

RESOLUTION NO. 5324

A RESOLUTION ESTABLISHING LIMITS ON THE CIRCUMSTANCES IN WHICH THE CITY WILL PERMIT A NON-CITY ENTITY TO INCLUDE INFORMATION IN UTILITY BILL MAILINGS.

WHEREAS, it has been the practice of the City not to allow non-City entities to include material in City utility bill mailings; and

WHEREAS, prior to the May 2006 General Election, the City Council was consulted by the City Manager concerning a request from Greater Albany Public School District 8J to include informational material concerning the upcoming School Bond Measure Election in the City's utility bill mailings; and

WHEREAS, the City Council did not object to allowing the proposed inclusion of School District material in the utility billings, on a one-time basis, but expressed a desire that criteria be established in order that a consistent policy exist defining when, and under what circumstances, similar requests might be honored; and

WHEREAS, the request from the School District was one that could have been granted as an Intergovernmental Agreement pursuant to the provision of ORS Chapter 190; and

WHEREAS, the City Council desires that any future inclusion of non-City material in utility bill mailings be approved as an ORS Chapter 190, Intergovernmental Agreement.

NOW, THEREFORE, BE IT RESOLVED as follows:

Non-City entities may be allowed to include material in a City utility bill mailing only if all of the following conditions are met:

- (1) The third-party entity is a unit of local government as that term is defined in ORS 190.003; and
- (2) Prior to the inclusion of any material in a City utility bill mailing, an Intergovernmental Agreement must be entered into between the third-party entity and the City pursuant to the provisions of ORS Chapter 190; and
- (3) The terms of the Intergovernmental Agreement must provide that the material provided by the third-party entity be deemed a communication by the third-party entity, and not the City of Albany; and
- (4) The Intergovernmental Agreement shall require the third-party entity to reimburse the City for any and all additional incremental costs incurred by the City over and above the costs that the City would have incurred without the material from the third-party entity; and
- (5) The Intergovernmental Agreement shall require the third-party entity to indemnify and hold harmless the City of Albany from any and all claims, damages, demands, including cost of defense, which may result, in any manner, from the inclusion of the third-party entity's material with the City's utility bill mailing; and
- (6) The Intergovernmental Agreement shall comply with all of the mandatory requirements applicable to such agreements pursuant to the terms of ORS Chapter 190; and
- (7) The City Council has concluded that it is in the interest of the governmental mission of the City that the requested material be included with the City utility billings; and
- (8) A request by a third-party entity to include material in a City utility bill mailing must be made to the City Manager not less than 45 days prior to the proposed first mailing date.

BE IT FURTHER RESOLVED that the City Manager is authorized and directed to charge any third-party entity who seeks the inclusion of material in a City utility bill mailing, a fee in an amount reasonably calculated to defray the City's staff expenses in reviewing and processing an application made pursuant to the terms of this policy.

BE IT FURTHER RESOLVED that the City Council reserves the right to attach such conditions as they may feel are in the best interest of the City to any intergovernmental agreement authorizing the inclusion of third-party materials in City utility bill mailings. These conditions may include, but are not limited to, legal review and approval by the City Attorney, conditions on the physical characteristics of the material proposed for inclusion, and limitations on the amount of material submitted or the frequency of such submissions.

BE IT FURTHER RESOLVED that the City Council determines this policy to be consistent with the prior action by the City Manager to include the School District's informational material in the City utility bill mailings that preceded the May 2006 General Election, except that a prior written Intergovernmental Agreement did not precede the mailings. It is the intent of this resolution to clarify the City's future policy decision to require Intergovernmental Agreements as a precondition to the inclusion of third-party material in City utility billings in the future.

DATED AND EFFECTIVE THIS 13TH DAY OF SEPTEMBER 2006.


MAYOR

ATTEST:


CITY CLERK