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Office of the Mayor

July 31, 2014

John S. Franden, President
Ada County Highway District Commission
3775 Adams St.
Garden City, ID 83714

Re: Vehicle Detection Sensors

Dear President Franden:

Boise City has never disputed ACHD's administrative authority over public rights-of-way, which ACHD holds in trust for the public, and Boise City has never disputed ACHD's authority to require an administrative permit to install parking meters with vehicle detection sensor components within the public rights-of-way.

In an email dated May 29, 2013, an ACHD Deputy Director wrote that he had requested ACHD's legal department to "determine what type of license agreement is most appropriate for your situation." That was the first mention by ACHD staff of a requirement that the City enter into a license agreement to install parking meters with vehicle detection sensor components in the public rights-of-way. However, there is no statutory basis for ACHD to require a license agreement. The license agreement requirement, unreasonably imposed by ACHD without statutory authority, is contained in the Ada County Highway District Policy Manual. However, even assuming ACHD possessed authority to require the City to enter into a license agreement, ACHD's own Policy Manual exempts the City's statutorily-authorized installation of parking meters from the license agreement requirement:

Any Person desiring to occupy a Highway either temporarily or permanently, for any purpose which is not otherwise authorized ... by statutory right to occupy the District's Highways shall be required to enter into a License Agreement with the District on such terms and conditions as may be required by the District.

Ada County Highway District Policy Manual, Section 6007.20, entitled "License Agreements" [emphasis added]. Idaho Code § 40-1415(8) expressly authorizes Boise City to place, care for, and remove parking meters located within the public rights-of-way. This statutory authorization is not limited to parking

meters within curbs or gutters, or within sidewalks; rather, it extends to the entire width of the public right-of-way:

A city, after advising the board of highway district commissioners of its intent, shall be responsible for the placement, care and removal of any parking meters within the limits of any city, and for the enforcement of ordinances regulating the use of parking meters, which are located within the rights-of-way of any highway of the county-wide highway district. The city shall be entitled to all of the revenues received from parking meters.

Idaho Code § 40-1415(8) [emphasis added]. The legislature gave the City complete statutory authority for the placement of parking meters “located within the rights-of-way of any highway of the county-wide highway district,” which makes the City’s installation of parking meters with vehicle detection sensors exempt from ACHD’s license agreement requirement.

In *United Cable Television Corporation (“TCI”) v. Ada County Highway District*, Case No. CV OC 96-04619, Fourth Judicial District Court in and for Ada County (decided Oct. 15, 1996), District Judge D. Duff McKee ruled against ACHD’s discretionary denial of administrative excavation permits for TCI to bury cable beneath the public right-of-way. Judge McKee concluded that the actions of ACHD “constitute an arbitrary and unjust abuse of its discretion.” *Id.* at p. 13. TCI (the plaintiff in that case), like the City in this case, possessed statutory authority to use the public rights-of-way. Judge McKee continued:

Therefore, it is not for the ACHD to grant or withhold access to the rights of way, and the attempts to do so as documented in this case are clearly outside of its statutory authority to act. I conclude that the attempts to inject discretionary considerations into the process of granting permits for excavations is an arbitrary and unjust abuse of the discretion vested in the district. *Kolp v. Butte County School District*, 102 Idaho 320 (1981).”

Id., at p. 5.

The letter from the Attorney General’s Office to State Representative Michael E. Moyle only re-affirmed ACHD’s authority to require Boise City to obtain an administrative permit to install in-road vehicle detection sensors, a position the City has never disputed. Conspicuously absent from the letter, however, was any assertion or belief that ACHD possesses authority to compel the City to enter into a license agreement. In fact, the letter included language that inferred City authority to install vehicle detection sensors within metered parking stalls without obtaining a permit:

...a court would likely find that the authority granted to a city pursuant to I.C. § 40-1415(8) is limited to use of rights-of-way outside the traveled way. Should a city want to place a parking meter device into the traveled way, a court would likely find that the city needs a permit from ACHD to do so.

Attorney General’s Office Letter to State Representative Michael E. Moyle, dated December 24, 2013, p. 4. The parking meters with vehicle detection sensor components do not extend into lanes

of vehicular travel. The sensors are embedded in the asphalt, flush with the surface, within metered parking stalls, in no way interfering with vehicle, bicycle, or pedestrian travel. Therefore, according to the statutory interpretation of the Attorney General's Office, ACHD may not have authority to require even an administrative permit for the City to install parking meters with vehicle detection sensor components within metered parking spaces in the non-traveled lanes of the public rights-of-way.

Boise City was not contacted by the Attorney General's Office prior to the December 24, 2013, letter. When City staff reached out to the letter's author, he was unaware of Judge McKee's decision in the *TCI v. ACHD* case (referenced above), which is directly on-point with the facts of the current dispute. Furthermore, the letter to State Representative Moyle included the following disclaimer:

This response is provided to assist you and is an informal, unofficial expression of the views of the Office of the Attorney General based on the research of the author.

Attorney General's Office Letter to State Representative Michael E. Moyle, dated December 24, 2013, p. 4.

Despite the City's clear statutory authority to install parking meters in the public rights-of-way, and despite ACHD's lack of discretionary authority to deny the City its statutory access to the public rights-of-way, the City cooperated with ACHD for over one year as a gesture of goodwill in negotiating amendments to the existing Master License Agreement.

Throughout this process, the City's goals have included safeguarding taxpayer money, responding to the needs of downtown businesses by upgrading the City's parking infrastructure, providing new parking technology and user-friendly smartphone applications, and fundamentally protecting the City's statutory right to install parking meters in the public rights-of-way without being unreasonably restricted or conditioned. The amended Master License Agreement initially was approved by the Ada County Highway District Commission on July 24, 2013, and then was approved by the Boise City Council on July 30, 2013. On August 7, 2013, however, the Ada County Highway District Commission, after disagreeing with the particular vehicle detection sensor technology selected by Boise City, reconsidered its approval of the amended Master License Agreement and ultimately, on August 28, 2013, rejected it on the basis of its disagreement with City purchasing decisions and parking policy considerations that are unquestionably outside ACHD's authority or jurisdiction. The City's approval of ACHD's required license agreement remains in force, as the City Council never revoked or reconsidered its approval.

The City, by hesitating to file a lawsuit against ACHD to resolve this dispute, has conserved taxpayer money. Although litigation is costly, and although the district court understandably looks with disfavor on lawsuits between governmental entities, ACHD's continued arbitrary interference with the City's statutory right to install parking meters within public rights-of-way has made litigation almost unavoidable.

Prior to the expiration of the most recent deadline given by ACHD for the City to respond, the City will file an application and pay the related fee for the administrative permit required by ACHD for the City to exercise its statutory right to install 800 parking meters with vehicle detection sensors within metered parking spaces in the public rights-of-way. Further, the City respectfully requests that ACHD remove the unauthorized "hold" it placed on the permit application filed on July 11, 2013, by A-Core on the City's behalf, and provide the City with a final decision as to the issuance of a permit or denial of that application. As Judge McKee expressed in the *TCI v. ACHD* case, any attempt by ACHD to "inject discretionary considerations into the process of granting permits for excavations is an arbitrary and unjust abuse of the discretion vested in the district." *TCI v. ACHD*, p. 5. The City expects its permit application will receive the same consideration and treatment as the applications of all other permit applicants - even those who, unlike the City, lack express statutory authority to install facilities in the public rights-of-way.

Until the permit application review process is complete and ACHD provides the City with an administrative decision on both of the City's permit applications, we request that ACHD take no action to remove the already-installed sensors. In addition to the potential liability ACHD may incur for the unauthorized removal of the sensors, any action taken at this point would be premature, and would result in the unnecessary expenditure of taxpayer money.

Sincerely,



David H. Bieter
Mayor



Maryanne Jordan
Council President