



MEMORANDUM CITY OF TUALATIN

TO: Honorable Mayor and Members of the City Council
FROM: Sherilyn Lombos, City Manager 
DATE: November 2, 2009
SUBJECT: Work Session for November 9, 2009

Work Session will begin at 5:00 p.m.

5:00 p.m. (10 min) – Council / Commission Meeting Agenda Review.

Action requested: Council review the agenda for the November 9th City Council and Development Commission meetings.

5:10 p.m. (20 min) – PGE Franchise Discussion. The City's current franchise with PGE expires in December so representatives from PGE and the City have been meeting to negotiate an updated franchise. Our intent is to have the franchise on the Council's November 23rd agenda so that the new franchise is in place prior to expiration. Attached is a brief memo along with the draft franchise agreement.

Action requested: Direction from the City Council regarding any changes to the draft franchise agreement.

5:30 p.m. (40 min) – Municipal Court Update / Peer Court Discussion. Municipal Court in Tualatin has been in operation since January of this year. The purpose of tonight's presentation is to update Council on how it is going. At the Council's November 2008 goal setting retreat, it was requested that Peer Court be researched and information brought back to Council. The second part of tonight's discussion will focus on information staff has gathered about Peer Court. Attached is a memo from Don Hudson and Cortney Cox (Court Administrator) with information about both of these items.

Action requested: The municipal court update is information only; no direction is requested. Staff is looking to Council for direction on any further pursuit of a peer court.

6:10 p.m. (20 min) – Stafford Basin Urbanization Discussion. The city of West Linn recently developed a position statement on the issue of urbanization of the Stafford Basin and asked that the cities of Lake Oswego and Tualatin join in with the goal of having a unified position on this issue. Attached is a memo from Doug and Aquilla with additional information along with the position statement from West Linn.

Action requested: Direction from the Council on a joint position statement regarding Stafford Basin urbanization.

6:30 p.m. (25 min) – Council Communications & Roundtable. This time is the Council's opportunity to brief the rest of the Council on committee meetings, follow-up on items, and any other general Council information that needs to be discussed.

Action requested: This is an open Council discussion.

Upcoming Council Meetings & Work Sessions: Attached is a three-month look ahead for upcoming Council meetings and work sessions. If you have any questions, please let me know.

Dates to Note: Attached is the updated community calendar for the next three months.

As always, if you need anything from your staff, please feel free to let me know.



MEMORANDUM

CITY OF TUALATIN

TO: Honorable Mayor and Members of the City Council

THROUGH: Sherilyn Lombos, City Manager 

FROM: Dan Boss, Operations Director
Brenda Braden, City Attorney
Don Hudson, Finance Director
Mike McKillip, Engineering & Building Director

DATE: November 9, 2009

SUBJECT: PGE Franchise

The current PGE franchise with the City expires December 2009. Representatives of PGE and the City have been meeting for several months to negotiate a new franchise.

The intent of an electric franchise is to set in place regulations and agreements around the electric utility's use of the public right of way for distributing electricity. The attached proposal is the result of careful thought and discussion and protects the interest of the city. Highlights include:

- *Term:* this is a 10-year agreement with an automatic renewal for another 10 years unless notice is given by either party within 180-days of expiration (section 2.B).
- *Franchise Fee:* PGE will pay the city 3.5% of gross revenues (defined in section 2.B.11) with the city retaining the right to charge a privilege tax (section 12). Currently state law provides that a franchise fee can be no more than 5% (3.5% franchise fee and up to an additional 1.5% for a privilege tax upon Council approval). The agreement provides a process for audits and late fees.
- *Location of Facilities:* section 4 deals with construction and how PGE and the City will coordinate with development regarding space availability in the public right of way.
- *Work in the ROW:* the franchise requires PGE to get permits from the city and for ROW to be restored and repaired to an agreed upon standard.
- *Relocation:* the franchise allows the city to require the relocation of facilities for a public project (the franchise defines a public project in section 8.A). The franchise provides for both permanent relocation and temporary relocation. It also allows for relocation at the request of a third party at the third parties expense.

MEMORANDUM: PGE Franchise

Date: November 9, 2009

- *Undergrounding*: the franchise requires PGE to underground utilities on a public project. (section 8.C)
- *Termination & Service Provision*: Section 14 details cause for termination, remedies, penalties and provision of service in case of termination.

From engineering and operations perspectives, this agreement continues the process of PGE obtaining permits for work in the City ROW. It provides the flexibility for the City and PGE to work toward good solutions to construction and phasing problems that occur on projects involving the City, PGE, and private developers and allows for appropriate remedies when problems are encountered.

Franchise Fees account for 17.4% of current General Fund revenue and is the second largest revenue source in the fund, behind property taxes and not including beginning cash balances. PGE's payment in fiscal year 2008-2009 was \$1,109,823 and makes up approximately half of the total franchise fees for the year.

Thank you for the opportunity to discuss the agreement. City staff along with representatives from PGE will be available to discuss the agreement and answer any questions you have. The agreement is scheduled for the November 23rd City Council meeting.

Attachment: Draft Franchise Agreement

FRANCHISE AGREEMENT

This Franchise Agreement grants Portland General Electric Company (“Grantee”) a non-exclusive franchise for ten years to erect, construct, maintain, repair, update and operate an electric light and power system within the City of Tualatin (“City”), sets the terms and conditions of the franchise and provides an effective date.

WHEREAS, Grantee has been providing electric light and power service within the City; and

WHEREAS, Grantee is duly authorized by the Oregon Public Utility Commission (“OPUC”) to supply electric light and power within the City; and

WHEREAS, the City has the authority to regulate the use of the Public ROW (as defined below) within the City and to establish the terms by which Grantee shall use and occupy the Public ROW;

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

Section 1. Nature and Term of Franchise.

(A) The City grants to Grantee and its successors and assigns, subject to the terms and conditions in this Franchise, a nonexclusive franchise to erect, construct, repair, maintain, upgrade and operate an electric light and power system within the City as it now exists or may be extended in the future, including related communication equipment and Grantee Facilities (as defined below). This Franchise includes the privilege to install, repair, maintain, upgrade and operate Facilities necessary for the operation of Grantee’s Electric Light and Power System upon, over, along, and across the surface of and the space above

and below the streets, alleys, roads, highways, sidewalks, bridges, and other public ways (collectively, "Public ROW"), as well as public utility easements on third party property that have been acquired by the City, dedicated to the City, or on which a preliminary subdivision plat has been approved by the City, and which will be managed by the City thereafter ("PUEs"), for the provision of public utility services within the City as Grantees' Electric Light and Power System now exists or is extended or upgraded in the future. Nothing in this Franchise limits the City from granting others the right to carry on activities similar to, or different from the ones described in this Franchise. The rights granted in this Franchise do not include the right to build or site electric generating facilities in the Public ROW.

(B) This Franchise also includes the privilege to repair, maintain, upgrade and operate Grantee Facilities located in City park property that are existing as of the effective date of this Franchise. Grantee's right to install Grantee Facilities in City park property on or after the effective date of this Franchise, and to repair, maintain, upgrade and operate such after-installed Grantee Facilities, shall be subject to the City's permitting process. With respect to Grantee Facilities located in City park property existing as of the effective date of this Franchise, and Grantee Facilities installed in City park property on or after the effective date of this Franchise in accordance with the City permitting process, City park property shall be treated the same as the Public ROW for purposes of Sections 4, 6, 7, 8, 10, 12, 14, 16 and 19.

(C) All Grantee Facilities in possession of Grantee currently or during the Term (as defined in Section 2(B)) that are located within the Public ROW are

covered by this Franchise and the location and placement thereof is hereby approved for the purposes of this Franchise.. The City may require relocation of Grantee Facilities as permitted by law and specified in Section 8.

Section 2. Term and Effective Date.

(A) Effective Date. The effective date of this Franchise shall be thirty (30) days after the City Council passes an ordinance adopting this Franchise and Grantee accepts this Franchise in writing in accordance with Section 25.

(B) Duration of Franchise. The term of this Franchise, and all rights and obligations pertaining thereto, shall be ten years from the effective date of the Franchise ("Term") unless renegotiated or terminated as provided in this Franchise. The Term shall automatically renew for an additional ten years after the expiration of the initial Term; unless either party provides the other party written notice, at least 180 days prior to the expiration of the initial Term, that it does not desire to renew this Franchise.

(C) Charter and General Ordinances to Apply. To the extent authorized by law, this Franchise is subject to the Charter of the City of Tualatin and general ordinance provisions of Chapter XX and XX requiring underground utilities in subdivisions or partitions, and state statutes and regulations existing during the Term. Nothing in this Franchise shall be deemed to waive the requirements of the various codes and ordinances of the City regarding permits, fees to be paid that are generally applicable to

other similar businesses operating within the City, or the manner of construction.

Section 3. Definitions.

(A) Captions. Throughout this Franchise, captions to sections are intended solely to facilitate reading and to reference the provisions of this Franchise. The captions shall not affect the meaning and interpretation of this Franchise.

(B) Definitions. For purposes of this Franchise, the following terms, phrases, and their derivations shall have the meaning given below unless the context indicates otherwise. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The word, “shall” is always mandatory and not merely directory.

(1) “City” means the City of Tualatin, Oregon, a municipal corporation, and all of the territory within its corporate boundaries, as such may change from time to time.

(2) “City Council” means the duly elected legislative body of the City.

(3) “City Engineer” means the City Engineer of the City or the City Engineer’s designee.

(4) “City Manager” means the City Manager of the City or the City Manager’s designee.

- (5) "City Recorder" means the Recorder of the City or the City Recorder's designee.
- (6) "Director of Finance" or "Finance Director" means the Finance Director of the City or the Finance Director's designee.
- (7) "Franchise" means this Franchise Agreement as fully executed by the City and Grantee and adopted by the City Council pursuant to Ordinance No. _____.
- (8) "Grantee" means Portland General Electric Company, an Oregon corporation.
- (9) "Grantee Facility" means any tangible component of Grantee's Electric Light and Power System, including but not limited to any poles, guy wires, anchors, wire, textures, equipment, conduit, circuits, vaults, switch cabinets, transformers, secondary junction cabinets, antennas, communication equipment and other property necessary or convenient to supply electric light and power by Grantee within the City.
- (10) "Grantee's Electric Light and Power System" means all the real property and Grantee Facilities used by Grantee in the transmission and distribution of its services that are located inside the boundaries of the City.
- (11) "Gross Revenues" shall include all revenues derived by Grantee within the City from Grantee's Electric Light and Power System, and includes, but is not limited to, the sale of and use of electricity and electric service, and the use, rental, or lease of Grantees Facilities,

after adjustment for the net write-off of uncollectible accounts. "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 one public utility to another of electrical energy when the utility purchasing such electrical energy is not the ultimate consumer. "Gross Revenues" also do not include revenue from joint pole use. For purposes of this Franchise, revenue from joint pole use includes any revenue collected by Grantee from other franchisees, permittees, or licensees of the City for the right to attach wires, cable or other facilities or equipment to Grantee's poles or place them in Grantee's conduits.

- (12) "NESC" means the National Electrical Safety Code.
- (13) "OPUC" means the Oregon Public Utility Commission.
- (14) "Term" has the meaning described in Section 2(B).
- (15) "Person" means any individual, sole proprietorship, partnership, association, corporation, cooperative, People's Utility District, or other form of organization authorized to do business in the State of Oregon, and includes any natural person.
- (16) "Public ROW" has the meaning described in Section 1(A).
- (17) "PUE" has the meaning described in Section 1(A).
- (18) "Year," "annual" or "annually" means the period consisting of a full calendar year, beginning January 1 and ending December 31, unless otherwise provided in the Franchise.

Section 4. Construction.

(A) Construction. Subject to the NESC, Grantee's Electric Light and Power System shall be constructed and maintained in such manner as to not interfere with sewers, water pipes, or any other property of the City, or with any other pipes, wires, conduits or facilities that may have been laid in the Public ROW by or under the City's, County's or State's authority. Grantee and the City shall work together during any design process affecting the Public ROW to establish suitable locations for Grantee's Facilities and minimize cost to both parties. Assuming there is sufficient space in the Public ROW, all poles shall be placed between the sidewalk and the edge of the Public ROW unless another location is approved by the City Engineer. For any land use development in the City requiring Grantee's services, the City shall notify Grantee of such pending land use development and Grantee shall notify the City of Grantee's construction standards that are provided to the OPUC and NESC requirements that are applicable to the pending land use development. The City shall impose a condition on its land use development approval that the developer either (i) provide a sufficient location in the Public ROW located in the land use development for Grantee Facilities that meet the applicable construction standards and NESC requirements, or (ii) obtain an easement for Grantee Facilities that meet the applicable construction standards and NESC requirements. .

(B) Acquisition. Subsequent to the effective date of this Franchise, upon Grantee's acquisition of additional Grantee Facilities in the Public ROW, or upon an addition or annexation to the City of an area in which Grantee retains Grantee Facilities in the Public ROW of such addition or annexation, Grantee shall submit a statement to the City describing all Grantee Facilities involved, whether authorized by a franchise agreement or upon any other form of prior right, together with a map, as described in Section 5, specifying the location of all such Grantee Facilities. Such Grantee Facilities shall immediately be subject to the terms of this Franchise.

(C) Emergency Repairs. In the event emergency repairs to Grantee's Facilities are necessary, Grantee shall as soon as reasonably possible notify the City of the need for such repairs. Grantee may immediately initiate such emergency repairs and apply for appropriate permits the next business day or as soon as reasonably possible following discovery of the emergency.

(D) Reasonable Care. All work completed by Grantee within the Public ROW shall be conducted with reasonable care and with the goal of minimizing the risk to those using the Public ROW and to minimize the risk of damage to public and third party property. All work shall be performed in accordance with all applicable laws and regulations, including but not limited to the NESC. Any work completed by Grantee within the Public ROW may be inspected by the City to determine whether it has been

placed in its approved location according to Grantee's permit issued by the City. If emergency work has been completed by Grantee in the Public ROW and the City determines such work was not completed in a City approved location, the City shall notify Grantee and provide Grantee with sixty (60) days after the emergency passed to reperform the work in a City approved location in the Public ROW.

Section 5. Supplying Maps. Grantee shall maintain maps and data pertaining to the location of Grantee Facilities on file at its corporate offices or at an office in Oregon. After providing Grantee with twenty-four (24) hours prior notice, the City may inspect the maps (excluding Grantee proprietary information) at any time during Grantee's business hours. Upon request of the City and without charge, Grantee shall furnish current maps to the City by electronic data in read-only format showing the general location of Grantee Facilities, excluding Grantee proprietary information. Unless required by law, the City will not sell or provide Grantee prepared maps or data to third parties without written permission from Grantee. Upon request of Grantee, the City will make available to Grantee any relevant City prepared maps or data at no charge to Grantee.

Section 6. Excavation. Subject to Sections 4 and 7, and after obtaining any permits required by the City, Grantee may make all necessary excavations within the Public ROW for the purpose of installing, repairing, upgrading or maintaining Grantee Facilities, except that in the case of an emergency, no permit shall be required prior to excavation. Should there be a direct conflict between any terms or conditions stated in a permit granted by the City and the terms and conditions of this

Franchise, the terms and conditions of this Franchise shall control. All excavations made by Grantee in the Public ROW shall be properly safeguarded for the prevention of accidents. All of Grantee's work under this Section shall be completed in strict compliance with all applicable rules, regulations and ordinances of the City. If a customer of Grantee is required to make excavations that are located in the Public ROW pursuant to Grantee's tariff on file with the OPUC, the City agrees that Grantee shall not be responsible or liable for any failure by such customer to comply with any applicable rules, regulations, ordinances of the City and/or with City standards.

Section 7. Restoration after Excavation. Except as otherwise provided for in this Section, Grantee shall restore the surface of the Public ROW disturbed by any excavation by Grantee to at least the same condition that it was in prior to excavation. If Grantee excavates the surface of the Public ROW, Grantee shall be responsible for restoration of the Public ROW and the area affected by the excavation. If Grantee fails to restore the Public ROW to at least the same condition that it was in prior to the excavation, the City shall give Grantee written notice and provide Grantee a reasonable period of time, not to exceed thirty (30) days, to restore the Public ROW. If Grantee's work creates a public safety hazard as determined by the City Engineer, Grantee may be required to repair or restore the Public ROW within twenty-four (24) hours notice from the City, or such time as agreed between the City Engineer and Grantee, taking into consideration weather and other relevant factors. If Grantee fails to make such repairs or restorations within the specified time frames, after providing notice to Grantee and a reasonable

opportunity to cure, the City may refill or repave any opening made by Grantee in the Public ROW and Grantee shall pay that expense. The City reserves the right, after providing notice to Grantee, to remove or repair any work completed by Grantee, which, in the determination of the City Engineer is inadequate, using a qualified contractor in accordance with applicable state and federal safety laws and regulations, and Grantee's construction standards as provided to the OPUC and applicable NESC requirements. The cost of such work, including the cost of inspection and supervision, shall be paid by Grantee. If Grantee's work is coordinated with other construction work in the Public ROW, the City Engineer may excuse Grantee from restoring the surface of the Public ROW, provided that as part of the coordinated work, the Public ROW is restored to good order and condition.

Section 8. Relocation.

(A) Permanent Relocation Required by City and Commission

Projects. This subsection (A) covers permanent relocation of overhead Grantee Facilities that will remain overhead, and underground Grantee Facilities that will remain underground. When it is necessary or convenient in the interest of the public for a City or a Tualatin Development Commission project, the City has the right to require Grantee to change the location of Grantee's Electric Light and Power System located in the Public ROW, and unless otherwise agreed Grantee shall pay the expenses of the relocation. However, when the City requests a subsequent relocation of all or part of the same Grantee Facilities less than two years after the initial relocation

that is necessary or convenient for a public project, and not at the request of or to accommodate a third party, the subsequent relocation shall be at the expense of the City. This Section 8(A) shall not apply if either of the following is true: (1) the project or improvement necessitating the change in location will not be owned by the City or Commission; or (2) the majority of the funding for the project or improvement does not come from the City, state or federal government sources. The City agrees to provide a suitable location in the Public ROW, as mutually agreed, for Grantee Facilities that meets the Grantee's construction standards as provided to the OPUC and NESC requirements. If sufficient space is not available in the Public ROW for Grantee Facilities, the City agrees to obtain sufficient easements from private property owners to accommodate Grantee Facilities in order to maintain service and permit upgrades to Grantee Facilities. If Grantee fails to remove or relocate such Grantee Facilities within ninety (90) days after the date established by the City, which, except in the event of a public emergency, shall not occur sooner than ninety (90) days after the City provides written notice to remove/relocate to Grantee, the City may cause or effect such removal or relocation, performed by a qualified contractor in accordance with applicable state and federal safety laws and regulations and Grantee's construction standards as provided to the OPUC, and Grantee shall pay that expense. In the event a public project is delayed and could result in damages to the

City, City agrees to convene a meeting among all parties who potentially could have caused the delay to discuss who was responsible for the delay. City shall provide notice to Grantee of anticipated damages as a result of a public project delay as soon as reasonably practicable after City has received notice of such anticipated damages. Unless otherwise agreed to by the parties, Grantee will not be liable for any delay damages before the delayed public project is completed. The City shall use commercially reasonable efforts to mitigate any damages it may incur as a result of a delay in the completion of a public project. If the City incurs delay damages as a result of Grantee's negligence or willful misconduct, as determined by the City, Grantee and City agree to negotiate a mutually agreeable settlement with the City. In the event a settlement is not reached between the City and Grantee within ninety (90) days after the completion of the delayed public project, City may pursue any other remedies at law or equity available to City.

(B) Notice. The City will provide as much notice prior to requiring Grantee to relocated Grantee Facilities as is reasonably possible. The notice shall specify the date by which the existing Grantee Facilities must be removed or relocated. Nothing in this provision shall prevent the City and Grantee from agreeing, either before or after notice is provided, to another schedule for relocation. The City and Grantee agree to

cooperate in the design phase to minimize the economic impact of such relocation on Grantee and the City.

(C) Permanent Relocation- Undergrounding. This subsection (C) applies to conversions of Grantee Facilities from overhead to underground regardless of whether or not such conversion is made in conjunction with a public project. As permitted by, and in accordance with City Ordinance and any applicable law, administrative rule, or regulation, the City may require Grantee to convert any overhead Grantee Facilities to underground Grantee Facilities at the same or different locations, subject to the NESC and Grantee's engineering and safety standards. This subsection does not apply to Grantee Facilities used for or in connection with the transmission of electric energy at nominal voltages in excess of 35,000 volts or to pedestals, cabinets or other aboveground equipment. In the event aboveground equipment must be relocated as part of the conversion of overhead Grantee Facilities, Grantee agrees to provide City an opportunity to comment on the location and aesthetic design of such aboveground equipment. Such relocation shall be consistent with applicable long-term development plans or projects of the City or Commission, or as approved by the City. Grantee shall pay the expense of such conversion, and Grantee may recover its costs from its customers in accordance with state law, administrative rule, or regulation. The City agrees to provide a suitable location in the Public ROW, as mutually

agreed, that meets Grantee's construction standards as provided to the OPUC and NESC requirements and if sufficient space is not available in the Public ROW, then the City will obtain sufficient easements from private property owners to accommodate Grantee Facilities in order to maintain service and permit upgrades of Grantee Facilities. Nothing in this subsection prevents the City and Grantee from agreeing to a different form of cost recovery consistent with applicable statutes, administrative rules, or regulations on a case-by-case basis.

Within sixty (60) days, or as mutually agreed upon by the Grantee and the City, the Grantee shall remove the overhead facilities that have been replaced by underground facilities.

(D) Temporary Relocation at Request of City. This subsection (D) covers temporary relocation of overhead Grantee Facilities that will remain overhead, as well as underground Grantee Facilities that will remain underground. The City may require Grantee to temporarily remove and relocate Grantee Facilities by giving sixty (60) days notice to Grantee. Prior to such relocation, the City agrees to provide a suitable location in the Public ROW, as mutually agreed, that meets the Grantee's construction standards as provided to the OPUC and NESC requirements, or a temporary construction easement that meets the Grantee's construction standards as provided to the OPUC and NESC requirements, and that allows Grantee to place Grantee

Facilities on the easement, in order to maintain sufficient service and permit upgrades to Grantee Facilities until such time as the Grantee moves such Grantee Facilities to their permanent location. The City will assist in acquiring easements from private property owners if sufficient square footage is not available in the Public ROW or the City has not obtained construction easements for the public project necessitating the temporary relocation of Grantee Facilities. The cost of temporary removal or relocation of Grantee Facilities that is necessary or convenient for public projects, as well as the cost of replacing Grantee Facilities in their permanent location, shall be paid by Grantee. However, when the City requests a subsequent relocation of all or part of the same Grantee Facilities less than two years after the initial relocation, that is necessary or convenient for a public project and not at the request of or to accommodate a third party request, the subsequent relocation shall be at the expense of the City.

(E) Permanent Relocation at Request of Third Party. If a relocation is requested by or is to accommodate a third party, Grantee shall seek reimbursement from the third party and not from the City. Such relocation shall be consistent with any applicable long-term development plan or projection of the City or approved by the City; however, if relocation of Grantee Facilities is caused or required by conditions placed by the City on approval for projects of third parties, such relocation shall in no event fall under the provisions of

subsections (A), (C) or (D) of this Section 8. The City and Grantee agree to cooperate to minimize the economic impact of such relocation on each party.

(F) Temporary Relocation at Request of Third Parties. Whenever it is necessary to temporarily relocate or rearrange a Grantee Facility in order to permit the passage of a building, machinery or other object, Grantee shall perform the work after receiving sixty (60) business days written notice from the persons desiring to move the building, machinery or other object. The notice shall:

- (1) demonstrate that the third party has acquired at its expense all necessary permits from the City;
- (2) detail the route of movement of the building, machinery, or other object;
- (3) provide that the person requesting the temporary relocation is responsible for Grantee's costs;
- (4) provide that the requestor shall indemnify and hold harmless the City and Grantee from all damages or claims resulting either from moving the building, machinery or other object or from the temporary relocation of Grantee Facilities; and
- (5) be accompanied by a cash deposit or other security acceptable to Grantee for the costs of relocation.

Grantee in its sole discretion may waive the security obligation. The cash deposit or other security shall be in an amount reasonably calculated by

Grantee to cover Grantee's costs of temporary relocation and restoration.

All temporary relocations under this subsection shall comply with ORS 757.805.

Section 9. Public ROW Vacation. If all or a portion of the Public ROW used by Grantee is proposed to be vacated by the City during the Term, the Grantee shall be notified of the pending public hearing for the Public ROW vacation. The Grantee shall notify City if Grantee has facilities in the Public ROW that must be maintained. Unless Grantee and the future owner of the property to be vacated agree on a plan for the relocation of Grantee's Facilities, the City shall impose a condition on the vacation that the property owner provide an easement of Grantee Facilities in their then-current location and that prohibits any use of the vacated property that interferes with Grantee's full enjoyment and use of its easement. . If a condition on the vacation is not reasonably possible and Grantee and the future owner of the property to be vacated have not agreed on a plan for the relocation of Grantee's Facilities located in the vacated Public ROW, Grantee shall, after notice from the City and without expense to the City, remove Grantee Facilities from such vacated Public ROW, restore, repair or reconstruct the Public ROW where such removal has occurred, and place the Public ROW in good order and condition as may be required by the City. In the event of failure, neglect or refusal of Grantee, after providing Grantee with ninety (90) days prior written notice, to repair, restore, or reconstruct such Public ROW, the City may complete such work or cause it to be completed by a qualified contractor in accordance with applicable state and federal safety laws and regulations, and

Grantee shall bear that cost. Upon request, the City will cooperate with Grantee to identify alternative locations within the Public ROW for Grantee Facilities if they are not permitted to remain in the vacated area.

Section 10. City Public Works and Improvements. Nothing in this Franchise shall be construed to prevent the City from excavating, grading, paving, planking, repairing, widening, altering, or completing any work that may be needed or convenient in the Public ROW that is consistent with the NESC. The City shall coordinate such work with Grantee to avoid, to the extent reasonably foreseeable, any obstruction, injury or restrictions on the use by Grantee of any Grantee Facilities, and the City shall be responsible for the costs to repair any damage to Grantee Facilities arising out of such work. Nothing in this Section relieves Grantee from its obligations stated in Section 8.

Section 11. Use of Grantee Facilities. City shall maintain attachment agreements and permits to string wires on Grantee's poles or run wires in Grantee's trenches and/or conduit for municipal purposes and to attach fire and police alarm and communication equipment to Grantee's poles, provided that such wires and equipment:

- (a) do not unreasonably interfere with Grantee's operations;
- (b) conform to the NESC; and
- (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.

Grantee shall not charge the City for such attachments to its poles or in its conduits; however, the City shall be responsible for paying for any make-ready and inspections Grantee must perform in order to provide access to Grantee Facilities for City wires and equipment in accordance with the NESC. If any of the City's attachments to Grantee Facilities violate the NESC, the City shall work with Grantee to address and correct such violations in an agreed-upon period of time. The City shall indemnify and hold Grantee harmless from loss or damage resulting from the presence of City's wires and equipment on or in Grantee Facilities. For purposes of this Franchise, "make-ready" means engineering or construction activities necessary to make a pole, conduit, or other support equipment available for a new attachment, attachment modifications, or additional facilities.

Section 12. Payment for use of Public ROW

(A) Use of Public ROW. In consideration for its use of the Public ROW in accordance with the terms of this Franchise, Grantee agrees to pay the City an amount equal to 3 ½ percent of the Gross Revenue received by Grantee from its customers within the City. The payment for each year shall be based on the Gross Revenue collected by Grantee during the previous calendar year from Grantee's customers, and shall be paid on an annual basis. To the extent permissible under state law and regulation, the payment imposed by this subsection shall be considered an operating expense of Grantee and shall not be itemized or billed separately to consumers within the City.

(B) Property Tax Limitations Do Not Apply. The payment described in this Section 12 is not subject to the property tax limitations of Article XI, Sections 11(b) and 11(19) of the Oregon Constitution and is not a fee imposed on property or property owners by fact of ownership.

(C) Privilege Tax. As permitted by Oregon law, the City retains the right, to charge a privilege tax based on a percentage of the Gross Revenue earned from Grantee's customers within the City in addition to the payment amounts set forth in subsection (A). The City shall provide Grantee at least ninety (90) days notice prior to such privilege tax becoming effective. Grantee shall follow state regulations regarding inclusion of such privilege tax as an itemized charge on the electricity bills of its customers within the City.

(D) Remittance of Annual Payment. Grantee shall remit the annual 3 ½% franchise fee payment, as well as payment of any additional privilege tax, to the Finance Director on or before the first (1st) day of April of each year. Payment shall be made in immediately available federal funds. With its annual payment, Grantee shall provide the City a statement under oath showing the Gross Revenue for the preceding year.

(E) Acceptance of Payment. The City's acceptance of any payment due under this Section shall not be a waiver by the City of a breach of this Franchise occurring prior to the acceptance, nor shall the City's acceptance preclude the City from later establishing that a larger amount was actually due, or from collecting the balance due to the City.

(F) Late Payments. Interest on late payments shall accrue from the due date based on PGE's cost of debt as approved by the OPUC plus 100 basis points (1%). as of the due date, 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.

(G) No Exemption From Other Fees or Taxes. Payment of the amounts described in this Section 12 shall not exempt Grantee from the payment of any other license fee, tax or charge on the business, occupation, property or income of Grantee that may be lawfully imposed by the City or other taxing authority, except as may otherwise be provided in the ordinance or laws imposing such other license fee, tax or charge.

(H) Direct Access and Volumetric Methodologies. Consistent with state law, the City may direct that the payments made under this Section 12 be based on volume-based methodologies as specifically described in ORS 221.655 instead of the formula set out in subsections 12 (A) and (C). Notice must be given to Grantee in writing for the subsequent payments to be made using volume-based methodology. The volumetric calculation shall apply to payments made in one calendar year (based on January 1 to December 31 billings from the previous calendar year). The choice to use volumetric methodology must be renewed annually by the City. No notice is necessary if the City chooses to remain on the revenue-based calculation.

(I) Payment Obligation Survives Franchise. If the parties do not finish negotiation of a new franchise agreement prior to the expiration of this

Franchise, the obligation to make the payments impose by this Section 12 shall survive expiration of this Franchise until a new franchise agreement becomes effective and supersedes this Franchise. If this Franchise is terminated before expiration, Grantee shall make the remaining payments owed, if any, within ninety (90) days of the termination date.

Section 13. AUDIT.

(A) Audit Notice and Record Access. The City may audit Grantee's calculation of Gross Revenues. Within ten (10) business days after receiving a written request from the City, or such other time frame as agreed by both parties, Grantee shall furnish the City and any auditor retained by the City: (a) information sufficient to demonstrate that Grantee is in compliance with this Franchise; and (b) access to all books, records, maps and other documents maintained by Grantee with respect to Grantee Facilities that are necessary for the City to perform such audit. Grantee shall provide access to such information to City within the City, or the Portland, Oregon metropolitan area, during regular Grantee business hours.

(B) Audit Payment. If the City's audit shows that the amounts due to the City are higher than those based on the Grantee's calculations of Gross Revenue, then Grantee shall make a payment for the difference within sixty (60) days after the deliver to Grantee of the audit results. In addition to paying any underpayment, Grantee shall pay interest at the prevailing annual average yield of the State of Oregon's local government

investment pool (also called the Oregon Short-Term Fund – OSTF), but not penalties, as specified in this Franchise, from the original due date. If the City's audit shows that Grantee's calculation of Gross Revenue resulted in an overpayment to the City by five percent (5%) or more in any one year, the Grantee may deduct such overpayment from the next annual franchise fee payment. If the City's audit shows that the amounts due to the City based on the Grantee's calculation of Gross Revenue deviated by five percent (5%) or more in any one year from the City's calculation during the audit, Grantee shall reimburse City for the cost of the audit, not to exceed one percent (1%) of the total annual franchise payment for the applicable audit period.

Section 14. TERMINATION AND REMEDIES.

(A) By City for Cause. If Grantee ceases to maintain Grantee Facilities in accordance with the maintenance commitments outlined in the Service Quality Measures review filed with the OPUC, and this causes an increase in the risk to the public of personal injury or property damage, the City shall notify Grantee. Grantee shall have thirty (30) days after the date of the notice to eliminate such risk or, if such risk can not be eliminated within thirty (30) days, such reasonable time period as is required to eliminate such risk. Grantee shall bear all costs related to remedying the risk. If Grantee does not eliminate the risk in accordance with the preceding sentence, the City may then terminate this Franchise by providing Grantee written notice of termination.

(B) By City if City Will Provide Service. The City may terminate this Franchise upon one year's written notice to Grantee if the City decides to engage in public ownership of the electric facilities located in the Public ROW and the public distribution of electric energy to customers throughout the City in accordance with ORS 758.470.

(C) City Reserves Right to Terminate. In addition to any other rights provided for in this Franchise, the City reserves the right, subject to subsections 14(E) and (F), to terminate this Franchise in the event that:

- 1) The Grantee materially violates a material provision of this Franchise;
- 2) The Grantee is found by a court of competent jurisdiction to have practiced any material fraud or deceit upon the City;
- 3) There is a final determination that Grantee has failed, refused, neglected or is otherwise unable to obtain or maintain Grantee's service territory designation required by a federal or state regulatory body regarding Grantee's operation of Grantee's Electric Light and Power System; or
- 4) Grantee becomes unable or unwilling to pay its debts, or is adjudged bankrupt.

(D) Material Provision. For purposes of this Section 14, the following are material provisions of this Franchise, allowing the City to exercise its rights under this Section 14 or as set forth elsewhere in this Franchise:

- 1) The invalidation, failure to pay or suspension of Grantee's payments of franchise fees or privilege taxes to the City for use of the Public ROW under this Franchise;
- 2) Failure by Grantee to submit timely reports as may be requested by the City, regarding the calculation of its franchise fees or privilege taxes paid or to be paid to the City;
- 3) Failure by Grantee to maintain the liability insurance or self insurance required under this Franchise;
- 4) Failure by Grantee to provide copies of requested information as provided under Sections 4, 5, and 13 above; and
- 5) Failure by Grantee to otherwise substantially comply with the requirements of Section 4 through Section 20 of this Franchise, unless otherwise agreed.

(E) Notice and Opportunity to Cure. The City shall provide Grantee thirty (30) days prior written notice of its intent to exercise its rights under this Section 14, stating the reasons for such action. If Grantee cures the basis for termination or if the Grantee initiates efforts satisfactory to the City to remedy the basis for termination and the efforts continue in good faith within the thirty (30) day notice period, the City shall not exercise its remedy rights. If Grantee fails to cure the basis for termination or if the Grantee does not undertake and/or maintain

efforts satisfactory to the City to remedy the basis for termination within the thirty (30) day notice period, then the City Council may impose any or all of the remedies available under this Section 14.

(F) 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 such violations, and any other matters the City deems appropriate. Nothing in this subsection shall be construed to limit the City's authority to pursue any legal remedy it deems appropriate.

(G) Financial Penalty. In addition to any rights set out elsewhere in this Franchise, as well as its rights under the City Code or other law, the City reserves the right at its sole option to impose a financial penalty of up to \$500.00 per day per material violation of a material provision of this Franchise when the opportunity to cure has passed.

Section 15. ASSIGNMENT OF FRANCHISE. Grantee shall not sell, assign, transfer, or convey this Franchise to a third party without the City Council giving its consent in a duly passed ordinance. Upon obtaining such consent, this Franchise shall inure to and bind such third party. Grantee shall not sell or assign this Franchise to an entity that is not authorized by the OPUC to provide electric service to retail consumers under Oregon law. Prior to any proposed transfer, Grantee shall be in full compliance with this Franchise and the proposed transferee shall agree in writing to be bound by this Franchise. In the event

Grantee is purchased by or merged into another entity and Grantee survives such purchase or merger as a public entity, Grantee shall provide notice to the City of such purchase or merger, but shall have no obligation under this Franchise to obtain the consent of the City Council for such purchase or merger.

Section 16. REMOVAL OF FACILITIES. If this Franchise is terminated or expires on its own terms and is not replaced by a new franchise agreement or similar authorization, the City may determine whether Grantee Facilities are to be removed from the Public ROW or remain in place. The City shall provide written notice of any requirement to remove Grantee Facilities and shall provide Grantee sixty (60) days to comment on such requirement to move Grantee Facilities. Following consideration of such comments, the City Manager may issue an order requiring removal of Grantee Facilities within nine (9) months after such order is declared.

Section 17. NONDISCRIMINATION. Grantee shall provide service to electric light and power consumers in the City without discriminating against persons based upon race, color, religion, sexual orientation, creed, or national origin, or, in accordance with Oregon law.

Section 18. INDEMNIFICATION. To the fullest extent permitted by law, Grantee shall indemnify and hold harmless the City against 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 Grantee, 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 19. INSURANCE. Grantee shall obtain and maintain in full force and effect, for the entire Term, the following insurance covering risks associated with Grantee's ownership and use of Grantee Facilities and the Public ROW:

(A) Commercial General Liability insurance covering all operations by or on behalf of Grantee for Bodily Injury and Property Damage, including Completed Operations and Contractors Liability Coverage, in an amount not less than Two Million Dollars (\$2,000,000.00) per occurrence and in the aggregate.

(B) 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 One Million Dollars (\$1,000,000.00) per accident.

(C) Workers' Compensation coverage as required by law and Employer's Liability Insurance with limits of \$1,000,000. With the exception of Workers' Compensation and Employers Liability coverage, Grantee shall name the City as an additional insured on all applicable policies. All insurance policies shall provide that they shall not be canceled or modified unless thirty (30) days prior written notice is provided to the City. Grantee shall provide the City with a certificate of insurance evidencing such coverage as a condition of this Franchise and shall provide updated certificates upon request.

(D) In Lieu of Insurance. In lieu of the insurance policies required by this Section 19, Grantee may self-insure any and all of the coverage outlined in this Section 19. If Grantee elects to self-insure, it shall do so in an amount at least equal to the coverage requirements of this Section 19 in a form acceptable to the City. Grantee shall provide proof of self-insurance to the City before this Franchise takes effect and thereafter upon request by the City.

Section 20. DAMAGE TO FACILITIES. 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 Grantee against all claims, damages, costs and expenses, including attorney's fees and costs, arising from such acts or omissions, 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 21. LIMITATION ON PRIVILEGES. All rights and authority granted to Grantee by the City under this Franchise are conditioned on the understanding and agreement that the privileges in the Public ROW shall not be an enhancement of Grantee's properties or an asset or item of ownership of Grantee.

Section 22. FRANCHISE NOT EXCLUSIVE. This Franchise is not exclusive and shall not be construed to limit the City from granting rights, privileges and authority to other persons similar to or different from those set forth in this Franchise.

Section 23. REMEDIES AND PENALTIES NOT EXCLUSIVE. All remedies and penalties under this Franchise, including termination, are cumulative and not exclusive, and the recovery or enforcement by one available remedy or imposition of a penalty is not a bar to recovery or enforcement of any other remedy or imposition of any other penalty. The City reserves the right to enforce the penal provisions of any City ordinance or resolution and to avail itself to any and all remedies available at law or in equity. Failure to enforce any term, condition or obligation of this Franchise shall not be construed as a waiver of a breach of any term, condition or obligation of this Franchise. A specific waiver of a particular breach of any term, condition or obligation of this Franchise shall not be a waiver of any other subsequent or future breach of the same or any other term, condition or obligation of this Franchise.

Section 24. SEVERABILITY CLAUSE. If any section, subsection, sentence, clause, phrase, or other portion of this Franchise is, for any reason, held to be invalid or unconstitutional by a court of competent jurisdiction, all portions of this Franchise that are not held to be invalid or unconstitutional shall remain in effect until this Franchise is terminated or expired. After any declaration of invalidity or unconstitutionality of a portion of this Franchise, either party may demand that the other party meet to discuss amending the terms of this Franchise to conform

to the original intent of the parties. If the parties are unable to agree on a revised franchise agreement within ninety (90) days after a portion of this Franchise is found to be invalid or unconstitutional, either party may terminate this Franchise by delivering one hundred and eighty (180) days notice to the other party.

Section 25. ACCEPTANCE. Within thirty (30) days after the ordinance adopting this Franchise is passed by the City Council, Grantee shall file with the City Recorder its written unconditional acceptance of this Franchise. If Grantee fails to do so, the City may withdraw this Franchise an any time prior to January 1, 20XX. If the City elects not to withdraw this Franchise on or before January 1, 20XX, the Grantee shall be deemed to accept the terms of this Franchise, whether or not a written acceptance has been filed with the City.

Section 26. NOTICE. Any notice provided for under this Franchise shall be sufficient if in writing and (1) delivered personally to the following addressee, (2) deposited in the United States mail, postage prepaid, certified mail, return receipt requested, (3) sent by overnight or commercial air courier (such as Federal Express or UPS), or (4) sent by facsimile transmission with verification of receipt, addressed as follows, or to such other address as the receiving party hereafter shall specify in writing:

If to the City: City Manager, City of Tualatin, Oregon

18880 SW Martinazzi

Tualatin, Oregon 97062

FAX # (503) 692-5421

With a copy to: City Attorney

City of Tualatin, Oregon

-18880 SW Martinazzi

Tualatin, OR 97062

If to the Grantee: Regional Manager

Portland General Electric Company

Address

XXX, Oregon 97XXX

FAX: (503) XXX-XXXX

With a copy to: Portland General Electric Company

Attn: General Counsel

One World Trade Center, 17th Floor

121 SW Salmon Street

Portland, Oregon 97204

FAX: (503) 464-2200

Any such notice, communication or delivery shall be deemed effective and delivered upon the earliest to occur of actual delivery, three (3) business days after deposition in the United States mail, one (1) business day after shipment by commercial air courier or the same day as confirmed facsimile transmission (or the first business day thereafter if faxed on a Saturday, Sunday or legal holiday).

The parties, through their duly authorized representatives, have executed this franchise as of the dates indicated below.

PORTLAND GENERAL ELECTRIC

CITY

COMPANY

BY: _____

BY: _____

NAME: _____

NAME: _____

TITLE: _____

TITLE: _____

DATE: _____

DATE: _____



MEMORANDUM CITY OF TUALATIN

TO: Honorable Mayor and Members of the City Council

THROUGH: Sherilyn Lombos, City Manager 

FROM: Donald A. Hudson, Finance Director 
Cortney Cox, Court Administrator 

DATE: November 9, 2009

SUBJECT: Update on Municipal Court and Exploration of a Youth Peer Court

UPDATE ON MUNICIPAL COURT

BACKGROUND:

In the summer of 2008, the City Council directed staff to pursue expanding the Tualatin Municipal Court to include non-criminal traffic violations. At that time, Tualatin Police Officers were issuing traffic citations and sending them to either Washington County Justice Court in Beaverton or the Clackamas County Circuit Court in Oregon City. This meant Tualatin Officers, as well as residents, had to travel outside the City to appear in Court.

In September, 2008, the City hired Cortney Cox as the Court Administrator. She embarked on setting up the expanded Court, including implementation of a new court software system, collaborating with Police and Legal to establish the Court organization, and visiting other municipal courts to observe their operations. On December 8, 2008, Mayor Ogden appointed and the City Council unanimously confirmed Jack Morris as the Court's Presiding Judge and Scott Morrill and James Shartel as Pro Tem Judges. Jack Morris came to the Court with more than 12 years experience from Sherwood Municipal Court where he also currently presides. The first session of the newly expanded Municipal Court was held on January 29, 2009.

UPDATE:

Court proceedings (arraignments and trials) are held twice a month. Through October, Court was held on the first and third Thursdays of each month, however as of November 4th, Court has changed to the first and third Wednesdays of each month. This change was at the request of Judge Morris, due a schedule conflict with Sherwood's Municipal Court.

MEMORANDUM: Update on Municipal Court and Exploration of a Youth Peer Court

Date: November 9, 2009

Page 2 of 5

When a traffic citation is written by a Tualatin Police Officer, it is given an arraignment date approximately 4 weeks from the date the citation is issued, based upon a schedule distributed to the officers by the Court. As the following chart shows, we have averaged approximately 100 citations issued for each court date:

Court Date	Citations Issued	Court Date	Citations Issued
29-Jan	90	2-Jul	60
6-Feb	100	16-Jul	54
19-Feb	134	6-Aug	75
5-Mar	119	20-Aug	114
19-Mar	99	3-Sep	80
2-Apr	99	17-Sep	118
16-Apr	75	1-Oct	105
7-May	134	15-Oct	117
21-May	81	4-Nov	108
4-Jun	87		
18-Jun	87		

On most court dates, the arraignment docket is between 70 to 80 defendants, which means that approximately 20-30% of violators have mailed in their fines or come in person to handle their citation before their court date. For those who appear before the judge during arraignments, they are given the choice to either plead guilty/no contest or not guilty. Until the last few months, approximately 10% of those arraigned pleaded not guilty and requested a trial. Presumably due to the economy, we are now experiencing about 20% of defendants pleading not guilty. When a defendant pleads not guilty they are mailed a Trial Notice with a trial date approximately a month or so out. Trials are held each court date, following that docket's arraignments. Trials are scheduled starting at 5:00p.m. for officers that work night shifts and 6:00p.m. for officers that work the day shift. Scheduling trials in this way allows for officers on duty to be out in the field protecting the interests of residents while at the same time keeping the amount of overtime to a minimum.

For the first quarter of the current fiscal year, our revenues are below projections. One factor is that due to Police Department staffing issues, fewer citations have been issued. There are other factors for this besides the lower number of citations, including a rise in the number of deferred payment plans and a rise in the number of defendants failing to appear. Deferred payment plans are an option available for defendants with an added cost of 25% and a signed contract.

Pursuant to ORS 153.102, when a defendant fails to appear (FTA) at an arraignment or a trial, a guilty by default finding is entered on their citation. The following day, a letter is

sent to the defendant notifying them of the Guilty By Default finding and gives them 30 days to pay the citation balance to avoid having their license suspended. After the DMV suspends their license, the file will be sent to collections for attempt to recover the outstanding bail amount. On average, approximately 15 people fail to appear each court date.

We are not alone in this, as due to the current economic climate, Courts across Oregon are experiencing a decline in revenues and an increase in failures to comply. We will continue to monitor our revenue situation as the year goes on.

EXPLORATION OF A YOUTH PEER COURT

BACKGROUND:

During the City Council Goal Setting retreat in November 2008, the idea of exploring the addition of a Youth Peer Court was added to the Council's Strategic Plan.

DESCRIPTION:

Peer Court is a diversion program for first time juvenile offenders who commit misdemeanors or violations. Youths may be referred to Peer Court by local schools, police officers, or Municipal Court. After an officer arrests a juvenile, if they admit guilt and have parental approval, the offender is referred to Peer Court. Juries made up of students hear the cases and recommend a sentence for the defendant that is appropriate for the crime and the circumstances.

Typically the following types of juvenile offenses are referred to Peer Courts:

- Minor in possession of Marijuana
- Minor in possession of Tobacco
- Minor in possession of Alcohol
- Curfew
- Criminal Trespass
- Littering
- Minor Graffiti (Criminal Mischief III)
- Theft
- Reckless Burning
- Disorderly Conduct
- Harassment
- Truancy

Currently the Tualatin Police Department cites juvenile traffic citations and ordinance violations into Tualatin Municipal Court. Tualatin Police send juvenile misdemeanors to the County Juvenile Circuit Court in the County which the juvenile resides for adjudication. On average, Tualatin Police arrest 47 juveniles monthly for criminal matters.

HOW YOUTH PEER COURT WORKS:

When an offender is contacted by a police officer, they will be given the option of having their case heard and determined in the Peer Court System. The Peer Court Coordinator or School Resource Officer will schedule an interview with the offender and their parent or guardian to determine if the offender is eligible for the program and if they agree to complete the program.

An appearance date is scheduled and the offender appears, with a parent or guardian, to have the case heard. The Presiding Judge is usually a volunteer local attorney who will ensure that all legal requirements are met. Students will act as Peer Attorneys, to summarize the case and present any circumstances that may have an effect on the sentence. Finally, a jury composed of other student volunteers and former offenders will decide the appropriate sentence in the case.

POSSIBLE SANCTIONS:

The following sanctions are possible:

- Community Service hours: 0-40 hours
- Maximum number of words given for essay: 1000
- Verbal or letter of apology
- Restitution either directly related to the monetary items listed in the police report, or include two written appraisals for replacement of damaged property presented at hearing
- All defendants must sit as a juror at least once per infraction

FACILITATING PEER COURT:

Youth Peer Courts usually have Court once to twice a month and have a Peer Court Coordinator that is employed 20-30 hours a week. This position generally supervises and trains youth volunteers as well as runs the Court while in session and prepares files, and manages and coordinates sanctions such as community service. The Peer Court Coordinator is also the Liaison with local schools, Police, and the community as a whole. This position also generally facilitates the Peer Court Advisory Committee.

As with exploring any new program there are positives and negatives to consider. The following are pros and cons of a new Youth Peer Court:

Pros:

- Youth Peer Court gives first time offenders a "second chance". The juvenile offender upon completion avoids a juvenile record.
- Volunteer students are provided hands-on experience in the judicial system.
- The Community benefits by the reduction of potential occurrence by repeat offenders.

Cons:

- Potential liability to City in regards to insurance and security.

MEMORANDUM: Update on Municipal Court and Exploration of a Youth Peer Court

Date: November 9, 2009

Page 5 of 5

- Offender misses out on intervention programs such as treatment and counseling they may be mandated to in Juvenile Circuit Courts.
- Dependency on volunteerism to run program.
- Large amounts of case management, coordinating, monitoring and facilitating community services.
- Cost of implementing and operating the peer court and paying for additional staffing in this economic climate.

CONCLUSION:

Staff seeks direction related to the pursuit of setting up a Youth Peer Court.



MEMORANDUM CITY OF TUALATIN

TO: Honorable Mayor and Members of the City Council

THROUGH: Sherilyn Lombos, City Manager *SL*

FROM: Doug Rux, Community Development Director *DR*
Aquilla Hurd-Ravich, Senior Planner *AHR*

DATE: November 9, 2009

SUBJECT: JOINT POSITION STATEMENT BY THE CITIES OF LAKE OSWEGO, TUALATIN, AND WEST LINN REGARDING THE FUTURE URBANIZATION OF THE STAFFORD AREA NORTH OF I-205 AND THE NORTHERN PORTION OF PETE'S MOUNTAIN ALONG THE TUALATIN RIVER

ISSUE BEFORE THE COUNCIL

The issue before the Council is consideration of a joint position statement drafted by a consultant for the City of West Linn.

POLICY CONSIDERATIONS

1. Does the letter accurately support Tualatin's position on urbanization in the Stafford area north of I-205 and the northern portion of Pete's Mountain?
2. If so, should the Council adopt a resolution that adopts this position?

BACKGROUND

On Monday October 20, 2009 the West Linn City Council discussed this statement during their work session. They approved the statement with some changes and authorized their consultant to share the work with Lake Oswego and Tualatin. The objective of this position statement is to formulate one position that each City Council feels comfortable adopting by resolution. Such a unified position about not urbanizing the Stafford area would then be shared with the Core 4 and Metro Councilors. The position is specifically aimed at the portion of Stafford north of I-205 and the northern portion of Pete's Mountain as defined by Clackamas County.

DISCUSSION

Generally, this position paper reflects the Mayor's statement to Clackamas County, the Regional Steering Committee and the Core 4 regarding the City's opposition to urbanization of the Stafford area in Clackamas County. It is also reflective of the City's Local Aspirations and the positions stated in response to Metro's COO recommendations and staff's analysis of the Urban Reserve factors that was submitted to the Regional Steering Committee and Core 4.

However, after review staff has identified four specific comments for Council's consideration.

1. The position statement includes a comment regarding the analysis we contracted CH2M Hill to produce, and the findings that urban level development is not financially feasible. We did not conduct a fiscal impact analysis that measures revenues and compares them against expenses to determine the effect on the City. Therefore, it is not clear what financial impacts the City could face from urbanization. (page 1 paragraph 4)
2. The statement mentions negative impacts on existing neighborhoods in the cities but it does not enunciate these impacts. (page 2 paragraph 2)
3. There is no mention of the Reserve factors or analysis showing this area does not meet Urban Reserve factors. It also does not mention the other non-urban, non-rural uses Commissioner Lehan articulated this past summer.
4. "Rather than criticize the three cities for wanting to preserve it for what it is, Metro should be supportive of their efforts to protect what is also a significant regional resource." Finally, the above statement could be changed to reflect protecting the Tualatin River and Wilson Creek both natural features listed on Metro's Natural Features Inventory. (page 2 paragraph 3)

Any changes made to the joint position statement will have to go back before the West Linn City Council and the Lake Oswego City Council for review and approval by resolution.

If agreement can be reached on the language in the position statement, then a resolution of support will be brought before the City Council on November 23, 2009 for adoption.

RECOMMENDATION

Staff recommends you review the position statement and provide any comments or amendments.

- Attachments:**
- A. Joint Position Statement
 - B. Map of Stafford Area and Northern Portion of Pete's Mountain

Attachment A



City of Lake
Oswego
OREGON



Tualatin, Oregon
18880 SW Martinazzi Ave
Tualatin, OR 97062



CITY OF
West Linn

Joint Position Statement by the Cities of Lake Oswego, Tualatin, and West Linn Regarding the Future Urbanization of the Stafford Area North of I-205 and the Northern Portion of Pete's Mountain Along the Tualatin River

The Cities of Lake Oswego, Tualatin and West Linn, by separate resolutions of their Councils, dated _____, _____, and _____ respectively, hereby declare united opposition to the urbanization of the Stafford area and the designation of this area as an urban reserve by Metro.

Each city has communicated to Metro an unwillingness to serve the Stafford area with municipal services. Also, each city has communicated a general unwillingness to subject the Stafford area to the negative impacts of urbanization. Despite these communications, the Stafford area has been recommended by the Metro Chief Operating Officer for urbanization, and the Stafford area continues to be an area that the Metro Council wishes to "discuss further."

Our cities do not wish to discuss the prospect of urbanizing the Stafford area any further. The shared opposition to urbanizing the Stafford area is longstanding. Over time, the reasons for opposing urbanization have become even more relevant and more consistent with the current and long term interests of the cities and residents.

Evaluation of the Stafford area for urbanization in 1993 led the cities to conclude that the area was not suitable for urbanization. Recently, detailed analysis completed in 2009 by the City of Tualatin for the Borland Road area of Stafford showed that urbanization of the Stafford area would not be a financially feasible undertaking that any local government would or should be expected to attempt given the development costs the public would have to subsidize.

MEMORANDUM: Joint Position Statement

November 9, 2009

Page 4 of 5

Since 1993, the acquisition of land by public agencies and some development has resulted in even less capacity for urban development in the Stafford area over which to spread the increasing costs of infrastructure, while the availability of public financing has decreased. There is little reason to believe these circumstances would be reversed in the future.

Our cities oppose urbanization because it would not be cost effective, and because it would have significant negative impacts on existing neighborhoods. Our cities also oppose urbanization because of how the Stafford area has and continues to evolve into a semi-rural area with a pastoral setting that is enjoyed by its residents for the lifestyle it affords them and by its neighbors for the relief it provides from the adjacent urban areas.

The Stafford area's extensive drainage system; steep slopes; significant natural landscape features; limited transportation access; and parcelization make it unsuitable for urbanization and highly suitable for a buffer area between cities. There are few such areas remaining in the Portland Metropolitan Region. Rather than criticize the three cities for wanting to preserve it for what it is, Metro should be supportive of their efforts to protect what is also a significant regional resource.

Our cities have all stated in our previously submitted aspirations to Metro that an urbanized Stafford is not part of our city's futures. We are all more focused on making our communities more complete and compact; on redeveloping their centers and corridors; on correcting deficiencies in existing transportation and utility systems and in maximizing the return on our investment in these systems; on ensuring that our communities are more sustainable and energy efficient; and on improving the quality of life for our residents. None of these goals would be served by expansion of our cities into the Stafford area.

We are confident that this unified position statement is consistent with our cities' positions on Stafford over the past 16 years. We are also confident that this unified position statement is consistent with the wishes of our citizens today and that it will remain so into the future.

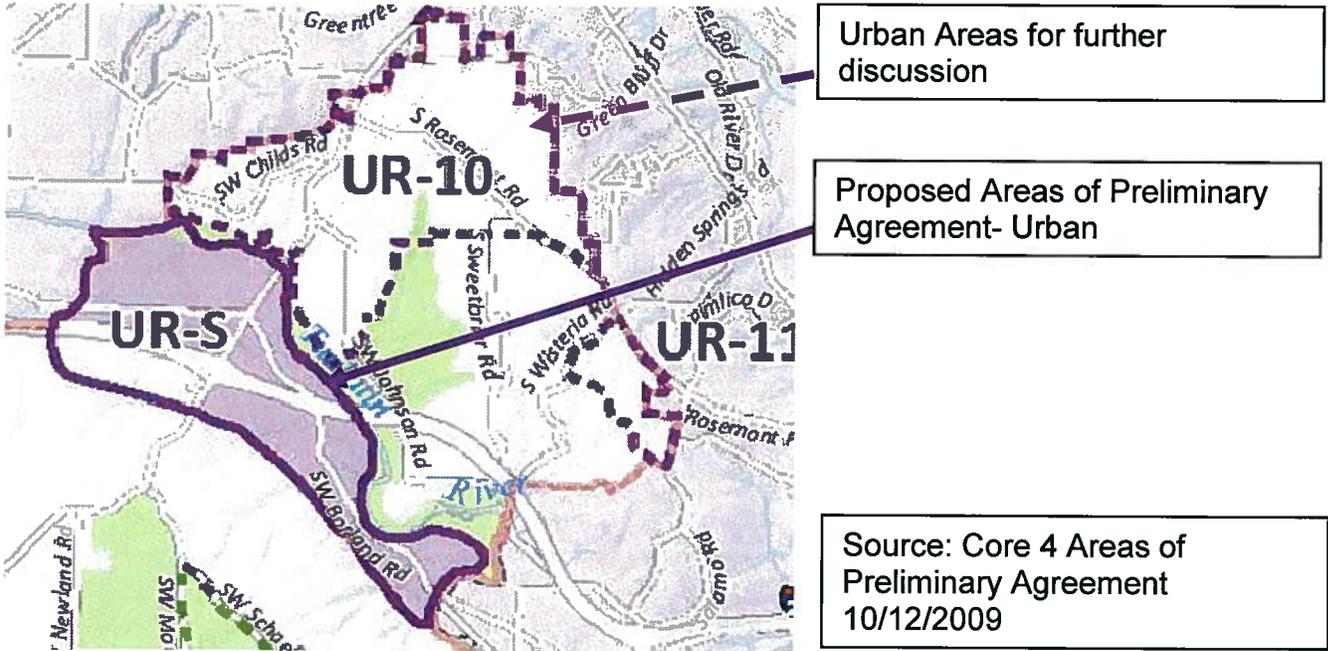
Jack Hoffman, Mayor
City of Lake Oswego

Lou Ogden, Mayor
City of Tualatin

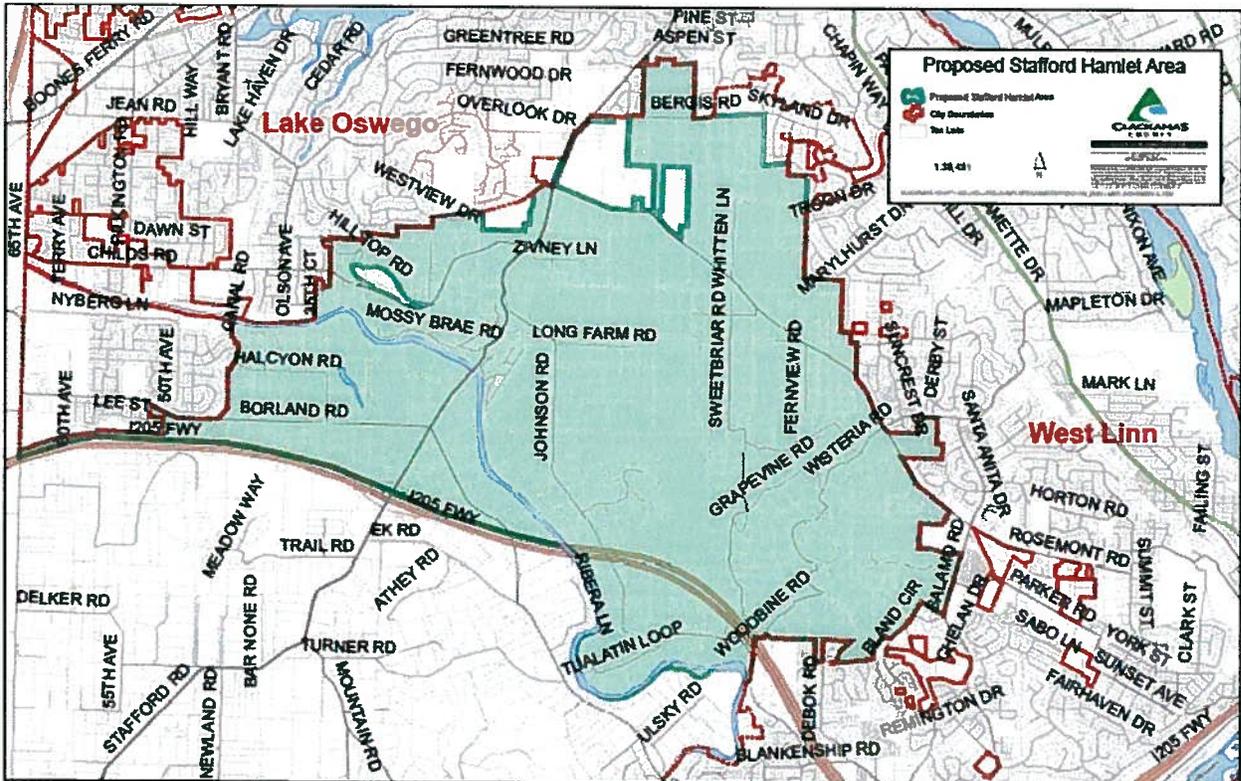
Patti Galle, Mayor
City of West Linn

Attachment B

Map of Core 4 Areas of Preliminary Agreement and Areas for Further Discussion



Map of Stafford Hamlet



November

2009

<i>Sun</i>	<i>Mon</i>	<i>Tue</i>	<i>Wed</i>	<i>Thu</i>	<i>Fri</i>	<i>Sat</i>
1	2 6:00p CIC Meeting	3 6:30p TLAC	4 6:30p Tualatin Tomorrow VIC Steering Committee, Police Department 7:00p ARB re: Stafford Hills Racquet Club; Council Chambers	5 2:00p Chamber Business Showcase @ Grand Hotel 6:45p Clackamas County C-4 Meeting @County Develop. Services Building	6 7:30a Chamber Network. @ Clairmont Financial Partners, 5285 SW Meadow Road, Lake Oswego	7 10-2:00 Bulky Waste Day @ Allied in Wilsonville
8	9 5:00p Work Session 7:00p Council/TDC Mtg	10 6:00p TPARK NLC Conference - San Antonio	11 Veterans Day Holiday CITY OFFICES CLOSED LIBRARY OPEN	12 7:00p TPAC Meeting, Council Chambers	13 7:30a Chamber Networking Sponsored by Joy Fleming, Mary Kay	14 10-2:00 Yard Debris Drop- Off @ Grimm's - Tualatin
15	16 5:00p Work Session 7:00p Council/TDC Mtg	17 6:30p TAAC	18 12:00p Core Area Parking District Board, Council Chambers 5:00p Metro Policy Advisory Committee	19	20 7:30a Chamber Networking @ Wine Styles, 7009 SW Nyberg St.	21
22	23 5:00p Work Session 7:00p Council/TDC Mtg	24	25	26 Thanksgiving Day Holiday CITY OFFICES AND CHAMBER CLOSED	27 Thanksgiving Holiday CITY OFFICES AND CHAMBER CLOSED LIBRARY OPEN 10a-6p	28
29	30					

December

<i>Sun</i>	<i>Mon</i>	<i>Tue</i>	<i>Wed</i>	<i>Thu</i>	<i>Fri</i>	<i>Sat</i>
		1	2	3	4	5
		6:30p TLAC		11:00a Chamber Holiday Auction @ Country Club 6:45p Clackamas County C-4 Meeting @ County Develop. Services Building	6p-9p Starry Nights and Holiday Lights	
6	7	8	9	10	11	12
	6:00p CIC Meeting	6:00p TPARK/Metro Tonquin Trail Master Plan Open House	6:30p Tualatin Tomorrow VIC Meeting, Library Community Room 5:00p Metro Policy Advisory Committee	7:00p TPAC Meeting, Council Chambers	City Holiday Party	
13	14	15	16	17	18	19
	5:00p Work Session 7:00p Council/TDC Mtg		5:00p Metro Policy Advisory Committee			
20	21	22	23	24	25	26
		6:30p TAAC			Christmas Day Holiday CITY OFFICES AND LIBRARY CLOSED	
27	28	29	30	31		

2009

January

2010

	<i>Mon</i>	<i>Tue</i>	<i>Wed</i>	<i>Thu</i>	<i>Fri</i>	<i>Sat</i>
					1 New Years Day Holiday CITY OFFICES AND LIBRARY CLOSED	2
3	4 6:00p CIC Meeting	5 6:30p TLAC	6	7 6:45p Clackamas County C-4 Meeting @ County Develop. Services Building	8	9
10	11 5:00p Work Session 7:00p Council/TDC Mtg	12 6:00p TPARK	13 6:30p Tualatin Tomorrow VIC Steering Committee Meeting, Council Chambers	14 11:30a Tualatin Tomorrow Partners' Luncheon @ Hayden's 7:00p TPAC Meeting, Council Chambers	15	16
17	18 MLK Day Holiday CITY OFFICES CLOSED LIBRARY OPEN 1-9p Day of Volunteer Service	19 6:30p TAAC	20	21 7:00p Urban Renewal Advisory Committee, City Offices 18876 SW Martinazzi Avenue	22	23
24	25 5:00p Work Session 7:00p Council/TDC Mtg	26	27	28	29	30
31						

February

<i>Sun</i>	<i>Mon</i>	<i>Tue</i>	<i>Wed</i>	<i>Thu</i>	<i>Fri</i>	<i>Sat</i>
	1 6:00p CIC Meeting	2 6:30p TLAC	3	4 6:45p Clackamas County C-4 Meeting @County Develop. Services Building	5	6
7	8 5:00p Work Session 7:00p Council/TDC Mtg	9 6:00p TPARK	10 6:30p Tualatin Tomorrow VIC Steering Committee Meeting, Council Chambers	11 7:00p TPAC Meeting, Council Chambers	12	13
14	15 Presidents Day Holiday CITY OFFICES CLOSED LIBRARY OPEN 1-9p	16 6:30p TAAC	17 12:00p Core Area Parking District Board, Council Chambers	18	19	20
21	22 5:00p Work Session 7:00p Council/TDC Mtg	23	24	25	26	27
28						

2010

WORK SESSION ITEMS

PowerPoint?

1. Land Acquisition and Trails Update (Comm Svc)

2. Ordinance regarding filming in city limits (Comm Dev)

3. Quarterly Financial Report

4. Phase III Tree Regs

5.

PRESENTATIONS / ANNOUNCEMENTS / SPECIAL REPORTS

PowerPoint?

1. Tualatin Tomorrow HSS (Health, Safety, Social Services)

2. Tualatin Riverkeepers

3. Presentation of 25-year service award to HR Director, Nancy McDonald

CONSENT CALENDAR ITEMS

1. Meeting Minutes

2.

3.

4.

PUBLIC HEARINGS – Legislative, Quasi-Judicial or Other

PowerPoint?

1.

2.

3.

GENERAL BUSINESS ITEMS (not consent)

PowerPoint?

1.

2. PGE Franchise Ordinance

3. Stop Signs – Install and remove (Eng)

4.

5.

EXECUTIVE SESSION ITEMS

1.

Location: TBD

1.

2.

3.

4.

5.

WORK SESSION ITEMS

PowerPoint?

1. South Tualatin (Comm. Dev)

2. Sign Design Standards (Comm. Dev)

3. Water Update (Eng) – *tentative*

4. CURD Maximum Indebtedness Financial Analysis TDC – (Comm. Dev.)

5.

PRESENTATIONS / ANNOUNCEMENTS / SPECIAL REPORTS

PowerPoint?

1. YAC Update

2. Tualatin Tomorrow TTC (Transportation, Traffic & Connectivity)

3. Commuter Rail Update

4. Human Rights Month Proclamation (move to Nov 23rd?)

CONSENT CALENDAR ITEMS

1. Meeting Minutes

2.

3.

4.

PUBLIC HEARINGS – Legislative, Quasi-Judicial or Other

PowerPoint?

1. CUP-09-04 Glass Doctor - 63rd Avenue (*Quasi-Judicial*) (Comm.Dev.)

2.

3.

GENERAL BUSINESS ITEMS (not consent)

PowerPoint?

1. Ord regarding filming in city limits (Comm.Dev.)

2.

3.

4.

5.

EXECUTIVE SESSION ITEMS

1.

WORK SESSION ITEMS

PowerPoint?

1. CUP List of Uses in Residential Update (Comm. Dev.)
2. Phase III Tree Preservation Regs (Comm.Dev.)
3. Land Use Notification Requirements (Comm. Dev.)
4. Advisory Committees
- 5.

PRESENTATIONS / ANNOUNCEMENTS / SPECIAL REPORTS

PowerPoint?

1. YAC Update
- 2.
- 3.

CONSENT CALENDAR ITEMS

1. Meeting Minutes
2. Picnic Shelter Name (*Comm Svcs*)
3. Annual Council / TDC Resolutions on Committee meetings dates and times
- 4.

PUBLIC HEARINGS – Legislative, Quasi-Judicial or Other

PowerPoint?

- 1.
- 2.
- 3.

GENERAL BUSINESS ITEMS (not consent)

PowerPoint?

1. Verizon change to Frontier – MACC (*will be at meeting*)
2. Ord regarding filming in city limits (Comm.Dev.)
- 3.
- 4.
- 5.

EXECUTIVE SESSION ITEMS

- 1.

WORK SESSION ITEMS

PowerPoint?

1. PTA-09-03 Historic Regs Update (Comm. Dev.) *(Tentative)*
2. SW Concept Plan Update (Comm. Dev.)
- 3.
- 4.
- 5.

PRESENTATIONS / ANNOUNCEMENTS / SPECIAL REPORTS

PowerPoint?

- 1.
- 2.
- 3.

CONSENT CALENDAR ITEMS

1. Meeting Minutes
- 2.
- 3.
- 4.

PUBLIC HEARINGS – Legislative, Quasi-Judicial or Other

PowerPoint?

- 1.
- 2.
- 3.

GENERAL BUSINESS ITEMS (not consent)

PowerPoint?

- 1.
- 2.
- 3.
- 4.
- 5.

EXECUTIVE SESSION ITEMS

- 1.

WORK SESSION ITEMS

PowerPoint?

1. _____
2. _____
3. _____
4. _____
5. _____

PRESENTATIONS / ANNOUNCEMENTS / SPECIAL REPORTS

PowerPoint?

1. YAC Update
2. Tualatin Tomorrow ACE
3. _____

CONSENT CALENDAR ITEMS

1. Meeting Minutes
2. _____
3. _____
4. _____

PUBLIC HEARINGS – Legislative, Quasi-Judicial or Other

PowerPoint?

1. PTA -08-06 Sign Design Standards (**Legislative**) (Comm. Dev.)
2. PTA-09-02 For Sale/Lease Signs (**Legislative**) (Comm. Dev.)
3. _____

GENERAL BUSINESS ITEMS (not consent)

PowerPoint?

1. _____
2. _____
3. _____
4. _____
5. _____

EXECUTIVE SESSION ITEMS

1. _____