved By:

City Manager 

City Attorney 

INTRODUCTION

Time is needed for the Ronald Wastewater District and the City to complete the work outlined by the interlocal agreement they executed in 1997. Council action is necessary to preserve the status quo and provide that time. Without that action, the positions of the parties will change in an unintended manner threatening the objectives of the 1997 interlocal.

BACKGROUND

The interlocal signed by the City and the District in 1997 contained two major elements. The first was the District's commitment to acquire SPU's service area within the City. The second was the agreement of the parties to work in good faith to develop an agreement to guide their relationship into the future. Key issues to be discussed listed in the interlocal include uniform service rates, franchise fee payment, and District independence.

When Council took action in March 2001 to extend the District's franchise through December 31, 2001, it was anticipated that the parties would be able to conduct the dialogue outlined in the interlocal during the summer months. The acquisition process was more time consuming than expected and, for this reason, these discussions did not occur. At that time, it was also anticipated both the SPU franchise and the District franchise would expire on December 31, 2001 and be replaced by the new agreement developed by the parties.

The SPU franchise adopted by the City in December 1999 and effective January 1, 2000 differs significantly from that granted to the District. Of these differences the provision for a franchise fee is the most objectionable to the District. This franchise also had two other terms that are likely to result in strained relations between the District and the City in the absence of Council action. While the District's current franchise applies only to the District's defined historic service area, the SPU franchise, like most of the other franchises granted by the City, applies to the entire City of Shoreline. As a result, the assignment of the SPU franchise to the District created overlapping and conflicting franchise grants within the District's historic service area. In addition, while the District's franchise expires December 31, 2001, the SPU franchise automatically renewed for two years through December 31, 2003 when the City did not take action to terminate it prior to October 31, 2001. The result of events and these two terms is that without Council action, the District's franchise will terminate leaving the SPU franchise, which has been assigned to the District, as the only remaining legal agreement between the parties. This would result in the franchise fee provision included in that agreement applying to all of the District's operations within the City prior to the completion of the dialogue outlined by the interlocal agreement. The District has made it clear that they would resort to legal action to prevent this from occurring.

ALTERNATIVES ANALYSIS

The adoption of the proposed ordinance would preserve the status quo between the City and the District through June 30, 2002 by doing the following:

- The District's current franchise, which is restricted by its own terms to the District's historic service area, is extended through June 30, 2002
- The SPU franchise is amended to restrict its application to the area that used to be served by SPU
- The SPU franchise is amended to also terminate June 30, 2002

In addition, the District also raised concerns regarding potential liability to the City for the method of franchise fee calculation and collection established by SPU. To address this concern, the proposed ordinance restricts the City's ability to audit that process as long as the District continues to follow SPU's practice.

The proposed ordinance was developed cooperatively with the District and is expected to maintain a positive relationship between the parties as they work during the next three or four months to complete the vision articulated in the 1997 interlocal agreement.

Taking no action will result in there only being two alternative interpretations of the controlling legal obligations between the parties:

1. That the SPU franchise is the controlling legal document applicable to all the District's operations in the City, or
2. That the SPU franchise is unenforceable under one legal theory or another and, therefore, there is no agreement setting out the legal obligations of the parties in place.

The District has made it clear that they would seek to prove the second of these options and would not continue to honor any franchise fee payment after December 31st if the Council fails to act. The City would then be faced with the difficult choice of either forgoing the revenue, which has been budgeted for 2002, or seeking legal action to enforce the terms of the SPU franchise. Either way, the relationship between the two agencies would suffer and further negotiations would be difficult.

RECOMMENDATION

Staff recommends that Council adopt Ordinance No. 296 Extending Ronald Wastewater District's Franchise To Provide Sanitary Sewer Service.

ATTACHMENTS

Attachment A – Ordinance No. 296, Extending The Franchises Under Which The Ronald Wastewater District (Formerly Known As Shoreline Wastewater Management District) Is Authorized To Provide Sanitary Sewer Services Within The City Of Shoreline

ORDINANCE NO. 296

AN ORDINANCE OF THE CITY OF SHORELINE, WASHINGTON, EXTENDING THE FRANCHISES UNDER WHICH THE RONALD WASTEWATER DISTRICT (Formerly Known As SHORELINE WASTEWATER MANAGEMENT DISTRICT) IS AUTHORIZED TO PROVIDE SANITARY SEWER SERVICES WITHIN THE CITY OF SHORELINE.

WHEREAS, the City of Shoreline, by Shoreline City Ordinance No. 152, granted the Ronald Wastewater District (District) a non-exclusive Franchise to construct, maintain, operate, replace and repair a sanitary sewer system, in, under, through and below certain designated public rights-of-way of the city effective March 8, 1998; and

WHEREAS, the Franchise granted to the District by the City through Ordinance No. 152, as amended by Ordinance No. 175, was extended by Ordinance No. 267 through December 31, 2001, and

WHEREAS, on October 1, 2001, the District acquired Seattle Public Utilities' (SPU) facilities, accounts, and service area within Shoreline; and

WHEREAS, SPU's operating franchise granted by Ordinance No. 215 was assigned to the District effective October 1, 2001, by assumption agreement approved by the City pursuant to Ordinance No. 215, and terminates December 31, 2003 unless replaced with a substitute franchise prior to that date; and

WHEREAS, the District does not agree with key provisions of the franchise granted by Ordinance No. 215 and does not desire its extension to their historical service area; and

WHEREAS, the District has protested the Franchise Fee payment applied to revenue from SPU customers included in Ordinance No. 215, and both the District and the City agree that the means selected by SPU to pass this cost onto its Shoreline customers is undesirable, but the District is willing to continue making this payment pending negotiations to resolve this concern; and

WHEREAS, both the City and the District are committed to developing new agreements to guide their relationship; and

WHEREAS, the District is currently occupied with operational issues related to the acquisition of the SPU service area; and

WHEREAS, the District and the City agree that it is in the best interest of sanitary sewer customers and the City that the District continue to operate under a City franchise and that the status quo be preserved for a reasonable period of time to allow the development of a unified franchise agreement and potentially an interlocal agreement as envisioned by the parties in their Interlocal Agreement dated August 13, 1997:

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SHORELINE,
WASHINGTON, DO ORDAIN AS FOLLOWS:**

Section 1. Franchise Extension. The sanitary sewer franchise granted pursuant to City Ordinance No. 152, is hereby extended through the earlier of June 30, 2002, or until the effective date of a replacement franchise (whichever first occurs). The terms of this franchise shall apply to the area of the City serviced by the District prior to October 1, 2001. This franchise shall, in that area, also control over any conflicting provisions of the sanitary sewer franchise granted to SPU pursuant to City Ordinance No. 215 and assigned to the District effective October 1, 2001.

Section 2. Franchise Amendment. The sanitary sewer franchise granted pursuant to City Ordinance No. 215, is hereby amended to end its effective term on June 30, 2002, or upon the effective date of a replacement franchise (whichever first occurs). The terms of this franchise shall apply to the area of the City serviced by SPU at the time of its adoption. The parties further stipulate that the Franchise Fee payment methodology utilized by SPU and as continued by the District satisfy the Franchise Fee payment requirements of this franchise. The City hereby waives any right to audit or otherwise seek revision or reconciliation of the District's satisfaction of this payment obligation during the remaining term of this franchise as long as the District continues to adhere to SPU's payment methodology.

Section 3. Directions to City Clerk. The City Clerk is hereby authorized and directed to forward certified copies of this ordinance to the Grantee set forth in this ordinance. The Grantee shall have fifteen (15) days from receipt of the certified copy of this ordinance to accept in writing the extension of the franchise granted to the Grantee in this ordinance.

Section 4. Publication and Effective Date. In accord with state law, this ordinance shall be published in full and shall take effect five days after said publication.

PASSED BY THE CITY COUNCIL ON DECEMBER 10, 2001.

Mayor Scott Jepsen

ATTEST:

APPROVED AS TO FORM:

Sharon Mattioli, CMC
City Clerk

Ian Sievers, City Attorney

Date of Publication: , 2001

Effective Date: , 2001