



CITY OF TROUTDALE

"Gateway to the Columbia River Gorge"

AGENDA

CITY COUNCIL – REGULAR MEETING

Troutdale City Hall - Council Chambers
219 E. Historic Columbia River Hwy. (Lower Level, Rear Entrance)
Troutdale, OR 97060-2078

Tuesday, September 9, 2014 – 7:00PM

Mayor

Doug Daoust

City Council

Norm Thomas

Glenn White

David Ripma

Rich Allen

Eric Anderson

John L. Wilson

City Manager

Craig Ward

City Attorney

David J. Ross

1. **PLEDGE OF ALLEGIANCE, ROLL CALL, AGENDA UPDATE.**
2. **CONSENT AGENDA:**
 - 2.1 **MOTION:** A motion supporting the re-appointment of Mark Clark to the Portland International Airport Citizen Noise Advisory Committee (PDX CNAC), representing the cities of Troutdale, Wood Village and Fairview, for a 3-year term beginning November 2014.
3. **PUBLIC COMMENT:** Public comment is limited to comments on non-agenda items. *Remarks shall be limited to 5 minutes for each speaker unless a different time is allowed by the Mayor. The Mayor and Council should avoid immediate and protracted response to citizen comments.*
4. **PUBLIC HEARING / ORDINANCE (Introduction):** An ordinance relating to the Troutdale Riverfront Renewal Plan and establishing a procedure for transfer of the former Sewer Treatment Plant property.
Erich Mueller, Finance Director
5. **PUBLIC HEARING / ORDINANCE (Introduction):** An Ordinance of the City Council of the City of Troutdale, Oregon, relating to Nuisances and amending Chapter 8.28 of the Troutdale Municipal Code.
Ed Trompke, City Attorney
6. **RESOLUTION:** A resolution granting a non-exclusive franchise to Portland General Electric.
Steve Gaschler, Public Works Director
7. **STAFF COMMUNICATIONS**

8. COUNCIL COMMUNICATIONS

9. ADJOURNMENT



Doug Daoust, Mayor

Dated: 9/4/14

City Council Regular Meetings will be replayed on Comcast Cable Channel 30 and Frontier Communications Channel 38 on the weekend following the meeting - Saturday at 2:30pm and Sunday at 9:00pm.

Further information and copies of agenda packets are available at: Troutdale City Hall, 219 E. Historic Columbia River Hwy. Monday through Friday, 8:00 a.m. - 5:00 p.m.; On our Web Page www.troutdaleoregon.gov or call Debbie Stickney, City Recorder at 503-674-7237.

The meeting location is wheelchair accessible. A request for an interpreter for the hearing impaired or for other accommodations for persons with disabilities should be made at least 48 hours before the meeting to: Debbie Stickney, City Recorder 503-674-7237.

Agenda Item #2.1

9/9/14 Council Meeting

RECEIVED

AUG 08 2014 *SS*

CITY RECORDER'S OFFICE

CITY OF TROUTDALE

Mission: To enhance the region's economy and quality of life by providing efficient cargo and air passenger access to national and global markets.

August 6, 2014

Mayor Doug Daoust
Troutdale City Hall
219 E. Historic Columbia River Hwy
Troutdale, OR 97060

Mayor Mike Weatherby
Fairview City Hall
1300 NE Village Street
Fairview, OR 97024

Mayor Patricia Smith
Wood Village City Hall
2055 NE 238th Drive
Wood Village, OR 97060-1095

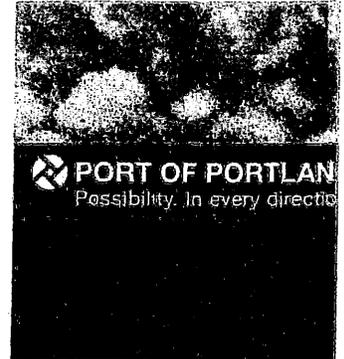
Dear Mayor Daoust, Mayor Smith and Mayor Weatherby:

The three cities have one appointment to the 15-member Portland International Airport Citizen Noise Advisory Committee (PDX CNAC) representing the three-county region. This committee is charged with:

- Acting on behalf of local jurisdictions as the official forum to address community PDX aircraft noise concerns;
- Monitoring and providing input on the implementation of the current PDX Noise Compatibility Plan;
- Reviewing aircraft noise issues and providing advice on issue resolution and follow-up action;
- Developing ideas and recommending proposals for consideration in future airport noise plans;
- Participating on advisory committees involved in long-range airport facilities and capital improvement planning;
- Enhancing citizen understanding of aircraft noise management through the work of the CNAC as a whole; and
- Periodically briefing the Port of Portland Board of Commissioners and other appointing jurisdictions on the work of the committee.

Currently, Wood Village Councilor Mark Clark serves as the three cities' representative on CNAC and was recently elected as chair of the committee. Mark has served for three years as your representative on CNAC and would like to continue as his representation on CNAC when his term expires in November 2014. The three cities have the opportunity to either reappoint Mark Clark to a new three year term, or appoint a new representative to CNAC for a term beginning November 2014 and expiring November 2017. This letter is to confirm your appointment preference. *We would appreciate your assistance in confirming your appointment to CNAC by October 17, 2014.*

For your reference, I have enclosed a committee charge for CNAC, a membership list, and appointment form which should assist you in making your appointment to CNAC. The committee generally meets the second Thursday of every other month from 5:30-8:30 pm at the Portland International Airport terminal building in the St. Helens conference rooms. Dinner is provided beginning about 5:00 pm. Parking in the Long Term garage will be validated.

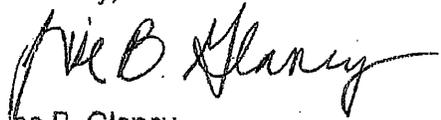


Mayor Daoust, Mayor Smith, and Mayor Weatherby
August 6, 2014
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Given the technical nature of noise, we ask that CNAC members serve a minimum of one (1) three year term and attend all CNAC meetings. We also ask that CNAC appointments regularly report back to their appointing jurisdiction on the work of the committee.

Please call me at 503/415-6519 if you have questions about the information provided or to notify me of your appointment. Thanks in advance for your assistance.

Sincerely,



Lise B. Glancy
Regional Government Relations Manager

Enclosures (3)

c: Phil Stenstrom, Port Noise Program Manager
Craig Ward, Troutdale City Administrator
Bill Peterson, Wood Village City Administrator
Samantha Nelson, Fairview City Administrator
Mark Clark, Wood Village City Council



Citizen Noise Advisory Committee - CNAC
Portland International Airport (PDX)
c/o Noise Management Department
Port of Portland, PO Box 3529, Portland, Oregon 97208

PDX Citizen Noise Advisory Committee - ROSTER

	<u>Oregon</u>
1	Clackamas County Bradley Robison Term ends Nov. 2015
2	Multnomah County Joe Smith Term ends Nov. 2015
3	Washington County Bob Braze Term ends Nov. 2015
4	Cities of Fairview/Troutdale/Wood Village Mark Clark (Chair) Term ends Nov. 2014
5	City of Gresham Vicki Thompson - <i>to be vacated</i> Term ends Nov. 2014
6	City of Portland VACANT Term ends Nov. 2016
7	City of Portland Laura Young (Vice Chair) Term ends Nov. 2016
8	City of Portland Kelly Sweeney Term ends Nov. 2016

	Washington
9	Clark County Craig Walker Term ends Nov. 2015
10	City of Vancouver Mike Merchant Term ends Nov. 2015
11	City of Vancouver Mike Yee Term ends Nov. 2016

At-Large Positions (Appointed by the Port of Portland)

	<u>At-Large Positions (Appointed by the Port in consultation with the CNAC chair)</u> <i>At-Large positions are not assigned to any specific jurisdiction.</i>
12	At-Large Beverly Bruender (Portland) Term ends Nov. 2015
13	At-Large Tina Penman (Portland) Term ends Nov. 2015
14	At-Large Kenya Williams (Portland) Term ends Nov. 2015
15	At-Large Karen Meyer (Maywood Park) Term ends Nov. 2015



Citizen Noise Advisory Committee - CNAC

Portland International Airport (PDX)

c/o Noise Management Department

Port of Portland, PO Box 3529, Portland, Oregon 97208

PDX Citizen Noise Advisory Committee Organization and Responsibilities

Updated: March 29, 2014

1) CNAC Mission Statement

CNAC seeks to limit and reduce the impact of aircraft noise related to Portland International Airport (PDX) in consideration of, and respect for, the community's environment, health and quality of life. CNAC also seeks to raise the community's understanding of aviation noise through education, outreach and advocacy.

2) CNAC Charter

- a) Serve as the official forum for local jurisdictions to address PDX aviation-related noise concerns of the community.
To do this, CNAC will:
 - i) Maintain a working understanding of current aviation operations, technology, regulations, economics and human factors related to noise generation and mitigation.
 - ii) Review reported airport noise issues and suggest ideas and proposals for airport noise reduction plans.
 - iii) Solicit and invite comment from the community on perceived noise problems.
 - iv) Monitor and offer input on implementing recommendations of the PDX Noise Compatibility Plan (Part 150 Study Update) until completed.
 - v) Provide input and help to advisory committees involved in airport facility, capital improvement and long-range planning.
 - vi) Brief the Port of Portland Commission on CNAC's work and accomplishments annually or as requested.
 - vii) Work collaboratively with the PDX Community Advisory Committee (PDX CAC), and serve as the official community forum on aircraft noise.
- b) Report, in an advisory capacity, to the Port of Portland's Airport Manager through the Noise Management and Long Range Planning offices.

- c) Enhance citizen understanding of airport noise and noise management by:
 - i) Keeping CNAC's constituent organizations informed of CNAC's work.
 - ii) Supporting community outreach and education on noise management at PDX.

3) CNAC Membership

- a) Organization:
 - i) CNAC will consist of 15 members, representing residential and business interests in the community, appointed to three-year terms by local jurisdictions in the region as follows:

City of Portland	3 members
City of Vancouver	2 members
City of Gresham	1 member
Combined cities of Fairview, Troutdale, and Wood Village	1 member
Multnomah County (outside Portland)	1 member
Clark County (from Camas/Washougal area)	1 member
Washington County	1 member
Clackamas County	1 member
Port of Portland	4 members*

*The Port will name four members from within the four-county region to provide geographic balance on the Advisory Committee.

- ii) The CNAC Chair and Vice Chair will be elected by the CNAC members for two-year terms, and may be re-elected in March.
- b) Recruitment:
 - i) Jurisdictional Appointments: Port Government Affairs manager will coordinate with the appointing jurisdiction to request they appoint a replacement.
 - ii) Port of Portland Appointments: The Port will advertise for replacements. Interviews will be conducted with the CNAC chair and/or vice-chair.
- c) Service Commitment: Members will:
 - i) Participate in resolving identified noise issues.
 - ii) Report periodically on the work of CNAC to their appointing jurisdictions.
 - iii) Be encouraged to participate in Port noise-related community outreach.
 - iv) Attend regular meetings.
 - If a member is unduly absent the Chair may request Port staff to consult with the member and, where appropriate, with the member's appointing jurisdiction to encourage attendance.
 - v) Be encouraged to participate in neighborhood association meetings and other noise outreach organized by the committee/Port.
 - vi) Report back to appointing jurisdictions on work of the committee periodically.

4) Operation:

a) Meetings:

- i) Regular Meetings: CNAC will meet bi-monthly on odd-numbered months. The Committee may vote to cancel or reschedule any meeting.
- ii) Planning Meeting: CNAC will optionally hold a Planning Meeting, designed to plan strategically for future work, scheduled in consultation with Port staff.
- iii) Quorum: a majority of the currently appointed members shall comprise a quorum for the conduct of business; at any meeting after a quorum has been determined to be present it shall be deemed to exist for the balance of that meeting.
- iv) Procedure: to the extent possible the Committee will reach decisions by consensus.
 - (1) If it appears consensus is not possible, a majority vote or 6 of the members present and voting, whichever is greater, will make decisions.
 - (2) In addition to the vote tally, any member or group of members shall be permitted to have their minority position recorded in the summary of the meeting. Minority positions recorded in the summary will always be transmitted to the Port Commission or the public if and when the majority position is reported.

5) Port of Portland support and sponsored activities

a) The Port will provide staff support to assist the Advisory Committee with its activities as follows:

- i) Technical research and informational reports.
- ii) Coordination of facilities and preparation of materials for monthly meetings.
- iii) Public meeting notifications for CNAC meetings.
- iv) Recording and distribution of meeting summaries.
- v) Maintaining a CNAC Issue and Priority List including current status.
- vi) Public access to CNAC information and documents.
- vii) Logistical support for Subcommittee and strategic planning meetings.
- viii) Coordination with the Advisory Committee on outreach activities in the community.
- ix) Chair support and preparation of correspondence as needed.
- x) Orientation and training for members.
- xi) Encourage The Port of Portland Executive Director, Airport Manager, Manager of Aviation Long Range Planning, and other Port Commissioners to attend CNAC meetings periodically.
- xii) Coordinate activities with Port Community Affairs
- xiii)

b) Annual Noise Symposium

The Port may invite a CNAC member to attend the annual National Noise Symposium.

- i) CNAC members through the CNAC Chair shall recommend the attendee. The manager of the Noise office will make the final selection.
- ii) A member who has served at least one year, and if possible has not attended a previous Symposium, will be selected.
- iii) The member selected shall prepare and submit a thorough report to CNAC on what was learned at the Symposium.

6) CNAC External Communications Policy:

The following proviso shall be attached to all statements issued by CNAC.

"The opinions expressed herein are those of the Portland International Airport (PDX) Citizen Noise Advisory Committee (CNAC) and are not intended to represent the opinions of the Port of Portland."

If, for any reason, a member of CNAC writes, issues or publishes a personal statement in which he/she identifies him/herself as a member of CNAC, the statement shall not indicate concurrence of CNAC and shall include the following proviso:

"The opinions expressed herein are those of X.Xxxxx, and are not intended to represent the opinions of the Portland International Airport (PDX) Citizen Noise Advisory Committee (CNAC) or the Port of Portland."



CITY OF TROUTDALE



STAFF REPORT

SUBJECT / ISSUE: An Ordinance Relating To The Troutdale Riverfront Renewal Plan And Establishing A Procedure For Transfer Of The Former Sewer Treatment Plant Property.

<p>MEETING TYPE: City Council Regular Mtg.</p>	<p>MEETING DATE: September 9, 2014 STAFF MEMBER: Erich Mueller DEPARTMENT: Finance</p>
<p>ACTION REQUIRED Ordinance - Introduction PUBLIC HEARING Yes</p>	<p>ADVISORY COMMITTEE/COMMISSION RECOMMENDATION: Not Applicable <u>Comments:</u></p>

STAFF RECOMMENDATION: Ordinance Introduction and public hearing, no action at this meeting.

EXHIBITS: A: Draft Special Warranty Deed with right of re-entry.

Subject / Issue Relates To:

- Council Goals
 Legislative
 Other (describe)

GOAL 1: ENCOURAGE ECONOMIC DEVELOPMENT

A. OBJECTIVE: DEMONSTRATE CLEAR PROGRESS ON TROUTDALE RIVERFRONT DEVELOPMENT

Measure 1: Cooperate with prospective developers who pursue desirable development plans consistent with feasible public financial constraints

Issue / Council Decision & Discussion Points:

- ◆ The City desires to achieve redevelopment in the urban renewal area through the adopted Troutdale Riverfront Renewal Plan (Plan)

Reviewed and Approved by City Manager: 

- ◆ The City's former Sewer Treatment Plant site is located in the Plan area and redevelopment of the property is an important part of the Plan
- ◆ Transfer of the property from City ownership to the Troutdale Urban Renewal Agency is consistent with the goals of the Plan, and necessary to facilitate private sector redevelopment of the site

BACKGROUND:

Through significant public involvement in order to protect the public health, safety, and welfare of the public, in 2006 the City created Troutdale Riverfront Renewal Plan to eliminate blight and foster development and redevelopment in the plan area.

The City also established the Troutdale Urban Renewal Agency (Agency) providing tax increment funding and urban renewal authority to eliminate blight and foster development and redevelopment. The City assigned the Troutdale Riverfront Renewal Plan to the Agency to implement and manage.

The Plan has envisioned assembling City property with adjacent private property owner, Eastwinds Development LLC, for redevelopment. Since 2006 economic conditions and environmental remediation challenges have delayed visible progress on the site.

Over the past several years the City and Eastwinds Development LLC have operated in an effective public/private partnership manner to successfully implement programs and grant projects for brownfield rehabilitation from Business Oregon, the State Department of Environmental Quality, and the Federal Environmental Protection Agency. And joined with the Sandy River Basin Watershed Council, through the Metro Nature in Neighborhoods Grant Project for Restoration and Enhancement program, to develop the "Sandy River Access Plan."

In May 2014 the City entered into an Exclusive Negotiating Agreement (ENA) with Eastwinds which resulted in the valuation formula and select deal terms for the sale of the City's former Sewer Treatment Plant (STP) property, which the Council approved in August 2014.

Current Status & Next Steps:

With the approval of the valuation formula and deal terms the City made the "decision" to intend to sell the City STP property to Eastwinds, yet there are many steps before an actual sale could be approved and executed. Just as in buying house there are many steps between the "offer" and receiving the keys, (appraisal, title, home inspection, mortgage underwriting, etc...) there are many steps still needed before approval of the actual sale.

We are in the middle of a long overall process which had its origins in the 2006 Agency and Plan creation, through the past environmental assessments, to current property preparation, and future redevelopment activities.

There are many other additional activities, such as currently both the City and Eastwinds each have appraisers working on the site, while also beginning the negotiations over the PSA, and obtaining a No Further Action (NFA) letter from the Oregon Department of Environmental Quality (DEQ), and proceeding with the sheep pit clean-up process. While these many actions are occurring in parallel, some sequential steps need to occur. One of the next steps is to transfer the STP property from the City to the Agency.

The Eastwinds' development vision aligns many of the City's commercial and job creation goals for the site, with a mix of hospitality with event and conference facilities, leading edge hotel, restaurant, mixed-use development, and high-quality retail opportunities. The project vision also includes many important public recreational benefits including connections and expansion of the 40-Mile Loop Regional Bicycle Trail and the western terminus of the Columbia River Gorge trail, and for community access and enjoyment of the Sandy Riverfront portions of the property while protecting the riparian habitat.

To reach the potential of the Eastwinds' development vision, it will require active participation and support of the City and in particular the Agency through the use of its flexible redevelopment authority and tax increment financing.

State statutes provide urban renewal agencies with flexibility which is not available to cities, in creating redevelopment incentives for the economically challenging sites, the type of sites typically located in urban renewal plan areas. Disposition of property under ORS 457.230 provides both the necessary flexibility of Fair Reuse Value of the STP site property and provides assurances that the property shall be redeveloped in a manner consistent with the goals and requirements of the Plan. Therefore, to make use of the benefits of ORS 457.230, the City must transfer ownership of the STP site real estate to the Agency.

Open Public Process:

The public will have several opportunities to comment on the upcoming property sale and receive reassurance that the property will ultimately be redeveloped in accordance with the Plan.

To transfer the property from the City to the Agency, there is an open and transparent process which will include two public hearings prior to approving the transfer, by ordinance, which includes the 30 day referendum period before becoming effective. Only after the ordinance effective date would the ownership be transferred from the City to the Agency. Further the deed provisions will

ensure that the property is redeveloped in accordance with the Plan or the property ownership will revert to the City.

While the above transfer procedure is occurring the appraisals will be finalized and negotiation of the definitive Purchase and Sale Agreement (PSA) with Eastwinds will be completed, which by that point in time the property would be owned by the Agency.

Upon completion of the PSA negotiation, the **second** open and transparent process with two more public hearings prior to approving the PSA, again by ordinance, which includes the 30 day referendum period before becoming effective. Only after the ordinance effective date could the ownership be transferred from the Agency to Eastwinds. And again the deed provisions will require redevelopment in accordance with the Plan and ORS 457.230, or the property ownership will revert to the City.

SUMMARY:

The ordinance introduction tonight is the next step in the process to move ownership of the former STP site property from the CITY to the AGENCY.

PROS & CONS:

- A. Approve the proposed ordinance to continue the deliberate, open and transparent process in preparing the City real estate for disposition and ultimate redevelopment as part of the Troutdale Riverfront Renewal Plan.
- B. Not approve the proposed ordinance and delay the ultimate redevelopment of City property in the Troutdale Riverfront Renewal Plan area.

Current Year Budget Impacts <input type="checkbox"/> Yes (<i>describe</i>) <input checked="" type="checkbox"/> N/A
Future Fiscal Impacts: <input type="checkbox"/> Yes (<i>describe</i>) <input checked="" type="checkbox"/> N/A
Community Involvement Process: <input type="checkbox"/> Yes (<i>describe</i>) <input checked="" type="checkbox"/> N/A

AFTER RECORDING RETURN TO:
City Recorder
Urban Renewal Agency of the City of Troutdale
219 E Historic Columbia River Hwy
Troutdale OR 97060-2078

UNTIL A CHANGE IS REQUESTED
SEND TAX STATEMENTS TO:
City Recorder
Urban Renewal Agency of the City of Troutdale
219 E Historic Columbia River Hwy
Troutdale OR 97060-2078

DRAFT

This space is reserved for recorder's use.

SPECIAL WARRANTY DEED

With right of Re-entry

The CITY OF TROUTDALE, an Oregon municipal corporation, whose address is 219 E Historic Columbia River Hwy, Troutdale Oregon 97060-2078 ("Grantor"), conveys and specially warrants to the URBAN RENEWAL AGENCY OF THE CITY OF TROUTDALE, an Oregon quasi-municipal corporation, whose address is 219 E Historic Columbia River Hwy, Troutdale Oregon 97060-2078 ("Grantee"), the following described real property, provided that no later than the expiration of the adopted Troutdale Riverfront Renewal Plan, as it may be amended, the property conveyed hereby is re-conveyed to a private developer under an agreement requiring the property to be developed in conformance with the adopted Troutdale Riverfront Renewal Plan and the requirements of ORS 457.230, or the Grantor shall have the right to enter, take possession of, and re-acquire title to the property.

The property is described on Exhibit A attached hereto and incorporated herein by reference and is conveyed free of encumbrances created or suffered by Grantor except as specifically set forth on Exhibit B, also attached hereto and incorporated by reference. The true consideration for this conveyance is other value given and received, which is the whole thereof.

Grantor hereby covenants to and with Grantee and Grantee's successors and assigns that Grantor is lawfully seized in fee simple of the property described in Exhibit A, free from all encumbrances except those of record, as shown on Exhibit B, and that Grantor will warrant and forever defend the property and every parcel thereof against the lawful claims and demands of all persons whomsoever, except those claiming under the encumbrances described in Exhibit B below.

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S

ACCEPTANCE OF DEED

The URBAN RENEWAL AGENCY OF THE CITY OF TROUTDALE, acting by and through its Board of Directors, through adoption of Resolution No. _____ on _____, 2014, hereby receives and accepts the foregoing Special Warranty Deed pursuant to ORS 93.808.

DATED this _____ day of _____, 2014.

URBAN RENEWAL AGENCY OF THE CITY OF TROUTDALE, an Oregon quasi-municipal corporation

By: _____
Craig R. Ward, City Manager, City of Troutdale

STATE OF OREGON)
) ss.
County of Multnomah)

This instrument was acknowledged before me on this _____ day of _____, 2014, by Craig R. Ward as City Manager on behalf of the Urban Renewal Agency of the City of Troutdale.

NOTARY PUBLIC FOR OREGON
My Commission Expires: _____

EXHIBIT A

(Legal Description)

PARCEL I:

A part of the David F. Buxton Donation Land claim in Section 25, Township 1 North, Range 3 East of the Willamette Meridian, in the City of Troutdale, County of Multnomah and State of Oregon, described as follows:

Commencing at a stone in the North line of the David F. Buxton Donation Land Claim, said stone being North 89°57' East 748 feet distant from the section corner common to Sections 23, 24, 25, and 26, said Township and Range; thence South 0°23' West 1346 feet to an iron pipe; thence East 675.33 feet to an iron pipe and the true point of beginning of the land herein to be described; thence South 0°23' West 345.34 feet to an iron pipe; thence East 586.45 feet to an iron pipe; thence North 27°18' West 244.11 feet to an iron pipe; thence North 9°24' West 130.17 feet to an iron pipe; thence West 450.92 feet to the true point of beginning.

PARCEL II:

A tract of land situated in Section 25, Township 1 North Range 3 East of the Willamette Meridian, in the City of Troutdale, County of Multnomah and State of Oregon, more particularly described as follows:

Commencing at the corner of Sections 23, 24, 25, and 26, said Township and Range, on the North line of the D.F. Buxton Donation Land Claim; thence North 89°57' East, on the North line of said D.F. Buxton Donation Land Claim, 748 feet to a stone; thence South 0°23' West 1343.82 feet, more or less, to a 2" x 36" pipe; thence South 61°11' East 398.04 feet, to a 1-1/4" x 34" pipe; thence South 49°01' East 96.72 feet to a 1-1/4 x 32" pipe; thence South 57°27 1/2' East 49.45 feet to a 1" x 38" pipe; thence South 66°46'30" East 216.40 feet to a 1" x 26" pipe; thence South 74°31'25" East 10.94 feet to a point for the point of beginning of the tract herein described; running thence South 0°23' West 623.96 feet to a point in the North line of the O. W. R. & N. Co.'s right of way; thence South 88°44' East on said right of way line; 117.71 feet to a point of curve; thence on a curve to the left of 2740 foot radius, 186.78 feet to a 1" x 37" iron rod; thence North 11°55' East 202.3 feet to a 1" x 36" pipe; thence North 86°04' East 225 feet to a 1" x 35" pipe; thence North 11°50' East 317.17 feet to a 3/4" x 26" pipe, at a point, said point being the most Southerly corner of that certain tract of land conveyed to H.C. McGinnis, by deed recorded April 22, 1943 in Book 744 Page 188, Deed Records; thence North 14°19' East 24.34 feet; thence North 27°18' West 110.89 feet, more or less, to the Southeast corner of that certain tract of land conveyed to Lloyd Stanley Holman and wife, by deed recorded August 9, 1957 in Book 1856 Page 394, Deed Records; thence West 586.45 feet, along the Southerly line of said Holman tract to the Southwest corner thereof; thence South 0°23' West 24.82 feet, more or less, to the true point of beginning.

EXCEPT THEREFROM a parcel of land located within Section 25, Township 1 North, Range 3 East of the Willamette Meridian, in the City of Troutdale, County of Multnomah and State of Oregon, and more particularly described as follows:

Commencing at the common section corner to Sections 23, 24, 25, and 26, Township 1 North, Range 3 East of the Willamette Meridian, said corner being marked by a brass cap; Thence North $89^{\circ}56'35''$ East along the North line of the David F. Buxton Donation and [sic] Claim a distance of 748.00 feet to a stone; Thence South $10^{\circ}14'13''$ East a distance of 1,524.26 feet to a one and one-half inch diameter iron pipe located at the Northeast corner of a tract of land conveyed to Z.T. Truelove by deed dated May 26, 1920 and recorded June 10, 1920 in Book 815 at Page 232 of the Multnomah County Deed Records; Thence South $68^{\circ}07'12''$ East a distance of 775.98 feet to a five-eighths inch diameter by thirty inch long iron rod set at the true point of beginning of this description; Thence North $89^{\circ}58'22''$ East a distance of 245.00 feet to a five-eighths inch diameter by thirty inch long iron rod, said iron rod being located North $67^{\circ}01'53''$ West a distance of 63.88 feet from a three-fourths inch diameter iron pipe at the Southeast most corner of that tract of land conveyed to H.C. McGinnis as described in that deed recorded April 22, 1943 in Book 744 at Page 18 of the Multnomah County Deed Records; Thence South $00^{\circ}01'38''$ East a distance of 171.90 feet to a five-eighths inch diameter by thirty inch long iron rod; Thence South $86^{\circ}13'49''$ West a distance of 245.52 feet to a five-eighths inch diameter by thirty inch long iron rod; Thence North $00^{\circ}01'38''$ West a distance of 187.92 feet to the true point of beginning of this description.

ALSO EXCEPT THEREFROM a parcel of land located within Section 25, Township 1 North, Range 3 East of the Willamette Meridian, in the City of Troutdale, County of Multnomah and State of Oregon, and more particularly described as follows:

Commencing at the common Sections Corner to Sections 23, 24, 25 and 26, Township 1 North, Range 3 East of the Willamette Meridian, said corner being marked by a brass cap; thence North $89^{\circ}56'35''$ East along the North line of the David F. Buxton Donation Land Claim a distance of 748.00 feet to a stone; thence South $10^{\circ}14'13''$ East a distance of 1524.26 feet to a 1-1/2 12 inch diameter iron pipe located at the Northeast corner of that tract of land conveyed to Z.T. Truelove by deed dated May 26, 1920, and recorded June 10, 1920, in Book 815, Page 232 of the Multnomah County Deed Records; thence South $56^{\circ}28'34''$ East a distance of 863.87 feet to a 5/8 inch diameter by a 30 inch long iron rod and the true point of beginning of this description; thence North $86^{\circ}13'49''$ East a distance of 245.52 feet to a 5/8 inch diameter by 30 inch long iron rod; thence continuing North $86^{\circ}13'49''$ East a distance of 4.80 feet; thence South $00^{\circ}01'38''$ East a distance of 20.04 feet; thence North $86^{\circ}13'49''$ East a distance of 20.29 feet to a point on the most Easterly line of that tract of land described as Parcel III in that Executor's Deed to the Town of Troutdale recorded August 3, 1970 in Book 745, Page 580 of the Multnomah County Deed Records; thence South $11^{\circ}51'20''$ West along the most Easterly line of the said Town of Troutdale parcel a distance of 151.52 to a 5/8 inch diameter by 30 inch long iron rod set an angle point in said Town of Troutdale parcel; thence South $86^{\circ}11'58''$ West along the Southerly line of the said Town of Troutdale parcel a distance of 224.95 feet to a 5/8 inch diameter by 30 inch long iron rod set at an angle point in the Town of Troutdale parcel; thence South $11^{\circ}56'24''$ West along the Westerly East line of the said Town of Troutdale parcel a distance of 15.13 feet; thence North $03^{\circ}35'32''$ West a distance of 180.60 feet to the true point of beginning of this description.

PARCEL III:

A tract of land situated in Section 25, Township 1 North, Range 3 East of Willamette Meridian, in the City of Troutdale, County of Multnomah and State of Oregon, more particularly described as follows:

Commencing at the Northwest corner of Section 25, said Township and Range; thence North 89°57' East, along the North line of the D.F. Buxton Donation Land Claim, 748 feet to a stone; thence South 0°23' West 1343.82 feet, more or less, to a 2" x 36" pipe; thence South 61°11' East 398.04 feet to a 1-1/4" x 34" pipe; thence South 49°01' East 96.72 feet to a 1-1/4" x 32" pipe; thence South 57°27'-1/2' East 49.45 feet to a 1" x 38" pipe; thence South 66°46'30" East 216.40 feet to a 1" x 26" pipe; thence South 74°31'25" East 10.94 feet; thence South 0°23' West 623.96 feet to a point on the North line of the O. W. R. & N. Co.'s right of way; thence South 88°44' East along said right of way 117.71 feet to an angle corner on said right of way; thence North to a point of curve; thence on a curve to the left of 2740 foot radius 186.78 feet to a 1" x 37" iron rod on said right of way and being the true point of beginning of the tract of land herein described; thence on the said curve to the left of 2740 foot radius 50.0 feet; thence North 8°33'31" West 138.0 feet; thence South 11°55' West 142.3 feet to the true point of beginning.

PARCEL IV:

A parcel of land located within Section 25, Township 1 North, Range 3 East of the Willamette Meridian, in the City of Troutdale, County of Multnomah and State of Oregon, described as follows:

Commencing at the common Section corner to Sections 23, 24, 25 and 26, Township 1 North, Range 3 East of the Willamette Meridian, said corner being marked by a brass cap; thence North 89°56' 35" East along the North line of the David F. Buxton Donation Land Claim a distance of 748.00 feet to a stone; thence South 10°14'13" East a distance of 1524.26 feet to a 1-1/2 inch diameter iron pipe located at the Northeast corner of the tract of land conveyed to Z.T. Truelove by deed dated May 26, 1920, recorded June 10, 1920 in Book 815 Page 232 of the Multnomah County Deed Records; thence North 68°42'42" East a distance of 424.58 feet to a 5/8 inch diameter x 30 inch long iron rod set at the Southwest corner of that tract of land conveyed to Cecil E. Duncan and Donald L. Bennett by that Warranty Deed recorded January 26, 1983 in Book 1642 Page 514 of the Multnomah County Deed Records, said corner also being the Northwest corner of that tract of land conveyed to H.C. McGinnis by that Bargain and Sale Deed recorded April 22, 1943 in Book 744 Page 188 of the Multnomah County Deed Records and the true point of beginning of this description; thence North 00°24'36" East along the West line of the said Duncan and Bennett Tract a distance of 25.00 feet to the Northwest corner thereof; thence North 89°59'35" East along the North line thereof, a distance of 447.01 feet to the Northeast corner thereof; thence South 09°15'37" East along the East line thereof a distance of 25.33 feet to the Southeast corner thereof, said corner also being the Northeast corner of the said H.C. McGinnis Tract, said corner being marked by a 3/4 inch diameter iron pipe; thence South 89°59'35" West along the South line of the said Duncan and Bennett Tract and the North line of the said H.C. McGinnis Tract a distance of 451.27 feet to the true point of beginning of this description.

PARCEL V:

A parcel of land located within Section 25, Township 1 North, Range 3 East of the Willamette Meridian, in the City of Troutdale, County of Multnomah and State of Oregon, described as follows:

Commencing at the common Section corner to Sections 23, 24, 25 and 26, Township 1 North, Range 3 East of the Willamette Meridian, said corner being marked by a brass cap; thence North 89°56'35" East along the North line of the David F. Buxton Donation Land Claim a distance of 748.00 feet to a stone; thence South 10°14'13" East a distance of 1524.26 feet to 1-1/2 inch diameter iron pipe located at the Northeast corner of the tract of land conveyed to Z.T. Truelove by deed dated May 26, 1920, recorded June 10, 1920 in Book 815 Page 232 of the Multnomah County Deed Records; thence North 68°42'42" East a distance of 424.58 feet to a 5/8 inch diameter x 30 inch long iron rod set at the Southwest corner of that tract of land conveyed to Cecil E. Duncan and Donald L. Bennett by that Warranty Deed recorded January 26, 1983 in Book 1642 Page 514 of the Multnomah County Deed Records, said corner also being the Northwest corner of that tract of land conveyed to H.C. McGinnis by that Bargain and Sale Deed recorded April 22, 1943 in Book 744 Page 188 of the Multnomah County Deed Records; thence North 89°59'35" East along the South line of the said Duncan and Bennett Tract and the North line of the said H.C. McGinnis Tract a distance of 451.27 feet to a 3/4 inch iron pipe at the Northeast corner of the said McGinnis Tract and the true point of beginning of this description, said point further being the Southwest corner of that tract of land conveyed to the State of Oregon by Quitclaim Deed recorded August 23, 1946 in Book 1091 Page 447 of the Multnomah County Deed Records; thence North 89°59'35" East along the South line of the said State of Oregon Tract a distance of 37.30 feet to a point that is at the West Water's Edge of the Sandy River as located November 29, 1983; thence along the following courses and distances following said West Water's Edge: South 7°24'19" East for a distance of 15.94 feet; South 16°38'22" East for a distance of 38.02 feet; South 33°09'01" East for a distance of 21.88 feet; South 40°50'27" East for a distance of 32.53 feet; South 35°02'59" East for a distance of 36.26 feet; South 46°26'13" East for a distance of 12.82 feet; South 35°03'31" East for a distance of 35.89 feet; South 36°18'27" East for a distance of 38.76 feet; South 21°30'34" East for a distance of 46.76 feet; South 38°52'07" East for a distance of 24.08 feet; South 37°01'47" East for a distance of 29.76 feet; South 39°40'57" East for a distance of 32.50 feet; South 29°10'17" East for a distance of 39.99 feet; South 38°59'56" East for a distance of 41.94 feet; South 31°16'45" East for a distance of 29.20 feet; South 43°32'12" East for a distance of 20.95 feet; South 51°03'34" East for a distance of 28.46 feet; South 61°23'15" East for a distance of 26.78 feet; South 57°13'08" East for a distance of 1.81 feet; thence leaving said West Water's Edge South 89°59'35" West a distance of 167.68 feet to a 5/8 inch diameter x 30 inch long iron rod, said point being the most Easterly angle point in said H.C. McGinnis Tract; thence North 27°08'50" West along the Easterly line of said McGinnis Tract a distance of 355.10 feet to a 5/8 inch diameter x 30 inch long iron rod set at an angle point in the East line of the said McGinnis Tract; thence North 09°15'37" West along the East line of the said McGinnis Tract a distance of 130.30 feet to the true point of beginning of this description.

EXCEPTING THEREFROM all of the above described lands lying between the said West Water's Edge of the Sandy River and Westerly therefrom to the low water mark on the West bank of the said Sandy River.

TOGETHER with all of the lands between the said West Water's Edge of the Sandy River and Easterly to the low water mark on the West bank of the said Sandy River.

PARCEL VI:

A parcel of land located within Section 25, Township 1 North, Range 3 East of the Willamette Meridian, in the City of Troutdale, County of Multnomah and State of Oregon, described as follows:

Commencing at the common Section corner to Sections 23, 24, 25 and 26, Township 1 North, Range 3 East of the Willamette Meridian, said corner being marked by a brass cap; thence North 89°56'35" East along the North line of the David F. Buxton Donation Land Claim a distance of 748.00 feet to a Stone; thence South 10°14'13" East a distance of 1524.26 feet to a 1-1/2 inch diameter iron pipe located at the Northeast corner of the tract of land conveyed to Z.T. Truelove by deed dated May 26, 1920, recorded June 10, 1920 in Book 815 Page 232 of the Multnomah County Deed Records; thence North 68°42'42" East a distance of 424.58 feet to a 5/8 inch diameter x 30 inch long iron rod located at the Northwest corner of that tract of land conveyed to H.C. McGinnis by that Bargain and Sale Deed recorded April 22, 1943 in Book 744 Page 188 of the Multnomah County Deed Recorder [sic]; thence North 89°59'35" East along the North line of the said McGinnis Tract a distance of 451.27 feet to the Northeast corner thereof, said corner being marked by a 3/4 inch diameter iron pipe; thence South 9°15'37" East along the East line of said McGinnis Tract, a distance of 130.30 feet to a 5/8 inch diameter x 30 inch iron rod set at an angle corner therein;

Thence South 27°08'50" East continuing along the East line of the said McGinnis Tract a distance of 355.10 feet to a 5/8 inch diameter x 30 inch iron rod set at the most Easterly corner of the said McGinnis Tract and the true point of beginning of this description; thence South 00°01'38" East a distance of 185.92 feet; thence South 85°36'40" West a distance of 39.87 feet to a point on the most Easterly line of that tract of land described within Parcel 3 of that Executor Deed to the Town of Troutdale recorded August 3, 1970 in Book 745, Page 580 of the Multnomah County Deed Records; thence North 11°51'20" East along the Easterly line of the said Town of Troutdale Parcel 3 and its Northerly extension a distance of 193.09 feet to the true point of beginning of this description.

PARCEL VII:

A parcel of land located within Section 25, Township 1 North, Range 3 East of the Willamette Meridian, in the City of Troutdale, County of Multnomah and State of Oregon, described as follows:

Commencing at the common section corner to Sections 23, 24, 25 and 26, Township 1 North, Range 3 East of the Willamette Meridian, said corner being marked by a brass cap; thence North 89°56'36" East along the North line of the David F. Buxton Donation Land Claim a

distance of 748.00 feet to a stone; thence South $10^{\circ}14'13''$ East a distance of 1524.26 feet to a 1-1/2 inch diameter iron pipe located at the Northeast corner of the tract of land conveyed to Z.T. Truelove by deed dated May 26, 1920, recorded June 10, 1920 in Book 815, Page 232 of the Multnomah County Deed Records; thence South $56^{\circ}28'34''$ East a distance of 863.87 feet to a 5/8 inch diameter x 30 inch long Iron rod; thence South $03^{\circ}35'32''$ East a distance of 180.60 feet to a point on the Westerly East line of Parcel 3 as described in that Executor's Deed within which lands were conveyed to the Town of Troutdale as recorded August 3, 1970 in Book 745, Page 580 of the Multnomah County Deed Records, and the true point of beginning of this description; thence South $03^{\circ}35'32''$ East a distance of 180.26 feet to a 5/8 inch diameter x 30 inch long iron rod located at the Southeast corner of that tract of land conveyed to the City of Troutdale by deed recorded March 27, 1969 in Book 669, Page 824 of the Multnomah County Deed Records; thence North $08^{\circ}32'01''$ West along the East line of the said City of Troutdale Parcel a distance of 138.00 feet to a 5/8 inch diameter x 30 inch long iron rod set at the most Northerly corner of the said City of Troutdale Tract, said corner being on the Westerly East line of the said Town of Troutdale Tract; thence North $11^{\circ}56'24''$ East along the Westerly East line of the said Town of Troutdale Tract a distance of 44.39 feet to the true point of beginning of this description.

PARCEL VIII:

A parcel of land located within Section 25, Township 1 North, Range 3 East of the Willamette Meridian, in the City of Troutdale, County of Multnomah and State of Oregon, and more particularly described as follows:

Commencing at the common section corner to Sections 23, 24, 25, and 26, Township 1 North, Range 3 East of the Willamette Meridian, said corner being marked by a brass cap; Thence North $89^{\circ}56'35''$ East along the North line of the David F. Buxton Donation and [sic] Claim a distance of 748.00 feet to a stone; Thence South $10^{\circ}14'13''$ East a distance of 1,524.26 feet to a one and one-half inch diameter iron pipe located at the Northeast corner of a tract of land conveyed to Z.T. Truelove by deed dated May 26, 1920 and recorded June 10, 1920 in Book 815 at Page 232 of the Multnomah County Deed Records; Thence South $68^{\circ}07'12''$ East a distance of 775.98 feet to a five-eighths inch diameter by thirty inch long iron rod set at the true point of beginning of this description; Thence North $89^{\circ}58'22''$ East a distance of 245.00 feet to a five-eighths inch diameter by thirty inch long iron rod, said iron rod being located North $67^{\circ}01'53''$ West a distance of 63.88 feet from a three-fourths inch diameter iron pipe at the Southeast most corner of that tract of land conveyed to H.C. McGinnis as described in that deed recorded April 22, 1943 in Book 744 at Page 18 of the Multnomah County Deed Records; Thence South $00^{\circ}01'38''$ East a distance of 171.90 feet to a five-eighths inch diameter by thirty inch long iron rod; Thence South $86^{\circ}13'49''$ West a distance of 245.52 feet to a five-eighths inch diameter by thirty inch long iron rod; Thence North $00^{\circ}01'38''$ West a distance of 187.92 feet to the true point of beginning of this description.

EXHIBIT B

(Exceptions)

Reservations and conditions, including the terms and provisions thereof, contained in Deed
Grantor: Bissinger and Company, a California corporation Grantee: City of Troutdale, a
municipal corporation
Recording Date: March 27, 1969
Recording No.: Book 669, Page 824
(Affects Parcel III)

Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a
document:

Granted to: City of Troutdale, a municipal corporation
Purpose: Utility lines
Recording Date: September 21, 1971
Recording No: Book 814, Page 160
Also Recorded: April 27, 1972 in Book 853 Page 798
Affects: (The West 20 feet of Parcel IV)

Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a
document:

Granted to: Portland General Electric Company
Purpose: Electric power lines and appurtenant signal or communication lines, and existing
power line and storm drains
Recording Date: May 31, 1985
Recording No: Book 1827, Page 400, Recorder's No. 85-036711
Affects: Various location - See document and map attached thereto for specifics

Reservation and Easement(s) for the purpose(s) shown below and rights incidental thereto, as
granted in a document:

Granted to: City of Troutdale
Purpose: Utilities
Recording Date: January 29, 1990
Recording No: Book 2272, Page 461, Recording No. 90-008201
(Affects Parcel II and additional property)

Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a
document:

Granted to: Portland General Electric Company
Purpose: Underground distribution line
Recording Date: July 2, 1993
Recording No: Book 2717, Page 2971 Recorder's No. 93-087000
Affects Parcel II and III)

Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:

Granted to: Portland General Electric Company

Purpose: Electric power line

Recording Date: July 2, 1993

Recording No: Book 2717, Page 2974, Recorder's No. 93-087001

Affects Parcel III and VII)

Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:

Granted to: State of Oregon, by and through its Department of Transportation

Purpose: Temporary construction

Recording Date: June 14, 2010

Recording No: 2010-073757

Affects: Exact location not set forth

Extended by instrument, including the terms and provisions thereof,

Recording Date: June 4, 2013

Recording No.: 2013-075778

ORDINANCE NO.

AN ORDINANCE RELATING TO THE TROUTDALE RIVERFRONT RENEWAL PLAN AND ESTABLISHING A PROCEDURE FOR TRANSFER OF THE FORMER SEWER TREATMENT PLANT PROPERTY.

THE TROUTDALE CITY COUNCIL FINDS AS FOLLOWS:

1. The Urban Renewal Agency of the City of Troutdale ("Agency"), the duly formed body to implement urban renewal in Troutdale, was formed by the adoption of Ordinance No. 771 on January 27, 2006.
2. The Troutdale Riverfront Renewal Plan ("Plan") was adopted on February 14, 2006, by Ordinance No. 773 to provide tax increment funding and urban renewal authority to eliminate blight and foster development and redevelopment within the Troutdale Riverfront Renewal Area in order to protect the public health, safety, and welfare.
3. On May 16, 2006, Troutdale voters approved the Plan, allowing use of urban renewal and tax increment financing to achieve redevelopment of properties, including the former sewer treatment plant ("STP"), among other goals. The former STP property is owned by the City of Troutdale ("City").
4. Use of urban renewal finance measures intended to facilitate eventual construction of a riverfront park, public plaza, public parking facility, and pedestrian facilities, on portions of the former STP site, and/or on other related real properties within the Plan area.
5. Other stated goals of the Plan for the urban renewal area, include promoting redevelopment with a mix of uses, which is intended to diversify and improve Troutdale's economic and employment base.
6. The City is negotiating with Eastwinds Development, LLC ("Eastwinds"), to redevelop property within the urban renewal area, including the former STP site, and these negotiations are premised on transfer of the former STP site to Eastwinds.
7. Because the Eastwinds' plans to redevelop within the urban renewal area include the former STP property, the City finds that it is appropriate to identify the former STP property as a city-owned property that serves the public interest better, if designated for transfer to the Agency for urban renewal purposes.

8. Over the past several years the City and Eastwinds Development LLC have operated in an effective public/private partnership manner to successfully implement programs and grant projects for brownfield rehabilitation from Business Oregon, the State Department of Environmental Quality, and the Federal Environmental Protection Agency. The Agency has been fully informed of all the environmental condition information and reports which have been developed regarding the property.

9. The City wishes to establish a process under which it will transfer the former STP property to the Agency.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF TROUTDALE

Section 1. The City identifies the following two properties ("Properties") that are no longer needed by the City and the conveyance of which pursuant to ORS 271.310 would serve the public interest:

(a) Tax Lot 400, Section 25BD, Township 1 North, Range 3 East Willamette Meridian, Multnomah County, Oregon, Parcel ID: R320520, and

(b) Tax Lot 500, Section 25BD, Township 1 North, Range 3 East Willamette Meridian, Multnomah County, Oregon, Parcel ID: R320650,

Section 2. The City establishes the following procedure for transfer of these properties and designates the City Manager or Finance Director (each a "City Official") or a designee of the City Official, to act on behalf of the City, and without further action by the City Council the City Official is hereby, authorized, empowered and directed to sign on behalf of the City the all documentation required for conveyance of the title of the Properties to the Agency.

Section 3. The City Official is, in the best interest of the City, hereby authorized to execute, acknowledge and deliver subsequent addendums, extensions, revisions, modifications, or successor documents or any other supporting and implementing documents, and to take any other action as may be advisable, convenient, necessary, or appropriate to give full force and effect to the terms and intent of this Ordinance, and the execution thereof by any such City Official shall be conclusive as to such determination.

Section 4. The City Council designates the Agency as its agent for conveyance of the title to the Properties to persons who will develop the property under the Plan and in compliance with ORS 457.230.

Section 5. If the City's authority to issue urban renewal bonds expires, including any extensions of such authority, before the Agency transfers title to one or more Properties, the City will have the right to have the Properties returned to the City.

Section 6. Prior to transfer of the Properties to the Agency, the City Official shall consult with the Public Works Director and determine the location and area of easements needed to accommodate sewer, water, stormwater, and other utilities. Such easements shall be reserved in the deed to the Agency.

Section 7. The Finance Director is authorized to disburse funds, subject to annual appropriations, as necessary to fulfill the Ordinance, and is further directed to implement all such actions necessary to ensure budgetary compliance.

Section 8. Conveyance shall only occur upon receipt by the City from the Oregon Department of Environmental Quality (DEQ) of a No Further Action (NFA) letter for the City Properties certifying that environmental cleanup has been completed to a level that is protective of human health and the environment, and is consistent with DEQ's regulations.

Section 9. This Ordinance shall be effective on the thirtieth day after its adoption.

YEAS:
NAYS:
ABSTAINED:

Doug Daoust, Mayor

Date _____

Debbie Stickney, City Recorder

Adopted:



CITY OF TROUTDALE



STAFF REPORT

SUBJECT / ISSUE: Nuisance code

MEETING TYPE:
City Council Regular Mtg.

MEETING DATE: September 9, 2014

STAFF MEMBER: Ed Trompke
DEPARTMENT: Legal

ACTION REQUIRED
Ordinance - Introduction

ADVISORY COMMITTEE/COMMISSION RECOMMENDATION:
Not Applicable

PUBLIC HEARING
Yes

Comments:

STAFF RECOMMENDATION: Adopt Ordinance

EXHIBITS:

A. Draft of nuisance code revisions

Subject / Issue Relates To:

Council Goals Legislative Other (describe)

Issue / Council Decision & Discussion Points:

- ◆ Updates and revisions to existing nuisance code
- ◆ Clarifying and codifying current practice

Reviewed and Approved by City Manager:

BACKGROUND: The City requested the city attorney's office review the existing nuisance code in Troutdale Municipal Code Chapter 8.28. Working with City staff, the city attorney's office identified several areas in which the City's code could be clarified, streamlined, and revised.

The proposed revisions in Exhibit A clarify definitions, allow the City to take action against persons responsible for the nuisance rather than simply the property owner, give the City greater flexibility in an emergency, clarify notice and abatement procedures, and give the City greater flexibility in evaluating requests for waivers of penalties.

The City has had success controlling nuisances by the use of informal notices, so that procedure has been formalized in the code revision by the use of "courtesy notices" that will result in no further action, if the violation is cured or abated within 30 days.

Another revision is expansion of the kinds of people to whom a nuisance violation notice may be issued, to include any person responsible for the nuisance condition. This allows a more common sense and direct approach, by giving the City authority to proceed directly against the person who is causing a problem, rather than only proceeding against the property owner, who may live miles away, or who, due to age or infirmity, may not have any practical control over family members, visitors or tenants who are creating the nuisance. Directly holding these responsible persons accountable provides a better mechanism for enforcement.

The code, as written, was complaint driven only. The revised text allows the City to take action if staff becomes aware of a nuisance, without a formal complaint being filed, but leaves the City discretion in when and how to proceed.

Additionally, the City expressed interest in options for dealing with chronic nuisance properties, including properties involving frequent criminal activities. The city attorney's office reviewed the chronic nuisance code provisions from the Cities of Portland and Gresham. Both cities have a process through which the city may take action to "close" the property for a period of 6-12 months after repeated violations at that location. To close a property based on repeated criminal activities, Portland requires 3 or more criminal nuisance activities during any 30 day period. Gresham defines a chronic nuisance as 3 or more criminal nuisance activities during any 120 day period. The closure process is similar to obtaining a temporary restraining order and is done in circuit court.

At this time, the city attorney's office believes the City's ordinance, as amended, will adequately address the vast majority of nuisance cases, though does not address properties involving frequent criminal activities. To do so would require a significant investment of City resources in order to complete the judicial process as well as maintain the property during the "closure" period and is not recommended at this point.

PROS & CONS:

Pros:

- Would provide another tool for the City to use in dealing with nuisance properties
- Allows City to directly address the persons who cause nuisances, rather than only owners, who may be indirectly responsible

Cons

- Might require additional involvement and monitoring by City staff
- Relies on existing procedures for addressing criminal activities on nuisance properties

Current Year Budget Impacts Yes (*describe*) N/A

Future Fiscal Impacts: Yes (*describe*) N/A
Ordinance may lead to potential increase to nuisance case load.

City Attorney Approved N/A Yes

Community Involvement Process: Yes (*describe*) N/A

Chapter 8.28 NUISANCES

8.28.010 Title.

This chapter shall be known as "The City of Troutdale Nuisance Control Ordinance," and may be so pleaded and referred to ~~and shall apply within the jurisdictional limits of the city.~~

(Ord. 352-O § 2 (7.30.005), 1981)

8.28.020 Definitions.

As used in this chapter, unless the context requires otherwise:

"Abandoned vehicle" means any vehicle which reasonably appears to be inoperative, wrecked, discarded, displays expired vehicle registration plates or tags, has no vehicle registration plates or tags displayed, or is totally or partially dismantled.

"Manager" means the city manager or the city manager's authorized representative.

"Camp" means to live, cook, sleep, or take overnight shelter in a motorized vehicle, temporary, or non-permanent structure or location, including but not limited to a shack, lean-to, storage shed, tent, travel trailer, recreational vehicle, boat, utility trailer or vehicle of any kind.

"Council" means a common council of the city.

"Emergency" means any situation in which the city manager determines imminently endangers human life, health, or property.

"Explosive" means a chemical compound, mixture or device that is used or intended to be used for the purpose of producing a chemical reaction resulting in a substantially instantaneous release of gas and heat, including but not limited to dynamite, blasting powder, nitroglycerin, blasting caps and nitrojelly, but excluding fireworks as defined by state law, black powder, smokeless powder, small arms ammunition and small arms ammunition primers.

"Garbage" means all animal and vegetable wastes resulting from the handling, preparation, cooking or consumption of food.

"Hearings officer" means that person appointed by the council to preside at hearings held pursuant to this chapter.

"Intersection" means the area embraced within the prolongation or connection of the lateral curblines or, if none, then of the lateral boundary lines of two or more streets or highways which join one another at an angle, whether or not one street or highway crosses the other.

"Liquid waste" means waste oil, septic tank pumping, liquid industrial wastes or other similar material.

"Nuisance" means any unsafe, annoying, unpleasant or obnoxious condition or practice causing or capable of causing an unreasonable threat to the public health, safety and welfare in the circumstances, but does not include noise; provided, however, that anything defined as a nuisance in Section 8.28.070 of this chapter shall be a nuisance.

"Owner" means any person having a legal interest in real or personal property or any person in possession or control of real or personal property, and excludes any person whose interest is for security only.

"Person" means any natural person, association, trust, partnership, firm or corporation.

"Person in charge of property" means an agent, occupant, lessee, tenant, contract purchaser or other person having possession or control of the property or the supervision of a construction project on the property.

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"Person responsible" means:

1. The owner or person in charge of property on which the nuisance exists or which abuts a public way where a nuisance exists; or

2. The person who causes the nuisance to come into or continue in existence.

"Personal property" means any tangible item including, but not limited to, vehicles, trailers, boats, recreational equipment, structures, carts, tables, racks, and similar items. Personal property shall not include trash or recycling containers placed in the public right-of-way for pick up.

"Right-of-way" means a public or private area that allows for the passage of people or goods. Right-of-way includes passageways such as freeways, streets, sidewalks, bike paths, alleys and walkways. A public right-of-way is a right-of-way that is dedicated or deeded to the public for public use and under the control of a public agency.

"Radioactive substance" means a substance which ~~omits~~ emits radiation in the form of gamma rays, X-rays, alpha particles, beta particles, neutrons, protons, high-speed electrons or other nuclear particles, but radiation does not include sound waves, radio waves, visible light, infrared light or ultra-violet light.

"Rodent" means a mouse or rat.

"Rubbish" means glass, metal, paper, wood, plastics or other nonputrescible solid waste.

"Sewage sludge" means residual waste of sewage treatment plants, consisting of digested organic waste and indigestible solids.

"Sidewalk" means that portion of a public right-of-way, other than the roadway, set apart by curbs, barriers, markings or other delineation for pedestrian travel.

"Solid waste" means all putrescible and nonputrescible wastes, whether in solid or liquid form, except wastes produced by the human body, liquid-carried industrial waste or sewage, or sewage hauled as an incidental part of septic tank or cesspool cleaning service, and includes garbage, rubbish, ashes, fill dirt, sewage sludge, street refuse, industrial wastes, swill, demolition and used construction materials, abandoned vehicles or parts thereof, discarded home or industrial appliances, manure, vegetable or animal solids and semisolid waste, dead animals and other discarded solid materials.

"Vector" means any insect organism, including but not limited to ~~lies~~, fleas, lice, ticks, fly maggots and mosquito larvae, capable of bearing or carrying a disease transmittable to human beings.

"Vehicle" means any device which is designed or used for transporting people, goods or property, including but not limited to a body, engine, transmission, frame or other major parts, but does not include a device propelled by human power, such as a bicycle, or a device operated exclusively upon fixed rails or tracks.

(Ord. 768 § 1 Att. A (part), 2005; Ord. 729 § 1 (part), 2003; Ord. 696 § 1, 2000; Ord. 352-O § 2 (7.30.010), 1981)

(Ord. No. 797, § 1, 7-14-2009; Ord. No. 801, § 1, 1-11-2011)

8.28.030 Purpose.

The council has determined it necessary to establish and maintain a program for the effective control and abatement of nuisances which constitute a hazard or menace to the health, safety and welfare of the people of the city and this chapter shall be liberally construed to effectuate that purpose.

(Ord. 352-O § 2 (7.30.015), 1981)

8.28.040 Administration—Enforcement.

A. The manager shall be responsible for the administration and enforcement of this chapter.

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- B. The manager shall have authority to administer oaths, certify all official acts, issue citations, subpoena and require the attendance of witnesses and production of relevant documents at hearings before the hearing officer and take testimony of any person by deposition.

(Ord. 352-O § 2 (7.30.020), 1981)

(Ord. No. 797, § 1, 7-14-2009; Ord. No. 801, § 1, 1-11-2011)

8.28.050 Administration—Rules and regulations.

The manager may adopt rules necessary for the administration and enforcement of this chapter.

(Ord. 352-O § 2 (7.30.025), 1981)

(Ord. No. 797, § 1, 7-14-2009; Ord. No. 801, § 1, 1-11-2011)

8.28.060 Notice procedure.

- A. ~~Notices of violations~~Courtesy notices shall be provided in writing to the person responsible. Upon receipt of the courtesy notice, the person responsible has thirty (30) days, or as otherwise provided, to abate the nuisance as indicated in the courtesy notice.

- B. If the person responsible has failed to abate the nuisance within the time provided in the courtesy notice, or in an emergency, the City shall issue a notice of violation. Notice of violation ~~provided in accordance with Section 8.28.090~~ of this chapter may shall be placed at the location of the violation or personally delivered or mailed to the ~~property owner~~person responsible, property manager, and/or the tenant. If mailed, the notice may shall be sent by regular postpaid certified or registered mail, return receipt requested or signature confirmation mail.

- ~~C. Notice of a violation provided in accordance with Section 8.28.095 of this chapter may be affixed to the property or personally delivered or mailed to the property owner. If mailed, it shall be mailed certified or registered mail, return receipt requested, or signature confirmation.~~

- ~~DC.~~ Summons, citations, and notices of city abatement, liens and penalties shall be mailed certified or registered mail, return receipt requested, or signature confirmation, or personally delivered to the ~~property owner~~person responsible.

- ~~ED.~~ A mailed notice shall be presumed to have been received on the second mail delivery day after mailing.

(Ord. 768 § 1 Att. A (part), 2005; Ord. 711 § 1, 2001; Ord. 352-O § 2 (7.30.030), 1981)

(Ord. No. 797, § 1, 7-14-2009)

8.28.070 Specific nuisances prohibited.

- A. It is unlawful for any person to maintain or allow to exist the following things, practices or conditions on any property, including unoccupied structures, or within public road rights-of-way adjacent to that property, which shall be nuisances:

1. A pond or pool of stagnant water which emits an obnoxious odor or is a source of vector breeding or otherwise presents a threat to the public health, safety and welfare;
2. An animal carcass not buried or destroyed within twenty-four hours after death;
3. Accumulation, collection or storage of solid waste without prior approval of the manager, unless the person is licensed by lawful authority to operate a business specifically for those purposes;
4. A well, septic system or cesspool that has not been safely or securely sealed or properly maintained and which may cause or has caused an injury to any person or contamination of a potable water supply;

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5. An abandoned, discarded or unattended icebox, refrigerator or other container with a compartment of more than one and one-half cubic feet capacity and a door or lid which locks or fastens automatically when closed and which cannot be easily opened from the inside;
6. Any property, whether vacant or improved building, residence, structure or accumulation of any materials which may attract or harbor vectors or rodents;
7. Any explosive or radioactive substance, unless the possession is authorized by law;
8. Any accumulation of dirt, sand, gravel, pieces or chunks of concrete or other similar inorganic material, which is unsightly and reduces the aesthetic appearance of the neighborhood;
9. An open pit, well, quarry, cistern, excavation or other hole of a depth of four feet or more and a top width of six inches or more without reasonable safeguards or barriers to prevent them from being accessible to children and domestic animals;
10. Dead or decaying trees and tree limbs that present a safety hazard to the public or to abutting property owners;
11. Any abandoned vehicle upon private or public property;
12. Any vehicle or personal property parked or stored in such a way as to obstruct the flow of traffic on a public right-of-way or the movement of pedestrians on a public sidewalk;
13. Any vehicle or personal property located on a public right-of-way, a sidewalk or on public property for more than seventy-two consecutive hours, provided that any basketball stand that does not interfere with the flow of traffic or pedestrians, or create a substantial safety hazard, may be located in the right-of-way for more than seventy-two hours;
14. Signs, hedges, shrubbery, natural growth or other obstructions at or near intersections which hinder the view necessary for the safe operation of vehicles;
15. Obstruction to public sidewalks or roadways by trees, bushes, roots, other natural growth, soil or solid waste;
16. Excavation which endangers the lateral support or causes cracking, settling or other damage to streets, sidewalks or other public property;
17. Signs placed illegally within the public right-of-way;
18. Uncontrolled or uncultivated growth of weeds, brush, poison oak, poison ivy, tansy ragwort, grasses, or blackberry vines over fourteen inches in height which that offer vector or rodent harborage, contribute noxious pollens to the atmosphere, constitute a fire hazard, or unreasonably interfere with the use and enjoyment of abutting public or private property, or that have grown to 14 or more inches in height. Except, uncontrolled or uncultivated growth on public land specifically for the purpose of providing native wildlife habitat shall not constitute a nuisance;
19. Vehicle storage and repair in violation of Section 8.28.075 of this chapter;
20. Maintaining an occupied travel trailer, motor home, camper, or vehicle or trailer modified for sleeping at any location other than a recreational vehicle park licensed under the provisions of the state, except as follows: vacation trailers and motor homes may be used by visitors of the residents, and shall be allowed on the residents' lot for a period of time not to exceed fourteen days in any consecutive six-month period;
21. Connection of any electric, water, sewer, gas, or telephone line from any source to a motor home, travel trailer, camper or utility trailer if any portion of such line between the connection at the termination and the point of connection at the source extends over, across, or under any public street, sidewalk, alley, or other public right-of-way or portion thereof;
22. Placement in a public right-of-way or on a public sidewalk of a newsstand, dispensing machine or any similar device intended for dispensing materials, including, but not limited to, newspapers, magazines, and advertising publications;

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23. For any person to camp or sleep in or upon any public highway, street, alley, public park, parking lot, or other public place; or to camp or sleep in any barn, shed, shop, warehouse, railroad car, automobile, vessel, or place other than such as is kept for lodging purposes, without the written permission of the owner or party entitled to possession thereof, and in no event for more than twenty-four hours, except as provided in Section 8.28.070(20) of this chapter.

B. The enumeration of nuisances in subsection A of this section shall not limit the power of the manager to investigate or declare any other condition a nuisance which is within the scope of the term "Nuisance" appearing in Section 8.28.020(4) of this chapter.

(Ord. 768 § 1 Att. A (part), 2005; Ord. 729 § 1 (part), 2003; Ord. 674 § 2, 1999; Ord. 649 § 1 Exh. A (part), 1997; Ord. 575-O, 1992; Ord. 454-O (part), 1985; Ord. 352-O § 2 (7.30.035), 1981)

(Ord. No. 797, § 1, 7-14-2009; Ord. No. 801, § 1, 1-11-2011; Ord. No. 818, Att. B, 4-9-2013)

8.28.075 Vehicle storage and repair.

Every person shall maintain the following things, practices or conditions on any property unless the practice or condition occurs as part of a lawfully established nonconforming use, or nonconforming development pursuant to the Troutdale Development Code.

- A. All new driveways must be constructed with concrete, asphalt or comparable hard surface, or as otherwise allowed by the Troutdale Development Code. "Driveway" means the private vehicular drive that connects an off-street parking area, garage, carport or other building used for parking or storing a vehicle with the street.
- B. Parking areas, other than driveways, must be surfaced with concrete, asphalt or not less than six inches of one inch minus or greater crushed stone. "Parking area" means any portion of the property, other than the driveway, that is used to park motorized or nonmotorized vehicles.
- C. No motor vehicle shall be parked upon any grass or exposed soil surface.
- D. Within residential neighborhoods, no commercial vehicle which exceeds eight thousand pounds gross weight, twenty-one feet in length or eight feet in height shall be parked in the street unless it is a vehicle that is routinely on standby and necessary to use under emergency circumstances. Semi-trailers are prohibited.
- E. Within residential neighborhoods, service, repair or storage of vehicles not owned and properly registered with the state of Oregon to a resident of the site is prohibited. A vehicle registered to a resident of the site may be serviced and repaired under the following conditions:
 1. The service and repair, if not conducted in a completely enclosed building, must be minor in nature. Minor service and repair includes tune-ups, replacement and servicing of oil and other fluids, and replacement and adjustment of minor parts such as tires, hoses, belts, filters, fuses, and similar items. Minor repair does not include: body and fender repair and replacement; painting; engine or transmission removal or replacement; or any work using welders, torches, or air-driven power tools; and
 2. All work not classified as minor in nature must occur inside a completely enclosed building.

(Ord. 768 § 1 Att. A (part), 2005; Ord. 749 §§ 1, 2, 2004; Ord. 729 § 1 (part), 2003; Ord. 674 § 3, 1999)

8.28.080 Routine and emergency inspections—Authority.

- A. The manager may enter any property or building at any reasonable time for the purpose of inspection or enforcing this chapter. Except when an emergency exists, the manager shall obtain the consent of the owner or a warrant from the municipal court or other court of competent jurisdiction before entering private property or a private building.

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- B. As used in this section and Sections 8.28.090 and 8.28.100 of this chapter, an "emergency" exists when the manager has reasonable cause to believe that a nuisance constitutes an immediate and active danger to the public health, safety and welfare.

(Ord. 352-O § 2 (7.30.040(A) and (B)), 1981)

(Ord. No. 797, § 1, 7-14-2009; Ord. No. 801, § 1, 1-11-2011)

8.28.090 Abatement—General procedures.

- A. An investigation may be conducted whenever the manager receives a complaint or otherwise has reasonable cause to believe that a nuisance exists.
- B. Whenever ~~it appears to~~ the manager ~~that there is~~ has reasonable cause to believe that a nuisance exists, the manager shall provide written notice to the owner person responsible of the existence of the nuisance pursuant to Section 8.28.060 of this chapter, provided, however, only one notice for a particular type of nuisance will be provided to the same owner person within a twelve-month period. Repeat nuisance violations as to a single person or property address are subject to immediate abatement in accordance with Section 8.28.095 of this chapter or city abatement in accordance with Section 8.28.140 of this chapter.
- C. Except for nuisances that are subject to ~~immediate abatement in accordance with Section 8.28.095 of this chapter~~, emergency abatement in accordance with Section 8.28.100 of this chapter, ~~or city abatement in accordance with Section 8.28.140 of this chapter~~, a notice of the nuisance violation shall demand abatement within ten (10) days from the date of the written notice, ~~or such lesser time as may be set by the manager to protect the public health, safety and welfare.~~
- D. The A notice of a nuisance violation that is not subject to ~~immediate abatement under Section 8.28.095 of this chapter~~, emergency abatement under Section 8.28.100 of this chapter ~~or city abatement under Section 8.28.140 of this chapter~~ shall contain:
1. A description of the real property by street address or otherwise on which the nuisance exists;
 2. A description of the ~~nature of the~~ nuisance;
 3. The action necessary to abate the nuisance;
 4. ~~The time within which the nuisance must be abated~~ A statement that the nuisance must be abated within ten (10) days from the date of notice;
 5. A statement that unless the nuisance is abated within ten (10) days from the date of written notice, the city may abate the nuisance and the cost of abatement shall ~~be be charged to the person responsible and may become~~ a lien against the property;
 - ~~6.~~ A statement that failure to abate a nuisance may result in court prosecution and/or the city may file charges against the owner person responsible in Troutdale municipal court; and
 - ~~67.~~ A statement that notwithstanding the city's abatement authority pursuant to Section 8.28.140 of this chapter, if the nuisance is not abated within ten (10) days from the date of the written notice, enforcement penalties for noncompliance in accordance with Section 8.28.130(B) of this chapter ~~will may~~ be imposed;
 - ~~78.~~ A statement that the owner person responsible may request a hearing to ~~contest whether a nuisance exists~~ appeal the order to abate or to contest the imposition of any enforcement penalty by writing to the manager within seven (7) days of the date of the notice.
- ~~E.~~ The notice of a nuisance that is subject to immediate abatement under Section 8.28.095 of this chapter shall contain:
- ~~1.~~ The information in subsections (D)(1) through (D)(5) of this section;

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- ~~2. A statement that the nuisance shall be abated immediately, which means as soon as possible and no later than seventy-two hours after the notice of the nuisance was affixed to the property or personally delivered or mailed to the owner;~~
- ~~3. A statement that if the nuisance is not abated within seventy-two hours of the date the notice of the violation was affixed to the property or mailed to the owner, the city may abate the nuisance in accordance with Section 8.28.140 of this chapter;~~
- ~~4. A statement that notwithstanding the city abatement authority pursuant to Section 8.28.140 of this chapter, if the nuisance is not abated within seventy-two hours, enforcement penalties for noncompliance in accordance with Section 8.28.130(B) of this chapter will be imposed;~~
- ~~5. A statement that the owner may request a hearing to contest the finding of a nuisance, provided that the hearing will occur after the nuisance has been abated. 8.28.090.~~

~~F. The notice shall be provided in accordance with Section 8.28.060 of this chapter.~~

~~(Ord. 768 § 1 Att. A (part), 2005; Ord. 678 § 1, 1999; Ord. 649 § 1 Exh. A (part), 1997; Ord. 352-O § 2 (7.30.040(C) and (D)), 1981)~~

~~(Ord. No. 797, § 1, 7-14-2009; Ord. No. 801, § 1, 1-11-2011)~~

8.28.095 Abatement—Immediate situations.

~~Nuisances that exist due to violations of Sections 8.28.070(A)(12), (A)(13), (A)(24) and (A)(25) and 8.28.075(D) of this chapter and repeat nuisance violations by the same owner within a twelve-month period shall be abated immediately, which means as soon as possible and no later than seventy-two hours after notice of the nuisance is affixed to the property or personally delivered or mailed to the owner.~~

~~(Ord. 768 § 2 Att. A (part), 2005)~~

~~(Ord. No. 797, § 1, 7-14-2009)~~

8.28.100 Abatement—Emergency situations.

A. In an emergency, the manager may order immediate abatement of a nuisance or shall proceed to summarily abate the nuisance. The manager shall give notice of the requirement for immediate abatement to the owner/person responsible.

B. The cost of summary abatement may be assessed as provided in Section 8.28.140.

C. Even when a nuisance is abated under this section, a person responsible may also be prosecuted for violating this chapter or other remedies may also be sought against a person responsible.

~~B. In an emergency, and in lieu of action under subsection A of this section, the manager may proceed with immediate abatement of the nuisance. The manager shall then immediately send written notice of abatement to the owner of the property.~~

~~(Ord. 352-O § 2 (7.30.040(E) and (F)), 1981)~~

~~(Ord. No. 797, § 1, 7-14-2009; Ord. No. 801, § 1, 1-11-2011)~~

8.28.110 Appeal and hearing procedures—General requirements.

A. Any person receiving a notice of violation under Sections 8.28.090, ~~8.28.130(B)~~ or 8.28.100 of this chapter, may request a hearing by writing the manager within seven (7) days of the date of the notice. A hearing request does not stay the requirement to immediately abate a nuisance in accordance with Sections ~~8.28.095 and~~ 8.28.100 of this chapter.

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- B. The manager shall, upon receipt of a request for a hearing, promptly notify the hearings officer who shall set a time and place for the hearing at the earliest possible time and shall promptly notify the person requesting the hearing as to the time and place for the hearing. Notice may be by any means of giving actual notice. Notice may also be given to such persons as the hearings officer may determine to be interested persons.
- C. The person requesting the hearing and the manager may make argument, submit testimony, cross-examine witnesses and submit rebuttal evidence on the pertinent issues. Any person may be represented by counsel.
- D. If requested by either party, all hearings shall be recorded in a manner which will allow for written transcription to be made and all materials submitted at the hearing shall be retained by the hearings officer for a period of two (2) years.
- E. Failure of the persons requesting the hearing to appear at the hearing shall constitute a waiver of the right to a hearing.
- F. After the hearing, the hearings officer shall issue and mail a copy of the order determining the question within fifteen (15) days from the date of the hearing, or any continuance thereof not to exceed fifteen (15) days from the date of the hearing, to the person requesting the hearing and the manager.
- G. If the hearings officer finds the nuisance to exist, the order shall set a date for abatement to be accomplished by the owner-person responsible or affirm the abatement was proper if the nuisance has already been abated.
- H. If the hearings officer determines that anything personal property removed under Section 8.28.100~~(B)~~ or 8.28.095 of this chapter no longer constitutes a nuisance or can be released upon such condition as the hearings officer may prescribe that will eliminate the nuisance, the person requesting the hearing may claim it upon paying the expense incurred in its removal and storage.
- I. If the hearings officer determines that there was a wrongful abatement under Section ~~8.28.095 or~~ 8.28.100~~(B)~~ of this chapter, the hearings officer may order the manager to make reasonable restitution.
- J. If the hearings officer determines that the basis for the appeal was unreasonable or designed only for purposes of delay, or the person requesting the hearing does not appear at the scheduled hearing, the person requesting the hearing may be assessed the costs of the hearing, including the cost of the hearings officer. Any such costs imposed by the hearings officer shall constitute a cost of abatement and collectable under Section 8.28.140 of this chapter.

(Ord. 768 § 1 Att. A (part), 2005; Ord. 678 § 2, 1999; Ord. 454-O (part), 1985; Ord. 352-O § 2 (7.30.050), 1981)

(Ord. No. 797, § 1, 7-14-2009; Ord. No. 801, § 1, 1-11-2011)

8.28.120 Appeal and hearing procedures—Review of decision.

Review of any action of the hearings officer taken under this chapter and the rules adopted under them shall be taken solely and exclusively by writ of review in the manner set forth in Oregon Revised Statutes Sections 34.010 through 34.100.

(Ord. 352-O § 2 (7.30.055), 1981)

8.28.130 Abatement by ownerperson responsible—Required.

- A. Within ten (10) days after the service of the notice of violation as provided in Section 8.28.090, or the time otherwise provided in the notice of violation, a person responsible shall remove the nuisance or show that no nuisance exists.
- B. Failure of the owner-person responsible to abate the nuisance within ~~ten days as provided by Section 8.28.090(B) of this chapter, the time indicated in the notice of violation, or within seventy-two hours as~~

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~~provided by Section 8.28.095 of this chapter~~, or within the time set by the hearings officer under Section 8.28.110 of this chapter, shall be a violation of this chapter.

BC. If a nuisance is not abated within ~~ten days of the initial written notice for abatement, as provided in Section 8.28.090 of this chapter~~ the time indicated in the notice of violation, unless a request for a hearing is made under Section 8.28.110 of this chapter ~~or if a nuisance is not abated within seventy-two hours as provided in Section 8.28.095 of this chapter~~, or if a nuisance is not abated within the time set by the hearings officer under Section 8.28.110 of this chapter, the manager ~~shall~~ may impose enforcement penalties for noncompliance in accordance with the adopted fee schedule. The manager shall provide notice of the imposition of any enforcement penalty to the ownerperson responsible. Enforcement penalties are separate from any penalties imposed under Section 8.28.200 of this chapter.

(Ord. 768 § 1 Att. A (part), 2005; Ord. 678 § 3, 1999; Ord. 678 § 3, 1999; Ord. 352-O § 2 (7.30.060), 1981)

(Ord. No. 797, § 1, 7-14-2009; Ord. No. 801, § 1, 1-11-2011)

8.28.140 Abatement by city—Assessments.

If an owner fails to abate a nuisance within the time allowed as required under this chapter, the manager may cause abatement of the nuisance and/or file charges against the owner in Troutdale municipal court or a state court with jurisdiction over this section. If the city abates the nuisance, an accurate record of the abatement costs shall be kept and shall include a surcharge of twenty-five percent (25%) of the cost of the abatement for administrative overhead. A billing for the amount of the costs, and notice that those costs may be imposed as a lien on the property should payment not be timely received, shall be forwarded by certified or registered mail, return receipt requested, to the ownerperson responsible. Payment shall be due to the city within fifteen (15) days from the date of the billing.

(Ord. 696 §2, 2000; Ord. 649 § 1 Exh. A (part), 1997; Ord. 352-O § 2 (7.30.065(A)), 1981)

(Ord. No. 797, § 1, 7-14-2009; Ord. No. 801, § 1, 1-11-2011)

8.28.150 Waiver of assessments—Conditions Abatement procedures—Joint responsibility.

If more than one person is responsible, they shall be jointly and severally liable for abating the nuisance or for the costs incurred by the city in abating the nuisance.

The cost of abating a nuisance or the cost of any enforcement penalty imposed by the manager may be waived for low income, elderly or disabled persons, if upon timely application under Section 8.28.160 of this chapter it appears to the manager that the following conditions are met:

A. ~~The owner is disabled or over sixty-five years of age, and, if single, had an income during the preceding calendar year from all sources of less than three thousand six hundred dollars, or, if the head of a family had an income during the preceding calendar year from all sources of less than five thousand four hundred dollars; and~~

B. ~~The owner is living on the property from which the nuisance is to be abated.~~

~~(Ord. 678 § 4, 1999; Ord. 352-O § 2 (7.30.065(B)), 1981)~~

~~(Ord. No. 797, § 1, 7-14-2009; Ord. No. 801, § 1, 1-11-2011)~~

8.28.160 Waiver of assessments—Application procedures.

Application for waiver of nuisance abatement costs or for waiver of enforcement penalties shall be filed with the manager, in writing, within ten (10) days from the date of notice of the amount of cost of abatement

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or within ten (10) days of the date of the notice of the imposition of the enforcement penalty. The manager may require the owner person responsible to supply additional information as present evidence that the applicant qualifies should be entitled to for a waiver. under the provisions of Section 8.28.150. An application for waiver of nuisance assessment costs or enforcement penalties must be submitted for each cost of abatement notice or each enforcement penalty notice sent to the applicant.

(Ord. 678 § 5, 1999; Ord. 352-O § 2 (7.30.065(C)), 1981)

(Ord. No. 797, § 1, 7-14-2009; Ord. No. 801, § 1, 1-11-2011)

8.28.170 Liens against property.

- A. The manager shall may file a lien against the property if payment is not made as provided in Section 8.28.140 of this chapter or waived under Section 8.28.~~150~~160 of this chapter.
- B. The lien provided for in subsection A of this section shall be given priority over all liens except those for taxes and assessments and shall include interest at the legal rate accruing from the date billing is sent to the owner of the property.
- C. The lien shall be enforced in the same manner as liens for assessments for local improvement districts. Failure to pay may result in foreclosure in any manner provided by ORS 223.505 to ORS 223.650 or otherwise provided by law. The lien provided for in subsection A of this section shall be foreclosed in the manner prescribed by state law for the enforcement of liens and collection of assessments.
- D. An error in the name of the owner shall not void the lien, nor shall a failure to receive the notice render the lien void, but it shall remain a valid lien against the property.

(Ord. 696 § 3, 2000; Ord. 352-O § 2 (7.30.065(D), (E), (F)), 1981)

(Ord. No. 797, § 1, 7-14-2009; Ord. No. 801, § 1, 1-11-2011)

8.28.180 Summary abatement.

~~The chief of police may proceed summarily to abate a nuisance which poses imminent danger to human life or property.~~

~~(Ord. 352-O § 2 (7.30.070), 1981)~~

8.28.190 Violation—Each day deemed separate offense.

- A. Violation of any provision within this chapter constitutes an offense punishable with a fine.
- B. Each day's violation of a provision of this chapter constitutes a separate offense.
- C. The abatement of a nuisance is not a penalty for violation of this chapter, but is an additional remedy. The imposition of a penalty shall not relieve a person of the duty to abate a nuisance.

(Ord. 352-O § 2 (7.30.075), 1981)

8.28.200 Violation—Penalty.

- A. Any owner or person who is convicted of a violation of this chapter shall be fined not more than one thousand dollars (\$1,000). The penalties set forth in this section are in addition to and not in lieu of civil remedies.
- B. Any person convicted two times in twelve (12) consecutive months for the same violation of this chapter shall be considered on the third offense violation a "habitual offender" and shall be fined no less than one thousand dollars (\$1,000) on the third and every subsequent conviction.

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(Ord. 729 § 1 (part), 2003; Ord. 352-O § 2 (7.30.080), 1981)

ORDINANCE NO.

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TROUTDALE, OREGON, RELATING TO NUISANCES AND AMENDING CHAPTER 8.28 OF THE TROUTDALE MUNICIPAL CODE

THE TROUTDALE CITY COUNCIL FINDS AS FOLLOWS:

1. The City Council desires to create additional efficiencies in its procedures for determining and resolving nuisance conditions on property; and
2. To create these efficiencies Council has determined that it may authorize the city manager to investigate complaints and other instances where the manager reasonably believes a nuisance may exist; and
3. Council has also determined that persons responsible for creating or maintaining a nuisance should be responsible, under the City's codes, along with the person who owns the property where the nuisance is present; and
4. Council has directed its staff to compile these and other improvements into the present Ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF TROUTDALE

Section 1. Chapter 8.28 of the City of Troutdale Municipal Code is amended to read as set forth in Attachment A, which is incorporated by reference herein.

Section 2. Severability. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable. This City Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof and intends that the invalid portions should be severed and the balance of the ordinance be enforced.

Section 3. This Ordinance takes effect thirty (30) days after passage.

**YEAS:
NAYS:
ABSTAINED:**

Doug Daoust, Mayor

Date

Debbie Stickney, City Recorder
Adopted:

Chapter 8.28 NUISANCES

8.28.010 Title.

This chapter shall be known as "The City of Troutdale Nuisance Control Ordinance," and may be so pleaded and referred to.

(Ord. 352-O § 2 (7.30.005), 1981)

8.28.020 Definitions.

As used in this chapter, unless the context requires otherwise:

"Abandoned vehicle" means any vehicle which reasonably appears to be inoperative, wrecked, discarded, displays expired vehicle registration plates or tags, has no vehicle registration plates or tags displayed, or is totally or partially dismantled.

"Manager" means the city manager or the city manager's authorized representative.

"Camp" means to live, cook, sleep, or take overnight shelter in a motorized vehicle, temporary, or non-permanent structure or location, including but not limited to a shack, lean-to, storage shed, tent, travel trailer, recreational vehicle, boat, utility trailer or vehicle of any kind.

"Council" means a common council of the city.

"Emergency" means any situation in which the city manager determines imminently endangers human life, health, or property.

"Explosive" means a chemical compound, mixture or device that is used or intended to be used for the purpose of producing a chemical reaction resulting in a substantially instantaneous release of gas and heat, including but not limited to dynamite, blasting powder, nitroglycerin, blasting caps and nitrojelly, but excluding fireworks as defined by state law, black powder, smokeless powder, small arms ammunition and small arms ammunition primers.

"Garbage" means all animal and vegetable wastes resulting from the handling, preparation, cooking or consumption of food.

"Hearings officer" means that person appointed by the council to preside at hearings held pursuant to this chapter.

"Intersection" means the area embraced within the prolongation or connection of the lateral curblines or, if none, then of the lateral boundary lines of two or more streets or highways which join one another at an angle, whether or not one street or highway crosses the other.

"Liquid waste" means waste oil, septic tank pumping, liquid industrial wastes or other similar material.

"Nuisance" means any unsafe, annoying, unpleasant or obnoxious condition or practice causing or capable of causing an unreasonable threat to the public health, safety or welfare in the circumstances, but does not include noise; provided, however, that anything defined as a nuisance in Section 8.28.070 of this chapter shall be a nuisance.

"Owner" means any person having a legal interest in real or personal property or any person in possession or control of real or personal property, and excludes any person whose interest is for security only.

"Person" means any natural person, association, trust, partnership, firm or corporation.

"Person in charge of property" means an agent, occupant, lessee, tenant, contract purchaser or other person having possession or control of the property or the supervision of a construction project on the property.

"Person responsible" means:

1. The owner or person in charge of property on which the nuisance exists or which abuts a public way where a nuisance exists; or
2. The person who causes the nuisance to come into or continue in existence.

"Personal property" means any tangible item including, but not limited to, vehicles, trailers, boats, recreational equipment, structures, carts, tables, racks, and similar items. Personal property shall not include trash or recycling containers placed in the public right-of-way for pick up.

"Right-of-way" means a public or private area that allows for the passage of people or goods. Right-of-way includes passageways such as freeways, streets, sidewalks, bike paths, alleys and walkways. A public right-of-way is a right-of-way that is dedicated or deeded to the public for public use and under the control of a public agency.

"Radioactive substance" means a substance which emits radiation in the form of gamma rays, X-rays, alpha particles, beta particles, neutrons, protons, high-speed electrons or other nuclear particles, but radiation does not include sound waves, radio waves, visible light, infrared light or ultra-violet light.

"Rodent" means a mouse or rat.

"Rubbish" means glass, metal, paper, wood, plastics or other nonputrescible solid waste.

"Sewage sludge" means residual waste of sewage treatment plants, consisting of digested organic waste and indigestible solids.

"Sidewalk" means that portion of a public right-of-way, other than the roadway, set apart by curbs, barriers, markings or other delineation for pedestrian travel.

"Solid waste" means all putrescible and nonputrescible wastes, whether in solid or liquid form, except wastes produced by the human body, liquid-carried industrial waste or sewage, or sewage hauled as an incidental part of septic tank or cesspool cleaning service, and includes garbage, rubbish, ashes, fill dirt, sewage sludge, street refuse, industrial wastes, swill, demolition and used construction materials, abandoned vehicles or parts thereof, discarded home or industrial appliances, manure, vegetable or animal solids and semisolid waste, dead animals and other discarded solid materials.

"Vector" means any insect organism, including but not limited to, fleas, lice, ticks, fly maggots and mosquito larvae, capable of bearing or carrying a disease transmittable to human beings.

"Vehicle" means any device which is designed or used for transporting people, goods or property, including but not limited to a body, engine, transmission, frame or other major parts, but does not include a device propelled by human power, such as a bicycle, or a device operated exclusively upon fixed rails or tracks.

(Ord. 768 § 1 Att. A (part), 2005; Ord. 729 § 1 (part), 2003; Ord. 696 § 1, 2000; Ord. 352-O § 2 (7.30.010), 1981)

(Ord. No. 797, § 1, 7-14-2009; Ord. No. 801, § 1, 1-11-2011)

8.28.030 Purpose.

The council has determined it necessary to establish and maintain a program for the effective control and abatement of nuisances which constitute a hazard or menace to the health, safety and welfare of the people of the city and this chapter shall be liberally construed to effectuate that purpose.

(Ord. 352-O § 2 (7.30.015), 1981)

8.28.040 Administration—Enforcement.

- A. The manager shall be responsible for the administration and enforcement of this chapter.

- B. The manager shall have authority to administer oaths, certify all official acts, issue citations, subpoena and require the attendance of witnesses and production of relevant documents at hearings before the hearing officer and take testimony of any person by deposition.

(Ord. 352-O § 2 (7.30.020), 1981)

(Ord. No. 797, § 1, 7-14-2009; Ord. No. 801, § 1, 1-11-2011)

8.28.050 Administration—Rules and regulations.

The manager may adopt rules necessary for the administration and enforcement of this chapter.

(Ord. 352-O § 2 (7.30.025), 1981)

(Ord. No. 797, § 1, 7-14-2009; Ord. No. 801, § 1, 1-11-2011)

8.28.060 Notice procedure.

- A. Courtesy notices shall be provided in writing to the person responsible. Upon receipt of the courtesy notice, the person responsible has thirty (30) days, or as otherwise provided, to abate the nuisance as indicated in the courtesy notice.
- B. If the person responsible has failed to abate the nuisance within the time provided in the courtesy notice, or in an emergency, the City shall issue a notice of violation. Notice of violation of this chapter shall be placed at the location of the violation or personally delivered or mailed to the person responsible. If mailed, the notice shall be sent by certified or registered mail, return receipt requested or signature confirmation mail.
- C. Summons, citations, and notices of city abatement, liens and penalties shall be mailed certified or registered mail, return receipt requested, or signature confirmation, or personally delivered to the person responsible.
- D. A mailed notice shall be presumed to have been received on the second mail delivery day after mailing.

(Ord. 768 § 1 Att. A (part), 2005; Ord. 711 § 1, 2001; Ord. 352-O § 2 (7.30.030), 1981)

(Ord. No. 797, § 1, 7-14-2009)

8.28.070 Specific nuisances prohibited.

- A. It is unlawful for any person to maintain or allow to exist the following things, practices or conditions on any property, including unoccupied structures, or within public road rights-of-way adjacent to that property, which shall be nuisances:
1. A pond or pool of stagnant water which emits an obnoxious odor or is a source of vector breeding or otherwise presents a threat to the public health, safety and welfare;
 2. An animal carcass not buried or destroyed within twenty-four hours after death;
 3. Accumulation, collection or storage of solid waste without prior approval of the manager, unless the person is licensed by lawful authority to operate a business specifically for those purposes;
 4. A well, septic system or cesspool that has not been safely or securely sealed or properly maintained and which may cause or has caused an injury to any person or contamination of a potable water supply;
 5. An abandoned, discarded or unattended icebox, refrigerator or other container with a compartment of more than one and one-half cubic feet capacity and a door or lid which locks or fastens automatically when closed and which cannot be easily opened from the inside;

ATTACHMENT A
to Ordinance # _____

6. Any property, whether vacant or improved building, residence, structure or accumulation of any materials which may attract or harbor vectors or rodents;
7. Any explosive or radioactive substance, unless the possession is authorized by law;
8. Any accumulation of dirt, sand, gravel, pieces or chunks of concrete or other similar inorganic material, which is unsightly and reduces the aesthetic appearance of the neighborhood;
9. An open pit, well, quarry, cistern, excavation or other hole of a depth of four feet or more and a top width of six inches or more without reasonable safeguards or barriers to prevent them from being accessible to children and domestic animals;
10. Dead or decaying trees and tree limbs that present a safety hazard to the public or to abutting property owners;
11. Any abandoned vehicle upon private or public property;
12. Any vehicle or personal property parked or stored in such a way as to obstruct the flow of traffic on a public right-of-way or the movement of pedestrians on a public sidewalk;
13. Any vehicle or personal property located on a public right-of-way, a sidewalk or on public property for more than seventy-two consecutive hours, provided that any basketball stand that does not interfere with the flow of traffic or pedestrians, or create a substantial safety hazard, may be located in the right-of-way for more than seventy-two hours;
14. Signs, hedges, shrubbery, natural growth or other obstructions at or near intersections which hinder the view necessary for the safe operation of vehicles;
15. Obstruction to public sidewalks or roadways by trees, bushes, roots, other natural growth, soil or solid waste;
16. Excavation which endangers the lateral support or causes cracking, settling or other damage to streets, sidewalks or other public property;
17. Signs placed illegally within the public right-of-way;
18. Uncontrolled or uncultivated growth of weeds, brush, poison oak, poison ivy, tansy ragwort, grasses, or blackberry vines that offer vector or rodent harborage, contribute noxious pollens to the atmosphere, constitute a fire hazard, or unreasonably interfere with the use and enjoyment of abutting public or private property, or that have grown to 14 or more inches in height. Except, uncontrolled or uncultivated growth on public land specifically for the purpose of providing native wildlife habitat shall not constitute a nuisance;
19. Vehicle storage and repair in violation of Section 8.28.075 of this chapter;
20. Maintaining an occupied travel trailer, motor home, camper, or vehicle or trailer modified for sleeping at any location other than a recreational vehicle park licensed under the provisions of the state, except as follows: vacation trailers and motor homes may be used by visitors of the residents, and shall be allowed on the residents' lot for a period of time not to exceed fourteen days in any consecutive six-month period;
21. Connection of any electric, water, sewer, gas, or telephone line from any source to a motor home, travel trailer, camper or utility trailer if any portion of such line between the connection at the termination and the point of connection at the source extends over, across, or under any public street, sidewalk, alley, or other public right-of-way or portion thereof;
22. Placement in a public right-of-way or on a public sidewalk of a newsstand, dispensing machine or any similar device intended for dispensing materials, including, but not limited to, newspapers, magazines, and advertising publications;
23. For any person to camp or sleep in or upon any public highway, street, alley, public park, parking lot, or other public place; or to camp or sleep in any barn, shed, shop, warehouse, railroad car, automobile, vessel, or place other than such as is kept for lodging purposes, without the written

permission of the owner or party entitled to possession thereof, and in no event for more than twenty-four hours, except as provided in Section 8.28.070(20) of this chapter.

B. The enumeration of nuisances in subsection A of this section shall not limit the power of the manager to investigate or declare any other condition a nuisance which is within the scope of the term "Nuisance" appearing in Section 8.28.020 of this chapter.

(Ord. 768 § 1 Att. A (part), 2005; Ord. 729 § 1 (part), 2003; Ord. 674 § 2, 1999; Ord. 649 § 1 Exh. A (part), 1997; Ord. 575-O, 1992; Ord. 454-O (part), 1985; Ord. 352-O § 2 (7.30.035), 1981)

(Ord. No. 797, § 1, 7-14-2009; Ord. No. 801, § 1, 1-11-2011; Ord. No. 818, Att. B, 4-9-2013)

8.28.075 Vehicle storage and repair.

Every person shall maintain the following things, practices or conditions on any property unless the practice or condition occurs as part of a lawfully established nonconforming use, or nonconforming development pursuant to the Troutdale Development Code.

- A. All new driveways must be constructed with concrete, asphalt or comparable hard surface, or as otherwise allowed by the Troutdale Development Code. "Driveway" means the private vehicular drive that connects an off-street parking area, garage, carport or other building used for parking or storing a vehicle with the street.
- B. Parking areas, other than driveways, must be surfaced with concrete, asphalt or not less than six inches of one inch minus or greater crushed stone. "Parking area" means any portion of the property, other than the driveway, that is used to park motorized or nonmotorized vehicles.
- C. No motor vehicle shall be parked upon any grass or exposed soil surface.
- D. Within residential neighborhoods, no commercial vehicle which exceeds eight thousand pounds gross weight, twenty-one feet in length or eight feet in height shall be parked in the street unless it is a vehicle that is routinely on standby and necessary to use under emergency circumstances. Semi-trailers are prohibited.
- E. Within residential neighborhoods, service, repair or storage of vehicles not owned and properly registered with the state of Oregon to a resident of the site is prohibited. A vehicle registered to a resident of the site may be serviced and repaired under the following conditions:
 1. The service and repair, if not conducted in a completely enclosed building, must be minor in nature. Minor service and repair includes tune-ups, replacement and servicing of oil and other fluids, and replacement and adjustment of minor parts such as tires, hoses, belts, filters, fuses, and similar items. Minor repair does not include: body and fender repair and replacement; painting; engine or transmission removal or replacement; or any work using welders, torches, or air-driven power tools; and
 2. All work not classified as minor in nature must occur inside a completely enclosed building.

(Ord. 768 § 1 Att. A (part), 2005; Ord. 749 §§ 1, 2, 2004; Ord. 729 § 1 (part), 2003; Ord. 674 § 3, 1999)

8.28.080 Routine and emergency inspections—Authority.

- A. The manager may enter any property or building at any reasonable time for the purpose of inspection or enforcing this chapter. Except when an emergency exists, the manager shall obtain the consent of the owner or a warrant from the municipal court or other court of competent jurisdiction before entering private property or a private building.
- B. As used in this section and Sections 8.28.090 and 8.28.100 of this chapter, an "emergency" exists when the manager has reasonable cause to believe that a nuisance constitutes an immediate and active danger to the public health, safety and welfare.

(Ord. 352-O § 2 (7.30.040(A) and (B)), 1981)

(Ord. No. 797, § 1, 7-14-2009; Ord. No. 801, § 1, 1-11-2011)

8.28.090 Abatement—General procedures.

- A. An investigation may be conducted whenever the manager receives a complaint or otherwise has reasonable cause to believe that a nuisance exists.
- B. Whenever the manager has reasonable cause to believe that a nuisance exists, the manager shall provide written notice to the person responsible of the existence of the nuisance pursuant to Section 8.28.060 of this chapter, provided, however, only one notice for a particular type of nuisance will be provided to the same person within a twelve-month period. Repeat nuisance violations as to a single person or property address are subject to immediate abatement in accordance with Section 8.28.095 of this chapter or city abatement in accordance with Section 8.28.140 of this chapter.
- C. Except for nuisances that are subject to emergency abatement in accordance with Section 8.28.100 of this chapter, a notice of violation shall demand abatement within ten (10) days from the date of the written notice.
- D. A notice of violation that is not subject to emergency abatement under Section 8.28.100 of this chapter shall contain:
 - 1. A description of the real property by street address or otherwise on which the nuisance exists;
 - 2. A description of the nuisance;
 - 3. The action necessary to abate the nuisance;
 - 4. A statement that the nuisance must be abated within ten (10) days from the date of notice;
 - 5. A statement that unless the nuisance is abated within ten (10) days from the date of written notice, the city may abate the nuisance and the cost of abatement shall be charged to the person responsible and may become a lien against the property;
 - 6. A statement that failure to abate a nuisance may result in court prosecution against the person responsible in Troutdale municipal court; and
 - 7. A statement that notwithstanding the city's abatement authority pursuant to Section 8.28.140 of this chapter, if the nuisance is not abated within ten (10) days from the date of the written notice, enforcement penalties for noncompliance in accordance with Section 8.28.130(B) of this chapter may be imposed.
 - 8. A statement that the person responsible may request a hearing to appeal the order to abate or to contest the imposition of any enforcement penalty by writing to the manager within seven (7) days of the date of the notice.

(Ord. 768 § 1 Att. A (part), 2005; Ord. 678 § 1, 1999; Ord. 649 § 1 Exh. A (part), 1997; Ord. 352-O § 2 (7.30.040(C) and (D)), 1981)

(Ord. No. 797, § 1, 7-14-2009; Ord. No. 801, § 1, 1-11-2011)

8.28.100 Abatement—Emergency situations.

- A. In an emergency, the manager may order immediate abatement of a nuisance or shall proceed to summarily abate the nuisance. The manager shall give notice of the requirement for immediate abatement to the person responsible.
- B. The cost of summary abatement may be assessed as provided in Section 8.28.140.
- C. Even when a nuisance is abated under this section, a person responsible may also be prosecuted for violating this chapter or other remedies may also be sought against a person responsible.

(Ord. 352-O § 2 (7.30.040(E) and (F)), 1981)

(Ord. No. 797, § 1, 7-14-2009; Ord. No. 801, § 1, 1-11-2011)

8.28.110 Appeal and hearing procedures—General requirements.

- A. Any person receiving a notice of violation under Sections 8.28.090 or 8.28.100 of this chapter may request a hearing by writing the manager within seven (7) days of the date of the notice. A hearing request does not stay the requirement to immediately abate a nuisance in accordance with Section 8.28.100 of this chapter.
- B. The manager shall, upon receipt of a request for a hearing, promptly notify the hearings officer who shall set a time and place for the hearing at the earliest possible time and shall promptly notify the person requesting the hearing as to the time and place for the hearing. Notice may be by any means of giving actual notice. Notice may also be given to such persons as the hearings officer may determine to be interested persons.
- C. The person requesting the hearing and the manager may make argument, submit testimony, cross-examine witnesses and submit rebuttal evidence on the pertinent issues. Any person may be represented by counsel.
- D. If requested by either party, all hearings shall be recorded in a manner which will allow for written transcription to be made and all materials submitted at the hearing shall be retained by the hearings officer for a period of two (2) years.
- E. Failure of the persons requesting the hearing to appear at the hearing shall constitute a waiver of the right to a hearing.
- F. After the hearing, the hearings officer shall issue and mail a copy of the order determining the question within fifteen (15) days from the date of the hearing, or any continuance thereof not to exceed fifteen (15) days from the date of the hearing, to the person requesting the hearing and the manager.
- G. If the hearings officer finds the nuisance to exist, the order shall set a date for abatement to be accomplished by the person responsible or affirm the abatement was proper if the nuisance has already been abated.
- H. If the hearings officer determines that personal property removed under Section 8.28.100 of this chapter no longer constitutes a nuisance or can be released upon such condition as the hearings officer may prescribe that will eliminate the nuisance, the person requesting the hearing may claim it upon paying the expense incurred in its removal and storage.
- I. If the hearings officer determines that there was a wrongful abatement under Section 8.28.100 of this chapter, the hearings officer may order the manager to make reasonable restitution.
- J. If the hearings officer determines that the basis for the appeal was unreasonable or designed only for purposes of delay, or the person requesting the hearing does not appear at the scheduled hearing, the person requesting the hearing may be assessed the costs of the hearing, including the cost of the hearings officer. Any such costs imposed by the hearings officer shall constitute a cost of abatement and collectable under Section 8.28.140 of this chapter.

(Ord. 768 § 1 Att. A (part), 2005; Ord. 678 § 2, 1999; Ord. 454-O (part), 1985; Ord. 352-O § 2 (7.30.050), 1981)

(Ord. No. 797, § 1, 7-14-2009; Ord. No. 801, § 1, 1-11-2011)

8.28.120 Appeal and hearing procedures—Review of decision.

Review of any action of the hearings officer taken under this chapter and the rules adopted under them shall be taken solely and exclusively by writ of review in the manner set forth in Oregon Revised Statutes Sections 34.010 through 34.100.

(Ord. 352-O § 2 (7.30.055), 1981)

8.28.130 Abatement by person responsible—Required.

- A. Within ten (10) days after the service of the notice of violation as provided in Section 8.28.090, or the time otherwise provided in the notice of violation, a person responsible shall remove the nuisance or show that no nuisance exists.
- B. Failure of the person responsible to abate the nuisance within the time indicated in the notice of violation, or within the time set by the hearings officer under Section 8.28.110 of this chapter, shall be a violation of this chapter.
- C. If a nuisance is not abated within the time indicated in the notice of violation, unless a request for a hearing is made under Section 8.28.110 of this chapter or if a nuisance is not abated within the time set by the hearings officer under Section 8.28.110 of this chapter, the manager may impose enforcement penalties for noncompliance in accordance with the adopted fee schedule. The manager shall provide notice of the imposition of any enforcement penalty to the person responsible. Enforcement penalties are separate from any penalties imposed under Section 8.28.200 of this chapter.

(Ord. 768 § 1 Att. A (part), 2005; Ord. 678 § 3, 1999; Ord. 678 § 3, 1999; Ord. 352-O § 2 (7.30.060), 1981)

(Ord. No. 797, § 1, 7-14-2009; Ord. No. 801, § 1, 1-11-2011)

8.28.140 Abatement by city—Assessments.

If an owner fails to abate a nuisance within the time allowed as required under this chapter, the manager may cause abatement of the nuisance and/or file charges against the owner in Troutdale municipal court or a state court with jurisdiction over this section. If the city abates the nuisance, an accurate record of the abatement costs shall be kept and shall include a surcharge of twenty-five percent (25%) of the cost of the abatement for administrative overhead. A billing for the amount of the costs, and notice that those costs may be imposed as a lien on the property should payment not be timely received, shall be forwarded by certified or registered mail, return receipt requested, to the person responsible. Payment shall be due to the city within fifteen (15) days from the date of the billing.

(Ord. 696 §2, 2000; Ord. 649 § 1 Exh. A (part), 1997; Ord. 352-O § 2 (7.30.065(A)), 1981)

(Ord. No. 797, § 1, 7-14-2009; Ord. No. 801, § 1, 1-11-2011)

8.28.150 Abatement procedures—Joint responsibility.

If more than one person is responsible, they shall be jointly and severally liable for abating the nuisance or for the costs incurred by the city in abating the nuisance.

8.28.160 Waiver of assessments—Application procedures.

Application for waiver of nuisance abatement costs or for waiver of enforcement penalties shall be filed with the manager, in writing, within ten (10) days from the date of notice of the amount of cost of abatement or within ten (10) days of the date of the notice of the imposition of the enforcement penalty. The manager may require the person responsible to present evidence that the applicant should be entitled to a waiver. An application for waiver of nuisance assessment costs or enforcement penalties must be submitted for each cost of abatement notice or each enforcement penalty notice sent to the applicant.

(Ord. 678 § 5, 1999; Ord. 352-O § 2 (7.30.065(C)), 1981)

(Ord. No. 797, § 1, 7-14-2009; Ord. No. 801, § 1, 1-11-2011)

8.28.170 Liens against property.

- A. The manager may file a lien against the property if payment is not made as provided in Section 8.28.140 of this chapter or waived under Section 8.28.160 of this chapter.
- B. The lien provided for in subsection A of this section shall be given priority over all liens except those for taxes and assessments and shall include interest at the legal rate accruing from the date billing is sent to the owner of the property.
- C. The lien shall be enforced in the same manner as liens for assessments for local improvement districts. Failure to pay may result in foreclosure in any manner provided by ORS 223.505 to ORS 223.650 or otherwise provided by law.
- D. An error in the name of the owner shall not void the lien, nor shall a failure to receive the notice render the lien void, but it shall remain a valid lien against the property.
(Ord. 696 § 3, 2000; Ord. 352-O § 2 (7.30.065(D), (E), (F)), 1981)
(Ord. No. 797, § 1, 7-14-2009; Ord. No. 801, § 1, 1-11-2011)

8.28.190 Violation—Each day deemed separate offense.

- A. Violation of any provision within this chapter constitutes an offense punishable with a fine.
- B. Each day's violation of a provision of this chapter constitutes a separate offense.
- C. The abatement of a nuisance is not a penalty for violation of this chapter, but is an additional remedy. The imposition of a penalty shall not relieve a person of the duty to abate a nuisance.
(Ord. 352-O § 2 (7.30.075), 1981)

8.28.200 Penalty.

- A. Any owner or person who is convicted of a violation of this chapter shall be fined not more than one thousand dollars (\$1,000). The penalties set forth in this section are in addition to and not in lieu of civil remedies.
- B. Any person convicted two times in twelve (12) consecutive months for the same violation of this chapter shall be considered on the third offense a "habitual offender" and shall be fined no less than one thousand dollars (\$1,000) on the third and every subsequent conviction.
(Ord. 729 § 1 (part), 2003; Ord. 352-O § 2 (7.30.080), 1981)



CITY OF TROUTDALE



STAFF REPORT

SUBJECT / ISSUE: A Resolution granting a non-exclusive franchise to Portland General Electric

MEETING TYPE:
City Council Regular Mtg.

MEETING DATE: September 9, 2014

STAFF MEMBER: Steve Gaschler
DEPARTMENT: Public Works

ACTION REQUIRED
Resolution

ADVISORY COMMITTEE/COMMISSION RECOMMENDATION:
Not Applicable

PUBLIC HEARING
No

Comments:

STAFF RECOMMENDATION: Adopt Resolution

EXHIBITS: None

Subject / Issue Relates To:

- Council Goals Legislative Other (describe)

ISSUE / COUNCIL DECISION & DISCUSSION POINTS:

The major provisions of the proposed franchise are follows:

- A. Duration: The duration of the franchise is ten years retroactive to January 1, 2014
- B. Compensation: The franchise fee remains 3.5% of PGE's gross revenue in Troutdale, plus a 1.5% privilege tax for undergrounding overhead electrical lines
- C. Undergrounding: All new lines in developments must be placed underground
- D. Work Hours: Except for emergencies work cannot occur before 8:00 a.m. or after 8:00 p.m. on weekdays nor at any time on Saturdays, Sundays or holidays without the City's consent
- E. City Permits: If PGE or its contractor fails to obtain a required City permit, PGE may be charged a fee of \$500

Reviewed and Approved by City Manager: 

- F. Restoration of Right of Way: PGE must restore the right of way to its previous condition upon completion of work. If it fails to do so after a fifteen day (15) written notice the City can have the restoration made and require PGE to reimburse the City for those costs.
- G. Insurance: PGE shall maintain general liability and property damage insurance that protects Applicant and the City, as well as the City's officers, agents, and employees, from the claims referred to in Section 7.2. The insurance shall provide coverage at all times of not less than \$2 million for personal injury to each person, \$3 million in the aggregate for each occurrence, and \$3 million for each occurrence involving property damages, plus costs of defense; or a single limit policy of not less than \$3 million covering all claims per occurrence, plus costs of defense.
- H. Indemnification: To the fullest extent permitted by law, Applicant shall indemnify and hold harmless the City against any and all claims, damages, costs and expenses, including attorney's fees and costs, to which the City may be subjected as a result of any negligent or willful misconduct of Applicant, or its affiliates, officers, employees, agents, contractors or subcontractors, arising out of the rights and privileges granted by this Franchise. The obligations imposed by this Section are intended to survive termination of this Franchise

BACKGROUND:

Ordinance No. 693 requires anyone installing facilities within a City right of way to obtain a franchise authorizing such use of the right of way. For many years Portland General Electric (PGE) has had its facilities within our right of way, has had a franchise agreement with the City and has paid the City a franchise fee. The most recent franchise agreement approved by the City Council via Resolution No. 1771 expired December 31, 2013. City staff has made some minor changes to the language of the previous agreement all at the advice of legal Counsel.

Current Year Budget Impacts Yes \$435,000 franchise fee revenue to General Fund and \$181,000 privilege tax to Underground Fund N/A

Future Fiscal Impacts: Yes (describe) The City will receive franchise fees and privilege tax fees for the 10 year term of the agreement N/A

City Attorney Approved Resolution **X** Yes

Community Involvement Process: Yes (describe) N/A

RESOLUTION NO.

A RESOLUTION GRANTING A NON-EXCLUSIVE FRANCHISE TO PORTLAND GENERAL ELECTRIC

THE TROUTDALE CITY COUNCIL FINDS AS FOLLOWS:

1. The City of Troutdale ("City") is authorized to grant non-exclusive franchises to companies desiring to occupy public Rights-of-Way within the City boundaries.
2. Portland General Electric ("Applicant"), an Oregon Corporation, owns, maintains, and operates, in accordance with regulations promulgated by the Federal Communications Commission, Public Utility Commission, or other appropriate agency, an electric light and power system and desires to install, operate, and maintain its Equipment in Rights-of-Way in the City of Troutdale.
3. Ordinance No. 693 requires anyone installing facilities in, on or over the Rights-of-Way in the City to first obtain a franchise authorizing use of the Rights-of-Way.
4. The City of Troutdale agrees to grant a franchise to Applicant under the terms and conditions provided in this resolution.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TROUTDALE

Section 1. Definitions. The following definitions shall apply generally to the provisions of this Franchise:

- 1.1 **Applicant.** "Applicant" means Portland General Electric, a corporation duly organized and existing under the laws of the State of Oregon, and its lawful successors, assigns, and transferees, as approved by the City under Section 12 of this Franchise.
- 1.2 **City.** "City" means the City of Troutdale, an Oregon municipal corporation, and all of the territory within its corporate boundaries, as may change from time to time.
- 1.3 **City Facilities.** "City Facilities" means City-owned street light poles, lighting fixtures, electroliers, pipes, cable, wire, conduit, or other City-owned structures or equipment located within the Right-of-Way.
- 1.4 **Existing Structures.** "Existing Structures" means light poles, utility poles, pipes, cable, wire, conduit, vaults, ducts, fiber or similar equipment that is not owned or operated by the City and that is lawfully placed in the Right-of-Way.

- 1.5 **Equipment.** "Equipment" means any tangible component, whether referred to singly or collectively, installed, maintained, or operated by Applicant for the provision of Services.
- 1.6 **Franchise.** "Franchise" means this franchise agreement as approved by the Troutdale City Council and accepted by Applicant, according to the terms in Section 14.7 of this Franchise.
- 1.7 **Gross Revenues.** "Gross Revenues" means all revenues derived by Applicant within the City from Applicant's Equipment, including, but not limited to, the sale of electricity and electric services and the use, rental or lease of any of Applicant's Equipment by third parties, minus any uncollectible revenue (i.e. bad debts) from subscribers with billing addresses in the City that was previously included in Gross Revenues. Gross Revenues do not include proceeds from the sale of bonds, mortgages or other evidence of indebtedness, securities or stocks, or sales at wholesale by Applicant to another utility when the utility purchasing such electricity and electric services is not the ultimate consumer. Gross Revenues also do not include revenue from joint pole use. For purposes of this subsection, revenue from joint pole use includes any revenue collected by Applicant from other franchisees, permittees or licensees of the City for the right to attach wires, cable or other facilities or equipment to Applicant's poles or place them in Applicant's conduits.
- 1.8 **Person.** "Person" means any individual, sole proprietorship, partnership, corporation, association or other organization authorized to do business in the State of Oregon, and includes any natural person.
- 1.9 **Right-of-Way.** "Right-of-Way" means the space in, upon, above, along, across, over or under the public streets, roads, highways, lanes, courts, ways, alleys, boulevards, sidewalks, bicycle lanes, and places used or intended to be used by the general public for travel as the same now or may hereafter exist, that the City has the right to allow Applicant to use.
- 1.10 **Services.** "Services" means the electric light and power services provided by Applicant.

Section 2. Nature and Term of Grant.

- 2.1 **Grant of Franchise.** Subject to the terms and conditions in this Franchise, the City hereby grants Applicant a franchise to install, operate, maintain, remove, reinstall, relocate, and replace, at Applicant's sole cost and expense, Equipment within the Right-of-Way, including on Existing Structures or City Facilities in the Right-of-Way. Before Applicant installs Equipment on Existing Structures in the Right-of-Way, Applicant shall obtain permission from the owner of the Existing Structure. The grant of authority authorizes Applicant to use the Right-of-Way for Services. This Franchise does not authorize Applicant to install or use facilities in the Right-of-Way for anything other than the Services as defined in Paragraph 1.10. To the extent Applicant's Services

change, the City may amend this Franchise. This Franchise does not authorize Applicant to operate a cable system or provide video programming services. This Franchise does not authorize Applicant to install Equipment on or in City Facilities unless Applicant enters into a separate written agreement with the City that authorizes such installations. All of Applicant's Existing Structures are covered by this Franchise. The City may require relocation in accordance with Section 4.7.

- 2.2 **Duration.** The term of this Franchise, and all rights and obligations pertaining thereto, shall be from January 1, 2014 to December 31, 2023, unless terminated sooner as provided herein.
- 2.3 **Non-Exclusive.** This Franchise is not exclusive. The City expressly reserves the right to grant franchises or rights to other Persons, as well as the City's right to use the Right-of-Way for similar or different purposes, as allowed hereunder. This Franchise is subject to all deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims of title of record that may affect the Right-of-Way. Nothing in this Franchise shall be deemed to grant, convey, create, or vest in Applicant a real property interest in land, including any fee, leasehold interest, or easement.
- 2.4 **Reservation of City Rights.**

A. Nothing in this Franchise shall be construed to prevent the City from constructing sewers, grading, paving, repairing and/or altering any Right-of-Way, laying down, repairing or removing water mains or constructing or establishing any other public work, utility or improvement, including repairs, replacement or removal of City Facilities, or performing any other activity within its authority. All work shall be done, insofar as practicable, so as to not obstruct, injure or prevent the unrestricted use and operation of Applicant's Services under this Franchise, and each party shall be responsible to the other for costs to repair any damage to the other's equipment or property that results from the acts or omissions of the damaging party, its employees, contractors or agents. However, if any of Applicant's Services interfere with the construction or repair of any Right-of-Way, public work, pre-existing franchised utility facilities or improvement, or City Facility, Applicant's Equipment shall be removed or replaced in the manner the City shall direct subject to the National Electrical Safety Code. Any and all removal or replacement shall be at Applicant's sole expense. Should Applicant fail to remove, adjust or relocate its Equipment by the date established by the City, the City may cause and/or effect such removal, adjustment or relocation by a qualified contractor in accordance with applicable state and federal safety laws and regulations, Applicant's

construction standards as provided to the OPUC, and NESC requirements, and the expense thereof shall be paid by Applicant, including all costs and expenses incurred by the City due to Applicant's delay.

B. The City shall not be liable for any consequential damages or losses resulting from any damage to or loss of any facility as a result of or in connection with any work by or for the City unless the damage or loss is the direct and proximate result of willful, intentionally tortuous, negligent, or malicious acts or omissions by the City, its employees, or agents. In such case, the City shall indemnify and hold harmless Applicant against any and all claims, damages, costs and expenses, including attorney fees and costs, arising from, subject to any applicable limitations in the Oregon Constitution and the Oregon Tort Claims Act. The obligations imposed by this Section are intended to survive termination of this Franchise.

Section 3. Compensation.

- 3.1 **Franchise Fee Amount.** As compensation for the benefits and privileges granted under this Franchise, and for Applicant's entry upon and deployment within the Right-of-Way, Applicant shall pay to the City an amount equal to three and one-half percent (3.5%) of Applicant's Gross Revenues (the "Franchise Fee"). To the extent permissible under state law and regulation, the Franchise Fee shall be considered an operating expense of Applicant and shall not be itemized or billed separately to consumers within the City.
- 3.2 **Due Date.** The Franchise Fee shall be paid annually and shall be due for each calendar year or fraction thereof, on or before the first day of April. Because annual payments are paid on or before the first day of April of the calendar year for which they are due, the payment shall be based on the gross receipts from the previous year's Gross Revenues. Within thirty (30) days after the termination of this Franchise, the Franchise Fee shall be paid for the period elapsing since the end of the last calendar year for which compensation has been paid. Interest on late payments shall accrue from the due date at a rate equal to the prime rate of interest as established by the Bank of America or its successor, and shall be computed based on the actual number of days elapsed from the due date until payment. Interest shall accrue without regard to whether the City has provided notice of delinquency. However, should payment be insufficient due to an error in computation, interest payments shall not begin to accrue until after the discovery of the error by Applicant or receipt by Applicant of notice of the error.
- 3.3 **Report.** Applicant shall furnish to the City with each payment of compensation required by this section a statement, in a form acceptable to

the City, executed by an authorized officer of Applicant or the officer's authorized designee, showing the amount of Gross Revenues for the period covered by the payment. Applicant may identify information submitted to the City as confidential by prominently marking any such information with the mark "Confidential." The City shall treat any such information as confidential to the fullest extent allowed by law. Applicant understands and accepts the City's obligation pursuant to the Oregon Public Record Law.

- 3.4 **Acceptance of Payment and Recomputation.** If Applicant discovers any error in the correct amount of compensation due, the City shall be paid within thirty (30) days of discovery of the error or determination of the correct amount. Any overpayment to the City through a confirmed error shall be refunded or offset against the next payment. Acceptance by the City of any payment due under this section shall not be deemed accord that the amount paid is the correct amount, nor shall any acceptance of payments be construed as a release of any claim the City may have for additional funds or as a waiver by the City of any breach of this Franchise.
- 3.5 **Audit.** The City may audit Applicant at any time while this agreement is in effect to determine the accuracy of the reporting of Gross Revenues. Applicant shall make all records available to the City and any auditor retained by the City on demand.
- 3.6 **Volumetric Fee.** The City may, consistent with state law, direct that in lieu of the Franchise Fee payable under Section 3.1 Applicant shall pay to the City a Franchise Fee based on volumetric methodologies as set forth in ORS 221.655. Notice by the City to Applicant to implement the volumetric methodology for purposes of calculating and paying the Franchise Fee to the City shall only be effective if provided by the City to the Applicant in writing not later than October 30th of any calendar year for implementation beginning on January 1st of the following year. Upon such notice, Applicant shall pay the volumetric fee for the entire calendar year (based on January 1 to December 31 electricity consumption by Applicant's customers within the City). The City shall provide the same manner of notice to Applicant if the City thereafter elects to return to the Gross Revenues methodology set for in Section 3.1. No notice to Applicant is necessary if the City otherwise relies on the Gross Revenues methodology of Section 3.1 on and after the effective date of this Franchise.
- 3.7 **Privilege Tax.** The City shall retain the right, as permitted by Oregon Law, to charge a privilege tax in addition to the Franchise Fee set forth herein. Applicant agrees to pay the City's Public Utilities Privilege Tax in accordance with Chapter 3.20 of the Troutdale Municipal Code so long as the combined Franchise Fee and privilege tax does not exceed the maximum limit set by ORS 221.450 for utilities operating without a

franchise. The privilege tax is passed through to customers within the City and is separately stated on the regular billings, pursuant to the regulations of the Oregon Public Utility Commission.

- 3.8 **Automatic Increase.** If Applicant agrees to pay a franchise fee or privilege tax to any other jurisdiction in Oregon that in combination is higher than five percent (5%), Applicant shall notify the City and the City shall have the right to require and shall receive the higher amount.
- 3.8 **Obligation to Pay Survives Franchise.** If this Franchise expires before the parties finish negotiating a new agreement, Applicant's payment obligations created by this Section 3 will survive expiration of this Franchise. If this Franchise is terminated before expiration, Applicant will make remaining payments owed, if any, within ninety (90) days of the termination date.

Section 4. Construction, Installation and Relocation.

- 4.1 **Construction and Installation.** Subject to applicable City regulations, Applicant may enter upon the Right-of-Way to perform all work that is necessary to install, operate, maintain, remove, reinstall, relocate, and replace Equipment in or on Existing Structures within the Right-of-Way, in or on City Facilities, provided the City has authorized the installation on a City Facility in a separate written agreement, as required under Section 2.1, or under the surface of the Right-of-Way. Applicant shall be responsible for all construction, installation, and maintenance that is performed, regardless of who performs the work.
- 4.2 **No Interference.** Applicant, in the performance and exercise of its rights and obligations under this Franchise, shall not interfere in any manner with the existence and operation of any Rights-of-Way, sanitary sewers, water mains, storm drains, gas mains, poles, aerial and underground electrical and telephone wires, electroliners, cable television, and other telecommunications, utility, communication system or municipal property, without the express written approval of the owner or owners of the affected property or properties.
- 4.3 **Prohibitions.** Chapter 12.11 of the Troutdale Municipal Code requires all new utility lines to be placed below ground. Therefore, Applicant is prohibited from installing any new overhead utility lines unless they are temporary and necessary to maintain electric service, or they are approved in advance by the City Public Works Director. In no event shall lines with increased capacity placed on existing overhead facilities in the same location as existing lines be considered "new overhead utility lines" for purposes of this Section 4.3. Additionally, except for emergencies, Applicant shall only perform work in the Right-of-Way in accordance with Chapter 12.12.050.D of the Troutdale Municipal Code unless different hours are approved in advance by the City Public Works Director. The City may further designate non-work

periods to accommodate community needs as long as such designation does not endanger the safety of the public or Applicant's workers, or apply in emergency situations.

- 4.4 **Compliance With Laws.** Applicant shall comply with all applicable federal and state laws and City ordinances, resolutions, rules and regulations in the exercise and performance of its rights and obligations under this Franchise.
- 4.5 **Obtaining Required Permits.** If the excavation, installation, operation, maintenance, removal, reinstallation, relocation or replacement of the Equipment in the Right-of-Way requires any permits, Applicant shall obtain the permits and pay any required permit fees. Applicant shall supply such information for its permits as required by the City Public Works Director. The City shall promptly respond to Applicant's requests for permits and shall otherwise cooperate with Applicant in facilitating the deployment of Equipment in the Right-of-Way in a reasonable and timely manner. In the event of an emergency situation where repairs to or relocation of Applicant's Equipment and/or Existing Structures are necessary, Applicant shall as soon as reasonably possible notify the City of the need for such repairs. If permits are required by City, Applicant shall apply for appropriate permits as soon as reasonably possible following discovery of the emergency situation, but no later than five (5) business days following the discovery. If the Applicant, or the Applicant's contractor, subcontractor or agent, fails to obtain a permit in accordance with this Section, the Applicant shall pay the City a \$500 fee for non-compliance and shall obtain the permit within 15 days of being notified of the failure to obtain the permit.
- 4.6 **Maps.** Applicant shall maintain maps and data pertaining to the location of Applicant's Facilities on file at its corporate offices or at an office in Oregon. After providing Applicant with twenty-four (24) hours prior notice, the City may inspect the maps (excluding Applicant's proprietary information) at any time during Applicant's business hours. Upon request of the City and without charge, Applicant shall furnish current maps to the City by electronic data in read-only format showing the general location of Applicant's Facilities, excluding Applicant's proprietary information. Unless required by law, the City will not sell or provide Applicant's prepared maps or data to third parties without written permission from Applicant. Upon request of Applicant, the City will make available to Applicant any relevant City prepared maps or data at no charge to Applicant.
- 4.7 **Relocation.**
- A. **Permanent Relocation - General.** In accordance with ORS 221.420, City may by written order require Applicant to move any facility in the Right-of-Way. If the relocation is the result of a public project, Applicant shall be responsible for the costs of relocation. If the relocation is required to accommodate a private party development or

project, Applicant shall have the right to seek reimbursement from the private party. In such event the City shall not be responsible for the costs of relocation of any of Applicant's facilities.

- B. **Permanent Relocation - Undergrounding.** As permitted by law, the City may require Applicant to remove any overhead facilities and replace those facilities within underground facilities at the same or different locations subject to Applicant's engineering and safety standards. The expense of such a conversion shall be paid by Applicant, and Applicant shall recover its costs from its customers in accordance with state law. Nothing in this paragraph prevents the City and Applicant from agreeing to a different form of cost recovery on a case-by-case basis.
- C. **Temporary Relocation at Request of Third Parties.** Whenever it is necessary to temporarily relocate or rearrange any facility of Applicant to permit the passage of any building, machinery or other object, Applicant shall perform the work on 30 days' written notice from the persons desiring to move the building, machinery or other object. The notice shall: (1) bear the approval of the City Public Works Director; (2) detail the route of movement of the building, machinery or other object; (3) provide that the person requesting the temporary relocation shall be responsible for Applicant's costs; (4) provide that the requestor shall indemnify and hold harmless the City and Applicant from any and all damages or claims resulting either from the moving of the building, machinery or other object or from the temporary relocation of Applicant's facilities; and (5) be accompanied by a cash deposit or other security acceptable to Applicant for the costs of relocation. Applicant in its sole discretion may waive the security. The cash deposit or other security shall be in an amount reasonably calculated by Applicant to cover Applicant's costs of temporary relocation and restoration.
- D. **Temporary Relocation at Request of City.** In accordance with ORS 221.420, the City may require Applicant to remove and relocate transmission and distribution facilities maintained by Applicant in any public Rights-of-Way, property, or place of the City by giving notice to Applicant. Prior to such relocation the City agrees to provide a suitable location which includes a minimum or maximum square footage set by Applicant and the required easements from private property owners for such relocated facilities sufficient to maintain service. The cost of removal or relocation of its facilities for public projects shall be paid by Applicant; however when relocation is to be temporary and both the initial and subsequent relocations are for public projects and not at the request of or to accommodate a private party, the initial relocation shall be at the expense of the Applicant and subsequent relocations occurring less than two (2) years after the initial relocation shall be at the expense of the City. In the event

that any relocation is requested by or is to accommodate a private party, Applicant shall seek reimbursement from the private party and not from the City. The City and Applicant agree to cooperate to minimize the economic impact of such temporary relocation on each party.

4.8 **Damage to Right-of-Way.** Whenever the installation, operation maintenance, removal, reinstallation, replacement or relocation of Equipment damages or disturbs the Right-of-Way, Applicant, at its sole cost and expense, shall promptly repair and return the Right-of-Way to the condition it was in before it was damaged or disturbed, as approved by the Public Works Director; provided, however, Applicant shall not be required, at Applicant's expense, to pave a gravel street that was gravel prior to Applicant's work, install sidewalk panels or curbs that did not exist prior to the work, or construct additional improvements in the Public Right-of-Way that did not exist prior to the work. If Applicant does not repair the Right-of-Way as just described, then the City may, upon fifteen (15) days' prior written notice to Applicant, repair the Right-of-Way at Applicant's sole expense. Upon the receipt of a demand for payment from the City, Applicant shall promptly reimburse the City for all reasonable costs the City incurred to repair the Right-of-Way to the standard required by this Section 4.8.

4.9 **Use by City.** The City may install, maintain, and replace wires and other equipment for municipal purposes on or in any of Applicant's Existing Structures within the Right-of-Way and may install pipes or conduit, in any openings created by Applicant, provided that: a) space therein or thereon is reasonably available; b) the City does so in compliance with all applicable state and federal safety rules, including but not limited to the NESC and OSHA regulations; c) the City's excess capacity on such wires and equipment is not leased to, sold to or otherwise used by non-governmental third parties; and d) the City holds Applicant entirely harmless from all claims, costs, damages and expenses which arise out of (i) the City's installation, operation, maintenance and repair of such wires, equipment, pipes and conduit and (ii) the presence of the City's wires and equipment on or in Applicant's Existing Structures, except to the extent such claims, costs, damages or expense is caused by the negligence or willful misconduct of Applicant. There shall be no charge to the City for such use of Applicant's Existing Structures or openings but the City agrees to submit permit requests to Applicant for engineering purposes and the City shall be responsible to pay for any make-ready and inspections Applicant must perform in order to provide access to Applicant's Existing Structures for City wires and equipment in accordance with the NESC. Should any of the City's attachments to Applicant's Existing Structures violate the NESC, the City shall work with Applicant to address and correct such violations in an agreed-upon period of time. For purposes of this Franchise, "make-ready" shall mean engineering or construction activities necessary to make

a pole, conduit, or other support equipment available for a new attachment, attachment modifications, or additional facilities.

- 4.10 **Safety.** Applicant shall insure that all work performed in the Right-of-Way is performed in a manner that ensures safety of workers and the public. As a minimum, Applicant shall provide signs, signals, and flaggers as necessary to control traffic.
- 4.11 **Use by Others.** Applicant agrees to make its conduits and ducts available to any other Person which may at the time have authority from the City to construct or maintain conduits or ducts in the Right-of-Way in a written agreement on terms and conditions that are consistent with the OPUC regulations, the NESC and sound engineering practices.

Section 5. Maintenance. Applicant shall install and maintain all Equipment in a manner that prevents injury to the Right-of-Way, the City's property or the property belonging to another Person within the City. Applicant shall, at its own expense, repair, renew, change, and improve Equipment from time to time as may be necessary to accomplish this purpose, subject to OPUC regulations, the NESC and sound engineering principles.

Section 6. Vacation. If the City vacates any Right-of-Way, or portion thereof, that Applicant uses, unless the City specifically reserves to Applicant the right to continue its installation in the vacated Right-of-Way, or Applicant secures such right from the third party that will have title to the area in which Applicant has its Equipment, Applicant shall remove its Equipment from the Right-of-Way at its own expense. If Applicant fails to remove its Equipment following ninety (90) days written notice from the City to do so, the City may remove the Equipment at Applicant's sole expense. Upon receipt of a demand for payment from the City, Applicant shall promptly reimburse the City for any reasonable costs the City incurred to remove the Equipment.

Section 7. General Financial, Liability and Insurance Provisions.

7.1 Insurance

- A. Applicant shall maintain general liability and property damage insurance that protects Applicant and the City, as well as the City's officers, agents, and employees, from the claims referred to in Section 7.2. Such coverage shall contain Completed Operations and Contractors Liability coverage. The insurance shall provide coverage at all times of not less than \$2 million for personal injury to each person, \$3 million in the aggregate for each occurrence, and \$3 million for each occurrence involving property damages, plus costs of defense; or a single limit policy of not less than \$3 million covering all claims per occurrence, plus costs of defense. The limits of the insurance shall be subject to statutory changes as to maximum limits of liability imposed on municipalities of the State of Oregon during the term of this Franchise. Applicant may self-insure all or part of its obligations under this Section 7.1

- B. Applicant shall maintain workers' compensation coverage as required by law, as well as employer's liability insurance with limits of \$1 million.
- C. Applicant shall maintain business automobile liability insurance to cover any vehicles used in connection with its activities under this Franchise, with a combined single limit not less than \$1 million per accident.
- D. Applicant shall maintain on file with the City a certificate of insurance or self-insurance certifying the coverage required above. The certificate of insurance or self-insurance shall be reviewed and approved as to form by the City Attorney. Applicant shall name the City as an additional insured on all applicable policies except for workers' compensation, employer's liability coverage, and policies which Applicant self-insures.

7.2 **Indemnification.** To the fullest extent permitted by law, Applicant shall indemnify and hold harmless the City against any and all claims, damages, costs and expenses, including attorney's fees and costs, to which the City may be subjected as a result of any negligent or willful misconduct of Applicant, or its affiliates, officers, employees, agents, contractors or subcontractors, arising out of the rights and privileges granted by this Franchise. The obligations imposed by this Section are intended to survive termination of this Franchise.

Section 8. Vegetation. Applicant shall prune or cause to be pruned any vegetation, including but not limited to tree limbs and roots, that protrudes into the Right-of-Way and contacts, or is likely to interfere with, Applicant's Equipment in accordance with the ANSI A300 pruning standards. Applicant shall reimburse the City for any costs City incurs, including but not limited to costs or damages associated with third party claims, when the costs or damages incurred by the City are caused by or directly attributable to the Applicant's failure to prune vegetation in accordance with the ANSI A300 pruning standards.

Section 9. Discontinued Use. Whenever Applicant discontinues use of any Equipment and does not intend to use the Equipment in the future to provide Services, Applicant shall remove the Equipment from the Right-of-Way unless the City agrees, in writing, that the Equipment may remain in the Right-of-Way and the Applicant conveys title or ownership of the Equipment to the City. If Applicant fails to remove Equipment that is no longer going to be used, the City may remove the Equipment at Applicant's sole expense using a qualified contractor in accordance with applicable state and federal regulations, Applicant's construction standards as provided to the OPUC and NESC requirements. Upon receipt of a demand for payment from the City, Applicant shall promptly pay the City for all reasonable costs the City incurred to remove the Equipment.

Section 10. Notices.

10.1 **Manner.** All notices that shall or may be given pursuant to this Franchise shall be in writing and delivered personally or transmitted (a) through the United States mail, by registered or certified mail, postage prepaid; (b) by means of prepaid overnight delivery service; or (c) by facsimile or e-mail transmission, if a hard copy of the same is followed by delivery through the United States mail or by overnight delivery service as just described and there is written confirmation of the facsimile or e-mail, addressed as follows:

If to the City: City of Troutdale
 342 W 4th Street
 Troutdale, Oregon 97060
 Attention: City Public Works Director

If to Applicant: Portland General Electric
 121 SW Salmon Street
 Portland, OR 97204
 Attention: Government Affairs

10.2 **Date of Notices; Changing Notice Address.** Notices shall be deemed effective upon receipt in the case of personal delivery, three (3) days after deposit in the mail, or one business day after in the case of facsimile, e-mail, or overnight delivery. Either party may from time to time designate other addresses for providing notice, if the change of address is provided in writing and delivered in the manner set forth above.

Section 11. Termination and Remedies.

11.1 **Termination.** In addition to any other rights set out elsewhere in this Franchise, the City reserves the right to terminate the Franchise, and all of Applicant's rights arising thereunder, in the following circumstances: a) Applicant has been judged to have committed fraud or deceit upon the City in a court of applicable jurisdiction; b) Applicant is unable to pay its debts when due or is declared bankrupt; c) Applicant fails to pay the Franchise Fee in accordance with the terms of this Agreement; d) Applicant fails to provide information regarding its calculation of the Franchise Fee in a timely manner upon request by the City; or e) Applicant commits a material breach of Section 4, 5 or 7 of this Franchise. Notwithstanding the foregoing, it shall not be a circumstance justifying termination under this Section 11.1 if Applicant fails to pay the full amount of the Franchise Fee owed due to an error in calculation, or a bona fide dispute exists between the parties concerning circumstance c), d) or e), above.

11.2 **Notice and Opportunity to Cure.** The City shall give Applicant thirty (30) days' prior written notice of its intent to exercise its rights under this section, stating the reasons for such action. If Applicant cures the stated reason

within the thirty (30) day notice period, or if Applicant initiates efforts to remedy the stated reason and, to the City's satisfaction, the efforts continue in good faith, the City shall not exercise its remedy rights under this section. If Applicant fails to cure the stated reason within the thirty (30) day notice period, or if Applicant does not undertake and/or maintain efforts to remedy the stated reason to the City's satisfaction, then the City may impose any or all remedies available under this section. In no event shall the City exercise its rights under this section if a bona fide, good-faith dispute exists between the City and Applicant.

11.3 Additional Remedies. In addition to any rights set out elsewhere in this Franchise, as well as its rights under the City Code, the City reserves the right at its sole option to apply any of the following, alone or in combination:

- A. Impose a financial penalty of up to \$1,000.00 per material Franchise violation; or,
- B. Revoke this Franchise in the event that any provision becomes invalid or unenforceable and the City expressly finds that such provision constituted a consideration material to the grant of the Franchise.

11.4 Termination for City Provision of Service. The City may terminate this agreement upon one year's written notice to Applicant in the event that the City decides to engage in public ownership of light and power facilities and the public distribution of electric energy to customers throughout the City.

11.5 Electing Remedies. In determining which remedy or remedies are appropriate, the City shall consider the nature of the violation, the person or persons burdened by the violation, the nature of the remedy required in order to prevent further violation and any other matters the City deems appropriate.

Section 12. Assignment. This Franchise shall not be assigned or transferred without the prior written consent of the City. The City's consent shall not be unreasonably withheld, conditioned, or delayed if the Franchise is transferred or assigned to an entity that controls, is controlled by, or is under the common control of the Applicant. If the City consents to an assignment or transfer of the Franchise, the transfer or assignment shall not be effective until the assignee or transferee has complied with the requirements in Section 7 and filed a signed acceptance of the terms of this Franchise.

Section 13. Expiration. At the end of the Franchise term, if the City and Applicant are negotiating another franchise and have not concluded their negotiations, Applicant's rights and responsibilities shall be controlled by this Franchise until the City grants a new franchise and Applicant accepts it.

Section 14. Miscellaneous Provisions.

- 14.1 **Waiver of Breach.** The waiver by either party of any breach or violation of any provision of this Franchise shall not be deemed to be a waiver or a continuing waiver of any subsequent breach or violation of the same or any other provision of this Franchise.
- 14.2 **Severability of Provisions.** If any one or more of the provisions of this Franchise is held by a court of competent jurisdiction to be invalid or unenforceable or pre-empted by federal or state laws or regulations, such provision(s) shall be deemed severable from the remaining provisions of this Franchise and shall not affect the legality, validity, or constitutionality of the remaining portions of this Franchise.
- 14.3 **Contacting Applicant.** The staff of any City department may contact Applicant twenty-four (24) hours a day, seven (7) days a week, to respond to problems or complaints resulting from the installation, operation, maintenance, or removal of the Equipment. The City may contact Applicant at 503-736-5665 regarding such problems or complaints.
- 14.4 **Governing Law and Choice of Forum.** This Franchise shall be governed and construed by and in accordance with the laws of the State of Oregon without reference to its conflicts of law principles. If suit is brought by a party to this Franchise, the parties agree that trial of such action shall be vested exclusively in the state courts of Oregon, County of Multnomah, or in the United States District Court for the District of Oregon.
- 14.5 **Representations and Warranties.** Each of the parties to this Franchise represents and warrants that it has the full right, power, legal capacity, and authority to enter into and perform the parties' respective obligations hereunder and that such obligations shall be binding upon such party without the requirement of the approval or consent of any other person or entity in connection herewith, except as required in Section 2.1 above.
- 14.6 **Amendment of Franchise.** This Franchise may not be amended, except pursuant to a written instrument signed by Applicant and approved by the Troutdale City Council.
- 14.7 **Acceptance.** Applicant shall, within thirty (30) days after the Council adopts this resolution, file with the City Recorder a written unconditional acceptance of this Franchise. If Applicant fails to file its acceptance, this resolution shall be void, unless the City grants Applicant an extension of time.
- 14.8 **Entire Agreement.** This Franchise contains the entire understanding between the parties with respect to the subject matter herein. There are no representations, agreements, or understandings (whether oral or written) between or among the parties relating to the subject matter of this Franchise that are not fully expressed herein. To the extent that a provision of this Franchise conflicts with a section of the Troutdale Municipal Code Chapter 12.12, the Franchise shall take precedence.

**YEAS:
NAYS:
ABSTAINED:**

Doug Daoust, Mayor

Date _____

Debbie Stickney, City Recorder

Adopted: