



NOTICE OF PUBLIC MEETING

Tuesday, July 6, 2021
City Council Chambers
680 Park Avenue
Idaho Falls, ID 83402
3:00 p.m.

The public is invited to observe City Council Work Sessions. However, to observe appropriate social distancing guidelines, as recommended by the Centers for Disease Control and Prevention (CDC), the public may view this meeting via livestream on the City's website at <https://www.idahofallsidaho.gov/429/Live-Stream>. The agenda does not include an opportunity for public interaction.

This meeting may be cancelled or recessed to a later time in accordance with law. If you need communication aids or services or other physical accommodations to participate or access this meeting or program of the City of Idaho Falls, you may contact City Clerk Kathy Hampton at 612-8414 or the ADA Coordinator Lisa Farris at 612-8323 as soon as possible and they will accommodate your needs.

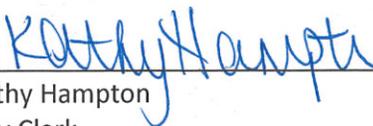
CITY COUNCIL WORK SESSION

Times listed in parentheses are only estimates.

Call to Order and Roll Call

- Mayor: -Calendars, Announcements, Reports (15)
 - Council: -Liaison Reports and Councilmember Concerns (15)
 - Community Development Services: -Report: Business Improvement District (BID) (30)
-Update: Block Face Parking Code Change (10)
 - Legal: -Discussion: Utilities Relocation Policy (30)
 - Municipal Services: -Introduction and Overview: Proposed 2021/2022 Budget (45)
- Announcements and Adjournment**

DATED this 2nd day of July, 2021



Kathy Hampton
City Clerk

Legal: Utilities Relocation Policy

RESOLUTION NO. 2021-

A RESOLUTION OF THE CITY OF IDAHO FALLS, IDAHO, A MUNICIPAL CORPORATION OF THE STATE OF IDAHO, ESTABLISHING A CITY POLICY FOR RELOCATION OF UTILITIES TO ACCOMMODATE DEVELOPMENT AND PROVIDING THAT THIS RESOLUTION BE EFFECTIVE UPON ITS PASSAGE.

WHEREAS, Council desires that development within the City is predictable, orderly, and consistent with development principles and regulations; and

WHEREAS, the Idaho Code (including the Local Land Use Planning Act) and City Code (including the Zoning and Subdivision codes) assist in the regulation of development; and

WHEREAS, a clear and standard policy should assist developers, City staff, and public and private utilities in planning for anticipated growth while recognizing the rights and responsibilities of those interests in a fair, legal, practical, and equitable manner; and

WHEREAS, growth should be the legal and economic responsibility of those who most directly benefit from it; and

WHEREAS, this Resolution establishes the City's policy relative to relocation of public and private utilities; and

WHEREAS, this policy documents long established legal and practical approached to relocation of utilities triggered by development.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF IDAHO FALLS, IDAHO, AS FOLLOWS:

1. The City Council hereby adopts the Development Triggered Requests for Relocation of Public Utilities attached to this Resolution as Exhibit "A".

ADOPTED this _____ day of _____, 2021.

EFFECTIVE on the _____ day of _____, 2021.

ATTEST:

CITY OF IDAHO FALLS, IDAHO

Kathy Hampton, City Clerk

Rebecca L. Noah Casper, Mayor

(SEAL)

STATE OF IDAHO)
) ss:
County of Bonneville)

I, KATHY HAMPTON, CITY CLERK OF THE CITY OF IDAHO FALLS, IDAHO, DO
HEREBY CERTIFY:

That the above and foregoing is a full, true and correct copy of the Resolution
entitled, "A RESOLUTION OF THE CITY OF IDAHO FALLS, IDAHO, A
MUNICIPAL CORPORATION OF THE STATE OF IDAHO, ESTABLISHING
A CITY POLICY FOR RELOCATION OF UTILITIES TO ACCOMMODATE
DEVELOPMENT AND PROVIDING THAT THIS RESOLUTION BE
EFFECTIVE UPON ITS PASSAGE."

Kathy Hampton, City Clerk

(SEAL)

EXHIBIT "A"

DEVELOPMENT-TRIGGERED REQUESTS FOR RELOCATION OF PUBLIC UTILITIES

I. Purpose

This document is meant to explain and to establish a general policy related to relocation of public utilities for City subdivision construction projects.

II. Idaho Law

Idaho's cities have authority to regulate all uses associated with a public right of way. This authority is derived, in part, from Article XII, Section 2 of the Idaho Constitution. This section of the Idaho Constitution grants police authority to incorporated cities within the State of Idaho to enforce order and provide for the general welfare within a city's boards, as long the city's ordinances are not in conflict with the City charter or with the general laws of the State of Idaho. The City of Idaho Falls was incorporated on July 8, 1899. See Idaho Falls City Code 1-1-1 and 1-1-2.

Idaho Code Section 50-301 allows cities "...to exercise all powers and perform all functions of local self-government in City affairs as they are not specifically prohibited by or in conflict with the general laws or the Constitution of the State of Idaho."

Idaho Code Section 50-302(1) allows cities to make any ordinances, bylaws, rules, regulations, and resolutions not inconsistent with the law of the State of Idaho as may be expedient, in addition to the special powers granted, to maintain the peace, good government, and welfare of the corporation and its trade, commerce, and industry.

In addition to these general grants of authority, the Idaho Legislature has specifically granted authority to Idaho cities over streets, avenues, alleys, lanes, rights-of-way, and other properties include those in Idaho Code Sections 50-311; 50-312; 50-313; 50-314; 50-315; and 50-316. Please note that Idaho Code Section 50-313 grants to city councils the "... care, supervision, and control of all public highways and bridges within the corporate limits ...".

The Legislature has granted Idaho cities authority to regulate utility transmission systems. Idaho Code Section 50-328 states:

All cities shall have power to remit, authorize, provide for and regulate the erection, maintenance, and removal of utility transmission systems, and the laying and use of underground conduits or subways for the same in, under, upon, or over the

streets, alleys, public parks, and public places of said cities; and in, under, over, and upon any lands owned or under the control of said city, whether they may be within or without the city limits.

Title 67, Chapter 5 of the Idaho State Code, grants to cities the authority to adopt standards for such things as roadways, streets, lanes, bicycle ways, pedestrian walkways, rights-of-way, grades, alignments, and intersections and other standards for public and private development. See especially Idaho Code 67- 6518.

Idaho Code Section 67-6513 grants to cities the ability to adopt, by ordinance, standards for the processing of applications for subdivision permits under Title 50 (Municipal Corporations):

Each such Ordinance may provide for mitigation of the effects of subdivision development on the ability of the political subdivisions of the State, including school districts, to deliver services without compromising quality of service delivery to current residents or imposing substantial additional costs upon current residents to accommodate the proposed subdivision.

Idaho Falls' Subdivision Ordinance is in Title 10, Chapter 1 of the Idaho Falls City Code. City bridge and street regulations is in Title 10, Chapter 2 of the Idaho Falls City Code.

Idaho Falls City Code Section 10-1-5(H)(1) requires roadway classification to comply with both the City's Comprehensive Plan and the current Access Management Plan provided by the Bonneville Metropolitan Planning Organization (BMPO).

Idaho Falls City Code Section 10-2-4(E) requires all streets, sidewalks, curbs, gutters, or other public improvements which developers are required to construct (including arterial streets) to be constructed in accordance to City Standard Drawings and Engineering Specifications that are adopted by City Ordinance. IFCC Section 10-2-4(A) requires such developments to be installed entirely by the developer, consistent with Idaho Code Section 67-6513 and the City Subdivision Ordinance.

III. Relevant Idaho Case Law

There are several cases decided by the Idaho Supreme Court that indicate that a public utility must relocate utility lines when the utility receives a relocate request from an Idaho public road agency, like the City of Idaho Falls.

In Mountain States Tel & Tel. Co. v. Boise Redevelopment Agency, 101 Idaho 30 (1980), an Idaho urban renewal agency vested with police power from the state proposed a

development plan that would require a utility line relocation. The utility conditioned the removal on the public reimbursing the utilities costs. When the renewal agency refused to pay, the utility sued. Ultimately, the Idaho Supreme Court confirmed that the State of Idaho follows a common law rule that, where a governmental entity exercises police powers in requiring the relocation of utilities (including telegraph, telephone, and electric power) out of public roads, streets, and highways so as not to "incommode the public use," the utility pays all associated costs. Such is the case unless there is specific and clear legislative authority to the contrary. The Supreme Court failed to find specific authority to the contrary and therefore confirmed that the utility had to bear the costs.

The company also argued that costs associated with the relocation should be borne by the public. The Idaho Supreme Court stated that utilities use the public streets at the convenience and tolerance of the public and that the public should not then have to pay to terminate a use which they have permitted only as a courtesy to a utility. The fact the utilities have the benefit of using public streets to generate profits over the years should not allow them to complain when the use is terminated because, without the use of the public way, other alternatives costing far more to the utilities would have likely been necessary to provide the utility service to its customers.

In Ada County Highway District v. Idaho Public Utility Commission, 151 Idaho 1 (2011), the Idaho Supreme Court held that modification of an electric power utility's tariff does not interfere with electric utility responsibility to relocate on public rights-of-way. This confirmed that the highway district and other governmental authorities have the exclusive jurisdiction over public rights-of-way controlled by them. The court determined that the IPUC exceeded its authority when it adopted a rule that would have allowed the IPUC to require third parties to pay for services if the IPUC determined a relocation benefitted a third party. The Idaho Supreme Court said that, there was no IPUC jurisdiction to impose a charge to a third party. If the electric company wanted to recover relocation costs from a third party, it would have to sue in court on some theory not related to IPUC requirement. The company's relocation obligation, however, was required "regardless of whether it is reimbursed."

IV. Public Utility Relocation and Recovery of Relocation Costs from Developers

A. Where Relocation is Required by City Regulation

The City's Subdivision Ordinance (Idaho Falls City Code Title 10, Chapter 1), adopted pursuant to Idaho law (especially Idaho Code Section 67-6513), provides for mitigation of the effects of subdivision development or re-development on the City's ability to deliver services without compromising quality of service delivery to current City residents or imposing substantial additional costs upon current City residents to accommodate the proposed subdivision development or re-development. City requirements for installation of public facilities by a developer or re-developer are based

in Idaho Code authority granted to the City and provide such mitigation. These improvements typically include street, curb, gutter, sidewalk, water, sewer, and stormwater detention, as per City Standard Drawings and Engineering Specifications, the Subdivision Ordinances, and BMPO street clarification. Common utilities affected include telephone telecommunications, electric, cable, and fiber.

Where installation of the public improvements in the City right-of-way are triggered by subdivision development or re-development requirements in the City Code (and not by a developer's preference) or where a public utility does not have its own easement for its presence in the City right-of-way, the public utility should bear relocation costs. The City should not collect, participate in, or support collection by a public utility of relocation or removal costs related to the public utility's facilities in the City right-of-way (because such relocation or removal is not discretionary on the part of the developer).

B. Where Relocation is Requested by Developer, but Not Required by Regulation

Any public utility is free to collect its relocation or removal costs from any developer, property owner, or other party where the relocation is not required by City development regulations. For example, when the developer's request for accommodations, removal, construction, or relocation serves only developer's interests or desires and is not triggered by City ordinance, a public utility may seek reimbursement for the discretionary portion of the costs from the developer who desires the accommodation.

Where installation of the City public improvements in the City right-of-way are not triggered by subdivision development or re-development or by other applicable law and the relocation, improvement, or removal, of the public utility's facilities are at the request of any third-party developer, property owner, or other party, the City should not interfere with the public utility's efforts to recover its costs.

Generally, where a public utility's facilities are located within such public utility's lawful easement outside of the City right-of-way; outside of Bonneville County right-of-way; or outside of a public prescriptive easement or public utility easement established prior to subdivision development or re-development permitted by the City and the subdivision development or re-development requires removal or relocation of facilities from a current location within the subdivision development or re-development project area, the City should not require the public utility to bear costs for relocation or removal of its facilities from the project area.

C. Where There is a Question About Who Should Bear Relocation Costs

Where it is unclear whether a relocation request is triggered by City development standards or solely by a developer's preference, the City Department affected, or a

representative of a non-City public utility, should meet to discuss the specific request with the City Attorney Department regarding the applicable laws related to the request. Upon confirmation that relocation costs to the public utility are considered to be reimbursable, the appropriate City Department, with the assistance of the Community Development Services Department, should notify the developer to discuss an appropriate mechanism to recover those costs.

NOTE: No required public development construction should be delayed while it is determined by the City whether relocation costs are reimbursable to a public utility.

It is recognized that, on occasion, there may be facts unique to a project which results in a decision that varies from this general policy. In those rare circumstances, the City will work with the utility to determine whether and to what extent an accommodation to the utility may be made and who shall bear the costs for the accommodation.