

**AGENDA**

**WILSONVILLE CITY COUNCIL MEETING  
NOVEMBER 3, 2014  
7:00 P.M.**

**CITY HALL  
29799 SW TOWN CENTER LOOP  
WILSONVILLE, OREGON**

Mayor Tim Knapp

Council President Scott Starr  
Councilor Susie Stevens

Councilor Richard Goddard  
Councilor Julie Fitzgerald

**CITY COUNCIL MISSION STATEMENT**

To protect and enhance Wilsonville's livability by providing quality service to ensure a safe, attractive, economically vital community while preserving our natural environment and heritage.

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**Executive Session is held in the Willamette River Room, City Hall, 2<sup>nd</sup> Floor**

- |                  |                                                                                                 |           |
|------------------|-------------------------------------------------------------------------------------------------|-----------|
| <b>5:00 P.M.</b> | <b>EXECUTIVE SESSION</b>                                                                        | [5 min.]  |
| A.               | Pursuant to ORS 192.660(2)(3) Property Transactions; and<br>ORS 192.660(2)(h) Litigation        |           |
| <b>5:15 P.M.</b> | <b>REVIEW OF AGENDA</b>                                                                         |           |
| <b>5:20 P.M.</b> | <b>COUNCILORS' CONCERNS</b>                                                                     | [5 min.]  |
| <b>5:25 P.M.</b> | <b>PRE-COUNCIL WORK SESSION</b>                                                                 |           |
| A.               | CIP Update (Mende)                                                                              | [20 min.] |
| B.               | Willamette Locks Economic Potential Report by Willamette<br>Falls Heritage Foundation (Ottenad) | [10 min.] |
| C.               | Stormwater Rate Study 25-year scenario (Kraushaar)                                              | [15 min.] |
| D.               | Update on Urban Renewal Strategic Plan (Retherford)                                             | [15 min.] |
| E.               | Grahams Ferry Road Surplus Property Declaration<br>(Retherford)                                 | [10 min.] |
| F.               | Climate Smart Communities Scenarios Follow-up<br>(Kraushaar)                                    | [15 min.] |
| G.               | Tourism Update (Cosgrove/Ottenad)                                                               | [15 min.] |
| <b>6:50 P.M.</b> | <b>ADJOURN</b>                                                                                  |           |
- 

**CITY COUNCIL MEETING**

The following is a summary of the legislative and other matters to come before the Wilsonville City Council a regular session to be held, Monday, November 3, 2014 at City Hall. Legislative matters must have been filed in the office of the City Recorder by 10 a.m. on October 21, 2014. Remonstrances and other documents pertaining to any matters listed in said summary filed at or prior to the time of the meeting may be considered therewith except where a time limit for filing has been fixed.



**7:00 P.M. CALL TO ORDER**

- A. Roll Call
- B. Pledge of Allegiance
- C. Motion to approve the following order of the agenda and to remove items from the consent agenda.

**7:05 P.M. MAYOR'S BUSINESS**

- A. Upcoming Meetings

**7:10 P.M. COMMUNICATIONS**

- A. Resolution in Support of Strategies to Reopen the Willamette Falls Locks (staff – Ottenad)

**7:25 P.M. CITIZEN INPUT & COMMUNITY ANNOUNCEMENTS**

This is an opportunity for visitors to address the City Council on items *not* on the agenda. It is also the time to address items that are on the agenda but not scheduled for a public hearing. Staff and the City Council will make every effort to respond to questions raised during citizens input before tonight's meeting ends or as quickly as possible thereafter. Please limit your comments to three minutes.

**7:30 P.M. COUNCILOR COMMENTS, LIAISON REPORTS & MEETING ANNOUNCEMENTS**

- A. Council President Starr – (*Park & Recreation Advisory Board Liaison*)
- B. Councilor Goddard – (*Library Board Liaison*)
- C. Councilor Fitzgerald – (*Development Review Panels A & B Liaison*)
- D. Councilor Stevens – (*Planning Commission; CCI; Wilsonville Seniors Liaison*)

**7:40 P.M. CONSENT AGENDA**

- A. **Resolution No. 2496**  
Resolution Of The City Of Wilsonville Supporting The Reopening Of The Willamette Falls Locks. (staff – Ottenad)
- B. **Resolution No. 2495**  
A Resolution Of The City Of Wilsonville Authorizing The City Manager To Execute Addendum One Amending Section 4.9 Of The Intergovernmental Agreement Between The City Of Sherwood And The City Of Wilsonville Regarding Cost, Construction Ownership, And Operation Of Segment 3B Of A 48-Inch Diameter Water Transmission Line From The Terminus Of Segment 3A In Kinsman Road To The Beginning Point Of Segment 4 Near The Intersection Of The Proposed, As Yet To Be Completed, Segment Of Kinsman Road And Boeckman Road, A Length Of Approximately 2,400 Feet. (staff – Mende)
- C. **Resolution No. 2492**  
A Resolution Of The City Of Wilsonville Declaring City-Owned Real Property Described As 3S-1W-15BD Tax Lot #01503 As Surplus Property And Authorizing Staff To Dispose Of The Property Through Sale. (staff – Retherford)
- D. **Resolution No. 2494**  
A Resolution Of The City Of Wilsonville Authorizing Acquisition Of Property Interest Related To The Replacement Of Water Pipeline (CIP Project #1121). (staff – Retherford)

**7:45 P.M. PUBLIC HEARING**

- A. **Ordinance No. 750** – 1<sup>st</sup> Reading



An Ordinance Of The City Of Wilsonville Amending Wilsonville Code Chapter 5, Vehicles And Traffic, Section 5.210, Prohibited Parking Or Standing (staff – Kohlhoff/Griffith)

B. **Ordinance No. 751** – 1<sup>st</sup> Reading

An Ordinance Of The City Of Wilsonville Adding Section “10.550 Civil Exclusion” To Chapter 10 Of The Wilsonville City Code (staff – Kohlhoff/Griffith)

C. **Ordinance No. 752** – 1<sup>st</sup> Reading

An Ordinance Of The City Of Wilsonville Adding Section 3.022 Water Safety Regulations To The Wilsonville City Code (staff – Kohlhoff/Griffith)

**8:45 P.M. CONTINUING BUSINESS**

A. **Ordinance No. 753** – 2<sup>nd</sup> Reading

An Ordinance Of The City Of Wilsonville Amending Wilsonville Code Chapter 8, Environment To Add A Stormwater Section And Make Other Modifications. (staff – Rappold/Kerber)

**8:50 P.M. CITY MANAGER’S BUSINESS**

**8:55 P.M. LEGAL BUSINESS**

**9:00 P.M. ADJOURN**

*An Urban Renewal Agency Meeting will follow.*

Time frames for agenda items are not time certain (i.e. Agenda items may be considered earlier than indicated. The Mayor will call for a majority vote of the Council before allotting more time than indicated for an agenda item.) Assistive Listening Devices (ALD) are available for persons with impaired hearing and can be scheduled for this meeting if required at least 48 hours prior to the meeting. The city will also endeavor to provide the following services, without cost, if requested at least 48 hours prior to the meeting: -Qualified sign language interpreters for persons with speech or hearing impairments. Qualified bilingual interpreters. To obtain services, please contact the City Recorder, (503)570-1506 or [king@ci.wilsonville.or.us](mailto:king@ci.wilsonville.or.us)



## CITY COUNCIL Work Session STAFF REPORT

<b>Meeting Date:</b> November 03, 2014	<b>Subject:</b> 5-year Capital Improvement Program – Work Session Briefing  <b>Staff Member:</b> Eric Mende, P.E., Capital Projects Engineering Manager <b>Department:</b> Community Development
<b>Action Required</b> <input type="checkbox"/> Motion <input type="checkbox"/> Public Hearing Date: <input type="checkbox"/> Ordinance 1 <sup>st</sup> Reading Date: <input type="checkbox"/> Ordinance 2 <sup>nd</sup> Reading Date: <input type="checkbox"/> Resolution <input type="checkbox"/> Information or Direction <input checked="" type="checkbox"/> Information Only <input type="checkbox"/> Council Direction <input type="checkbox"/> Consent Agenda	<b>Advisory Board/Commission Recommendation</b> <input type="checkbox"/> Approval <input type="checkbox"/> Denial <input type="checkbox"/> None Forwarded <input type="checkbox"/> Not Applicable  <b>Comments:</b>
<b>Staff Recommendation:</b> n/a	
<b>Recommended Language for Motion:</b>	
<b>PROJECT / ISSUE RELATES TO:</b> <i>[Identify which goal(s), master plans(s) issue relates to.]</i>	
<input checked="" type="checkbox"/> Council Goals/Priorities Sound Fiscal Management	<input checked="" type="checkbox"/> Adopted Master Plan(s) ALL
<input type="checkbox"/> Not Applicable	

**ISSUE BEFORE COUNCIL:** Staff will present the first draft of the 2015 to 2019 five-year Capital Improvement Program and solicit feedback from Council.

### EXECUTIVE SUMMARY:

The five year Capital Improvement Plan (CIP) is a strategic planning tool for staff and Council that provides a year-by-year listing of proposed capital expenditures against expected revenues for eight functional categories of capital improvements (Water, Sewer, Streets, Streetscape, Stormwater, Transit, Buildings, and Parks). The CIP also includes two other categories – Planning, and Urban Renewal, that either require revenue from, or provide revenue to the other functional categories. Expenses are identified for each project for each source of funds (Operations, SDCs, General Fund, grants, etc). Revenue projections are based on historic trends supplemented by staff calculations of revenue from future development.



**EXPECTED RESULTS:**

The five-year CIP informs the annual CIP budgeting process. The CIP is also used as a tool to determine if we are accruing adequate balances to fund longer range priorities. The key result desired from tonight's briefing is Council feedback on the project priorities and spending levels included in the five year plan. Do we have the right projects programmed into the right years to achieve Council's goals?

**TIMELINE:** Feedback from Council will be incorporated into a revised draft 5-year CIP that will be presented to the full Budget Committee in January/February 2015. Feedback from that meeting will be incorporated into FY 15/16 budget documents to be considered by the City Budget Committee in April and May 2015.

**CURRENT YEAR BUDGET IMPACTS:** None

**FINANCIAL REVIEW / COMMENTS:**

Reviewed by: SCole Date: 10/23/14

*No current fiscal impact. Future fiscal impacts will be discussed during subsequent budget meetings.*

**LEGAL REVIEW / COMMENT:**

Reviewed by: MEK Date: 10/23/24

NA

**COMMUNITY INVOLVEMENT PROCESS:**

The 5-year CIP is primarily comprised of projects that have been identified in the City's adopted master plans for wastewater, parks, transportation, stormwater, and water. Other projects in the 5-year CIP have been identified through operations and maintenance planning. Adopted master plans have gone through a public involvement process. From time to time an adopted master plan's CIP is amended by resolution through the City Council.

This draft five-year CIP will be available on-line to the general public, but at this time no targeted outreach or open house is planned.

**POTENTIAL IMPACTS or BENEFIT TO THE COMMUNITY** (businesses, neighborhoods, protected and other groups):

The 5-year CIP benefits the Wilsonville community that assures an organized and fiscally responsible approach to the annual budget process. This project and funding programming exercise provides thoughtful coordination of project priorities, funding needs, and revenue timing.

**ALTERNATIVES:** n/a

**CITY MANAGER COMMENT:**

**ATTACHMENTS:** None.



# **Five Year CIP Look Ahead 2014/15 to 2018/19**

**Wilsonville City Council Work Session  
November 03, 2014**

Eric Mende  
Capital Projects Engineering Manager

Keep tonight's presentation at a high level.

13 slides that touch on each of the main capital programs and then some charts showing the overall spending for the five year period.

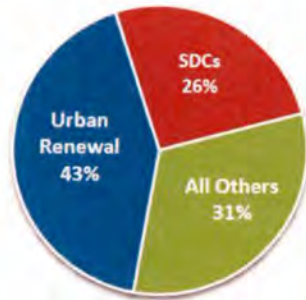
There is a lot of information behind a small number of slides, so please stop me at any time if I lose you or I need to clarify something.

Key feedback staff would like to get back – doesn't have to be tonight – is: do we have the right projects on the list to meet your Council Goals, and what other information would you like to see when we present this to the full budget committee in February.

Note on nomenclature: Current year plus four. Year 0 = 14/15



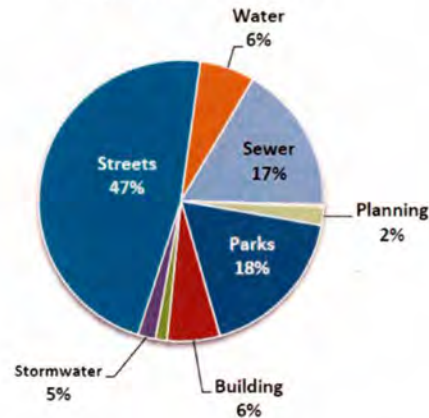
## 2014-15 CIP Funding (Year 0)



**\$25.04 Million**  
(\$29.28 Million in FY 2013-14)

**107 Line Items**  
(93 in FY 13/14)

### Allocations by Capital Program



This year's CIP budget is roughly \$25 million, of which \$8.5 UR and \$5M Fed. This is a little over \$4 M less than last year. (WWTP)  
(Note: Ops/SDC: 11.5M last year and 8.6M this year) As you'll see later, the five year plan is relatively flat (\$21-27M) with a small peak in 17/18 and small valley the year after.

The % allocation changes year by year and this year the focus is on two major road projects – Canyon Crk and Barber Street. Last year sewer and water comprised 68% of the CIP allocation, this year it's 23%. Streets were 15% last year and are 47% this year.

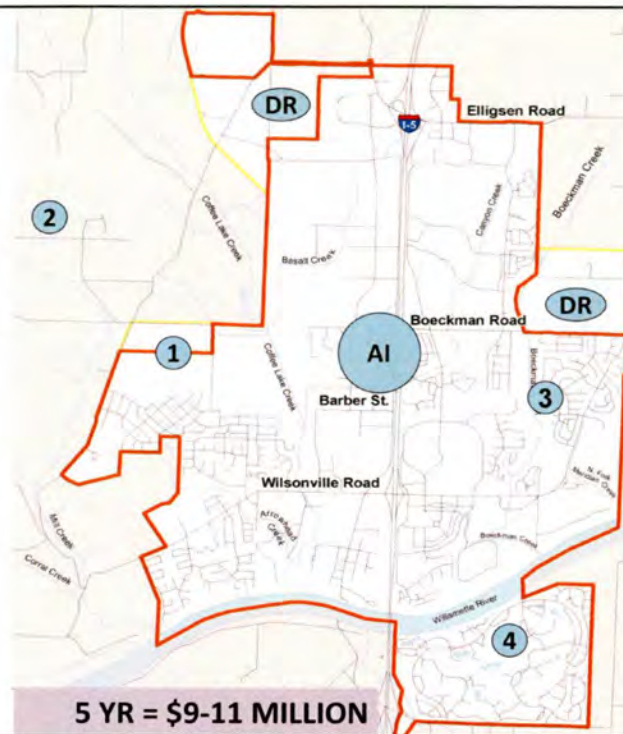
We have 107 different CIP line item budgets this year and there are approximately 45 new projects spread across the next four years. 45 sounds like a lot, but most of these are development related for areas such as coffee creek and frog pond. We are continuing the process of consolidating smaller projects into Annual Programs which is helping keep the list a little bit shorter. (more later...)

Important to keep in mind this 5 year plan is just that – a plan. 15/16 is pretty solid, 16/17 less so, and the out years have LOT OF UNCERTAINTY in both total project costs and timing.

## Water Projects 2015-2019

### Major Projects:

- AI** Aging Infrastructure (City Wide) (Annual)
- DR** Developer Reimb.\* ('16-'22)
- 1** Tooze Road Water Line (16/17)
- 2** 3 MG Reservoir ('18/19)
- 3** Well/Facility Upgrades ('14-'19)
- 4** Charbonneau (Annual)



Roughly 320K/yr Annual – pipes, valves, meters, telemetry, etc are all Ops funded plus

Big SDC project - Tank - \$5.9M (18/19)

Tooze - \$520k

\$150K/yr wells for 5 years

Charb – 0 (\$200K in 19/20)

DevRs - \$350K/yr 16-17, \$550K/yr 18-20 (\$2M total)

Also \$100k misc treatment plant related

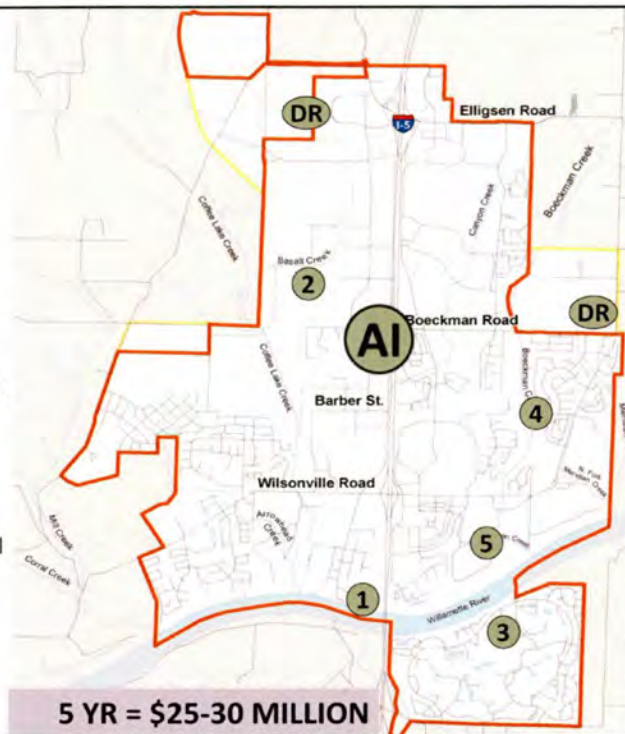
About 30% Ops, 70% SDCs over 5 yr period



## Sewer Projects 2015-19

### Major Projects:

- AI** Aging Infrastructure (City Wide) (Annual)
- DR** Developer Reimb.\* '16---
- 1** Outfall Replacement ('18-'19)
- 2** CCI Upsizing ('15-'19)
- 3** Charbonneau (Annual)
- 4** Boeckman Creek (High School Interceptor ('15-'18)
- 5** Memorial Park Lift Station ('15-'17)



Not including UR- sewer program has highest spending.

Annual Rep/Repl - \$400K (\$2M-5yr)

DR's – about \$2M In 5 yr

\$700K (5 year) Charb.

\$1.5M Outfall plus \$500K WWTP Cap Maint Charge

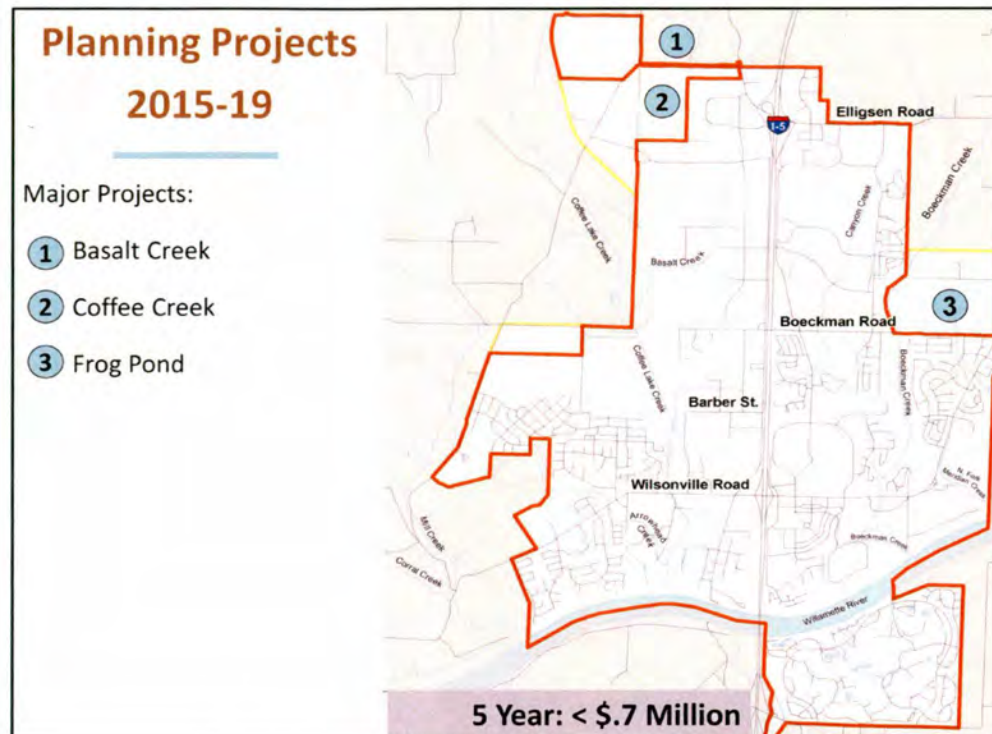
About \$4M for Coffee Creek Interceptor replacement (3 phases from MP)

B. Creek – About \$10M for B. Creek and Mem Pk LS

\$500K TC LS

Timing and spending for projects 2, 4, and 5 needs refinement – on the books the last couple years and carried over

About 40% Ops, 60% SDCs over 5 year period



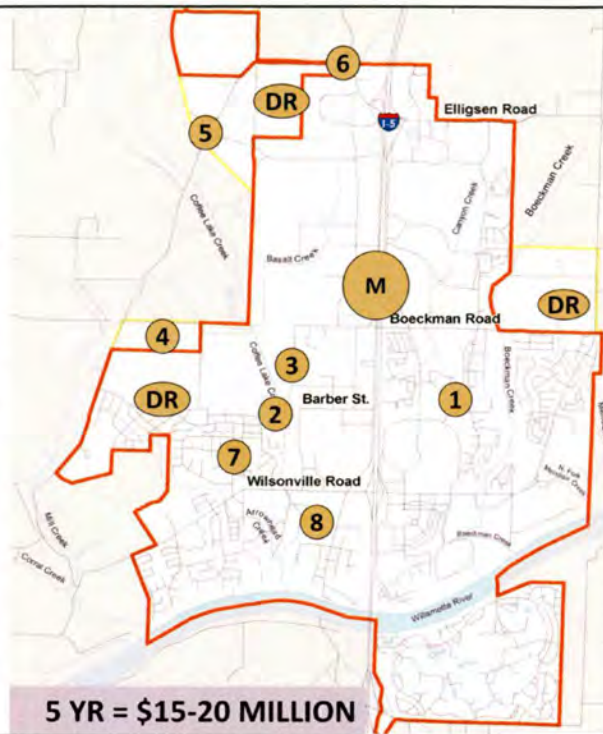
Most of the spending is 14/15 and 15/16. Only \$10k/yr in years 3- 5. note: BS and CC metro planning grants



## Transportation Projects 2015-19

### Major Projects:

- (M)** Annual Projects (Maintenance, Streetlights, Ped, ADA)
- (DR)** Developer Reimb.\*
- (1)** Canyon Creek South (URE-'14)
- (2)** Barber Street (URW - '15)
- (3)** Kinsman Road (16/17)
- (4)** Tooze Road (URW-16/17)
- (5)** GFR/ Clutter/RR ('19)
- (6)** Day Road Rebuild (18/19)
- (7)** Brown Road (URW - 17/18)
- (8)** Old Town Escape (URE -17/18)



The \$15-20M doesn't include another \$6.7M fed or about \$21M in UR.

Does include:

\$760,400 for street maintenance this year grow slowly over time. \$4M -5 year.

(\$750K -Bike and Ped Action Plan) streetlight (\$250K)

\$2.7 M Deve reimb. Know VB and CC - Placeholder for FP – no concept plan yet

CanCrk – \$4.5M URE budgeted – (expect \$3.0M actual) – good!

Barber budgeted \$2.23M URW this year and \$1.0M next year = \$3.2M (expect about \$2.0M actual) – good!

Old town – programed per strategic plan but timing uncertain

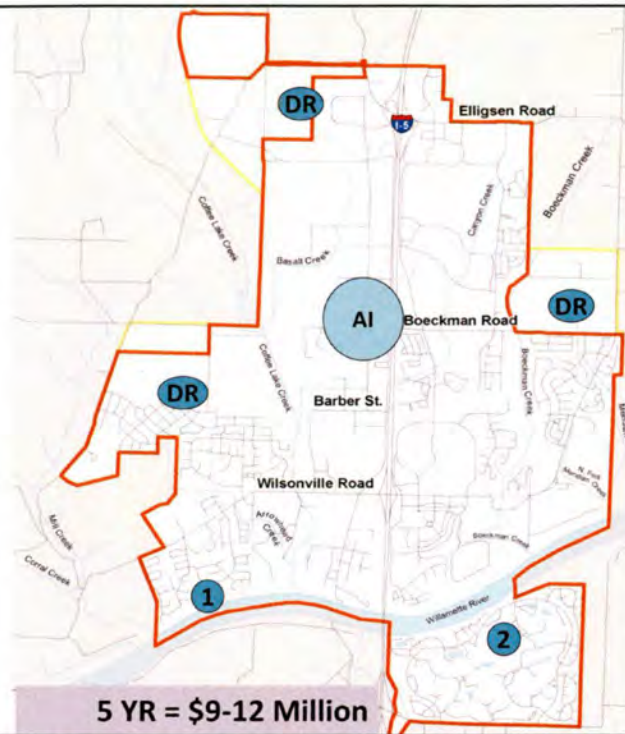
(May free up capacity under URE and URW...)

For non UR projects, About 25% Ops/Maint/streetlights, 75% SDC's

## Stormwater Projects 2015-19

### Major Projects:

- AI** Aging Infrastructure (City Wide) (Annual)
- DR** Developer Reimbursement
- 1** Willamette River Outfalls ('16-'18)
- 2** Charbonneau ('15---



About \$6.5 M are Ops projects which includes the Charb (\$3.8M) projects plus \$1M other City Wide repairs/replacements. Outfalls - \$1.4M – 3 years.

Dev Reimb. related, \$2M is Coffee Creek year 5 (18/19).

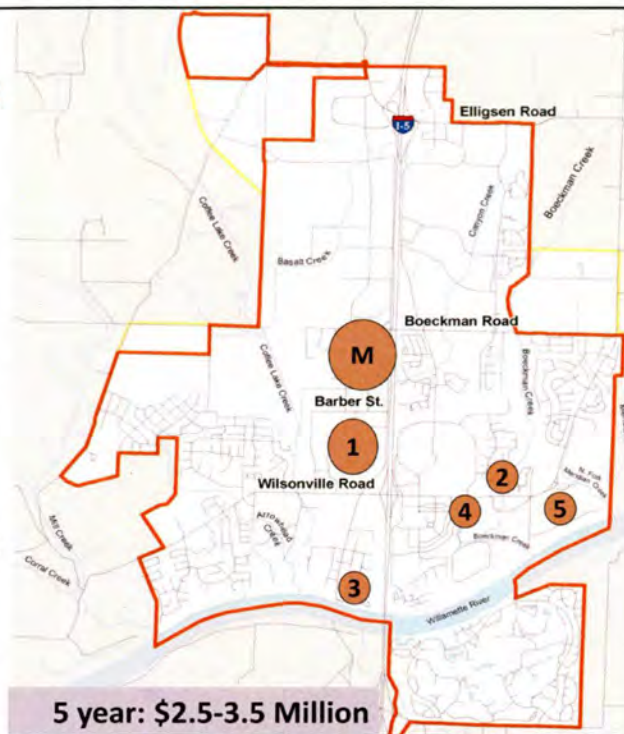
Not including Cof Crk, over 80% of total storm spending Ops pending rate increase



## Building Projects 2015-19

Major Projects:

- M** City Wide Facility Repairs
- 1** Fiber System Rollout
- 2** HVAC Replacements
- 3** Tauchman House Remodel
- 4** Library Improvements
- 5** New Public Works Facility



All of these Building Projects are funded through General Fund set asides.

City Wide: \$50k/yr – (Fac Mast Plan Impl.)

Fiber Rollout: \$50K/year

HVAC replacement: \$500K spread over 4 years - Community Center, PW, Library,

Tauchman House Remodel: \$225K spread over three years

Library improvements (\$1M grant)

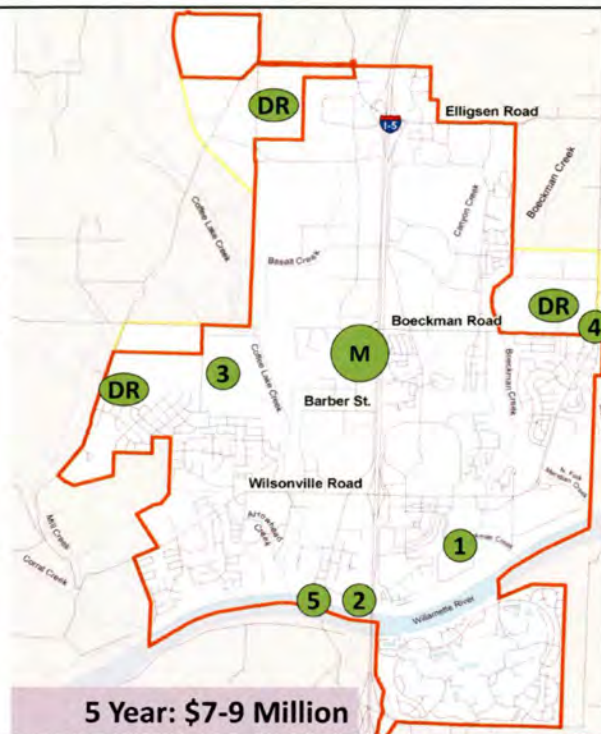
\$300K in year 5 as a placeholder for Concept Plan or PreEng. *new PW facility*

## Parks Projects 2015-19

### Major Projects:

- (M)** Annual Projects (ADA, Trails, Park Amenities/ play Equip.)
- (DR)** Developer Reimbursements
  - (1)** Memorial Park ('15-19)
  - (2)** I-5 Undercrossing ('15/16)
  - (3)** Ice Age Tonquin Trail (??)
  - (4)** Advance Rd Sports Flds (19)
  - (5)** French Prairie Bridge (15)

\*\* Skate Park / Rec. Center  
not programmed yet



Does not include another \$1.5 M in grant money (1.2 – FPB, 0.3 – Metro trails Mem Pk)

M- Implement smaller Park Improvements and Park Equip Replace per 3 master plans  
(Mem Pk, BF Pk, Citywide): \$300k/yr (\$1.5M)

DR – Villebois - \$1.1M, CC/FP - \$1.1M

Mem Pk - \$800K (MP Implementation)

I-5: \$600K

Advance Road: \$3.5M

FPB - \$1.2M grant

Virtually all \$\$ are Park SDC's, just over \$200K Gen Fund in 5 yrs

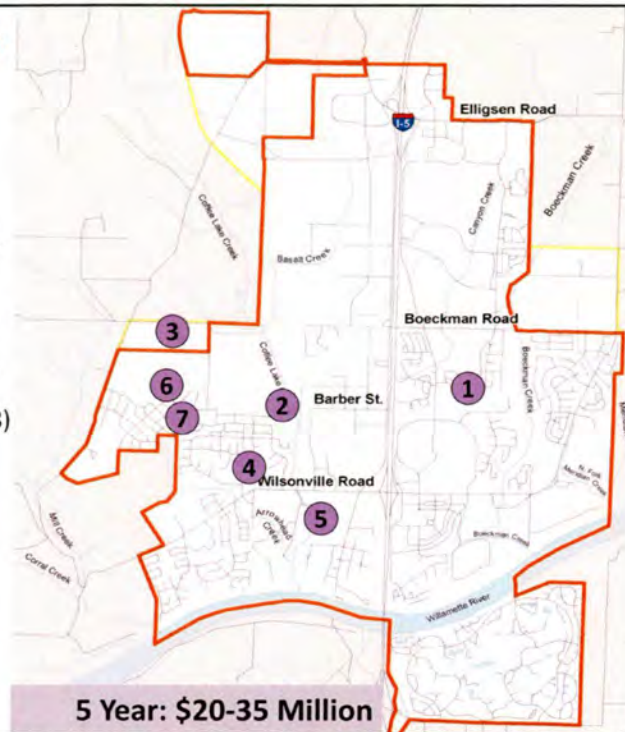
Note: NO SKATE PARK OR REC CENTER programmed yet.



## Urban Renewal Projects 2015-19

Major Projects: UR East

- 1 Canyon Creek South (URE- '14)
- 2 Barber Street (URW – '15)
- 3 (Tooze Road (URW-16/17)
- 4 Brown Road (URW – 17/18)
- 5 Old Town Escape (URE - 17/18)
- 6 Villebois Sprinkler SDC repay (URW)
- 7 Villebois Park Reimb.

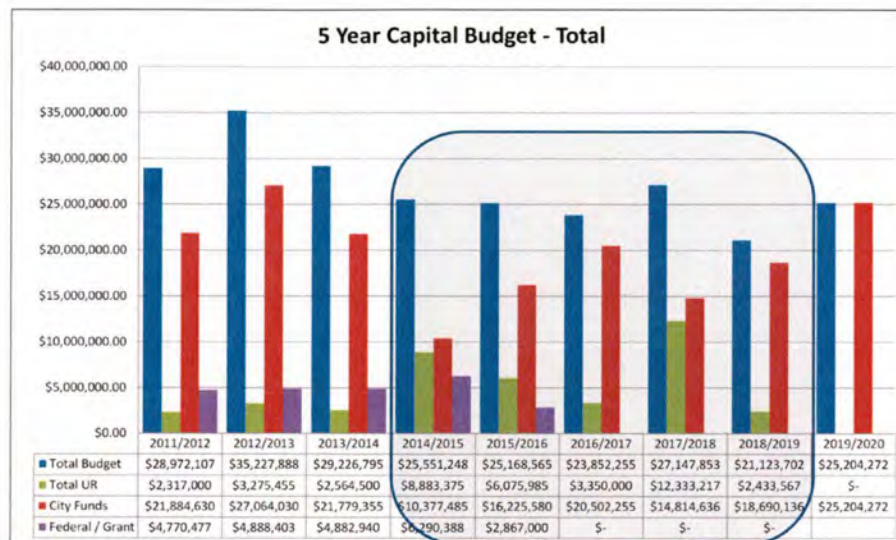


Mostly Roads.

VB Sprinkler - \$1.6 M over 4 years

VB- Parks – Montegue \$1M, Picadilly \$209K, Edelweis TBD – this year and next

Timing is very uncertain

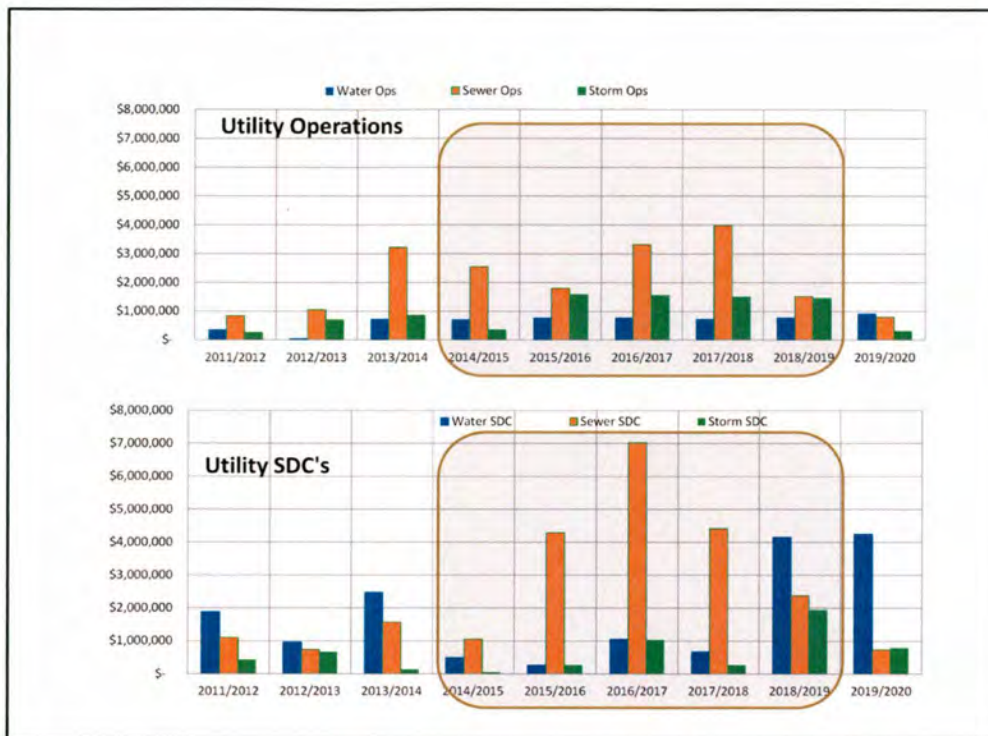


Flat to slightly decreasing total budget going forward - approx. \$25M annual program. However, actuals are historically about 25-30% lower than budget - various reasons (permit delays - carryovers, lower actual bids) Expect 14/15 the same (good bids on CC and Barber)

Noteworthy: Peak in 17/18 due to \$12M UR (Old Town Escape and Br. Rd).

Fed \$\$ drops to 0 in 16/17...





noteworthy:

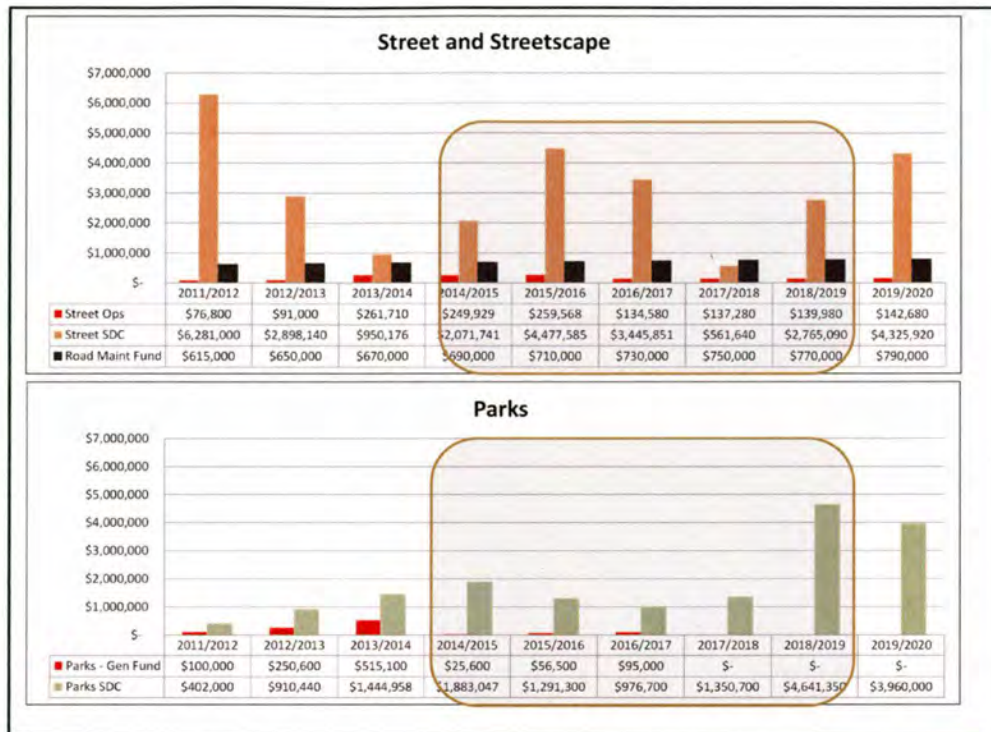
Water Ops are flat to slightly rising. (reflects good condition of water system)

Water SDC's – large jump in 18/19 is the West side Resv

Sewer Ops and SDCs: Influenced by 3 lg projects (BC and CofCrk Interceptors, Mem PK LS)

-- Expect about \$1M Ops in 14/15 will roll over – typical – actuals always lower. Once big projects done – should flatten out.

Storm: Large jump in Ops – Charb.



Streets: Street Ops nominal. Road Maint \$750k /yr consistent.

SDC: Finish current projects (Tooze, Kinsman, GFR) in 16/17, then start new batch of projects in 18/19 (Day, Cof Crk)

Note: Breather in 17/18 also when Sewer spending is big....

Parks:

Gen Fund spending is nominal

SDC's – soft – designed to implement MPs – but need Master Plans completed (this year)

Aprox \$250k/yr allocated to Citywide Park Improvements plus \$800K in 5 yr specific to Mem Pk.

Big Projects are: 14/15: VB Reimbursements, 18/19/20: Adv Road Sports Fields

Note: No Skate Park or Aquatic Center



**Questions?**



# Willamette Locks Economic Potential Report

September 30, 2014

PREPARED BY:

**ECON**orthwest  
ECONOMICS • FINANCE • PLANNING



## **ECONorthwest**

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Ed MacMullan, Lisa Rau, and Carsten Jensen prepared this report.

ECONorthwest is solely responsible for its content.

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## TABLE OF CONTENTS

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1 – Introduction

5 – River Locks Transfers

10 – The Locks and River Users

17 – Economic Potential

20 – Appendix

20 – Operating Scenarios

25 – Supplemental Tables

27 – Acknowledgements



## INTRODUCTION

On January 1, 1873, the Willamette Falls Locks (WFL) opened and allowed passage around Willamette Falls, the second largest waterfall by volume in the US behind Niagara Falls. The WFL were one of the first multi-lift tandem navigation locks<sup>1</sup> built in the US.<sup>2</sup> The initial design for the way the WFL gates are beveled upstream came directly from drawings by Leonardo da Vinci. The locks were considered an engineering marvel at the time and dramatically reduced transit times and transportation costs.<sup>3</sup>

Fast-forward 138 years. In response to dwindling commercial tonnage passing through the WFL, and a mounting bill for deferred maintenance and repairs, the US Army Corps of Engineers (ACoE) changed the operational status of the WFL from "caretaker status" to "non-operational status" in December 2011.<sup>4</sup> That decision effectively cut the Willamette River in two. Commercial and recreational users upstream from Oregon City and Willamette Falls (Falls) can no longer access markets, customers, or recreation sites downstream via the river. Likewise, downstream business and recreational river users can no longer access sites upstream from the Falls.



Willamette Locks, 1894.

<sup>1</sup>Each of the WFL's four tandem or adjacent lift-chambers provide 10-12 feet of elevation change.

<sup>2</sup>Lewis, Alan. No Date. Conquering the Falls. The Willamette Falls Locks. Willamette Falls Heritage Foundation. [www.willamettefalls.org/hisLocks](http://www.willamettefalls.org/hisLocks); Willamette River Initiative. Willamette Falls. <http://willametteinitiative.org/topics/willamette-falls>.

<sup>3</sup>Clackamas County Historical Society. 2013. Willamette Falls Locks: Past, Present, and Future — Army Corps of Engineers at MOOT. OregonLive blog. [http://blog.oregonlive.com/my-oregon-city/print.html?entry=/2013/09/willamette\\_falls\\_locks\\_past\\_pr.html](http://blog.oregonlive.com/my-oregon-city/print.html?entry=/2013/09/willamette_falls_locks_past_pr.html). September 27; Dungca, Nicole. 2009. Second Chance for Willamette Falls Locks, An Oregon Treasure. OregonLive blog. [http://blog.oregonlive.com/clackamascounty\\_impact/print.html?entry=/2009/10/second\\_chance\\_for\\_an\\_oregon\\_tr.html](http://blog.oregonlive.com/clackamascounty_impact/print.html?entry=/2009/10/second_chance_for_an_oregon_tr.html). October 28.

<sup>4</sup>Oregon Solutions. Willamette Falls Locks. <http://orsolutions.org/osproject/willamette-falls-locks>, accessed July 2014; Clackamas County Historical Society, 2013; In a December 1, 2011 press release, the ACoE indicated that "caretaker status" involved operating the locks at least once a month for maintenance. "Non-operational status" means they will not operate the locks at all. US Army Corps of Engineers, Portland District. News Release. Corps Changes Status of Willamette Falls Locks. Release Number 11-076, December 1, 2011; As we understand, the ACoE changed the locks status from "operational" to "caretaker" sometime prior to 2011. This change reduced funding, operations and number of lockages., and effectively began the process of shutting down the locks, which occurred with the change from "caretaker" to "non-operational" status.



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“The recreational boating use (both motorized and non-motorized) and commercial tourist boating on the Willamette River will grow and could become a significant tourism asset for Oregon and the Willamette Valley region.” -Travel Oregon

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The ACoE's decision to close the WFL does not reflect their historical and navigational significance, especially to Oregonians. In 1974, the WFL were listed on the National Register of Historic Places.<sup>5</sup> In 1991, they were designated a State Historic Civil Engineering Landmark by the American Society of Civil Engineers.<sup>6</sup> In 2012, the WFL were named a National Trust for Historic Preservation “National Treasure,” and the Historic Preservation League of Oregon (now Restore Oregon) named it one of the ten “Most Endangered Places.” The WFL facilitates movement on the Willamette River, which has been designated both an American Heritage River and a National Water Trail.<sup>7</sup>

Local interest in the WFL is also reflected in the efforts taken by Oregonians to keep them open and to describe their navigation and economic significance. These efforts include:<sup>8</sup>

- In 2005, then U.S. Representative Darlene Hooley convened a Willamette River United conference, which explored ideas for keeping the WFL open.
- Governor Ted Kulongoski designated keeping the WFL open an Oregon Solutions project. This led to a Declaration of Cooperation in May 2006, signed by more than 20 public and private organizations, to collectively commit to keep WFL open.

- The ACoE signed an agreement with Oregon Department of Transportation (ODOT) and Clackamas County to accept funds raised locally and provided by state agencies, that helped keep the locks open during 2006 and 2007.
- The City of West Linn submitted annual Congressional Budget requests, which provided O&M funding. The funding amount in the fiscal year 2008 appropriations was \$157,000.
- The Willamette Falls Heritage Foundation provides public education and outreach regarding the WFL and their historical significance. Their work includes sponsoring the annual Lock Fest celebration, which included rides through the locks prior to the ACoE shutting them down.
- Clackamas County coordinated with the Willamette Falls Heritage Foundation and took on the responsibility and cost of nominating the WFL as a National Historic Landmark.
- Inca Engineering undertook a \$50,000 engineering study that provided the first assessment of the locks' structural and operational conditions. The Clackamas Heritage Partners managed and administered the funds donated for the study commissioned by the One Willamette River Coalition, which came from: The Kinsman Foundation, Metro, Oregon Department of Parks

and Recreation, Oregon State Marine Board, Columbia River Yachting Association, Clackamas County, and the City of Keizer.

- Travel Oregon provide \$26,000 to fund public outreach and education about WFL. This project also produced a new name for partners collaborating to keep the locks open: The One Willamette River Coalition.
- ODOT contributed \$118,000 to fund the ACoE's inspection of the locks.
- The Oregon Solutions partnership secured \$1.8 million in stimulus funding to complete needed structural inspections.

In 2009, the Oregon Solutions project organized another Declaration of Cooperation, signed by public and private parties in support of keeping the WFL open. Signers included: Clackamas County, Wilsonville Concrete, the Governor's Economic Revitalization Team, ODOT, Clackamas Heritage Partners, Oregon Marine Board, the City of Oregon City, Oregon Department of Parks and Recreation, Portland General Electric, Travel Oregon, Willamette Falls Heritage Foundation, Northwest Oregon Resource Conservation & Development Council, ACoE, the Port of Portland, and the City of West Linn. A number of signers noted the significance of keeping WFL open including:

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<sup>5</sup>Clackamas County Historical Society, 2013.

<sup>6</sup>Lewis, A. 2004. “The Willamette Falls Canal,” *American Canals*, Bulletin of the American Canal Society. Vol. 33, No. 2, Spring, pp 1 – 4.

<sup>7</sup>Clackamas County Historical Society, 2013.

<sup>8</sup>Oregon Solutions. Declaration of Cooperation, The Willamette Falls Locks' Oregon Solution, May 2009.





believe the revitalized locks at Willamette Falls can play a key role in the reintroduction of thriving commercial river traffic along the entire navigable length of the Willamette River."<sup>10</sup>

The efforts described above reflect local, regional and state interests in the locks and how much stakeholders value the locks' scenic, historic, transportation, and engineering attributes.

Between 2001 and 2006, the number of lockages steadily declined. Lockages increased between 2006 and 2007, which coincided with a temporary increase in funding for WFL operations brought about by an innovative community partnership agreement that allowed an ODOT Transportation Enhancement grant to be used for operations for two years. Funding, operations and lockages declined again in 2008, and the locks were closed in 2009 for inspection. Operations and lockages increased dramatically in 2010 as a result of the funding provided through the Oregon Solutions project.<sup>11</sup> One could interpret these two episodes of lockages and use responding to increased funding and operations as indicative of pent-up demand for the types of river access that the WFL provide.

In 2005, BST Associates completed a report for the Clackamas County Tourism Development Council and Oregon Tourism Commission that described an analysis of the costs of keeping the WFL open, and the economic spending by the primarily recreational users. The authors concluded that the economic benefits of keeping the WFL open far outweighed the costs.<sup>12</sup> In a 2008 report for the One Willamette River Coalition, CEDER, Synergy

■ Travel Oregon: "We continue to believe that recreational boating use (both motorized and non-motorized) and commercial tourist boating on the Willamette River will grow and could become a significant tourism asset for Oregon and the Willamette Valley region."<sup>9</sup>

■ Port of Portland: "The Port of Portland is pleased to support the repair and refurbishment of the locks at Willamette Falls. Our hope is that this investment will allow a historical piece of infrastructure to contribute to the economic growth of the region for another 100 years to come. Moreover, we

<sup>9</sup>Oregon Solutions, 2009, p. 13.

<sup>10</sup>Oregon Solution, 2009, p. 17.

<sup>11</sup>U.S. Army Corps of Engineers, Lock Performance Monitoring System, <http://www.ndc.iwr.usace.army.mil/lpms/lpms.htm>; U.S. Army Corps of Engineers, Corps of Engineers Financial Management System year-end 3011a reports.

<sup>12</sup>BST Associates. 2005. Willamette Falls Locks Economic Impact Analysis Final Report. Prepared for Clackamas County Tourism Development Council and Oregon Tourism commission. March.





and Chenoweth Consulting described the results of a case study of transferring ownership and operations of the WFL from the ACoE to another entity. The authors reviewed the transfer of three other locks from ACoE and the associated transfer issues, challenges and lessons learned.<sup>13</sup> In July of 2011, Michael Bernert outlined the economic and environmental advantages of shipping municipal waste, pulp and paper, steel, bulk agricultural commodities and bulk building materials such as sand and gravel via barge vs. rail or truck.<sup>14</sup>

Our report describes the economic potential of the WFL if they were functioning and operating on a regular schedule. By economic potential we mean describing the types of demand for river access that the WFL would facilitate. Our analysis builds on past studies of the WFL and includes three major parts. First, we summarized and updated the description by CEDER et al. (2008) of the three transfers to date of ACoE locks to other entities.

The ACoE's decision to change the status of the WFL to non-operational makes more challenging an assessment of the future economic potential of the WFL. Hence, we review experiences of other lock transfers for insights into the WFL's future economic potential. Second, we describe the results of our assessment of the demand for WFL services based on key-informant interviews we conducted with representatives from various stakeholder groups. Third, we outline three potential operating scenarios for the WFL with varying number of lockages, operating costs, and revenues.

The remaining sections of this report are as follows. In *River Locks Transfers*, we describe the issues behind the ACoE transferring ownership or operations of three sets of locks to state or regional groups. The circumstances that led to the transfers are similar to conditions at the WFL today. All of the locks were built at a time when rivers provided the main transportation mode for commerce. Eventually rail and then road systems competed with river transport. As a result, the amount of commerce transported by river and through the locks gradually declined. As commercial lockages declined, however, recreational lockages increased. In spite of the increased recreational use, the ACoE, guided by the WFL's strictly "navigation authorization," eventually decided that the small amounts of commerce passing through the locks did not justify the expense of operating them. Prior to closure in 2011, recreational boaters were the dominant users of the locks' services, with limited commercial use.

In *The Locks and River Users*, we describe the results of our assessment of the demand for the types of river access that the WFL provide. Our assessment relies on our interviews with key-informants from stakeholder groups including: recreational users; commercial or industrial users; economic development officials from area jurisdictions; and county and state emergency managers.

In *Economic Potential*, we describe our conclusions based on information in the proceeding sections.

In the Appendix we describe three different operating scenarios. The assumptions in our scenarios reverse the ramp down in WFL operations that the ACoE implemented over the previous years. That is, we start with limited service during summer months, increase service to six months, then increase to twelve months of operations. The first two scenarios rely primarily on recreational users. We assume that for the most part, commercial shippers will not begin using the WFL until they have some assurances that the locks will operate on a regular basis, so our third scenario assumes both recreational and commercial users. We include in our operating scenarios estimated lockages, operations and maintenance costs, revenues generated by user fees, and revenues that could be generated by a transportation district established to support the WFL. The spreadsheet accompanying this report has the details of our assumptions, analyses and results.

<sup>13</sup>CEDER, Synergy Northwest, LLC, and Chenoweth Consulting. 2008. The Willamette Falls Locks: A Case Study Analysis of Potential Transfer Issues. Prepared for the One Willamette River Coalition. October 23.

<sup>14</sup>Bernert, Michael. 2011. Reclaim Our River, Environmental, Economic and Community Advantages of a United Willamette River. July 17.



## RIVER LOCKS TRANSFERS

The ACoE's decision to change the status of the WFL from "caretaker status" to "non-operational status," makes more challenging the task of estimating future demand for, and use of, the WFL. For insights into the future economic potential of the WFL, we collected and reviewed information on three locks systems that the ACoE transferred to other entities. We began by reviewing the CEDER et al. (2008) report that describes transfer issues in general, and issues specific to the three locks systems. We then reviewed other sources, e.g., web sites, and contacted representatives of the locks with follow up questions and requests for information. At the end of our summary for each lock system, we describe similarities, differences and other insights relative to the WFL.

### Locks Case Studies

We summarize the available information on current operations and usage details for three systems of locks that the ACoE turned over to regional or state entities:

- Muskingum River Parkway Locks in Ohio
- Kentucky River Locks in Kentucky
- Lower Fox River Locks in Wisconsin

We also summarize use and operations information for the Hiram Chittenden Locks in Seattle. The

ACoE operates these locks, but we include them in our summary because of their geographic proximity to the WFL, and because their mix of recreation and commercial users is comparable to what could be expected at the WFL. We also mention other lock systems that the ACoE currently owns and maintains in "non-operational" status that local stakeholders are interested in transferring ownership from the ACoE to other entities.

### Muskingum River Parkway Locks, Ohio

The ACoE transferred ownership of the Muskingum River Parkway Locks to the State of Ohio in 1958. The flat-water lock system consists of ten, hand-operated locks distributed along a 112-mile stretch of the Muskingum River in southeast Ohio. Operating the locks employs 14 seasonal workers.<sup>15</sup> Most of the locks are 184 feet long, 36 feet wide, and accommodate boats up to 160 feet long.<sup>16</sup> The Ohio State Parks (OSP) department manages locks operations and maintenance.

The locks currently operate seasonally, with daytime operating hours on Saturdays and Sundays from May 10, 2013 through October 12, 2014, and additional Friday and Monday hours between Memorial Day weekend and early September. Special arrangements for lockages outside of normal operational hours can be made with 48 hours notice and an additional fee. Public launch ramps are provided at five of the ten locks.<sup>17</sup>

The Ohio State Parks charge daily user fees of \$5, annual fees of between \$15 and \$50, and special fees for lockages outside of normal operations times of \$15 or \$25.<sup>18</sup> Gross user fees collected in 2013 totaled \$8,501. Revenues from user fees goes into the State's general fund and does not directly offset the costs of operating and maintaining the locks. Annual maintenance costs totaled \$67,000 in recent years.<sup>19</sup>

As is the case with many of the country's older locks systems, the Muskingum River Locks have a backlog of needed repairs. Locks #7 and #10 needed emergency repair work in recent years. The Ohio Department of Natural Resources, which oversees the OSP, place a priority on bringing the locks to full operations before peak summer seasons.<sup>20, 21</sup> This can be challenging at times. For example, Lock #11 is currently under repair and not operational for the 2014 summer recreational season.

Today, most of the lockages are for recreational boaters and anglers who fish from boats.<sup>22</sup> The river has a reputation among fishers for the unique "pools" between locks that contain a variety of bass and catfish species.<sup>23</sup> The number of recreational boaters has been estimated at roughly 7,000 per year.<sup>24</sup> Staff at the Ohio Department of Parks and Recreation report recent declines in the number of lockages, primarily due to weather causing poor boating conditions.

<sup>15</sup>Ohio State Parks representative, July 3rd, 2014, Interview.

<sup>16</sup>American Society of Civil Engineers. Muskingum River Navigation System. <http://www.asce.org/People-and-Projects/Projects/Landmarks/Muskingum-River-Navigation-System/>. Accessed July 2014.

<sup>17</sup>Ohio State Parks, Ohio Department of Natural Resources Division. Muskingum River State Park. <http://parks.ohiodnr.gov/muskingumriver>. Accessed July 2014.

<sup>18</sup>LAWriter Ohio Laws and Rules. 1501:41-2-30 Muskingum river parkway lock fee. <http://codes.ohio.gov/oac/1501:41-2-30>

<sup>19</sup>Ohio State Parks representative, July 3rd, 2014, Interview.

<sup>20</sup>Hannahs, Nichole. 2013. Canal Leak Serious Issue. <http://www.whiznews.com/content/news/local/2013/01/15/canal-leak-serious-issue>. January 15.

<sup>21</sup>Ohio State General Assembly. Balderson Announces Funding For Emergency Repairs To The Muskingum River Parkways Lock. 2012. <http://www.ohiosenate.gov/senate/balderson/press/balderson-announces-funding-for-emergency-repairs-to-the-muskingum-river-parkway-lock>. April 24.

<sup>22</sup>Most of the locks are 184-feet long and 36 feet wide, with the ability to handle boats up to 160 feet long.

<sup>23</sup>OhioBassAngler.com. Muskingum River Update. 2013. <http://www.ohiobassangler.com/blog/2013/1/Muskingum-River-Update>. January 13.

<sup>24</sup>Ohio Water Trails. Muskingum River Water Trail. <http://watercraft.ohiodnr.gov/Portals/watercraft/pdfs/maps/wtmuskingum.pdf>. Accessed July 2014.



#### Comparison with WFL:

- Ten sets of flat-water locks spread over 110 miles vs. a bypass canal with four 210-foot tandem lift locks, a boat basin and a 210-foot guard lock, all in less than one-half mile for WFL.<sup>25</sup>
- Operating the locks takes 14 seasonal workers. When last operational, the WFL employed two fulltime workers.
- Lockages driven primarily by fishing demand, and factors that affect fishing, e.g., weather, will also affect demand for lockages. Lockages at WF served a broader group of users and the lock chambers contain no fish.
- Locks were transferred from the ACoE 56 years ago, which shows it's possible for an entity other than the ACoE to operate and maintain a system of locks over a long time.
- Users pay fees to access the locks. The ACoE did not charge user fees for the WFL. Our operating scenarios include user fees.

#### Kentucky River Locks, Kentucky

The Kentucky River Locks consist of 14 flat-water lock and dam sites along 245 miles of the Kentucky River. The Commonwealth of Kentucky took over ownership of locks #5 through #14 in 1986, under the administration of the Kentucky River Authority(KRA), which was established to manage the system. The KRA also manages the ACoE-owned locks #1 through #4. The ACoE is

currently in the process of transferring ownership of these four locks to the KRA.<sup>26</sup>

Currently, only two of the 14 locks are operational. These are locks #3 and #4, two of the locks managed, but not currently owned, by the KRA. These two locks operate seasonally, Friday and Saturday, between May 23rd and October 26th.<sup>27</sup> The KRA plan to bring an additional three locks back into service.<sup>28</sup>

The locks upstream from Frankfort are not operational.<sup>29</sup> Locks above this point are primarily used for pooling water that creates a water source for the local population. The ACoE conducted a study published in February 2014 that recommended the "disposal" of these locks (permanent blockage by concrete barriers) or removal of many of the locks upstream. The KRA is assessing the stability of the locks and dams for their impacts on ecosystem restoration projects and water supply.

The KRA's most recent budget is approximately \$4 million. Fees assessed on water users supplied by the pool behind the locks upstream from Frankfort generate approximately \$250,000. Revenues allocated from the State general fund make up the shortfall between water fees and operating costs.<sup>30</sup>

The KRA does not operate the locks for commercial traffic.<sup>31</sup> The areas between dams are frequented by anglers attracted by the area's healthy fish stocks,<sup>32</sup> but the dams pose a risk to small vessels like kayaks and canoes that try to pass over them.<sup>33</sup>



#### Comparison with WFL:

- A larger number of flat-water locks spread out over a much longer stretch of river relative to the WFL.
- Some locks provide pooling, which supplies water users. Fees from water users help fund locks O&M. The WFL has no user fees under the ACoE.
- State ownership with support from the State general fund makes up the large majority of operating funds. ACoE funds the current "non-operational status" of the WFL.

<sup>25</sup>Lewis, 2004.

<sup>26</sup><http://finance.ky.gov/offices/Pages/LocksandDams.aspx>

<sup>27</sup><http://finance.ky.gov/offices/Documents/2014/2014%20Lock%20Schedule.doc>

<sup>28</sup>Jerry, Kentucky River Authority, July 3rd, 2014, Interview.

<sup>29</sup><http://www.kentucky.com/2009/10/19/982597/kentucky-river-a-river-to-nowhere.html>

<sup>30</sup>Jerry Graves, Kentucky River Authority, July 3rd, 2014, Interview.

<sup>31</sup>Jerry Graves, Kentucky River Authority, July 3rd, 2014, Interview.

<sup>32</sup><http://www.worldfishingnetwork.com/news/post/good-fish-populations-in-kentucky-river>

<sup>33</sup><http://www.lrl.usace.army.mil/Portals/64/docs/CWProjects/Green%20and%20Barren%20dispo/Main%20Report.pdf>



## Lower Fox River Locks, Wisconsin

The Lower Fox River Locks system, located along the Lower Fox River in Wisconsin, consists of eight locks sites along 39 river miles, with three sites of five, four, and three locks each, and five sites with only one lock. The sites with five and three locks, as well as one of the single locks, are currently undergoing restoration. The vertical drop across the Lower Fox River locks is approximately 180 feet.<sup>34</sup>

The State of Wisconsin took ownership of the lock system in September 2004. The State created the Fox River Navigational System Authority (Authority) to manage the lock system. The Authority is a public body overseen by a board of nine directors, consisting of two representatives from each of the counties from where the locks are located and the additional three designated by the Department of Natural Resources, Department of Transportation, and Director of the State Historical Society.<sup>35</sup>

Among the eight operational locks, service is provided on a seasonal basis, with start dates for 2014 ranging from April 18th to May 23rd, with regular service ending on either September 1st or October 5th. Days of operation vary, with some operating on weekdays and all operating Friday through Sunday.

Funding for the transfer, rehabilitation, and operation and maintenance of the locks is outlined in a joint funding agreement between the state and the ACoE. The agreement outlines the creation of a

Figure 1. Annual Lockages, Craft, and Passengers Passing Through Lower Fox River Locks

Year	Lockages	Craft	Passengers
2007	3,781	6,158	23,925
2008	3,300	5,073	20,226
2009	4,001	6,051	23,263
2010	3,297	5,223	20,303
2011	3,377	5,095	19,233
2012	3,876	5,921	23,298
2013	3,467	4,954	20,723
Average	3,586	5,496	21,567

Source: Fox River Navigational System Authority, reported by lock tenders as boats travel through the locks

trust consisting of combined funds of roughly \$22.8 million dollars. The agreement stated that the ACoE would contribute \$11.8 million, the State of Wisconsin would contribute \$5.5 million and the federal government would contribute \$5.5 million in matched funds. The State responsibility of \$5.5 million is broken into \$2.75 million from the state general fund and \$2.75 million in local and private funds to be raised by the contractor operating the locks, which is the Fox River Navigation System Authority.<sup>36</sup> Based on the most recent May 2014 reporting by the Authority, funds are currently stable at roughly \$20.1 million available and is considered within budget.<sup>37</sup>

The Authority currently charges user fees through daily or seasonal permits. Daily permits cost either \$6 or \$12, based on boat length and seasonal permits are either \$120 or \$140, depending on the intended use. Special lockages are available, with

12 hours notice, on an hourly basis for between \$15 and \$50 per hour with a two hour minimum charge.<sup>38</sup>

Currently, recreational use dominates lock usage, but there is potential for more commercial use.<sup>39</sup> Figure 1 shows total lockages for all lock sites. These include lockages of commercial and recreational craft. The number of operational locks changes over time; only three locks operated between 2007 and 2010.<sup>40</sup>

Comparisons with WFL:

- The lock system is much larger and includes many more locks than the WFL.
- Lower Fox River locks operations and maintenance is supported by funds including those supplied by the ACoE, the State of Wisconsin, and the Federal government.

<sup>34</sup><http://www.friendsofthefox.org/friendsofthefox/river+navigation/lock+and+bridge+schedules++procedures.asp>; [http://foxriverlocks.org/index.php?option=com\\_content&view=article&id=11&Itemid=4](http://foxriverlocks.org/index.php?option=com_content&view=article&id=11&Itemid=4).

<sup>35</sup>[http://foxriverlocks.org/index.php?option=com\\_content&view=article&id=3&Itemid=6](http://foxriverlocks.org/index.php?option=com_content&view=article&id=3&Itemid=6).

<sup>36</sup><https://docs.legis.wisconsin.gov/statutes/statutes/237/08/2>

<sup>37</sup>[http://foxriverlocks.org/frnsa\\_committeeminutes/2014/052714.pdf](http://foxriverlocks.org/frnsa_committeeminutes/2014/052714.pdf)

<sup>38</sup><http://www.friendsofthefox.org/friendsofthefox/river+navigation/lock+and+bridge+schedules++procedures.asp>

<sup>39</sup>Harlan Kiesow, Fox River Locks CEO. July 22nd, 2014. Interview

<sup>40</sup>[http://foxriverlocks.org/index.php?option=com\\_content&view=article&id=6&Itemid=5](http://foxriverlocks.org/index.php?option=com_content&view=article&id=6&Itemid=5)



- A mix of recreational and commercial vessels use the lock system, similar to the expected use of the WFL.
- Users pay fees to access the locks. When operated by the ACoE, the WFL had no user fees. We include user fees in our operating scenarios.

#### Hiram M. Chittenden (Ballard Locks), Washington

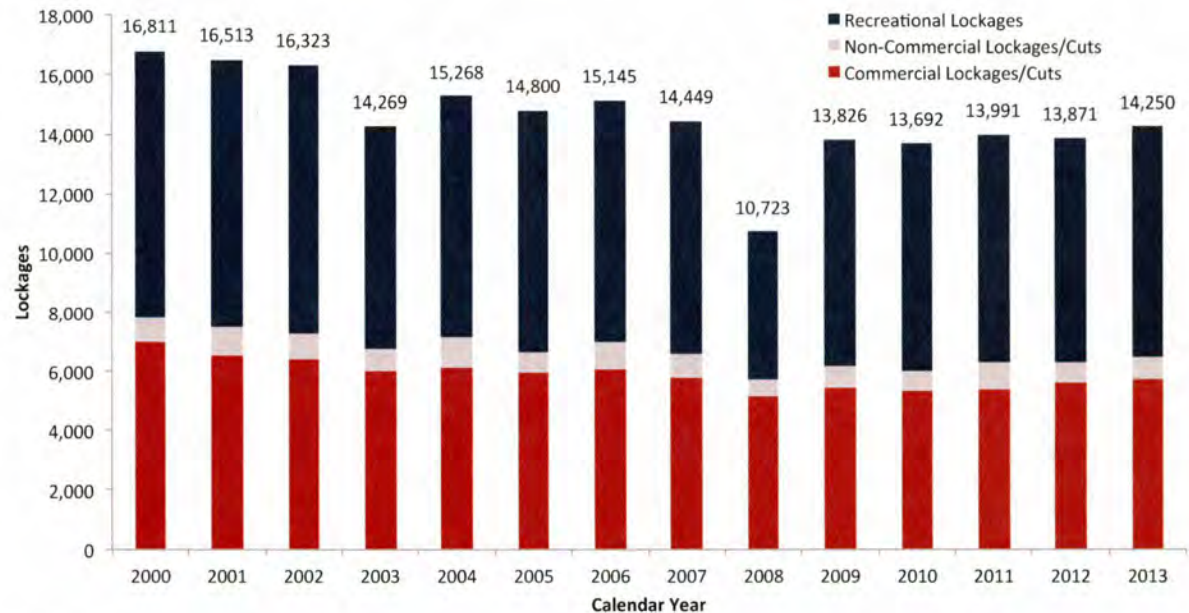
The Hiram M. Chittenden Locks, known as the Ballard Locks, in Seattle, Washington is a single site lock, like the WFL, consisting of one larger lock, with a length of 825 feet and width of 80 feet, and an auxiliary lock that is 150 feet long and 28 feet wide. The Ballard Locks are currently owned and operated by the ACoE.<sup>41</sup> The Ballard Locks are authorized for both navigation (commercial cargo) and recreational use.<sup>42</sup>

The locks operate all days of the year and at all hours. The locks employ roughly 60 staff, including visitor center personnel and administration. The budget for the locks fluctuates greatly due to capital investments, but it is usually in excess of \$5 million, annually.<sup>43</sup> The ACoE does not charge user fees to access the locks.

The ACoE Navigation Data Center reported that the lockages for recreational purposes have generally been slightly more than half of all lockages on an annual basis, as shown in Figure 2.<sup>44</sup>

Use of the locks is highly seasonal. Commercial users include sand and gravel barges, tugboats,

Figure 2. Ballard Locks Lockages by User Type



Source: OHSU, ECONorthwest, IMPLAN 2012 data

north Pacific fishing fleet, fuel barges, and drydock and repair traffic.<sup>45</sup>

#### Comparison with WFL:

- The locks have an authorization for both navigation (commercial cargo movement) and recreation. The WFL have a navigation authorization only, though there is interest and efforts in expanding the ACoE authorization for the WFL to include recreational use.<sup>46</sup>

- The locks are proximate to a larger population than the WFL.
- Both locks serve recreational and commercial users.
- ACoE maintains the locks and does not charge user fees. ACoE no longer operates the WFL.
- The staff and operating budget are significantly larger than that for the WFL when they were operating.

<sup>41</sup><http://www.nws.usace.army.mil/Missions/CivilWorks/LocksandDams/ChittendenLocks.aspx>

<sup>42</sup>Personal Communication. 2014. Peggy Sigler, National Trust for Historic Preservation.

<sup>43</sup>Jay Wells, ACOE Visitor Center Representative. July 2, 2014. Interview.

<sup>44</sup><http://www.navigationdatacenter.us/lpms/lock2013web.htm>

<sup>45</sup>Jay Wells, ACOE Visitor Center Representative. July 2, 2014. Interview.

<sup>46</sup>Personal communication, Sandy Carter, Willamette Falls Heritage Foundation, 2014.<sup>47</sup><http://www.kittanningpaper.com/2014/01/20/fundraising-to-reopen-river-locks-starting-soon/42955>



### Allegheny River Locks

The WFL is not the only ACoE-owned locks looking for alternative ownership or operations arrangements. The Allegheny River Locks, located in Pennsylvania, has struggled to maintain regular operations of its roughly 90-year old locks with the sole source of funding provided through the ACoE. A local non-profit, the Allegheny River Development Corporation (ARDC) and the local county commissioners, both interested in seeing the reopening of many of the system's 23 locks and dams, have organized to apply for the ability to contribute funds to the repair and operations of the locks.<sup>47</sup> The County would serve as a pass-through entity to provide funds to the ACoE.

The recently enacted 2013 Water Resources Reform Development Act, signed by President Obama on June 10, 2014, means that this process will become simpler. The Act allows non-profits to negotiate directly with the local ACoE.<sup>48</sup> Although raising funds is still an issue, this Act will allow interested parties more options for supporting locks operations. Local stakeholders are considering this option as a means of funding operations for the WFL as well.<sup>49</sup>



<sup>47</sup><http://www.kittanningpaper.com/2014/01/20/fundraising-to-reopen-river-locks-starting-soon/42955>

<sup>48</sup><http://www.boatlocal.com/articles/2014/ardc-gets-approval>

<sup>49</sup>Personal communication, Sandy Carter, Willamette Falls Heritage Foundation, 2014.



## THE LOCKS AND RIVER USERS

The trend in use of WFL mirrors that of the three locks described in the previous section. The WFL were built at a time when rivers were the primary transportation mode for personal or commercial travel. Railroads and then highways eventually provided alternative means of moving people and cargo. Commercial use of the WFL declined, while recreational use increased. In response to declining commercial tonnage passing through the WFL, which caused a lack of funds for inspection and maintenance, the ACoE closed the locks in December of 2011 for safety reasons.

As part of our evaluation of the economic potential of the WFL, we conducted an assessment of the likely future demand for the WFL if they were reopened and operating on a regular schedule. Our assessment included interviews with key-informants from stakeholder groups (e.g., recreational users; commercial or industrial users; economic development officials from area jurisdictions; and county and state emergency managers), as well as reviewing literature and reports that pertain to stakeholder groups.

Our assessment of demand also help inform the details of the three operating scenarios, which we describe in the appendix.

### Recreation

The recreational demand for WFL services would come primarily from three user groups: non-motorized vessel users, motorized vessel users, and commercial recreational users.

To inform our assessment of the demand for recreational use of the Willamette River and the



WFL, we conducted interviews with the following key informants:

- Dennis Corwin, Explorer Tours (Portland Spirit)
- Kate Ross, Willamette Riverkeeper, Outreach and Education Coordinator
- Alexandra Phillips, Oregon Parks and Recreation, Water Recreation Coordinator
- Eric Dye, Sportcraft Landing Moorages
- Sam Drevo, eNRG Kayaks

### Non-motorized vessel users

Non-motorized users include paddling vessels such as kayaks, canoes, and rafts, and can include both long and short distance trips. The Willamette River is a nationally recognized water body for paddling. In 2012, the Secretary of the Interior designated the Willamette River a National Water Trail. The Willamette River Water Trail (Trail) stretches from Creswell to St. Helens, Oregon and includes 187 miles of the Willamette River as well as 29 miles of connecting rivers. The Trail passes



through the heart of the Willamette Valley, flowing past urban and rural landscapes where seventy percent of Oregonians live.<sup>50</sup> The Willamette Riverkeeper, a non-profit organization dedicated to the preservation of the Willamette River, manage the Trail.<sup>51, 52</sup> *Canoeroots* magazine profiled the Trail and described it as one of the 13 "awesome canoe trips of a lifetime." The group of 13 includes the Yukon River.<sup>53</sup> The Oregon Parks and Recreation Department manages Willamette Greenway sites from upstream of Eugene to Portland that facilitate access and recreation along the Trail.<sup>54</sup>

Although there are no formal records kept on the number of paddlers that use the river each year, Willamette Riverkeeper and the Oregon Parks and Recreation Department reported that they receive many inquiries from Oregonians and interested paddlers from other states and countries about paddling the river. Inquiries have increased since the Willamette's addition to the National Water Trail System.

According to the staff at Willamette Riverkeeper, many paddlers travel the entire length of the Trail. Most through-paddles of the Willamette River occur during the summer months, and include several organized trips that occur annually. These trips include Paddle Oregon and the Corvallis-Portland Row. The 2014 Paddle Oregon begins in Corvallis and ends at Canby, upriver from

**Figure 3. SCORP Water-based Recreation Participation, Region 2 and 3, 2011**

	Using Personal Water Craft, Such As Jet Ski		Power Boating (Cruising/Water Skiing)		Flat-Water Canoeing, Sea Kayaking, Rowing, Stand-Up Paddling, Tubing/Floating		Beach Activities (Lakes, Reservoirs, Rivers, Etc.)	
	# of trips	% of region population	# of trips	% of region population	# of trips	% of region population	# of trips	% of region population
Region 2	558,185	3.6%	2,600,014	12.8%	1,717,149	9.9%	3,728,314	30.0%
Region 3	221,999	4.6%	1,600,679	17.4%	456,208	12.8%	2,810,191	36.5%

Source: OSU College of Forestry, Oregon Resident Outdoor Recreation Demand Analysis

Willamette Falls and the WFL. But for the fact that WFL are not operating, the trip could extend all the way downstream to Portland and the confluence with the Columbia River.<sup>55</sup>

There is also demand from a growing community of paddlers seeking new and less congested options for paddling day trips in the Portland area. Demand for flat-water paddling and tubing activities in Oregon Department of Parks and Recreation Region 2, which includes the Portland and Salem metropolitan regions and the Willamette River north of Albany, is significant and includes participation by almost 10 percent of the Region's population. Demand from Region 3, which includes Benton, Linn and non-coastal Lane Counties, amounts to almost 13 percent of the Region's population. Additional details of local recreational demand based on the 2011 survey completed in preparation for the 2013-2017 Oregon Statewide Comprehensive Outdoor Recreation Plan can be found in Figure 3.<sup>56</sup>

Most paddlers end their trip upstream of the Willamette Falls because of the challenging logistics of portaging around them. Moving past the Falls requires a several-mile vehicle trip, with takeout and put-in on opposite sides of the river. According to Willamette Riverkeeper staff, many paddlers inquire about going through the WFL and are disappointed when they learn that this is not an option. The last organized paddles or cruises by Willamette Riverkeeper through the locks occurred in 2005.

### Motorized vessel users

Motorized vessels include anything from yachts to smaller recreational motorboats and personal watercraft. In the past, yacht clubs based on the Willamette and Columbia Rivers took two- or three-day trips up the river and through the WFL. The SCORP results in Figure 3 show that a significant percentage of Oregonians living in the Willamette River drainage are involved in powerboating.

<sup>50</sup>National Water Trails System, <http://www.nps.gov/WaterTrails/Trail>.

<sup>51</sup><http://www.nps.gov/WaterTrails/Trail/Info/36>

<sup>52</sup><http://willamette-riverkeeper.org/WRK/about.html>

<sup>53</sup>Willamette River Water Trail, <http://willamettewatertrail.org/>.

<sup>54</sup>[http://www.oregonstateparks.org/index.cfm?do=parkPage.dsp\\_parkHistory&parkId=194](http://www.oregonstateparks.org/index.cfm?do=parkPage.dsp_parkHistory&parkId=194)

<sup>55</sup>Paddle Oregon, <http://www.paddleoregon.org/>.

<sup>56</sup>[http://www.oregon.gov/oprd/PLANS/docs/scorp/2013-2018\\_SCORP/Demand\\_Analysis.pdf](http://www.oregon.gov/oprd/PLANS/docs/scorp/2013-2018_SCORP/Demand_Analysis.pdf)





Closing the WFL increased the costs of maintaining recreational docks and moorages upstream. Prior to closure, tugboats and crane barges were easily transported upstream. After the closure, equipment needed upstream is either transported around the WFL, at greater cost, or contractors use more costly construction and maintenance methods. Two dredges, three tugboats and four barges were able to negotiate passing downstream through the WFL during the specially scheduled opening for Canby Ferry in 2013, which needed to be repaired in Portland.<sup>57</sup>

### Commercial recreational users

Commercial recreational users include commercial tour boats, charter boats, and other local river-based recreation businesses. River cruises would likely take advantage of the re-opened WFL to expand their offerings on the Willamette River. Prior to the closure, Explorer Tours, which runs the Portland Spirit, was looking into the feasibility of starting a through-locks tour. Representatives of the company believe that the tours would sell well.

If implemented, the tours would occur weekly from June through September, and could accommodate 35 people per tour.

Some river-based recreation businesses, such as eNRG Kayaks, locate near the falls and WFL to take advantage of the tourism and recreation interest in these attractions. Their customers and other paddlers visit the falls every year. According to representatives of these businesses, there would be strong demand from river paddlers for the types of river access that the WFL would facilitate.

### Past Recreational Use and Demand

Figure 4 shows the number of recreational vessels that passed through the WFL in previous years. The decline in use reflects the trend of reduced operating budgets and months and days of operations. The two spikes in use, in 2007 and 2010, are in response to two episodes of temporary funding increases and operations. One could interpret these increases in use as indicative of pent up recreational demand for access through the WFL.

### Tourism and Economic Development

Prior to closure the WFL were a tourism destination for local and regional visitors. Prior to the ACoE's closure, visitors came to see the locks operate and to learn about their historical significance.

For information on the tourism and economic development potential of the WFL, we contacted economic development officials in municipal jurisdictions along the Willamette River. We asked if their economic development plans included river access or river activities that could be affected by the reopening of the WFL. We conducted interviews with staff at the following jurisdictions:

Figure 4. Recent Recreational WFL Activity

Year	Recreational Vessels	Recreational Lockages
2000	2,548	1,221
2001	1,831	731
2002	1,068	605
2003	756	408
2004	787	160
2005	612	227
2006	795	304
2007	1,053	406
2008	2	0
2009	0	0
2010	899	380
2011	11	5

Source: US Army Corps of Engineers Navigation Data Center

- City of Wilsonville
- City of Oregon City
- Marion County
- Clackamas County Tourism and Cultural Affairs Office

<sup>57</sup>[http://www.oregonlive.com/west-linn/index.ssf/2013/01/willamette\\_falls\\_locks\\_open\\_br.html](http://www.oregonlive.com/west-linn/index.ssf/2013/01/willamette_falls_locks_open_br.html)



## Historical and Cultural Tourism

The WFL provide a multi-faceted recreational experience unmatched in the region. According to Willamette Riverkeeper, many paddlers express interest in learning about the history of the river. The WFL are a key feature of that history, and provided an additional draw for many paddlers, from both the local area and outside the region. The SCORP data on historical visits by Oregonians in Figure 5, shows a significant percent of the population has an interest in learning about the state's historic sites.

**Figure 5. SCORP Historic Site Recreation, Region 2 and 3, 2011**

Visiting Historic Sites/History-Themed Parks (History-Oriented Museums, Outdoor Displays, Visitor Centers, Etc.)		
	# of trips	% of region population
Region 2	4,238,756	43.3%
Region 3	905,598	42.4%

Source: OSU College of Forestry, Oregon Resident Outdoor Recreation Demand Analysis

A coalition of those interested in protecting and making more accessible the historical and cultural resources of the Willamette Falls and the WFL recently completed a feasibility study of creating a Willamette Falls Heritage Area.<sup>58</sup> The report describes the historical and cultural importance of the Falls and WFL area. The coalition includes stakeholders from political, business, Tribal, utilities, and non-profit groups, and illustrates the widespread support for the area's cultural resources.

## Economic Development

Many of the local jurisdictions included access to the river or the river itself as an asset for tourism-driven economic development. The City of Wilsonville's Tourism Development Strategy notes "increasing access and recreation on the river, including the Willamette River Trail" as a key opportunity and consideration in their strategy going forward. The strategy document also notes that additional infrastructure development is needed to move river recreation up to a priority status in terms of strong markets for their target audiences.<sup>59</sup> Reopening the WFL would help support the City's river-related economic development goals.

The City of Oregon City commented that the river and river access support area tourism and recreation businesses, and that reopening the WFL would provide new tourism opportunities.

Marion County noted that tourism is an economic development priority and that any development that draws tourists will increase economic activity. The river is not specifically mentioned in the County's economic development plan, but, increasing activities such as kayaking, boating, and fishing are. Reopening the WFL may strengthen these activities. Lack of river access is a limiting factor.

The Clackamas County Tourism and Cultural Affairs Office stated that supporting river-based recreation is a County priority.<sup>60</sup> Reopening the WFL would allow tourism access that connects downstream and upstream portions of the river. The County could then promote river recreation all the way downriver to Portland, which the County believes would be popular among local

recreationists and tourists. Boating, fishing, and kayaking have become very popular near the WFL, but lack of connectivity to the river and through the locks or around the falls limits the tourism and recreation potential. The historical aspect of the WFL draws tourists to the area. If the locks were not maintained, it would be a lost historical and cultural opportunity. The County currently owns and operates a boat landing on the south side of the WFL. If the locks were operational, the County expects this landing would get more use.

## Commercial and Industrial

Commercial and industrial users of the WFL include industries or businesses that produce goods that could be, or had previously been, transported via barge down the Willamette River. These include aggregate producers, agricultural and logging companies, trash transport, and marine construction.

To inform our assessment of the demand for commercial or industrial use of the Willamette River and the WFL, we conducted interviews with the following key informants:

- Dave Bernert, Wilsonville Concrete Products and Marine Industrial Construction
- Baker Rock Resources
- Oregon Concrete and Aggregate Producers Association
- Ross Island Sand and Gravel
- Oregon Seed Association
- Marion Agricultural Services

<sup>58</sup>Willamette Falls Heritage Area Coalition. 2013. Willamette Falls Heritage Area A National Heritage Area Feasibility Study. August.

<sup>59</sup><http://ci.wilsonville.or.us/DocumentCenter/View/6023>

<sup>60</sup>[https://www.mthoodterritory.com/Scripts/tiny\\_mce/jscripts/tiny\\_mce/plugins/filemanager/files/master\\_plan.pdf](https://www.mthoodterritory.com/Scripts/tiny_mce/jscripts/tiny_mce/plugins/filemanager/files/master_plan.pdf)



- Oregon Feed and Grain Association
- Dr. Starr McMullen, Oregon State University, Professor of Economics, transportation researcher
- Oregon Forest Industries Council
- Dr. Darius Adams, Oregon State University, College of Forestry
- Oregon Marine Construction
- Sportcraft Landing Moorages/Ken's Flotation Services Inc.
- Portland Metro
- Pacific Northwest Waterway Association
- Portland General Electric

### Aggregate

Aggregate, typically in the form of sand or gravel, can be found in relative abundance along the Willamette River. Moving aggregate and other heavy materials can cost less by barge than by truck, but, moving materials by truck may require less handling. Producers who source gravel close up or downstream from the WFL could benefit from reopening the locks. Producers further from the WFL may not move significant amounts of aggregate through the locks given the abundance of aggregate and the possibility of additional handling steps and associated costs.

Loading and unloading aggregate requires minimal infrastructure. Barges or riverside sites with portable conveyors and hoppers are sufficient. Investments in large or permanent infrastructure are not required. Moving aggregate further upstream from the WFL may require dredging the navigation channel. Also, not all aggregate producers have barges that would fit through the locks.

Data compiled by the ACoE lists "sand and gravel" as the only commodity shipped on the Willamette River between Portland and Harrisburg in recent years.<sup>61</sup> The ACoE, however, do not track all materials moved along the river and thus relying on the ACoE data would give an incomplete picture of river transport upstream and downstream from the locks.

### Agriculture and Lumber

Rail companies prefer consolidating rail shipments at central rail yards. This requires grain or seed producers to transport their products by truck to rail lines. Rail companies do not stop for small volumes of materials, preferring instead to assemble large rail shipments at central yards and not stopping along their route to add small shipments of one or a few cars. According to the local agricultural producers we spoke with, the Willamette Valley does not produce grain in sufficient volumes to support multiple shipping points.

The seed and grain key informants expressed the following concerns regarding moving grain by barge:

- The uncertainty of adding barge to their current transportation modes
- The lack of loading and unloading infrastructure specific to barge transport
- The additional handling step and cost of moving grain from truck to barge to truck, or truck to barge to rail

Logging and forestry key informants expressed the same reservations to barging as agricultural producers:

- The lack of loading and unloading facilities; and



- The additional handling step and cost of moving logs from truck to barge to truck or truck to barge.

These informants stated that barging would likely cost less per mile, but the additional handling and costs required to add barge transport could negate the cost-per-mile savings. The actual cost benefits or increases of barging relative to other transportation modes are unknown at this time. We note that containerized wood products produced upriver of the locks currently travel to Portland, Rainer, Tacoma, or Seattle for export.

<sup>61</sup>2006 through 2011, the most recent data available.



## Construction and Maintenance

Marine-based construction key-informants expressed varied interest in the reopening the WFL. One marine construction key informant stated that they have made investments in infrastructure and rolling stock that suit their needs and business model. These investments do not include barges and moving material through the WFL. Another key informant from a construction operation that focuses on recreational docks and facilities expressed strong interest in having the WFL available again. He used the WFL to transport tugs and crane barges upstream to repair and construct docks. Without the WFL, his costs have increased because he must either take equipment out of the water and transport it around the falls, or use more time consuming and expensive construction techniques. He indicated a willingness to pay a fee for using the locks.

Trash haulers noted higher costs and dredging concerns as factors that could inhibit moving trash by barge through the WFL. In the past, barging through the WFL was considered a competing mode for transporting trash, which placed pressure on truck and rail modes to keep prices down. Closing the locks foreclosed this competition pressure to keep prices down.<sup>62</sup>

Portland General Electric commented that the WFL might have a slight beneficial effect on their operations in that they could possibly use them to help facilitate maintenance on their equipment and facilities at the Falls.

## Past Commercial and Industrial Use and Demand

Figure 6 shows the general decline in commercial lockages over time. It also shows how commercial users responded to the two episodes of increased funding and operations in 2006 and 2010 by increasing lockages.

In the past, the WFL facilitated river transport as an alternative to truck and rail, which helped promote competition and reduced transportation costs. Closing the WFL foreclosed the competition option. The importance of the WFL to industrial and commercial users will likely increase in the future with continued economic growth in the I-5 corridor, increased congestion on road and rail lines, and uncertainty over reducing congestion at the I-5 Columbia River crossing.

## Transportation and Emergency Planning

Jurisdictions in the area recognize the benefits that the WFL could provide for transportation more generally. For example, the City of Wilsonville includes the WFL and river access as part of their transportation plan. The City's 2013 Transportation System Plan (TSP) establishes the continued maintenance of access to the Willamette River as a policy and supports the availability of river access for potential future transportation purposes. The TSP's goals include improving access for public docking, and designating sites for potential future ports. The TSP also suggests that the City would benefit from increased marine and barge traffic on the river. The TSP describes the City's past and ongoing support of the ACoE's of Engineer's efforts to maintain the WFL and periodically

Figure 6. Recent Commercial WFL Activity

Year	Commercial Vessels	Commercial Lockages
2000	443	272
2001	338	190
2002	229	180
2003	145	140
2004	149	149
2005	84	76
2006	231	181
2007	215	174
2008	10	6
2009	61	61
2010	183	160
2011	113	98
2012	2	2

Source: US Army Corps of Engineers Navigation Data Center

dredge the channel to maintain the river as a viable transportation facility.<sup>63</sup>

We also spoke to emergency managers to ask about the benefits of using the Willamette River and the WFL for transportation in the aftermath of a natural disaster, such as an earthquake that destroys bridges, roads, and rail transportation systems. Clackamas County's hazards plan does not specifically mention using the river for transportation. However, they noted that it has possibilities. Yamhill County does not include the river in its hazard mitigation planning.

According to staff from the State of Oregon's Office of Emergency Management, the river will be an important transportation asset in the event of a natural disaster.

<sup>62</sup>Personal Communication, Metro staff. 2014.

<sup>63</sup><http://or-wilsonville.civicplus.com/DocumentCenter/Home/View/661>



River transport may be one of the few transportation routes serving areas along the river. The WFL would facilitate moving longer distances down and up river. ODOT Director Matt Garrett also commented that the WFL could have a potentially important role as a redundant transportation mode in the aftermath of the Cascadia earthquake.<sup>64</sup> Some relevant questions when assessing the role of the WFL in the event of a natural disaster include the extent to which they would function in the aftermath of an earthquake, and how debris flows would affect their operations.

Overall, Emergency Managers at the State level see the WFL as a potential asset for facilitation transport in the aftermath of a natural disaster, while local emergency managers had more questions or concerns.

### Sociocultural Values

We can describe the types of demand for WFL using market and nonmarket values. The assessments of likely future demand described above are examples of market measures. For example, data can be collected on the numbers of paddlers and expenditures per paddler that pass through a reopened WFL. Likewise, tons of gravel and value per ton moved through the WFL are market measures. Examples of nonmarket values are the sociocultural values that people and society place on WFL. Such values are typically more difficult to quantify and so analysts describe them qualitatively.



A number of researchers describe these values in general and for structures or places.<sup>65</sup> For example, a report by the Getty Conservation Institute in Los Angeles, describes the types of sociocultural values that benefit society from facilities such as the WFL:

“Sociocultural values are the traditional core of conservation—values attached to an object, building, or place because it holds meaning for people or social groups due to its age, beauty, artistry, or association with a significant person or event or (otherwise) contributes to processes of cultural affiliation.”<sup>66</sup>

The range of sociocultural values for structures such as the WFL can include:

- Historical
- Cultural
- Social
- Aesthetic<sup>67</sup>

<sup>64</sup>Personal communication, Peggy Sigler, Oregon Field Officer, National Trust for Historic Preservation.

<sup>65</sup>These include: Archimedes. No date. Cultural Heritage as a Socio-Economic Development Factor. <http://www.med-pact.com/Download/Archimedes/11%20Introduction%20Paper%20Cultural%20Heritage%20and%20Ec%20Dvlpmt.pdf>; Dumcke, C. and M. Gnedovsky. 2013. The Social and Economic Value of Cultural Heritage: Literature Review. European Expert Network on Culture (EENC). EENC Paper, July; Manatu Taonga – Ministry for Culture and Heritage. 2013. Value and Culture an Economic Framework. Wellington, New Zealand; The J. Paul Getty Trust. 2002. Assessing the Values of Cultural Heritage. Research report edited by Marta de la Torre. The Getty Conservation Institute, Los Angeles.

<sup>66</sup>The J. Paul Getty Trust, 2002, page 11.

<sup>67</sup>The J. Paul Getty Trust, 2002.



## ECONOMIC POTENTIAL

The economic potential of WFL is multidimensional. The WFL are a unique historical, commercial and recreational piece of Oregon's transportation infrastructure. Demands for the locks' services changed over time. Commercial use dominated the large majority of years the locks were in service. More recently, demand from paddlers and boaters eclipsed that from commercial users. The locks proximity to Willamette Falls generates demand from those interested in the region's historic and cultural aspects.

In this section we provide a summary of the main points regarding the WFL's economic potential.

### Recreational and Tourism Demand

The primary demand for lock services comes from recreational and tourism use.

- The shift from predominantly commercial to predominantly recreational demand for locks services is similar to the changes in demand at other locks that the ACoE turned over.
- Our analysis of demand for WFL services found strong demand from local recreational and tourism groups and participants.
- Facilitating recreational and tourism access up and downstream on the Willamette River would help support economic development goals of jurisdictions along the river.
- The locks provide a unique draw for visitors interested in the region's historical and cultural attributes.
- Developing the former Blue Heron Paper Company site across the river will draw more attention to



Willamette Falls and WFL, and increase the public's awareness of the area's attributes.<sup>68</sup>

### User Fees and Other Funding

- Any entity that takes over ownership and operation of the WFL will need a dedicated funding source. (See Appendix.)
- User fees will cover but a small portion of the costs to operate and maintain the locks. This situation is common to the other locks that the ACoE turned over. (See Appendix.)
- Oregon Statutes include a range of funding mechanisms that jurisdictions throughout the state use to support the services they provide. These funding mechanisms could potentially be used to support locks operations. (See Appendix.)

- Our illustrative operating scenarios based on funding from a transportation district found that supporting the locks would require very small increases in tax assessments per \$1,000 of assessed value. For example, our six-month operating scenario resulted in a tax per \$1,000 of assessed value of between 0.3 and 0.4 cents. (See Appendix.)
- Our operating scenarios also found that the net tax increase to tax payers would also be very small. For our six-month operating scenario and a property with \$300,000 in assessed value, the tax increase would be approximately \$1.20 per year. (See Appendix.)

<sup>68</sup>Willamette Falls Legacy Project. <http://www.rediscoverthefalls.com/>.



## Commercial Demand

Even though the locks were originally built to satisfy commercial demand, we would expect only modest demand for lockages from commercial users at this time.

- A few commercial operators that currently transport commodities, mostly aggregate, up and down the Willamette River would take advantage of the locks reopening.
- We would also expect one-off demands from other users with special transportation needs. For example, moving ferries or other vessels to and from Portland for repairs. Clackamas County Director of Transportation and Development Cam Gilmour, stated that moving the Canby Ferry through the WFL in 2013 for repairs and biannual Coast Guard inspection saved Clackamas County \$500,000.<sup>69</sup>
- We would not expect significant commercial demand until the locks are operating on a regular schedule for a period of time. Another necessary condition is that commercial operators have confidence that the locks will be operating in the future. Without this assurance, it is unlikely that potential commercial users would make the necessary investments in barges and related infrastructure.
- The amount of commodities that currently move through Oregon includes commodities that could potentially move by barge through the WFL. See Figures A-4 and A-5 in the Appendix for information on these commodities.

Other factors that could contribute to increasing demand from commercial users for locks services include:

- The region's projected population increase and resulting demands on transportation infrastructure.
- Congestion on the region's roads. A recent study ranked Portland as the ninth worst for traffic congestion in the US.<sup>70</sup>
- Congestion on the region's rail system. This could become especially problematic if coal exports increase in the future.<sup>71</sup>
- A report prepared for the Oregon Business Council and Portland Business Alliance described the consequences of congested road and rail systems to the region's economy:

"The state's economy is transportation-dependent. Despite Oregon's excellent rail, marine, highway and air connections to national and international destinations, projected growth in freight and general traffic cannot be accommodated on the current system. Increasing congestion and travel time delay—even with currently planned improvement—will significantly impact the state's ability to maintain and grow business, as well as our quality of life."<sup>72</sup>

- When the Cascadia earthquake hits, the Willamette River could revert to a major transportation route in the likely event of downed bridges and other disruptions to road and rail systems. To the extent that the locks function after the event, they would be critical to moving goods and people up and down the river.

## Transfer and Related Issues

Transferring ownership of the locks from the ACoE to another entity will require both parties and interested stakeholders addressing a number of issues. The report by CEDER, et al., describes these issues for the WFL, which include clearing property titles, addressing existing easements, and other real estate matters.<sup>73</sup> The WFL status on the National Register of Historic Places means that the ACoE must fulfill certain requirements that protect and preserve historic resources as part of changing ownership. For example, in this instance, Section 110 of the National Historic Preservation Act(Act) requires that the ACoE preserve and maintain the WFL, or pay other entities to preserve and maintain them.<sup>74</sup> On this topic, CEDER, et al., compared the preservation needs of the WFL with three locks transferred from ACoE to other entities and found that the needs specific to the WFL, "... are both resolvable and of smaller scope."<sup>75</sup> As we noted in *River Locks Transfer*, the ACoE, the State of Wisconsin, and the Federal government entered into a joint funding agreement that established a trust of \$22.8 million for the transfer, rehabilitation, and operation and maintenance of the Lower Fox River locks.

As we understand it, the ACoE must also fulfill requirements under Section 106 of the Act. This section requires that the ACoE mitigate for any adverse effects on the WFL caused by their decision to move the locks to non-operational status. ACoE did not complete a Section 106 assessment prior to shutting down the locks due to their determination

<sup>69</sup>Wilsonville Area Chamber of Commerce, 2012, Canby Ferry Closed for Retrofitting. December 12. <http://business.wilsonvillechamber.com/news/details/canby-ferry-closed-for-retrofitting>.

<sup>70</sup>Loos, Mary. 2014. "Study Ranks Portland 9th Worst for Traffic Congestion." KATU.com. June 5. <http://www.katu.com/news/local/New-study-ranks-Portland-for-traffic-congestion-261860261.html>.

<sup>71</sup>Stewart, Bonnie. 2013. Northwest Railroads Will Need Improvements to Handle Coal Trains. OBP.org. April 1. <http://earthfix.opb.org/communities/article/northwest-railroads-already-congested/>.

<sup>72</sup>Economic Development Research Group. 2007. The Cost of Highway Limitation and Traffic Delay to Oregon's Economy. Executive Summary. March. Prepared for Oregon Business Council and Portland Business Alliance. Page 1.

<sup>73</sup>See the CEDER et al., 2008, report for the complete list of transfer issues.

<sup>74</sup>National Historic Preservation Act of 1966, Public Law 102-575, <http://www.nps.gov/history/local-law/nhpa1966.htm>.

<sup>75</sup>CEDER et al., 2008, page 27.



of safety concerns of continued operations.<sup>76</sup> In a May 15, 2014 letter to the Oregon State Historic Preservation Office, the ACoE stated that, “We have...determined that the closure of the locks to vessel traffic has had—and may continue to have—adverse effects on the character defining features and qualities that made the locks eligible for listing in the National Register.”<sup>77</sup> Future meetings between ACoE staff and stakeholders will address the next steps regarding mitigating the adverse effects on the WFL caused by the ACoE closure.<sup>78</sup>

Even though our report focuses on WFL operations after transfer from the ACoE to another entity, a number of transfer and related issues could affect the economic potential of the locks and so we mention them here.

- The recent determination under Section 106 of the National Historic Preservation Act (Act) that the ACoE’s shutting down the locks caused adverse effects on the locks’ historical attributes is significant. This means the ACoE must take actions to mitigate the adverse effects. In this case, those actions could include addressing some of the locks’ deferred maintenance issues.
- As evidenced by the Oregon Solutions projects, and current efforts by the Willamette Falls Heritage Foundation and other local groups, there is significant support among the region’s population, government entities, non-profit interest groups, and area business to reopen the locks.



- The ACoE has contributed funding to the repair and maintenance of locks it transferred to other entities. As we note in *River Locks Transfer*, the ACoE, the State of Wisconsin, and the Federal government entered into a joint funding agreement that established a trust of \$22.8 million for the transfer, rehabilitation, and operation and maintenance of the Lower Fox River locks. A comparable funding agreement may be feasible for the WFL.
- In addition to transferring ownership and operations of the locks, stakeholders are interested

in exploring the option of expanding the ACoE’s authorization for the WFL to include recreational use. This could increase the likelihood of additional ACoE funding for the locks.

- Local stakeholders are also considering how the recently passed Water Resources Reform Development Act, which allows non-profits to provide funding to ACoE in support of locks operations, could be used to help fund WFL operations.

<sup>76</sup>Willamette Falls Heritage Foundation, 2013, Winter Newsletter. December. [www.willamettefalls.org](http://www.willamettefalls.org); Willamette Falls Heritage Foundation, 2014, Spring Newsletter. March. [www.willamettefalls.org](http://www.willamettefalls.org).

<sup>77</sup>Casey, J. 2014. Letter to Mr. Roger Roper, Deputy State Historic Preservation Officer, Oregon Parks and Recreation Department, State Historic Preservation Office, RE: Continued Section 106 Consultation Regarding the Caretaker Status of the Willamette Falls Locks, Oregon, City, Clackamas County, Oregon. May 15, p. 1.

<sup>78</sup>Casey, 2014.



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## Appendix: Operating Scenarios and Supplementary Tables

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## OPERATING SCENARIOS

Our economic analysis of operating scenarios for the WFL begins after ownership of the locks has transferred to another entity. That is, our analysis focuses on use of the locks and associated costs and revenues after necessary preservation repairs and maintenance issues have been dealt with and transfer of ownership has occurred. We developed the details of the three operating scenarios based on past studies of the locks, historical ACoE records of lock usage and operations and maintenance costs, and our recent interviews.<sup>79</sup> The ACoE records show that through the mid to late 1990s the locks operated year round. Between 1999 and 2004, the ACoE operated the locks six months per year. After 2005, operations dropped to summer months only.

Our scenarios reverse the ACoE's ramping down lock operations over the years.<sup>80</sup> Our first scenario assumes three months of operations during the summer. Our second scenario assumes six months of operations. Our third scenario assumes year-round operations. We anticipate that demand for the locks will come primarily from recreational and tourism users. As we describe in the *Locks and River Users* section, it is unlikely that commercial haulers, e.g., barge operators, would use the locks to any significant degree until they are operating consistently on a regular basis. This is a likely necessary condition before commercial users would make investments and expand the transportation modes they use to include barging in addition to road and rail modes.

In each of our scenarios, we describe a high and low estimated number of lockages, operating costs, user fees, and tax revenues that support locks operations. We estimated the number of lockages based on available ACoE records of lockages over the years.<sup>81</sup> We estimated operations and maintenance costs based on the costs reported by BST Associates in their 2005 analysis, which was the average cost from 2002 to 2004.<sup>82</sup> During those years, the WFL operated for 6-months annually. We recalculated this average to account for inflation.<sup>83</sup> This amount was halved for the 3-month operating scenario, and doubled for the 12-month operating scenario. We also included a contingency factor of from 0 to 30 percent to account for the uncertainty of projecting future operating costs.

Our model also includes two other costs specific to operating and maintaining the WFL. Given the fact that the WFL were constructed over 140 years ago, and the findings of the CEDER et al. report regarding the recommendations for maintaining structures of that age, our model includes options of adding costs for deferred maintenance and a set-aside for future capital upgrades. Our annual deferred maintenance amounts in the model range from \$0 to \$225,000, and the annual capital set-aside ranges from \$0 to \$150,000. Our use of the term, operating costs, includes costs for operations and maintenance, deferred maintenance and set-aside capital amounts.

In addition to incurring costs from operating the locks, the new entity that takes over the WFL could generate revenues through user fees. Our model includes a range of user fees per lockage from \$0 to \$15. We know, however, based on our review of data from the other locks that the ACoE turned over, and from our analysis of the WFL, that user fees will cover only a small portion of operating costs, and possibly not enough to offset the cost of administering the fee. We therefore considered other possible funding sources to make up the shortfall.

Aside from single-owner options such as the State of Oregon leasing from the ACoE, Oregon statute includes provisions for a number of possible funding models that could support the WFL operations. We considered four possibilities and included the one we felt was most likely in our model. The first is creating a public corporation.<sup>84</sup> A public corporation can provide services, generate operating funds via taxes (though not through property taxes), is self-governed, but must be approved by the State legislature. Examples include the Port of Portland, TriMet and Oregon Health Sciences University.

The next possibility we considered was creating a new transportation agency via intergovernmental agreement, as described under Oregon Statute 190.<sup>85</sup> Government parties to the agreement must decide on the operating and financing details of the agreement and the services provided. Funding cannot come from property taxes. Establishing a new agency would include additional administrative fees, staff, and offices.

<sup>79</sup>US Army Corps of Engineers, Corps of Engineers Financial Management System (CEFMS), <http://www.usace.army.mil/FinanceCenter.aspx>.

<sup>80</sup>Contact the Willamette Falls Heritage Foundation, 503-650-9570, for a copy of the spreadsheet model that accompanies this report.

<sup>81</sup>Army Corps of Engineers, Locks Performance Monitoring System (LPMS), <http://www.ndc.iwr.usace.army.mil/lpms/lpms.htm>.

<sup>82</sup>BST Associates, 2005.

<sup>83</sup>Using the US Producer Price Index.

<sup>84</sup>[www.oregonlaws.org](http://www.oregonlaws.org).

<sup>85</sup>2011 ORS § 190.010 Authority of local governments to make intergovernmental agreement, <http://www.oregonlaws.org/ors/190.010>.



The third option is creating a service district, as described in Oregon Statute 451.<sup>86</sup> Creating such a district would require negotiations among entities that would form the boundary of the district. Examples of services districts formed in Oregon include districts for water and sewer services, parks and recreation, solid waste disposal, and emergency medical services, e.g., ambulance. Typically, the district services directly benefit the users who pay district fees.

The fourth option, and the one we include in our model, is forming a transportation district as described in Oregon Statute 391.550.<sup>87</sup> Currently, eleven transportation districts operate in Oregon including, TriMet, South Clackamas Transportation District, Salem Area Mass Transit District, and Land Transit District.<sup>88</sup> A district can be formed across jurisdictional boundaries of interested constituents. We included the transportation district option in our analysis because they are prevalent across the state, the process for establishing a district is relatively well known, and transportation districts can be funded by property taxes.

To help illustrate the amounts of revenues that a WFL-specific transportation district could generate, we developed transportation districts using jurisdictional boundaries of four entities. We stress that these transportation districts are illustrative only. We use these jurisdictional boundaries for convenience because assessed values for property taxes are available for these boundaries, and because they illustrate districts covering a range of geographies, from large to small. We use jurisdictional boundaries for the Port of Portland, Metro, TriMet, and Clackamas County in our model.

**Figure A-1: Illustrative Model Run #1**

Operating Scenario: 3 Months (300 to 600 lockages)  
 Transportation District: Clackamas County Boundary  
 Deferred Maintenance: \$25,000

Set-Asides For Future Capital Improvements: \$50,000  
 User Fees: \$5 per lockage

Costs	Low Estimate	High Estimate
Operations & Maintenance	\$156,900	\$156,900
O&M Contingency (10%)	0	15,690
Deferred Maintenance	25,000	25,000
Set-Asides For Capital Improvements	50,000	50,000
Total	\$231,900	\$247,590
Revenues	Low Estimate	High Estimate
From User Fees	\$1,500	\$3,000
From Clackamas County Boundary	231,900	246,090
Total	\$233,400	\$249,090
Tax Impacts		
Tax per \$1,000 Assessed Value	0.81¢	0.89¢
Net Tax Increase	0.04%	0.04%

Our model calculates tax revenues generated from each jurisdictional boundary that would be needed to make up the revenue shortfall between user fees and operating costs. Our model calculates total revenues generated from a transportation district, the tax amount per \$1,000 of assessed value, and the percent net tax increase attributed to the district-specific tax amounts.

As described above, our model includes a number of assumptions and choices that affect the number of lockages, operating costs, and revenues. We reproduce results from three illustrative model runs using different assumptions and choices.

Model Run #1 assumes three months of operations, a 10% contingency factor for operating costs, \$25,000 a year in deferred maintenance, \$50,000 per year set-aside for future capital improvements, a \$5 per lockage user fee, and a transportation district equivalent to the Clackamas County boundary.

<sup>86</sup>2011 ORS § 451.010 Facilities and services provided by service districts, <http://www.oregonlaws.org/ors/451.010>.

<sup>87</sup>2011 ORS § 391.550 Powers of Mass Transportation Financing Authority, <http://www.oregonlaws.org/ors/391.550>.

<sup>88</sup>Oregon Blue Book, Transit Districts, <http://bluebook.state.or.us/local/other/other05.htm#r>. <sup>89</sup>Metro, Adopted Budget FY 2013-14, [www.oregonmetro.gov](http://www.oregonmetro.gov).



**Figure A-2: Illustrative Model Run #2**

Operating Scenario: 6 Months (1,000 to 1,500 lockages)

Set-Asides For Future Capital Improvements: \$100,000

Transportation District: Metro Region Boundary

User Fees: \$8 per lockage

Deferred Maintenance: \$50,000

Costs	Low Estimate	High Estimate
Operations & Maintenance	\$313,800	\$313,800
O&M Contingency (10%)	0	31,380
Deferred Maintenance	50,000	50,000
Set-Asides For Capital Improvements	100,000	100,000
Total	\$463,800	\$495,180
Revenues	Low Estimate	High Estimate
From User Fees	\$8,000	\$12,000
From Metro Region Boundary	463,800	487,180
Total	\$471,800	\$499,180
Tax Impacts		
Tax per \$1,000 Assessed Value	0.34¢	0.37¢
Net Tax Increase	0.02%	0.02%

Model Run #2 assumes six months of operations, a 10% contingency factor for operating costs, \$50,000 a year in deferred maintenance, \$100,000 per year set-aside for future capital improvements, a \$8 per lockage user fee, and a transportation district equivalent to the Metro boundary.

**Figure A-3: Illustrative Model Run #3**

Operating Scenario: 12 Months (1,700 to 2,500 lockages)

Set-Asides For Future Capital Improvements: \$150,000

Transportation District: Port of Portland District Boundary

User Fees: \$0 per lockage

Deferred Maintenance: \$100,000

Costs	Low Estimate	High Estimate
Operations & Maintenance	\$627,600	\$627,600
O&M Contingency (10%)	0	62,760
Deferred Maintenance	100,000	100,000
Set-Asides For Capital Improvements	150,000	150,000
Total	\$877,600	\$940,360
Revenues	Low Estimate	High Estimate
From User Fees	\$0	\$0
From Port of Portland District Boundary	877,600	940,360
Total	\$877,600	\$940,360
Tax Impacts		
Tax per \$1,000 Assessed Value	0.58¢	0.64¢
Net Tax Increase	0.03%	0.03%

Model Run #3 assumes twelve months of operations, a 10% contingency factor for operating costs, \$100,000 a year in deferred maintenance, \$150,000 per year set-aside for future capital improvements, a \$0 per lockage user fee, and a transportation district equivalent to the Port of Portland jurisdictional boundary.



Our three illustrative model runs show results across a range of operating possibilities for the WFL. Despite this range, we can draw a number of conclusions about the outcomes of likely future operations of the WFL.

- User fees will cover but a small portion of operating costs. If actual lockages were greater than the numbers in our operating scenarios, it is unlikely that the impacts on user fees would significantly reduce the demand for supplemental funding from other sources, e.g., a transportation district.
- The revenues provided by a transportation district based on the boundaries in our analysis would result in less than a tenth of a percent increase in taxes paid by property owners within the district boundaries.
- The highest operating costs from our illustrative model run #3, in which we assume 12 months of operations, would represent a very small portion of current budgets for area jurisdictions. For example, Metro's fiscal year (FY) 2013-14 total budget is \$490 million. The \$940 thousand WFL operating costs for 12 months works out to less than 0.2% of Metro's budget.<sup>89</sup> TriMet's adopted budget for FY 2014-15 is comparable to Metro's, at \$494 million,<sup>90</sup> as is the Port of Portland's adopted budget for FY 2014-15, of \$489 million.<sup>91</sup> Clackamas County's FY 2014-15 adopted budget is \$606 million.<sup>92</sup> Costs of operating WFL for 12 months represents 0.16% of the County's budget.

Readers interested in running alternative operating scenarios to those reported above can select from a menu of values for model inputs and the model will generate new results.<sup>93</sup>



<sup>89</sup> Metro. Adopted Budget FY 2013-14. [www.oregonmetro.gov](http://www.oregonmetro.gov)

<sup>90</sup> Tri-County Metropolitan Transportation District of Oregon. Adopted Budget 2014-2015. [Trimet.org/budget/](http://Trimet.org/budget/).

<sup>91</sup> Port of Portland, 2014-15 Adopted Budget, [www.portofportland.com/strategicplanbudget.aspx](http://www.portofportland.com/strategicplanbudget.aspx).

<sup>92</sup> Clackamas County, Amended FY 2013-14 vs. Adopted FY 2014-15 Budgets. [www.clackamas.us/budget/documents/budportala.pdf](http://www.clackamas.us/budget/documents/budportala.pdf).

<sup>93</sup> Contact the Willamette Falls Heritage Foundation, 503-650-9570, for a copy of the spreadsheet model that accompanies this report.



## SUPPLEMENTAL TABLES

Figure A-4: Shipments Originating in Oregon, by Transportation Mode

Mode type	Value (millions)	Tons (thousands)	Ton-miles (millions)
Single modes			
Truck	\$101,093	149,917	27,962
Rail	3,353	7,204	9,889
Water	1,859	8,454	379
Air*	5,262	13	21
Pipeline	23	89	1
Subtotal, single modes	\$111,590	165,677	38,252
Multiple modes	28,450	8,312	11,083
Other and unknown modes	6,846	10,749	514
Total	\$146,886	184,738	49,849

\*Includes truck & air multi-mode

Source: 2007 Commodity Flow Survey, U.S. Bureau of Transportation Statistics.



Figure A-5: Shipments Originating in Oregon, by Commodity

Commodity type	Value (millions)	Tons (thousands)	Ton-miles (millions)
Cereal grains (includes seed)	\$3,262	14,541	34
Agricultural products (excludes animal feed, cereal grains, and forage products)	5,340	3,190	3,795
Animal feed, eggs, honey, and other products of animal origin	ND	ND	279
Meat, poultry, fish, seafood, and their preparations	1,864	561	151
Milled grain products and preparations and bakery products	2,009	1,533	571
Other prepared foodstuffs and fats and oils	8,112	6,344	5,262
Alcoholic beverages	1,474	1,130	149
Tobacco products	137	3	ND
Monumental or building stone	ND	ND	60
Natural sands	ND	2,147	63
Gravel and crushed stone (excludes dolomite and slate)	404	47,978	1,148
Other nonmetallic minerals, nec	111	1,442	309
Metallic ores and concentrates	ND	8	ND
Gasoline and aviation turbine fuel	4,614	7,076	228
Fuel oils	2,580	4,292	215
Other coal and petroleum products, nec	1,938	5,468	368
Basic chemicals	765	617	146
Pharmaceutical products	ND	ND	2
Fertilizers	358	892	209
Chemical products and preparations, nec	3,141	1,002	508
Plastics and rubber	3,828	1,234	657
Logs and other wood in the rough	ND	357	ND
Wood products	11,076	23,169	19,530
Pulp, newsprint, paper, and paperboard	2,754	4,251	3,503
Paper or paperboard articles	1,985	1,668	442
Printed products	1,511	493	348
Textiles, leather, and articles of textiles or leather	5,666	135	127
Nonmetallic mineral products	5,023	ND	ND
Base metal in primary or semifinished forms and in finished basic shapes	4,439	2,791	950
Articles of base metal	4,434	980	478
Machinery	6,270	485	441
Electronic and other electrical equipment and components and office equipment	21,208	262	104
Motorized and other vehicles (including parts)	6,958	835	618
Transportation equipment, nec	993	19	23
Precision instruments and apparatus	8,441	51	103
Furniture, mattresses and mattress supports, lamps, lighting fittings, and illuminated signs	1,227	152	98
Miscellaneous manufactured products	5,760	806	584
Waste and scrap	1,258	4,363	320
Mixed freight	14,834	4,926	1,030
Total	\$146,886	184,738	49,849

ND = Not disclosed.

Source: 2007 Commodity Flow Survey, U.S. Bureau of Transportation Statistics.



This study was conducted and produced by ECONorthwest for the Willamette Falls Heritage Foundation, Inc. and funded through the generosity of the following entities:

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City of Oregon City

City of West Linn

City of Wilsonville

Clackamas County

J & A Fuel

METRO

National Trust for Historic Preservation

Portland General Electric Company

The Kinsman Foundation

The Portland Spirit Cruises

Willamette Falls Heritage Area Coalition

Wilsonville Concrete Products



City of

**WILSONVILLE**

OREGON



**Community Development**  
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## MEMORANDUM

To: Honorable Mayor Knapp and City Council  
From: Nancy Kraushaar, PE, Community Development Director  
Date: October 30, 2014  
Subject: November 3, 2014 Work Session – Climate Smart Communities Scenarios Discussion Preparation Materials

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### Background

A draft Climate Smart Communities Strategy has been shaped that meets the 2009 Oregon Legislative state mandate for greenhouse gas reductions and supports the plans and visions that have been adopted by communities around the region (local comprehensive plans, local TSPs, and the Regional Transportation Plan [RTP]).

The strategy, if implemented, achieves 29 percent per capita greenhouse gas emissions reduction below 2005 levels by 2035.

The strategy meets the target and also supports other local, regional, and state goals. It is expected to deliver significant public health, environmental, and economic benefits to communities and the region (such as reduced air pollution, improved safety, helping people live healthier lives, managing congestion, and expanded travel options).

At the November 3 Work Session, the City Council will be asked to discuss the two topics and the questions presented below. Please see the attached September 15, 2014 document entitled "Draft Toolbox of Possible Actions (2015-20)". Copies of this document will be provided for your use at the meeting.

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### Topic #1

The draft "Toolbox of Possible Early Actions (2015-2020)" has been developed that:

- Is a menu of over 200 voluntary policy, program, and funding actions that can be tailored for state, Metro, cities and counties, and special districts.
- The toolbox does not mandate any particular policy or action, but was developed realizing that some actions may work better in some locations than others.
- The actions are expected to reduce greenhouse gas emissions in ways that support community and economic development goals.

Please note that long-range actions beyond 2020 will be developed through the 2018 RTP update process.

Question 1: Does the City Council support the "Draft Toolbox of Possible Early Actions (2015-2020)" for cities? And if so, are there early actions in the toolbox that are more suited to Wilsonville?

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## Topic #2

In addition to those in the toolbox, there are actions that are more regional in nature and may be best accomplished by local and regional officials working together in 2015 and 2016. The first two actions below are considered to be high priority for long term success of the strategy. The third action is intended to develop demonstration projects. Work plans for addressing each action would be developed in 2015.

<b>Action 1</b>	<b>Advocate for increased federal, state, regional and local transportation funding for all transportation modes as part of a diverse coalition</b> to implement adopted local and regional plans and transit service enhancement plans. <i>This action will advance efforts to implement adopted local city and county plans, transit service plans, and the 2014 Regional Transportation Plan.</i>
<b>Action 2</b>	<b>Advocate for federal and state governments to implement actions to advance Oregon's transition to cleaner, low carbon fuels, and more fuel-efficient vehicle technologies.</b> <i>This action will accelerate the fuel and vehicle technology trends assumed in the state target.</i>
<b>Action 3</b>	<b>Seek opportunities to advance local projects that best combine the most effective greenhouse gas emissions reduction strategies.</b> <i>The action means the region will seek seed money for local government pilot projects that leverage (1) local, regional, state and federal resources and (2) state and regional technical assistance to plan for or implement community pilot projects that combine the following elements (and can achieve greater cost-effectiveness and GHG reductions than if implemented individually):</i> <ul style="list-style-type: none"><li>• <i>investments in transit facility and/or service improvements identified in TriMet Service Enhancement Plans or the South Metro Area Regional Transit (SMART) Master Plan</i></li><li>• <i>local bike and pedestrian safety retrofits that also improve access to transit, schools and activity centers</i></li><li>• <i>investments in transportation system management technologies, including traffic signal timing and transit signal priority along corridors with 15-minute or better service, to smooth traffic flow and improve on-time performance and reliability</i></li><li>• <i>parking management approaches, including bicycle parking, preferential parking for alternative fuel vehicles, and shared and unbundled parking</i></li><li>• <i>transportation demand management incentives or requirements to increase carpooling, biking, walking and use of transit.</i></li></ul> <i>Seed funding could be sought from multiple sources, such as the Regional Flexible Funding Allocation process, Metro's Community Development Grant program, Oregon's Transportation Growth Management grant program, and federal grant programs such as the Building Blocks for Sustainable Communities.</i>

Question 2: Does the City Council support developing plans to address working as a region on these three action items?



**CLIMATE  
SMART**  
COMMUNITIES  
SCENARIOS PROJECT

**2**

# **Draft Toolbox of Possible Actions (2015-20)**

**Public Review Draft**

September 15, 2014

**MAKING A  
GREAT  
PLACE**





## About Metro

Clean air and clean water do not stop at city limits or county lines. Neither does the need for jobs, a thriving economy, and sustainable transportation and living choices for people and businesses in the region. Voters have asked Metro to help with the challenges and opportunities that affect the 25 cities and three counties in the Portland metropolitan area.

A regional approach simply makes sense when it comes to providing services, operating venues and making decisions about how the region grows. Metro works with communities to support a resilient economy, keep nature close by and respond to a changing climate. Together we're making a great place, now and for generations to come.

Stay in touch with news, stories and things to do.

[www.oregonmetro.gov/climatescenarios](http://www.oregonmetro.gov/climatescenarios)

### **Metro Council President**

Tom Hughes

### **Metro Councilors**

Shirley Craddick, District 1

Carlotta Collette, District 2

Craig Dirksen, District 3

Kathryn Harrington, District 4

Sam Chase, District 5

Bob Stacey, District 6

### **Auditor**

Suzanne Flynn



## PART 2. DRAFT TOOLBOX OF POSSIBLE ACTIONS (2015-20)

*This is one of three parts of the draft implementation recommendations being presented for public review and comment from Sept. 15 to Oct. 30, 2014*

This document includes a draft toolbox of actions with meaningful implementation steps that can be taken in the next five years to reduce greenhouse gas emissions and minimize the region's contribution to climate change. Building on existing local, regional and statewide activities and priorities, the toolbox is a comprehensive menu of voluntary policy, program and funding actions that can be tailored to best support local, regional and state plans and visions.

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### TABLE OF CONTENTS

Background .....	1
How to provide your input .....	1
What's next? .....	2
Where can I find more information? .....	2
<b>Draft Toolbox of Possible Actions (2015-20)</b>	

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### BACKGROUND

The Climate Smart Communities Scenarios Project responds to a 2009 mandate from the Oregon Legislature for our region to develop a strategy to reduce per capita greenhouse gas emissions from cars and small trucks by 2035. Metro is the regional government and federally-designated metropolitan planning organization for the Portland metropolitan area, serving a population of 1.5 million people. In that role, Metro has been working together with community, business and elected leaders across our region to shape a draft Climate Smart Strategy that meets the state mandate while supporting economic prosperity, community livability and protection of our environment.

After a four-year collaborative process informed by research, analysis, community engagement and deliberation, a draft Climate Smart Strategy that meets the state target is being presented for your review and comment. The draft strategy relies on policies and investments that have already been identified as local priorities in communities across the region and in the region's long-range transportation plan.

### HOW TO PROVIDE YOUR INPUT

- Take an on-line survey at [www.makeagreatplace.org](http://www.makeagreatplace.org).
- Submit comments by mail to Metro Planning, 600 NE Grand Ave., Portland, OR 97232, by email to [climatescenarios@oregonmetro.gov](mailto:climatescenarios@oregonmetro.gov), or by phone at 503-797-1750 or TDD 503-797-1804 from Sept. 15 through Oct. 30, 2014.
- Testify at a Metro Council hearing on Oct. 30 at 600 NE Grand Ave., Portland, OR 97232 in the Council Chamber.

## WHAT'S NEXT?

The Metro Policy Advisory Committee and the Joint Policy Advisory Committee on Transportation are working to finalize their recommendation to the Metro Council on the draft approach and draft implementation recommendations.

**Sept. 15 to Oct. 30** Public comment period on draft approach and draft implementation recommendations

**Nov. 7** MPAC and JPACT meet to discuss public comments and shape recommendation to the Metro Council

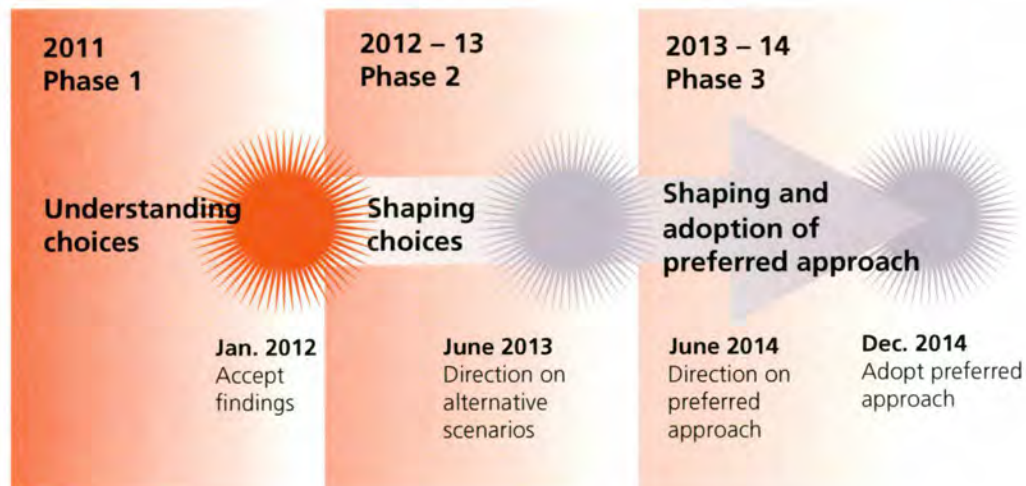
**December 10 and 11** MPAC and JPACT make recommendation to Metro Council

**December 18** Metro Council considers adoption of preferred approach

**January 2015** Metro submits adopted approach to Land Conservation and Development Commission for approval

**2015 and beyond** Ongoing implementation and monitoring

## Climate Smart Communities Scenarios Project timeline



## WHERE CAN I FIND MORE INFORMATION?

Public review materials and other publications and reports can be found at [oregonmetro.gov/climatescenarios](http://oregonmetro.gov/climatescenarios). For email updates, send a message to [climatescenarios@oregonmetro.gov](mailto:climatescenarios@oregonmetro.gov).





**DRAFT TOOLBOX OF POSSIBLE ACTIONS (2015-2020)**

**BACKGROUND |** The Climate Smart Communities Scenarios Project responds to a state mandate to reduce greenhouse gas emissions from cars and small trucks by 2035. Working together, community, business and elected leaders are shaping a strategy that meets the goal while creating healthy and equitable communities and a strong economy. After considering prior public input and other information, on May 30, 2014, the Metro Policy Advisory Committee (MPAC) and the Joint Policy Advisory Committee on Transportation (JPACT) unanimously recommended a draft approach for testing that relies on policies and investments that have already been identified as local priorities in communities across the region. Analysis shows the region can meet the 2035 target if we make the investments needed to build the plans and visions that have already been adopted by communities and the region. The draft Climate Smart Strategy does more than just meet the target. It supports many other local, regional and state goals, including clean air and water, transportation choices, healthy and equitable communities, and a strong regional economy.

Building on existing local, regional and statewide activities and priorities, the project partners have developed a draft toolbox of actions with meaningful steps that can be taken in the next five years to reduce greenhouse gas emissions and minimize the region’s contribution to climate change. The policies and actions are the result of a four-year collaborative process informed by research, analysis, community engagement, and deliberation. They will be subject to public review from Sept. 15 to Oct. 30, 2014 before being considered by MPAC, JPACT, and the Metro Council in December 2014.

**HOW TO USE THE TOOLBOX |** The toolbox is a comprehensive menu of policy, program and funding actions that can be tailored to best support local, regional and state plans and visions. Local, state and regional partners are encouraged to review the toolbox and identify actions they have already taken and any new actions they are willing to consider or commit to as we move into 2015. Medium and longer-term actions will be identified during the next update to the Regional Transportation Plan (scheduled for 2016-18).

POLICY	TOOLBOX OF POSSIBLE ACTIONS (2015-2020)			
	WHAT CAN THE STATE DO?	WHAT CAN METRO DO?	WHAT CAN CITIES AND COUNTIES DO?	WHAT CAN SPECIAL DISTRICTS DO? (e.g., transit providers, Port districts, parks providers, etc.)
Implement the 2040 Growth Concept and local adopted land use and transportation plans	<b>Immediate (2015-16)</b> <ul style="list-style-type: none"> <li><input type="checkbox"/> Reauthorize Oregon Brownfield Redevelopment Fund</li> <li><input type="checkbox"/> Support brownfield redevelopment-related legislative proposals</li> <li><input type="checkbox"/> Restore local control of housing policies and programs to ensure local communities have a full range of tools available to meet the housing needs of all residents to expand opportunities for households of modest means to live closer to work, services and transit</li> <li><input type="checkbox"/> Begin implementation of the Statewide Transportation Strategy Vision and short-term implementation plan to support regional and community visions</li> </ul> <b>Near-term (2017-20)</b> <ul style="list-style-type: none"> <li><input type="checkbox"/> Seek opportunities to leverage local, regional, state and federal funding to achieve local visions and the region's desired outcomes</li> <li><input type="checkbox"/> Provide increased funding and incentives to local governments, developers and non-profits to encourage brownfield redevelopment and transit-oriented development to help keep urban areas compact</li> </ul>	<b>Immediate (2015-16)</b> <ul style="list-style-type: none"> <li><input type="checkbox"/> Implement policies and investments that align with regional and community visions to focus growth in designated centers, corridors and employment areas</li> <li><input type="checkbox"/> Support restoring local control of housing policies and programs through Legislative agenda, testimony, endorsement letters or similar means</li> <li><input type="checkbox"/> Support reauthorization of Oregon Brownfield Redevelopment Fund through Legislative agenda, testimony, endorsement letters or similar means</li> <li><input type="checkbox"/> Facilitate regional brownfield coalition to develop legislative proposals and increase resources available in the region for brownfield redevelopment</li> <li><input type="checkbox"/> Maintain a compact urban growth boundary</li> <li><input type="checkbox"/> Review functional plans and amend as needed to implement Climate Smart Strategy</li> </ul> <b>Near-term (2017-20)</b> <ul style="list-style-type: none"> <li><input type="checkbox"/> Seek opportunities to leverage local, regional, state and federal funding to achieve local visions and the region's desired outcomes</li> <li><input type="checkbox"/> Expand on-going technical assistance and grant funding to local governments, developers and others to incorporate travel information and incentives, transportation system management and operations strategies, parking management</li> </ul>	<b>Immediate (2015-16)</b> <ul style="list-style-type: none"> <li><input type="checkbox"/> Implement policies and investments that align with community visions, focus growth in designated centers, corridors and employment areas</li> <li><input type="checkbox"/> Support restoring local control of housing policies and programs through Legislative agenda, testimony, endorsement letters or similar means</li> <li><input type="checkbox"/> Support reauthorization of Oregon Brownfield Redevelopment Fund through Legislative agenda, testimony, endorsement letters or similar means</li> <li><input type="checkbox"/> Participate in regional brownfield coalition to develop legislative proposals and increase resources available in the region for brownfield redevelopment</li> </ul> <b>Near-term (2017-20)</b> <ul style="list-style-type: none"> <li><input type="checkbox"/> Pursue opportunities to locate higher-density residential development near activity centers such as parks and recreational facilities, commercial areas, employment centers, and transit</li> <li><input type="checkbox"/> Locate new schools, services, shopping, and other health promoting resources and community destinations in activity centers</li> <li><input type="checkbox"/> Seek opportunities to leverage local, regional, state and federal funding to achieve local visions and the region's desired outcomes</li> </ul>	<b>Immediate (2015-16)</b> <ul style="list-style-type: none"> <li><input type="checkbox"/> Implement policies and investments that align with community visions, focus growth in designated centers, corridors and employment areas</li> <li><input type="checkbox"/> Support restoring local control of housing policies and programs through Legislative agenda, testimony, endorsement letters or similar means</li> <li><input type="checkbox"/> Support reauthorization of Oregon Brownfield Redevelopment Fund through Legislative agenda, testimony, endorsement letters or similar means</li> </ul> <b>Near-term (2017-20)</b> <ul style="list-style-type: none"> <li><input type="checkbox"/> Seek opportunities to leverage local, regional, state and federal funding to achieve local visions and the region's desired outcomes</li> <li><input type="checkbox"/> Share brownfield redevelopment expertise with local governments and expand leadership role in making brownfield sites development ready</li> </ul>



PUBLIC REVIEW DRAFT				
TOOLBOX OF POSSIBLE ACTIONS (2015-2020)				
POLICY	WHAT CAN THE STATE DO?	WHAT CAN METRO DO?	WHAT CAN CITIES AND COUNTIES DO?	WHAT CAN SPECIAL DISTRICTS DO? (e.g., transit providers, Port districts, parks providers, etc.)
		<p>approaches and transit-oriented development in local plans and projects</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Convene regional brownfield coalition and strengthen regional brownfields program by providing increased funding and technical assistance to local governments to leverage the investment of private and non-profit developers</li> </ul>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Develop brownfield redevelopment plans and leverage local funding to seek state and federal funding and create partnerships that leverage the investment of private and non-profit developers</li> </ul>	
<b>Make transit more convenient, frequent, accessible and affordable</b>	<p><b>Immediate (2015-16)</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Begin update to Oregon Public Transportation Plan</li> <li><input type="checkbox"/> Increase state funding for transit service</li> <li><input type="checkbox"/> Maintain existing intercity passenger rail service and develop proposals for improvement of speed, frequency and reliability</li> <li><input type="checkbox"/> Provide technical assistance and funding to help establish local transit service</li> </ul> <p><b>Near-term (2017-20)</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Adopt Oregon Public Transportation Plan with funding strategy to implement</li> <li><input type="checkbox"/> Begin implementation of incremental improvements to intercity passenger rail service</li> <li><input type="checkbox"/> Make funding for access to transit a priority</li> </ul>	<p><b>Immediate (2015-16)</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Build a diverse coalition that includes elected officials and community and business leaders at local, regional and state levels working together to: <ul style="list-style-type: none"> <li>o Seek and advocate for new, dedicated funding mechanism(s)</li> <li>o Seek transit funding from Oregon Legislature</li> <li>o Consider local funding mechanism(s) for local and regional transit service</li> <li>o Support state efforts to consider carbon pricing</li> <li>o Fund reduced fare programs and service improvements for youth, older adults, people with disabilities and low-income families</li> </ul> </li> <li><input type="checkbox"/> Consider local funding mechanism(s) for local and regional transit service</li> <li><input type="checkbox"/> Update Regional High Capacity Transit System Plan</li> </ul> <p><b>Near-term (2017-20)</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Support reduced fares and service improvements for low-income families and individuals, youth, older adults and people with disabilities through testimony, endorsement letters or similar means</li> <li><input type="checkbox"/> Make funding for access to transit a priority</li> <li><input type="checkbox"/> Research and develop best practices that support equitable growth and development near transit without displacement, including strategies that provide for the retention and creation of businesses and affordable housing near transit</li> <li><input type="checkbox"/> Update Regional Transportation Plan by 2018</li> </ul>	<p><b>Immediate (2015-16)</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Support and/or participate in efforts to build transportation funding coalition</li> <li><input type="checkbox"/> Participate in development of TriMet Service Enhancement Plans (SEPs): <ul style="list-style-type: none"> <li>o Provide more community to community transit connections</li> <li>o Identify community-based public and private shuttles that link to regional transit service</li> <li>o Link service enhancements to areas with transit-supportive development, communities of concern<sup>1</sup>, and other locations with high ridership potential</li> <li>o Consider ridership demographics in service planning</li> </ul> </li> <li><input type="checkbox"/> Consider local funding mechanism(s) for local and regional transit service</li> </ul> <p><b>Near-term (2017-20)</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Make funding for access to transit a priority</li> <li><input type="checkbox"/> Complete gaps in pedestrian and bicycle access to transit</li> <li><input type="checkbox"/> Expand partnerships with transit agencies to implement capital improvements in frequent bus corridors (including dedicated bus lanes, stop/shelter improvements, and intersection priority treatments) to increase service performance</li> <li><input type="checkbox"/> Implement plans and zoning that focus higher density, mixed-use zoning and development near transit</li> <li><input type="checkbox"/> Partner with transit providers and school districts to seek resources to support youth pass program and expand reduced fare program to low-income families and individuals</li> <li><input type="checkbox"/> Support reduced fares and service improvements for low-income families and individuals, youth, older adults and people with disabilities through testimony, endorsement letters or similar means</li> </ul>	<p><b>Immediate (2015-16)</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Support and/or participate in efforts to build transportation funding coalition</li> <li><input type="checkbox"/> Expand transit payment options (e.g., electronic e-fare cards) to increase affordability, convenience and flexibility</li> <li><input type="checkbox"/> Seek state funding sources for transit and alternative local funding mechanisms</li> <li><input type="checkbox"/> Complete development of TriMet Service Enhancement Plans (SEPs): <ul style="list-style-type: none"> <li>o Provide more community to community transit connections</li> <li>o Identify community-based public and private shuttles that link to regional transit service</li> <li>o Link service enhancements to areas with transit-supportive development, communities of concern, and other locations with potential high ridership potential</li> <li>o Consider ridership demographics in service planning</li> </ul> </li> <li><input type="checkbox"/> Consider local funding mechanism(s) for local and regional transit service</li> </ul> <p><b>Near-term (2017-20)</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Expand partnerships with cities, counties and ODOT to implement capital improvements in frequent bus corridors (including dedicated bus lanes, stop/shelter improvements, and intersection priority treatments) to increase service performance</li> <li><input type="checkbox"/> Partner with local governments and school districts to seek resources to support youth pass program and expanding reduced fare program to low-income families and individuals</li> <li><input type="checkbox"/> Expand transit service to serve communities of concern, transit-supportive development and other potential high ridership locations, etc.</li> <li><input type="checkbox"/> Improve and increase the availability of transit</li> </ul>

<sup>1</sup> The 2014 Regional Transportation Plan defines communities of concern as people of color, people with limited English proficiency, people with low-income, older adults, and young people.



POLICY	TOOLBOX OF POSSIBLE ACTIONS (2015-2020)			
	WHAT CAN THE STATE DO?	WHAT CAN METRO DO?	WHAT CAN CITIES AND COUNTIES DO?	WHAT CAN SPECIAL DISTRICTS DO? (e.g., transit providers, Port districts, parks providers, etc.)
<b>Make biking and walking safe and convenient</b>	<b>Immediate (2015-16)</b> <ul style="list-style-type: none"> <li><input type="checkbox"/> Adopt Oregon Bicycle and Pedestrian Plan with funding strategy</li> <li><input type="checkbox"/> Adopt a Vision Zero strategy for eliminating traffic fatalities</li> <li><input type="checkbox"/> Seek and advocate for new, dedicated funding mechanism(s) for active transportation projects</li> <li><input type="checkbox"/> Advocate for use of Connect Oregon funding for active transportation projects</li> <li><input type="checkbox"/> Review driver's education training materials and certification programs and make changes to increase awareness of bicycle and pedestrian safety</li> <li><input type="checkbox"/> Complete Region 1 Active Transportation Needs inventory</li> <li><input type="checkbox"/> Maintain commitment to funding Safe Routes to School programs statewide</li> <li><input type="checkbox"/> Fund Safe Routes to Transit programs</li> <li><input type="checkbox"/> Adopt a complete streets policy</li> <li><input type="checkbox"/> Partner with local governments to conduct site-specific evaluations from priority locations identified in the ODOT Pedestrian and Bicycle Safety Implementation Plan</li> <li><input type="checkbox"/> Improve bicycle and pedestrian crash data collection</li> <li><input type="checkbox"/> Support local and regional health impact assessments</li> </ul> <b>Near-term (2017-20)</b> <ul style="list-style-type: none"> <li><input type="checkbox"/> Provide technical assistance and expand grant funding to support development and adoption of complete streets policies and designs</li> <li><input type="checkbox"/> Expand existing funding for active transportation investments</li> </ul>	<b>Immediate (2015-16)</b> <ul style="list-style-type: none"> <li><input type="checkbox"/> Adopt a Vision Zero strategy for eliminating traffic fatalities</li> <li><input type="checkbox"/> Fund construction of active transportation projects as called for in air quality transportation control measures</li> <li><input type="checkbox"/> Advocate for use of Connect Oregon funding for active transportation projects</li> <li><input type="checkbox"/> Build a diverse coalition that includes elected officials and community and business leaders at local, regional and state levels working together to:               <ul style="list-style-type: none"> <li><input type="checkbox"/> Build local and state commitment to implement Active Transportation Plan, and Safe Routes to Schools and Safe Routes to Transit programs</li> <li><input type="checkbox"/> Seek and advocate for new, dedicated funding mechanism(s)</li> <li><input type="checkbox"/> Advocate to maintain eligibility in federal formula programs (i.e., NHPP, STP, CMAQ) and discretionary programs (New Starts, Small Starts, TIFIA, TIGER)</li> </ul> </li> <li><input type="checkbox"/> Seek opportunities to implement Regional Transportation Safety Plan recommendations in planning, project development and development review activities</li> </ul> <b>Near-term (2017-20)</b> <ul style="list-style-type: none"> <li><input type="checkbox"/> Provide technical assistance and planning grants to support development and adoption of complete streets policies</li> <li><input type="checkbox"/> Provide technical assistance and funding to support complete street designs in local planning and project development activities</li> <li><input type="checkbox"/> Review the regional transportation functional plan and make amendments needed to implement the Regional Active Transportation Plan</li> <li><input type="checkbox"/> Update and fully implement the Regional Transportation Safety Plan</li> <li><input type="checkbox"/> Update best practices in street design and complete streets, including:               <ul style="list-style-type: none"> <li><input type="checkbox"/> develop a complete streets checklist</li> <li><input type="checkbox"/> provide design guidance to minimize air pollution exposure for bicyclists and pedestrians</li> <li><input type="checkbox"/> use of green street designs that include tree</li> </ul> </li> </ul>	<b>Immediate (2015-16)</b> <ul style="list-style-type: none"> <li><input type="checkbox"/> Adopt a Vision Zero strategy for eliminating traffic fatalities</li> <li><input type="checkbox"/> Support and/or participate in efforts to build transportation funding coalition</li> <li><input type="checkbox"/> Advocate for use of Connect Oregon funding for active transportation projects</li> <li><input type="checkbox"/> Leverage local funding with development for active transportation projects</li> <li><input type="checkbox"/> Seek opportunities to coordinate local investments with investments being made by special districts, park providers and other transportation providers</li> <li><input type="checkbox"/> Seek and advocate for new, dedicated funding mechanism(s)</li> <li><input type="checkbox"/> Seek opportunities to implement Regional Transportation Safety Plan recommendations in planning, project development and development review activities</li> </ul> <b>Near-term (2017-20)</b> <ul style="list-style-type: none"> <li><input type="checkbox"/> Develop and maintain a city/county-wide active transportation network of sidewalks, on- and off-street bikeways, and trails to provide connections between neighborhoods, schools, civic center/facilities, recreational facilities, transit centers, bus stops, employment areas and major activity centers</li> <li><input type="checkbox"/> Build infrastructure and urban design elements that facilitate and support bicycling and walking (e.g., completing gaps, crosswalks and other crossing treatments, wayfinding signs, bicycle parking, bicycle sharing programs, lighting, separated facilities)</li> <li><input type="checkbox"/> Invest to equitably complete active transportation network gaps in centers and along streets that provide access to transit stops, schools and other community destinations</li> <li><input type="checkbox"/> Link active transportation investments to providing transit and travel information and incentives</li> <li><input type="checkbox"/> Partner with ODOT to conduct site-specific evaluations from priority locations identified in the ODOT Pedestrian and Bicycle Safety Implementation Plan</li> <li><input type="checkbox"/> Expand Safe Routes to Schools programs to include high schools and Safe Routes to Transit</li> </ul>	<b>Immediate (2015-16)</b> <ul style="list-style-type: none"> <li><input type="checkbox"/> Adopt a Vision Zero strategy for eliminating traffic fatalities</li> <li><input type="checkbox"/> Support and/or participate in efforts to build transportation funding coalition</li> <li><input type="checkbox"/> Advocate for use of Connect Oregon funding for active transportation projects</li> <li><input type="checkbox"/> Complete Port of Portland 2014 Active Transportation Plan for Portland International Airport</li> <li><input type="checkbox"/> Prepare a TriMet Bicycle Plan</li> </ul> <b>Near-term (2017-20)</b> <ul style="list-style-type: none"> <li>Invest in trails that increase equitable access to transit, services and community destinations</li> </ul>
	route and schedule information			



POLICY				
TOOLBOX OF POSSIBLE ACTIONS (2015-2020)				
	WHAT CAN THE STATE DO?	WHAT CAN METRO DO?	WHAT CAN CITIES AND COUNTIES DO?	WHAT CAN SPECIAL DISTRICTS DO? (e.g., transit providers, Port districts, parks providers, etc.)
		<ul style="list-style-type: none"> <li>plantings to support carbon sequestration</li> <li>○ identify new pavement and hard surface materials proven to help reduce infrastructure-related heat gain</li> </ul>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Adopt “complete streets” policies and designs to support all users</li> <li><input type="checkbox"/> Establish local funding pool to leverage state and federal funds</li> </ul>	
<b>Make streets and highways safe, reliable and connected</b>	<b>Immediate (2015-16)</b> <ul style="list-style-type: none"> <li><input type="checkbox"/> Maintain existing highway network to improve traffic flow</li> <li><input type="checkbox"/> Increase state gas tax (indexed to inflation and fuel efficiency)</li> <li><input type="checkbox"/> Update the Oregon Transportation Safety Action Plan</li> <li><input type="checkbox"/> Review driver’s education training materials and certification programs and make changes to increase awareness of safety for all system users</li> </ul> <b>Near-term (2017-20)</b> <ul style="list-style-type: none"> <li><input type="checkbox"/> Work with Metro and local governments to consider alternative performance measures</li> <li><input type="checkbox"/> Integrate multi-modal designs in road improvement and maintenance projects to support all users</li> <li><input type="checkbox"/> Pilot new pavement and hard surface materials proven to help reduce infrastructure-related heat gain</li> <li><input type="checkbox"/> Use green street designs that include tree plantings to support carbon sequestration</li> </ul>	<b>Immediate (2015-16)</b> <ul style="list-style-type: none"> <li><input type="checkbox"/> Build a diverse coalition that includes elected officials and community and business leaders at local, regional and state levels working together to: <ul style="list-style-type: none"> <li>○ Ensure adequate funding of local maintenance and support city and county efforts to fund maintenance and preservation needs locally</li> <li>○ Support state and federal efforts to increase gas tax (indexed to inflation and fuel efficiency)</li> <li>○ Support state and federal efforts to implement mileage-based road usage charge program</li> </ul> </li> <li><input type="checkbox"/> Seek opportunities to implement Regional Transportation Safety Plan recommendations in planning, project development and development review activities</li> </ul> <b>Near-term (2017-20)</b> <ul style="list-style-type: none"> <li><input type="checkbox"/> Work with ODOT and local governments to consider alternative performance measures</li> <li><input type="checkbox"/> Provide technical assistance and grant funding to support integrated transportation system management operations strategies in local plans, projects and project development activities</li> <li><input type="checkbox"/> Update and fully implement Regional Transportation Safety Plan</li> <li><input type="checkbox"/> Update best practices in street design and complete streets, including: <ul style="list-style-type: none"> <li>○ Develop a complete streets checklist</li> <li>○ Provide design guidance to minimize air pollution exposure for bicyclists and pedestrians</li> <li>○ Use of green street designs that include tree plantings to support carbon sequestration</li> <li>○ Identify new pavement and hard surface materials proven to help reduce infrastructure-related heat gain</li> </ul> </li> </ul>	<b>Immediate (2015-16)</b> <ul style="list-style-type: none"> <li><input type="checkbox"/> Maintain existing street network to improve traffic flow</li> <li><input type="checkbox"/> Support and/or participate in efforts to build transportation funding coalition</li> <li><input type="checkbox"/> Seek opportunities to implement Regional Transportation Safety Plan recommendations in planning, project development and development review activities</li> </ul> <b>Near-term (2017-20)</b> <ul style="list-style-type: none"> <li><input type="checkbox"/> Work with ODOT and Metro to consider alternative performance measures</li> <li><input type="checkbox"/> Support railroad grade separation projects in corridors to allow for longer trains and less delay/disruption to other users of the system</li> <li><input type="checkbox"/> Invest in making new and existing streets complete and connected to support all users</li> <li><input type="checkbox"/> Integrate multi-modal designs in road improvement and maintenance projects to support all users</li> <li><input type="checkbox"/> Pilot new pavement and hard surface materials proven to help reduce infrastructure-related heat gain</li> <li><input type="checkbox"/> Use green street designs that include tree plantings to support carbon sequestration</li> </ul>	<b>Near-term (2017-20)</b> <ul style="list-style-type: none"> <li><input type="checkbox"/> Support and/or participate in efforts to build transportation funding coalition</li> <li><input type="checkbox"/> Support railroad grade separation projects in corridors to allow for longer trains and less delay/disruption to other users of the system</li> </ul>



TOOLBOX OF POSSIBLE ACTIONS (2015-2020)				
POLICY	WHAT CAN THE STATE DO?	WHAT CAN METRO DO?	WHAT CAN CITIES AND COUNTIES DO?	WHAT CAN SPECIAL DISTRICTS DO? (e.g., transit providers, Port districts, parks providers, etc.)
<b>Use technology to actively manage the transportation system</b>	<b>Immediate (2015-16)</b> <ul style="list-style-type: none"> <li><input type="checkbox"/> Integrate transportation system management and operations strategies into project development activities</li> <li><input type="checkbox"/> Expand deployment of intelligent transportation systems (ITS), including active traffic management, incident management and traveler information programs</li> <li><input type="checkbox"/> Partner with cities, counties and TriMet to expand deployment of transit signal priority along corridors with 15-minute or better transit service</li> </ul>	<b>Immediate (2015-16)</b> <ul style="list-style-type: none"> <li><input type="checkbox"/> Seek Metro Council/JPACT commitment to invest more in transportation system management and operations (TSMO) projects using regional flexible funds</li> <li><input type="checkbox"/> Advocate for increased state commitment to invest more in TSMO projects using state funds</li> </ul> <b>Near-term (2017-20)</b> <ul style="list-style-type: none"> <li><input type="checkbox"/> Build capacity and strengthen interagency coordination</li> <li><input type="checkbox"/> Provide technical assistance and grant funding to integrate transportation system management operations strategies in local plans, project development, and development review activities</li> <li><input type="checkbox"/> Update Regional TSMO Strategic Plan by 2018</li> </ul>	<b>Immediate (2015-16)</b> <ul style="list-style-type: none"> <li><input type="checkbox"/> Advocate for increased regional and state commitment to invest more in TSMO projects using regional and state funds</li> </ul> <b>Near-term (2017-20)</b> <ul style="list-style-type: none"> <li><input type="checkbox"/> Expand deployment of intelligent transportation systems (ITS), including active traffic management, incident management and travel information programs and coordinate with capital projects</li> <li><input type="checkbox"/> Partner with TriMet to expand deployment of transit signal priority along corridors with 15-minute or better transit service</li> </ul>	<b>Near-term (2017-20)</b> <ul style="list-style-type: none"> <li><input type="checkbox"/> Partner with cities, counties and ODOT to expand deployment of transit signal priority along corridors with 15-minute or better transit service</li> </ul>
<b>Provide information and incentives to expand the use of travel options</b>	<b>Immediate (2015-16)</b> <ul style="list-style-type: none"> <li><input type="checkbox"/> Adopt Statewide Transportation Options Plan with funding strategy to implement</li> <li><input type="checkbox"/> Deploy statewide eco-driving educational effort, including integration of eco-driving information in driver's education training courses, Oregon Driver's education manual and certification programs</li> <li><input type="checkbox"/> Review EcoRule to identify opportunities to improve effectiveness</li> <li><input type="checkbox"/> Increase state capacity and staffing to support on-going EcoRule implementation and monitoring</li> <li><input type="checkbox"/> Deploy video conferencing, virtual meeting technologies and other communication technologies to reduce business travel needs</li> <li><input type="checkbox"/> Partner with TriMet, SMART and media partners to link the Air Quality Index to transportation system information outlets</li> </ul> <b>Near-term (2017-20)</b> <ul style="list-style-type: none"> <li><input type="checkbox"/> Promote and provide information, recognition, funding and incentives to encourage commuter programs and individualized marketing to provide employers, employees and residents information and incentives to use travel options</li> <li><input type="checkbox"/> Integrate transportation demand management practices into planning, project development, and development review activities</li> <li><input type="checkbox"/> Establish a state vanpool strategy that addresses urban and rural transportation needs</li> </ul>	<b>Immediate (2015-16)</b> <ul style="list-style-type: none"> <li><input type="checkbox"/> Seek Metro Council/JPACT commitment to invest more regional flexible funds to expand direct services and funding provided to local partners (e.g., local governments, transportation management associations, and other non-profit and community-based organizations) to implement expanded education, recognition and outreach efforts in coordination with other capital investments</li> <li><input type="checkbox"/> Provide funding and partner with community-based organizations to develop culturally relevant information materials</li> <li><input type="checkbox"/> Develop best practices on how to integrate transportation demand management in local planning, project development, and development review activities</li> <li><input type="checkbox"/> Integrate transportation demand management practices into planning, project development and development review activities</li> </ul> <b>Near-term (2017-20)</b> <ul style="list-style-type: none"> <li><input type="checkbox"/> Expand on-going technical assistance and grant funding to local governments, transportation management associations, business associations and other non-profit organizations to incorporate travel information and incentives in local planning and project development activities and at worksites</li> <li><input type="checkbox"/> Establish an on-going individualized marketing program that targets deployment in conjunction with capital investments being made in the region</li> </ul>	<b>Immediate (2015-16)</b> <ul style="list-style-type: none"> <li><input type="checkbox"/> Advocate for increased state and regional funding to expand direct services provided to local partners (e.g., local governments, transportation management associations, and other non-profit organizations) to support expanded education, recognition and outreach efforts in coordination with other capital investments</li> <li><input type="checkbox"/> Host citywide and community events like Bike to Work Day and Sunday Parkways</li> </ul> <b>Near-term (2017-20)</b> <ul style="list-style-type: none"> <li><input type="checkbox"/> Integrate transportation demand management practices into planning, project development, and development review activities</li> <li><input type="checkbox"/> Provide incentives for new development over a specific trip generation threshold to provide travel information and incentives to support achievement of EcoRule and mode share targets adopted in local and regional plans</li> <li><input type="checkbox"/> Partner with businesses and/or business associations and transportation management associations to implement demand management programs in employment areas and centers served with active transportation options, 15-minute or better transit service, and parking management</li> <li><input type="checkbox"/> Expand local travel options program delivery through new coordinator positions and partnerships with business associations, transportation management associations, and other non-profit and community-based</li> </ul>	<b>Immediate (2015-16)</b> <ul style="list-style-type: none"> <li><input type="checkbox"/> Expand employer program capacity and staffing to support expanded education, recognition and outreach efforts</li> </ul>



POLICY	TOOLBOX OF POSSIBLE ACTIONS (2015-2020)			
	WHAT CAN THE STATE DO?	WHAT CAN METRO DO?	WHAT CAN CITIES AND COUNTIES DO?	WHAT CAN SPECIAL DISTRICTS DO? (e.g., transit providers, Port districts, parks providers, etc.)
<b>Manage parking to make efficient use of parking spaces</b>	<p><b>Immediate (2015-16)</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Provide technical assistance and grant funding to support development of parking management plans at the local and regional level</li> <li><input type="checkbox"/> Distribute "Parking Made Easy" handbook and provide technical assistance, planning grants, model code language, education and outreach</li> <li><input type="checkbox"/> Increase safe, secure and convenient bicycle parking</li> </ul> <p><b>Near-term (2017-20)</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Provide preferential parking for electric vehicles, vehicles using alternative fuels and carpools</li> <li><input type="checkbox"/> Prepare inventory of state-owned public parking spaces and usage</li> <li><input type="checkbox"/> Provide monetary incentives such as parking cash-out and employer buy-back programs</li> </ul>	<p><input type="checkbox"/> Begin update to Regional Travel Options Strategic Plan in 2018</p> <p><b>Immediate (2015-16)</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Build a diverse coalition that includes elected officials and community and business leaders at local, regional and state levels working together to: <ul style="list-style-type: none"> <li><input type="checkbox"/> Discuss priced parking as a revenue source to help fund travel information and incentives programs, active transportation projects and transit service</li> </ul> </li> </ul> <p><b>Near-term (2017-20)</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Expand on-going technical assistance to local governments, developers and others to incorporate parking management approaches in local plans and projects</li> <li><input type="checkbox"/> Pilot projects to develop model parking management plans and model ordinances for different development types</li> <li><input type="checkbox"/> Research and update regional parking policies to more comprehensively reflect the range of parking approaches available for different development types and to incorporate goals beyond customer access, such as linking parking approaches to the level of transit service and active transportation options provided</li> <li><input type="checkbox"/> Amend Title 6 of Regional Transportation Functional Plan to update regional parking map and reflect updated regional parking policies</li> </ul>	<p>organizations</p> <p><b>Immediate (2015-16)</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Consider charging for parking in high usage areas served by 15-minute or better transit service and active transportation options</li> </ul> <p><b>Near-term (2017-20)</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Prepare community inventory of public parking spaces and usage</li> <li><input type="checkbox"/> Adopt shared and unbundled parking policies</li> <li><input type="checkbox"/> Require or provide development incentives for developers to separate parking from commercial space and residential units in lease and sale agreements</li> <li><input type="checkbox"/> Provide preferential parking for electric vehicles, vehicles using alternative fuels and carpools</li> <li><input type="checkbox"/> Require or provide development incentives for large employers to offer employees a parking cash-out option where the employee can choose a parking benefit, a transit pass or the cash equivalent of the benefit</li> <li><input type="checkbox"/> Increase safe, secure and convenient bicycle parking</li> <li><input type="checkbox"/> Reduce requirements for off-street parking and establish off-street parking supply maximums, as appropriate, enacting and adjusting policies to minimize spillover impacts in adjacent areas</li> <li><input type="checkbox"/> Prepare parking management plans tailored to 2040 centers served by high capacity transit (existing and planned)</li> </ul>	<p><b>Near-term (2017-20)</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Provide preferential parking for electric vehicles, vehicles using alternative fuels and carpools</li> <li><input type="checkbox"/> Increase safe, secure and convenient bicycle parking</li> </ul>
<b>Secure adequate funding for transportation investments</b>	<p><b>Immediate (2015-16)</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Preserve local options for raising revenue to ensure local communities have a full range of financing tools available to adequately fund current and future transportation needs</li> <li><input type="checkbox"/> Seek and advocate for new, dedicated funding mechanism(s) for active transportation and transit</li> <li><input type="checkbox"/> Research and consider carbon pricing models to generate new funding for clean energy, transit and active transportation, alleviating regressive impacts to businesses and communities of concern</li> <li><input type="checkbox"/> Increase state gas tax (indexed to inflation and fuel efficiency)</li> <li><input type="checkbox"/> Implement a mileage-based road usage charge program as called for in Senate Bill 810</li> </ul>	<p><b>Immediate (2015-16)</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Update research on regional infrastructure gaps and potential funding mechanisms to inform communication materials that support engagement activities and development of a funding strategy to meet current and future transportation needs</li> <li><input type="checkbox"/> Build a diverse coalition that includes elected officials and community and business leaders at local, regional and state levels working together to: <ul style="list-style-type: none"> <li><input type="checkbox"/> Advocate for local revenue raising options</li> <li><input type="checkbox"/> Seek and advocate for new, dedicated funding mechanism(s) for transit and active transportation</li> <li><input type="checkbox"/> Seek transit and active transportation funding from Oregon Legislature</li> </ul> </li> </ul>	<p><b>Immediate (2015-16)</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Support and/or participate in efforts to build transportation funding coalition</li> <li><input type="checkbox"/> Advocate for local revenue raising options</li> <li><input type="checkbox"/> Support state efforts to implement a mileage-based road usage charge program</li> <li><input type="checkbox"/> Support state efforts to research and consider carbon pricing models</li> <li><input type="checkbox"/> Consider local funding mechanism(s) for local and regional transportation needs, including transit service and active transportation</li> </ul> <p><b>Near-term (2017-20)</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Work with local, regional and state partners, including elected officials and business and community leaders, to develop a funding strategy to meet current and future transportation needs</li> </ul>	<p><b>Immediate (2015-16)</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Support and/or participate in efforts to build transportation funding coalition</li> <li><input type="checkbox"/> Advocate for local revenue raising options</li> <li><input type="checkbox"/> Seek and advocate for new, dedicated funding mechanism(s) for active transportation and transit</li> <li><input type="checkbox"/> Support state efforts to research and consider carbon pricing models</li> </ul> <p><b>Near-term (2017-20)</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Work with local, regional and state partners, including elected officials and business and community leaders, to develop a funding strategy to meet current and future transportation needs</li> </ul>



POLICY	TOOLBOX OF POSSIBLE ACTIONS (2015-2020)			
	WHAT CAN THE STATE DO?	WHAT CAN METRO DO?	WHAT CAN CITIES AND COUNTIES DO?	WHAT CAN SPECIAL DISTRICTS DO? (e.g., transit providers, Port districts, parks providers, etc.)
	<b>Near-term (2017-20)</b> <input type="checkbox"/> Expand funding available for active transportation and transit investments <input type="checkbox"/> Broaden implementation of the mileage-based road usage charge	<input type="checkbox"/> Consider local funding mechanism(s) for local and regional transit service <input type="checkbox"/> Support state efforts to research and consider carbon pricing models <input type="checkbox"/> Build local and state commitment to implement Active Transportation Plan, and Safe Routes to Schools (including high schools) and Safe Routes to Transit programs <input type="checkbox"/> Ensure adequate funding of local maintenance and safety needs and support city and county efforts to fund safety, maintenance and preservation needs locally <input type="checkbox"/> Support state and federal efforts to increase gas tax (indexed to inflation and fuel efficiency) <input type="checkbox"/> Support state and federal efforts to implement road usage charge program <input type="checkbox"/> Discuss priced parking as a revenue source for travel information and incentives programs, active transportation projects and transit service		
<b>Support Oregon's transition to cleaner, low carbon fuels, more fuel-efficient vehicles and pay-as-you-drive insurance</b>	<b>Immediate (2015-16)</b> <input type="checkbox"/> Reauthorize Oregon Clean Fuels Program <input type="checkbox"/> Implement Oregon Zero Emission Vehicle Program and Multi-State Zero Emission Vehicle Action Plan in collaboration with California and other states <input type="checkbox"/> Lead by example by increasing the public alternative fuel vehicle (AFV) fleet <input type="checkbox"/> Provide funding to Drive Oregon to advance electric mobility, and to other endeavors that advance alternative fuels <input type="checkbox"/> Work with insurance companies to offer and encourage pay-as-you-drive insurance <b>Near-term (2017-20)</b> <input type="checkbox"/> Provide consumer and business incentives to purchase new AFVs <input type="checkbox"/> Expand communication efforts about the cost savings of driving more fuel-efficient vehicles <input type="checkbox"/> Promote and provide information, funding and incentives to encourage the provision of electric vehicle charging and compressed natural gas (CNG) stations and infrastructure in residences, work places and public places <input type="checkbox"/> Encourage private fleets to purchase, lease or rent AFVs <input type="checkbox"/> Develop model code for electric and CNG vehicle	<b>Immediate (2015-16)</b> <input type="checkbox"/> Support reauthorization of the Oregon Clean Fuels Program through Legislative agenda, testimony, endorsement letters or similar means <input type="checkbox"/> Support the Oregon Zero Emission Vehicle Program through Legislative agenda, testimony, endorsement letters or similar means <b>Near-term (2017-20)</b> <input type="checkbox"/> Lead by example by increasing public AFV fleet <input type="checkbox"/> Support state efforts to build public acceptance of pay-as-you-drive insurance <input type="checkbox"/> Expand communication efforts about the cost savings of driving more fuel-efficient vehicles <input type="checkbox"/> Partner with state agencies to hold regional planning workshops to educate local governments on AFV opportunities Develop AFV readiness strategy for region in partnership with local governments, state agencies, electric and natural gas utilities, non-profits and others	<b>Immediate (2015-16)</b> <input type="checkbox"/> Support reauthorization of the Oregon Clean Fuels Program through Legislative agenda, testimony, endorsement letters or similar means <input type="checkbox"/> Support the Oregon Zero Emission Vehicle Program through Legislative agenda, testimony, endorsement letters or similar means <b>Near-term (2017-20)</b> <input type="checkbox"/> Lead by example by increasing public AFV fleet <input type="checkbox"/> Expand communication efforts about the cost savings of driving more fuel-efficient vehicles <input type="checkbox"/> Pursue grant funding and partners to expand the growing network of electric vehicle fast charging stations and publicly accessible CNG stations <input type="checkbox"/> Partner with local dealerships, Department of Energy (DOE) Clean Cities programs, non-profit organizations, businesses and others to incorporate AFV outreach and education events for consumers in conjunction with such events as Earth Day celebrations, National Plug-In Day and the DOE/Drive Oregon Workplace Charging Challenge <input type="checkbox"/> Adopt policies and update development codes to support private adoption of AFVs, such as streamlining permitting for alternative fueling stations, planning for access to charging and CNG	<b>Immediate (2015-16)</b> <input type="checkbox"/> Support reauthorization of the Oregon Clean Fuels Program through Legislative agenda, testimony, endorsement letters or similar means <input type="checkbox"/> Support the Oregon Zero Emission Vehicle Program through Legislative agenda, testimony, endorsement letters or similar means <b>Near-term (2017-20)</b> <input type="checkbox"/> Provide electric vehicle charging and CNG stations in public places (e.g., park-and-rides, parking garages) <input type="checkbox"/> Provide preferential parking for AFVs



POLICY	TOOLBOX OF POSSIBLE ACTIONS (2015-2020)			
	WHAT CAN THE STATE DO?	WHAT CAN METRO DO?	WHAT CAN CITIES AND COUNTIES DO?	WHAT CAN SPECIAL DISTRICTS DO? (e.g., transit providers, Port districts, parks providers, etc.)
	<p>infrastructure and partnerships with businesses</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Remove barriers to electric and CNG vehicle charging and fueling station installations</li> <li><input type="checkbox"/> Promote AFV infrastructure planning and investment by public and private entities</li> <li><input type="checkbox"/> Provide clear and accurate signage to direct AFV users to charging and fueling stations and parking</li> <li><input type="checkbox"/> Expand communication efforts to promote AFV tourism activities</li> <li><input type="checkbox"/> Continue participation in the Pacific Coast Collaborative, Western Climate Initiative, and West Coast Green Highway Initiative and partner with members of Energize Oregon coalition</li> <li><input type="checkbox"/> Track and report progress toward adopted state goals related to greenhouse gas emissions reductions and AFV deployment</li> <li><input type="checkbox"/> Provide incentives and information to expand use of pay-as-you-drive insurance and report on progress</li> </ul>		<p>stations, allowing charging and CNG stations in residences, work places and public places, and providing preferential parking for AFVs</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Update development codes and encourage new construction to include necessary infrastructure to support use of AFVs</li> </ul>	
<b>Demonstrate leadership on climate change</b>	<p><b>Immediate (2015-16)</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Update the 2017-20 Statewide Transportation Improvement Program (STIP) allocation process to address the Statewide Transportation Strategy (STS) Vision and STS Short-Term Implementation Plan actions</li> <li><input type="checkbox"/> Support local government and regional planning for climate change mitigation</li> </ul> <p><b>Near-term (2017-20)</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Amend the Oregon Transportation Plan to address the Statewide Transportation Strategy Vision</li> <li><input type="checkbox"/> Update statewide greenhouse gas emissions inventory and track progress toward adopted greenhouse gas emissions reduction goals</li> <li><input type="checkbox"/> Through the Oregon Modeling Steering Committee, collaborate on appropriate tools to support greenhouse gas reduction planning</li> <li><input type="checkbox"/> Report on the potential greenhouse gas emissions impacts of policy, program and investment decisions</li> </ul>	<p><b>Immediate (2015-16)</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Seek Metro Council/JPACT commitment to address the Climate Smart Strategy in the policy update for the 2018-21 Metropolitan Transportation Improvement Program (MTIP) and the 2019-21 Regional Flexible Fund Allocation (RFFA) process</li> </ul> <p><b>Near-term (2017-20)</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Assess potential risks and identify strategies to address potential climate impacts to transportation infrastructure and operations as part of 2018 RTP update</li> <li><input type="checkbox"/> Update regional greenhouse gas emissions inventory and track progress toward adopted greenhouse gas emissions reduction target</li> <li><input type="checkbox"/> Through the Oregon Modeling Steering Committee, collaborate on appropriate tools and methods to support greenhouse gas reduction planning and monitoring</li> <li><input type="checkbox"/> Report on the potential greenhouse gas emissions impacts of policy, program and investment decisions</li> <li><input type="checkbox"/> Encourage development and implementation of local climate action plans</li> </ul>	<p><b>Near-term (2017-20)</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Sign U.S. Conference of Mayors Climate Protection Agreement</li> <li><input type="checkbox"/> Prepare and periodically update community-wide greenhouse gas emissions inventory</li> <li><input type="checkbox"/> Report on the potential greenhouse gas emissions impacts of policy, program and investment decisions</li> <li><input type="checkbox"/> Adopt greenhouse gas emissions reduction policies and performance targets</li> <li><input type="checkbox"/> Develop and implement local climate action plans</li> </ul>	<p><b>Near-term (2017-20)</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Prepare and periodically update greenhouse gas emissions inventory of transportation operations</li> <li><input type="checkbox"/> Report on the potential greenhouse gas emissions impacts of policy, program and investment decisions</li> <li><input type="checkbox"/> Adopt greenhouse gas emissions reduction policies and performance targets</li> </ul>



## CITY COUNCIL Work Session STAFF REPORT

<b>Meeting Date:</b> November 03, 2014	<b>Subject:</b> Stormwater Utility Rate Update  <b>Staff Member:</b> Nancy Kraushaar, PE, Community Development Director  <b>Department:</b> Community Development	
<b>Action Required</b> <input type="checkbox"/> Motion <input type="checkbox"/> Public Hearing Date: <input type="checkbox"/> Ordinance 1 <sup>st</sup> Reading Date: <input type="checkbox"/> Ordinance 2 <sup>nd</sup> Reading Date: <input type="checkbox"/> Resolution <input type="checkbox"/> Information or Direction <input type="checkbox"/> Information Only <input checked="" type="checkbox"/> Council Direction <input type="checkbox"/> Consent Agenda	<b>Advisory Board/Commission Recommendation</b> <input type="checkbox"/> Approval <input type="checkbox"/> Denial <input type="checkbox"/> None Forwarded <input type="checkbox"/> Not Applicable  <b>Comments:</b>	
<b>Staff Recommendation:</b> Staff recommends the City Council discuss the Stormwater Rate Study and provide direction on a preferred rate alternative.		
<b>Recommended Language for Motion:</b> N/A		
<b>PROJECT / ISSUE RELATES TO:</b> <i>[Identify which goal(s), master plans(s) issue relates to.]</i>		
<input checked="" type="checkbox"/> Council Goals/Priorities #6. Well maintained infrastructure	<input checked="" type="checkbox"/> Adopted Master Plan(s) 2012 Stormwater Master Plan with amended CIP	<input type="checkbox"/> Not Applicable

### ISSUE BEFORE COUNCIL:

This is a follow-up to the October 6, 2014 work session on preliminary rate forecast scenarios for the Stormwater Operating Fund and the associated 20-year Stormwater Capital Improvement (CIP) Plan. Based on Council direction from that work session, staff has prepared a third rate scenario which shows a 5 year initial CIP, a 25 year program for overall CIP implementation and use of both revenue bonds and interfund loans for debt financing.

### EXECUTIVE SUMMARY:

The Stormwater Utility has been under financial pressure over recent years resulting in a fund



balance that is near zero. This is due to major repair projects at Morey's Landing and the Rivergreen Bank Stabilization and Channel Restoration. Both these emergency projects were cash funded through the Utility's operating reserves.

As noted in the adopted 2014-15 Wilsonville Budget, the Utility does not meet ending fund balance goals the City has set for all enterprise funds. The fund is able to minimally meet operational needs, but cannot support future capital requirements. The Stormwater Utility Rate Study was initiated to determine necessary actions to restore fund stability.

The study is based on the adopted budget for operational needs and an updated Stormwater Capital Improvement Plan (CIP). The CIP has been updated since its adoption with the 2012 Stormwater Master Plan. Revisions include the addition of stormwater infrastructure needs documented in the Charbonneau Consolidated Improvements Plan, reprioritizing projects over the next 20 years, and elimination of projects that are not considered mandatory at this time based on existing conditions.

Please note that the City's stormwater discharge permit (administered by the Oregon Department of Environmental Quality under their MS4 NPDES program) requires the City to complete a stormwater retrofit study by June 2015 at which time some of these projects may need to be added back to the CIP.

The City's current single-family stormwater utility rate is \$5.25. It is scheduled to increase to \$5.45 in July 2015 and \$5.60 in July 2016. Non-single family residential properties are charged a monthly fee at the single-family rate per 2,750 square feet of impervious area.

As a result of the October 6 work session, Council requested the following:

1. Keep the current 5 year capital program as presented. That CIP cost is \$7,130,015,
2. Include in the 5 year CIP costs related to the 3 pending outfall projects,
3. Debt finance the 5 year CIP by combining an interfund loan (via the General Fund) with a revenue bond, and
4. Expand the timeframe for implementing the remaining CIP to 25 years. That CIP cost is \$26,318,315 (excludes SDC eligible capital costs) which will be annualized and cash funded.

#### **EXPECTED RESULTS:**

The rate study is expected to stabilize the Stormwater Operating Fund

#### **TIMELINE:**

Staff has been developing various rate scenarios over that last six months and regularly updated the City Council over the summer and in September and October. If the City Council provides direction to staff on their preferred rate alternative at the November 3, 2014 meeting, staff will bring back a resolution for the Council to consider for adoption at their December 1, 2014 Regular Council Meeting. Staff recommends that the preferred rate alternative be adopted in time to be implemented in January 2015 in order to improve the stability of the Stormwater Fund.



**CURRENT YEAR BUDGET IMPACTS:**

The Stormwater Rate Study was budgeted at \$20,160 in the adopted FY 2013-14 Budget. Approximately half of this was spent before July 1, 2014. A supplemental budget adjustment to the adopted FY 2014-15 Budget will recognize remaining funds to complete the study.

**COMMUNITY INVOLVEMENT PROCESS:**

An article about the stormwater utility and rates was included in the latest Boones Ferry Messenger. After the Council has provided direction to staff on their preferred rate alternative, additional public outreach will occur – primarily through the website, press releases, and the newspapers.

**POTENTIAL IMPACTS or BENEFIT TO THE COMMUNITY** (businesses, neighborhoods, protected and other groups):

Stormwater management is an important component of the public works infrastructure in Wilsonville. The stormwater system protects against flooding, improves water quality by removing sediment and pollutants from urban runoff, and can protect and enhance wildlife habitat.

Impacts from the rate study are increased monthly stormwater utility rates. Increased rates will allow the City to address aging infrastructure, system deficiencies, growing system needs, and regulatory requirements.

The community will benefit from a reliable stormwater system – including operations and maintenance and well-programmed capital investments. Environmental benefits include water quality protection in the Willamette River, healthier natural resources (such as the Coffee Creek wetlands and the Boeckman Creek watershed), and protection of native plant and wildlife species.

**ALTERNATIVES:** n/a

**CITY MANAGER COMMENT:****ATTACHMENTS**

Attachment 1 – Summary of Rate Projections - November 3, 2014



## City of Wilsonville Stormwater Utility Rate Update Summary of Rate Projections November 3, 2014

### **Background**

At its October 6, 2014 work session, City Council asked that a third rate projection be developed that shows the effect of a 25-year capital improvement schedule. The cases discussed at the October 6 work session had addressed a CIP of 20 and 30 years. Under the 25-year capital program, total capital costs remain at \$33,448,019 (current dollars) and the initial 5 year CIP that would be funded through a combination of a revenue bond and interfund loan also remains at \$7,130,014 (less SDC eligible costs). The difference is that the remaining capital requirements of \$26,318,005 (less SDC eligible costs) would be funded on a "pay as you go" basis that reflects the average annual CIP cost for years 6 through 25.

The Utility's future operating requirements were also evaluated including the addition of a staff engineer (2016), utility worker (2025) and the need to re-establish an adequate operating reserve (2017).

### **25 Year Rate Scenario**

The following conditions are reflected in the rate scenario requested by Council at its October 6 work session:

1. The initial CIP timeframe is 5 years (\$7,130,014),
2. Debt finance the entire 5 year CIP (less any SDC eligible project costs or \$521,586) via an interfund loan and a revenue bond,
3. \$2,000,000 will be the maximum amount to be financed through an interfund loan from the City's General Fund,
4. The remaining capital costs (\$4.6 million) will be financed through a revenue bond,
5. The revenue bond is 20 years @ 4.5% interest with reserve requirements funded through bond proceeds. Annual debt service will be \$405,993. The interfund loan is 10 years @ .54%. Annual debt service will be \$264,064. Total annual debt service is \$670,057,
6. The overall CIP schedule will be evaluated on a 25 year timeframe.
7. Projects to be scheduled for years 2021 through 2041 will be funded via the "capital reserve strategy" which simply means we will divide the total inflated project costs by 20 years and adjust annual rates to meet that average annual capital cost. The average annual amount will be \$1,329,000 million for the 25 year case, and
8. The costs for the 3 recently scoped outfall projects are in the 5 year CIP and will be included in the debt issuance.

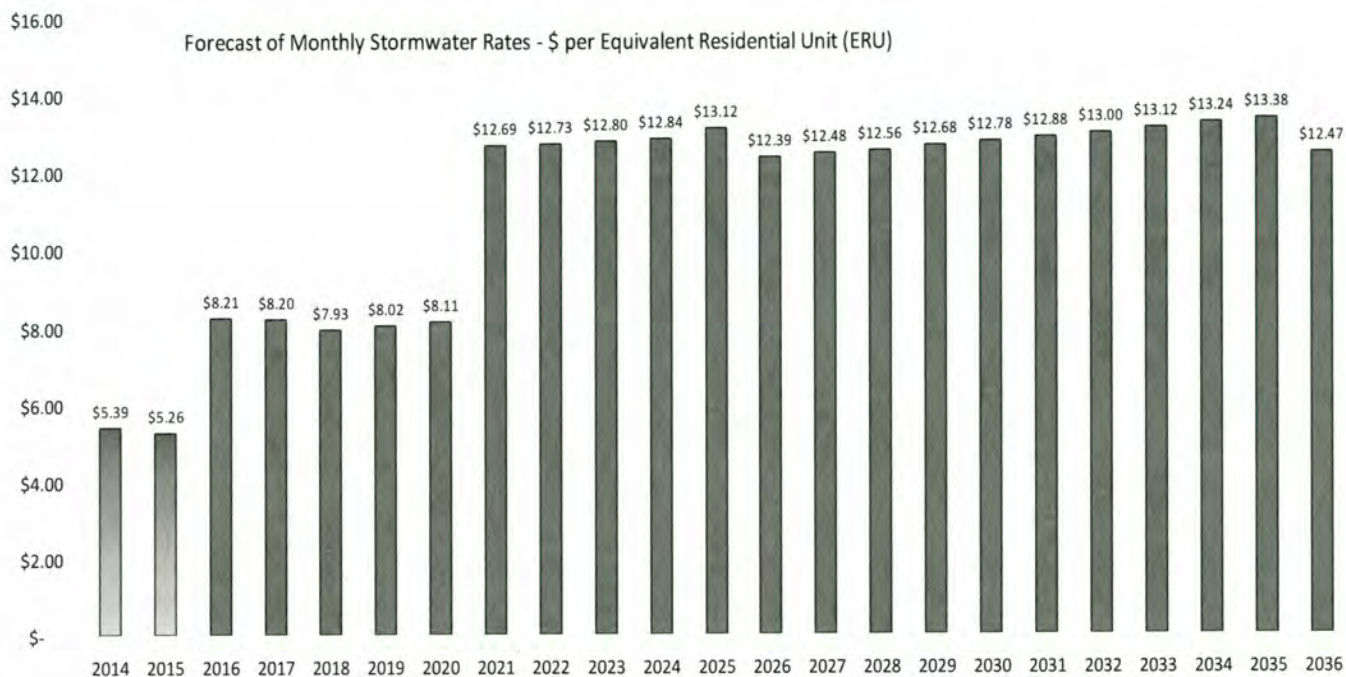
### **Rate Projections**

The following case is based on the estimated revenue requirements of the Stormwater Utility over the next 25 years. Operational costs are indexed based on inflation factors consistent with



Wilsonville's other enterprise funds and include the staffing additions for an engineer and utility worker. Achieving an operating fund reserve of 20% of annual operating costs is also reflected in the projections. All capital costs have been inflated for the year of planned construction and the debt service expense is as outlined above (# 5).

### 25 Year CIP Case



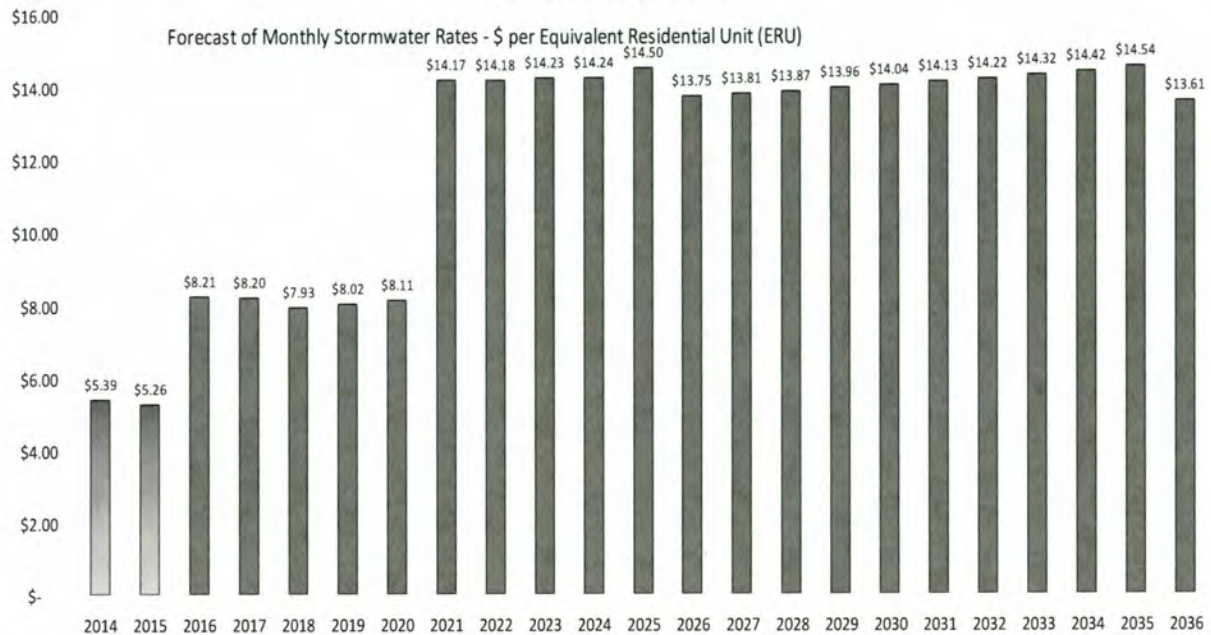
This case reflects the estimated rate required on an annual basis. Based on Council direction regarding the preferred approach, rates could be "smoothed" as reflected in the following table:

Date	Amount of Annual Rate Increase	New Rate	Percent Increase
Current Rate	—	\$5.25	—
Jan. 1, 2015	\$1.50	\$6.75	29%
Jan. 1, 2016	\$1.50	\$8.25	22%
Jan. 1, 2017	\$.90	\$9.15	11%
Jan. 1, 2018	\$.90	\$10.05	10%
Jan. 1, 2019	\$.90	\$10.95	9%
Jan. 1, 2020	\$.90	\$11.85	8%
Jan. 1, 2021	\$.90	\$12.75	7.5%

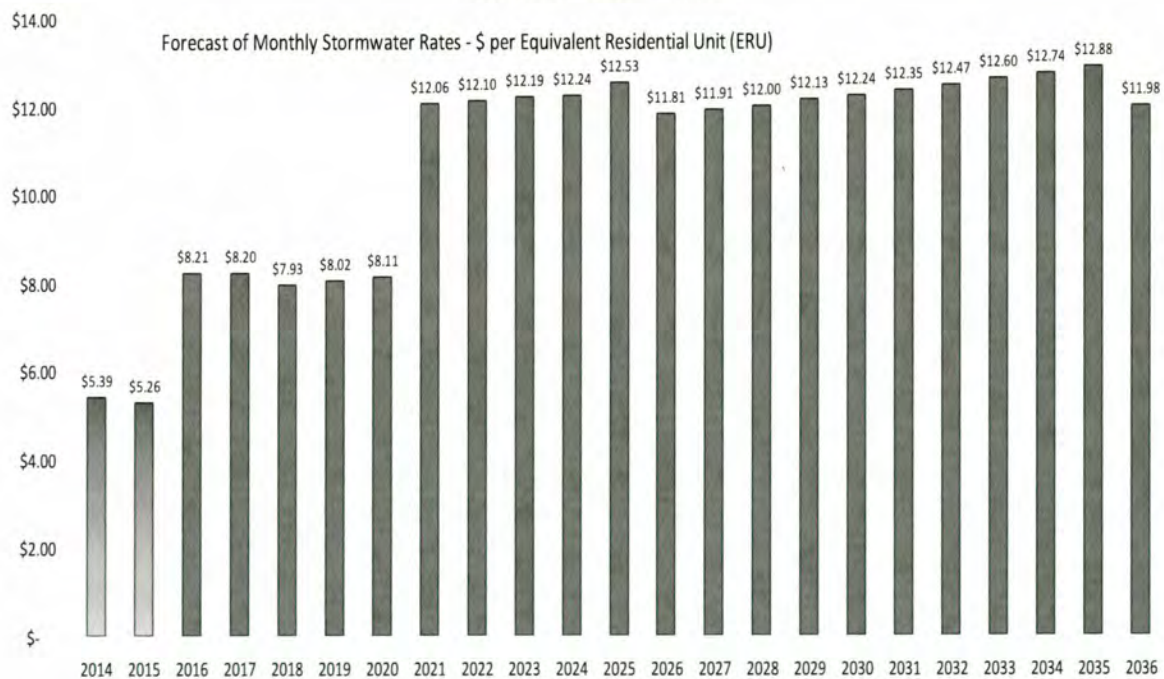


The following graphs were presented at the October 6 work session and are provided here to compare with the 25-Year CIP case.

### 20-Year CIP Case



### 30-Year CIP Case




### Direction Requested from Council

It is important for that Council select a preferred rate alternative in order to address known stormwater maintenance needs and provide reliable infrastructure for the community in the long term.



Staff recommends that for whichever CIP case the Council selects, the stormwater rate be increased over the first five years using a schedule with incremental increases (as shown in the table above). This will allow the community to plan for moderate rate increases over a known period of time.






**Stormwater Utility  
Rate Update**

**City of Wilsonville**

**- Continued from October 6, 2014 Council Work Session -**

1 *November 3, 2014*



**Tonight's Agenda**

- Rate Forecast with 25 Year CIP Schedule
- Council Discussion and Direction

2



## Re-cap from October 6 Work Session

- Include Cost Estimates for the 3 New Willamette River Outfall Projects...\$1,401,010
- Expand the Timeframe for the Initial CIP from 3 to 5 Years...\$7,130,014
- Finance All Projects for the 5 Year CIP through a Combination of Revenue Bonding and an Interfund Loan
- Limit the Interfund Loan to \$2,000,000
- Evaluate Future Rate Impacts Using a **25 Year CIP Schedule**

3

## Capital Program – Big Picture

- Revised Master Plan CIP Identifies Project Costs of \$13,865,019
- Charbonneau Contains an Additional \$19,583,000 in “Spot and Complete Repair” Project Costs
- Total CIP Over 20 Year Forecast is \$33,448,019 (current dollars)
- SDC Eligible Capital Costs are Estimated To Be \$8,358,457 (based on 7/17/14 SDC allocation)
- Project Costs to be Funded through Rates are \$25,089,562

4



## Preliminary Rate Forecast – 25 Year Case

*Issue Revenue Bond & Interfund Loan CIP (years 1-5);  
Pay as You Go (years 6 - 25)*

- Capital Costs Years 1 - 5 = \$7,343,914 (inflated to reflect 2016 costs)
- SDC Contributions = \$521,586
- Interfund Loan = \$2,000,000
- Revenue Bond Amount Borrowed = \$5,281,133 (with issuance & reserve expense)
- Cash Fund Each Year's CIP via Rate Adjustments Years 6 - 25
- Small Works CIP = \$200,000 per year (cash funded)
- Fund Balance = 20% of Operating Costs by FY' 17
- Other Assumptions Consistent with Sewer Rate Study
- O&M Expense Based on Budget with 2 Added FTEs

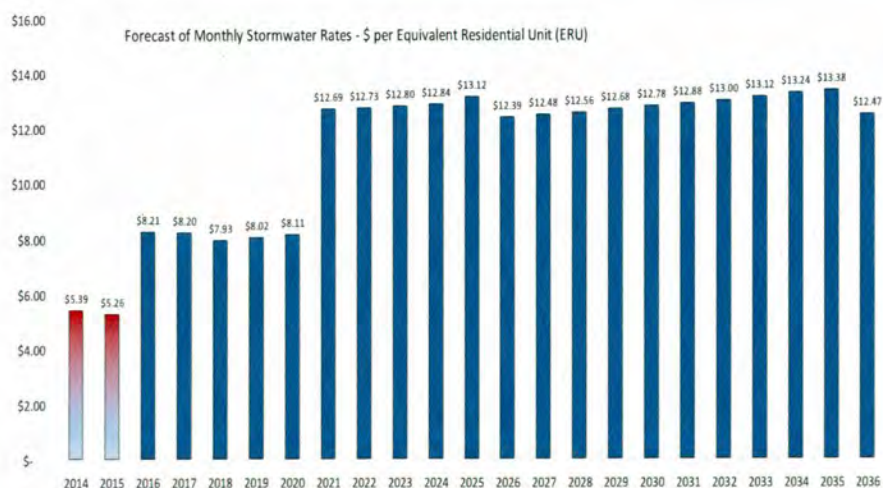
FY'16 Civil Engineer @ \$113,000 (fully burdened)

FY'25 Utility Worker @ \$76,000 (fully burdened)

5

## Preliminary Rate Forecast – 25 Year Case

*Issue Revenue Bond & Interfund Loan for CIP (years 1-5);  
Pay as You Go (years 6 - 25)*



6



## Graduated Rate Increase Scenario – 25 Year Case

Date	Amount of Annual Rate Increase	New Rate	Percent Increase
Current Rate	—	\$5.25	—
Jan. 1, 2015	\$1.50	\$6.75	29%
Jan. 1, 2016	\$1.50	\$8.25	22%
Jan. 1, 2017	\$.90	\$9.15	11%
Jan. 1, 2018	\$.90	\$10.05	10%
Jan. 1, 2019	\$.90	\$10.95	9%
Jan. 1, 2020	\$.90	\$11.85	8%
Jan. 1, 2021	\$.90	\$12.75	7.5%

7

Monthly rate per equivalent residential unit (ERU)

## Stormwater Rates in Other Jurisdictions

(cost per ERU per month)

Portland	\$24.88
Milwaukie	\$14.89
Sherwood	\$13.27
Lake Oswego	\$11.76
Oregon City	\$8.80
Newberg	\$7.30
Tualatin	\$6.75
Clackamas County (North Clackamas Service Area)	\$6.35
Hillsboro	\$6.25
West Linn	\$5.58
Wilsonville	\$5.25
Sandy	\$3.25

8



## Council Discussion & Direction

### Staff Recommendations:

- Rate increase needed to stabilize the Stormwater Operations Fund
- Graduated rate increase to allow customers to plan for annual increases
- 20-year program is most responsive to system needs and correcting deficiencies

### CIP Program - Assuming Gradual Rate Increases over 7 Years

	20-Year		25-Year		30-Year	
Current Rate	\$	5.25	\$	5.25	\$	5.25
Jan. 1, 2015	\$	6.75	\$	6.75	\$	6.75
Jan. 1, 2016	\$	8.25	\$	8.25	\$	8.25
Jan. 1, 2017	\$	9.45	\$	9.15	\$	9.00
Jan. 1, 2018	\$	10.65	\$	10.05	\$	9.75
Jan. 1, 2019	\$	11.85	\$	10.95	\$	10.50
Jan. 1, 2020	\$	13.05	\$	11.85	\$	11.25
Jan. 1, 2021	\$	14.25	\$	12.75	\$	12.00



## **“Visit Wilsonville” Tourism Development Strategy – Next Steps**

October 2014



### **“Visit Wilsonville” DMO Organization**

Initial research is showing that in Oregon most Destination Marketing Organizations (DMOs) are nonprofits with funding primarily by contracts with local governments, grants and business sponsorships. However, quite a few DMOs are agencies of local governments.

The City’s Tourism Development Strategy called for formation of a nonprofit DMO, with an option for the City to commence implementation of Visit Wilsonville DMO as a City committee and transition to being a nonprofit organization over a two- to three-year period.

#### **Key tasks for moving forward:**

1. Develop organizational charter or bylaws, including committee composition.
2. Confirm Council’s preference for Visit Wilsonville committee appointment.
3. Recruit potential committee members for appointment.

### **Visit Wilsonville Tourism Committee Composition**

DMO boards appear to vary greatly in terms of both the number of and terms of directors; however, a number of DMOs have seats designated for various industry stakeholders, including local-government representatives. City staff are collecting sample bylaws and information from various jurisdictions, organizations and members of the Oregon Destination Marketing Organization.

Several experts have advised that the City’s DMO start initially with a range of 5 to 11 members as the Visit Wilsonville Steering Committee. Staff recommends consideration of 9 members of the board of management; this number is both manageable but is large enough to convene a quorum at meetings if not all members can attend.

#### **Assuming that Visit Wilsonville starts with 9 committee members, the representatives could be:**

1. **Lodging** (Holiday Inn or other lodging property)
2. **Dining/Tourism Attraction** (Family Fun Center/Bullwinkles or other)
3. **Tourism Attraction/Event Facility** (World of Speed or other)
4. **Outdoor Recreation/Event Facility** (Langdon Farms or other)
5. **Equestrian Tourism/Event Facility** (Country Classic or other)
6. **Agri-Tourism** (MARStewart Creative Group, Local Winery or other)
7. **Organized Sporting Events** (Willamette United Soccer or other)
8. **Clackamas County Tourism**
9. **Washington County Tourism**

Composition of the proposed advisory committee would align well with the Tourism Development Strategy that identified Priority Markets as: Horse show participants and organizers; Meetings and conventions participants and organizers; Northwest getaways; Sports tournaments participants; and I-5 motorists in transit.

### **Appointment Process of Visit Wilsonville Tourism Committee**

Staff recommends the normal and customary method of City appointments to boards and commissions for the Visit Wilsonville DMO Board: Mayor appoints with City Council approval. Staff can commence recruitment of the Advisory Board at Council direction, and then convene the board to develop a more detailed plan of action.



King, Sandy

---

**From:** Brent Timm <bigseahawksfan@msn.com>  
**Sent:** Monday, November 03, 2014 3:57 PM  
**To:** King, Sandy  
**Subject:** Multi-Sport Complex

Sandy can you please get this to the City Council tonight for meeting?

Dear City Council,

Tonight I am at the Riverfront Athletic Club in Portland helping to prepare my oldest daughters basketball team for a tournament up in Seattle, so I am not able to attend in person. I really don't know many of the details, but was excited to hear that a Multi-Sport complex was being proposed for Wilsonville tonight! Both my daughters ages 13 and 10 play year round sports! My oldest now plays basketball for FAST, a tournament team based out of Club Sport in Tualatin. FAST travels every weekend 10 months out of the year! Seattle, Phoenix, Las Vegas, but primarily right here in Oregon! We play at the Hoop in Salem, all over Vancouver, East Moreland, and at Every High school in the Beaverton/Hillsboro area! Wilsonville sets up perfectly to attract these same caliber tournaments, very easily! We have incredible accessibility, and we could draw from Southwestern Washington, even as a start up! I don't know the actual numbers, that's for the experts, but at around \$350 per team for basketball, 4 game guarantee over two days, and all the hotels, food, gas, and money spent at local business's, it all adds up rather quickly!

The same can be said for soccer indoor and out, softball, baseball, etc, etc, etc!

There is a noticeable gap along the I-5 corridor when it comes to towns that can, or will, host our kids for sports, whether for the weekend or simply for the day. We as parents talk about this problem on a regular basis. Wilsonville fills that gap!

Our town is as prime a location as there is anywhere for a Multi Sport Complex, and I applaud the efforts to bring it to fruition!

Brent Timm

*Rec'd 11/3/14  
AKK*



# **CITY COUNCIL ROLLING SCHEDULE**

## **Board and Commission Meetings 2014-15**

### **November**

<b>DATE</b>	<b>DAY</b>	<b>TIME</b>	<b>MEETING</b>	<b>LOCATION</b>
11/3	Monday	7 p.m.	City Council Meeting	Council Chambers
11/10	Monday	6:30 p.m.	DRB Panel A	Council Chambers
11/11	Tuesday	Veteran's Day -- City Offices Closed		
11/12	Wednesday	1-3 p.m.	Wilsonville Community Seniors Inc.	Community Center
11/12	Wednesday	6 p.m.	Planning Commission	Council Chambers
11/17	Monday	7 p.m.	City Council Meeting	Council Chambers
11/24	Monday	6:30 p.m.	DRB Panel B	Council Chambers
11/26	Wednesday	6:30 p.m.	Library Board	Library
11/ 27 and 11/28	Thursday and Friday	Thanksgiving Day Holiday City offices closed		

## **COMMUNITY EVENTS**

### **MEMORIAL PARK MASTER PLAN OPEN HOUSE**

November 5 – 7-9 p.m. Willamette River Room

Staff will present findings from the initial data gathering and analysis phase of the Memorial Park Master Plan update project followed by a feedback session where community members are invited to share ideas about the current and future uses for the park.

### **VETERANS' DAY OBSERVATION**

November 11 – 10:30 A.M. Korean War Memorial, Town Center Park

Join with members of the Korean War Veterans Association, Oregon Trail Chapter, for a "Salute to the U.S. Flag and America's Veterans" during a ceremony at the Oregon Korean War Memorial in Town Center Park.



### **WILSONVILLE LEAF DROP-OFF DAY – Sponsored by Republic Services and City**

November 15<sup>th</sup> 9 a.m. to 2 p.m. at the City Hall Parking Lot

Bring leaves – NO yard debris – to the City Hall parking lot where City Staff will help unload. We suggested using large recyclable paper bags. Plastic bags will need to be emptied and are not recyclable. A donation of toiletries for the Wilsonville Community Sharing is suggested.



## CITY COUNCIL MEETING STAFF REPORT

<b>Meeting Date:</b> Nov. 3, 2014	<b>Subject: Resolution No. 2496</b> Resolution in Support of Reopening the Willamette Falls Locks <b>Staff Member:</b> Mark Ottenad, Public/Government Affairs Director <b>Department:</b> Administration	
<b>Action Required</b> <input checked="" type="checkbox"/> Motion <input type="checkbox"/> Public Hearing Date: <input type="checkbox"/> Ordinance 1 <sup>st</sup> Reading Date: <input type="checkbox"/> Ordinance 2 <sup>nd</sup> Reading Date: <input checked="" type="checkbox"/> Resolution Information or Direction <input type="checkbox"/> Information Only <input type="checkbox"/> Council Direction <input type="checkbox"/> Consent Agenda	<b>Advisory Board/Commission Recommendation</b> <input type="checkbox"/> Approval <input type="checkbox"/> Denial <input type="checkbox"/> None Forwarded <input checked="" type="checkbox"/> Not Applicable <b>Comments:</b>	
<b>Staff Recommendations:</b> Staff recommends adoption of Resolution No.2496.		
<b>Recommended Language for Motion:</b> I move to approve Resolution No. 2496.		
<b>PROJECT / ISSUE RELATES TO:</b>		
<input type="checkbox"/> Council Goals/Priorities	<input checked="" type="checkbox"/> Adopted Master Plan(s)	<input type="checkbox"/> Not Applicable

### ISSUE BEFORE COUNCIL

Does the City Council seek to continue to support efforts aimed at reopening the closed Willamette Falls Locks?

### EXECUTIVE SUMMARY

Staff members of the U.S. Army Corps of Engineers, Portland District Office, have indicated a preference and willingness to assist in studying and funding repairs to the closed Willamette Falls Locks in order to facilitate transfer of ownership and operation to a new entity. A number of stakeholders known as the One Willamette River Coalition coordinated by the Willamette Falls Heritage Foundation and the National Trust for Historic Preservation are advancing efforts to actuate the proposed transfer of ownership and to restore and reopen the Locks.

### BACKGROUND INFORMATION

The Corps of Engineers recognizes that the 140-year-old Willamette Falls Locks are a historic asset that can provide a number of benefits for various river users. However, due to the severe reduction over time of "tonnage" being transported through the Locks coupled with the costs of



operations and maintenance and declining federal support, the Corps is unable to continue operating or maintaining the Locks.

In December 2011 the Corps closed indefinitely the Locks to river traffic and placed them in “non-operational” status due to finding a “life safety emergency” with key components used to operate the Locks. Normally, however, the Corps would have first conducted a Section 106 analysis under the National Historic Preservation Act (NHPA) and a “NEPA” review under the National Environmental Policy Act to study and disclose to the public and decision-makers the impacts of the proposed action to close the Locks.

The Corps is conducting the NHPA Sec106 process now and plans to conduct the required NEPA analysis to examine the impacts of the current decision to close the Locks. Both of these processes develop potential binding mitigation measures that can be either broad and all-embracing or narrow with incremental steps.

The Portland Corps leadership has indicated a preference for reopening the Locks; however, to do so, the Corps anticipates transferring ownership and/or operations to another entity that is yet to be identified. The Corps states that “deauthorizing” the Locks as a federal project and transferring the facility to a new owner/operator would take two-plus years.

The Corps has indicated that staff will seek additional funds from the Office of Management and Budget to conduct a “real-estate study” that would provide a complete, detailed assessment of the Lock’s condition and projected costs for repairs. The Corps has also indicated that staff would seek an appropriation to improve the condition of the Locks such that they are fully functional when a new owner would take control.

At this time, several entities—including the Port of Portland, ODOT, Metro and Clackamas County—have been suggested as potential owner/operator or ownership partners. However, the effort to identify an eventual owner/operator has only just started and considerable work remains for this endeavor.

A coalition of businesses, local governments and nonprofit organizations known as the One Willamette River Coalition believes that the Lock facilities are vital for a wide range of river uses that include commercial, industrial, recreational, tourism and marine patrols. Coordinated by the Willamette Falls Heritage Foundation (a nonprofit founded in 2000 based in West Linn) working in conjunction with the National Trust for Historic Preservation, the coalition seeks to bring about a transfer of ownership of the Locks from the Corps to a new owner. The One Willamette River Coalition believes that such a transfer would enable the Locks to once again serve communities along the Willamette River.

Because Wilsonville could benefit from an operational Locks, especially as it relates to the City Council’s goal for a vital multi-modal transportation network and economic development opportunities, the Foundation requested City support for funds for an economic study on the potential benefits for reopening the Locks. The City Council approved in January 2014 a \$2,500 contribution to the study conducted by ECONorthwest, which was released on September 30 as the *Willamette Locks Economic Potential Report*.

The Foundation and the National Trust are now approaching potentially impacted jurisdictions up and down the river and requesting a resolution of support that endorses reopening of the Locks. The National Trust for Historic Preservation has retained two high-profile public-affairs



consultants, former Congresswoman Darlene Hooley and Lisa Naito of Hooley & Naito LLC, to advance lobbying efforts at the local, state and federal levels in support of reopening the Locks.

In addition to the direct and immediate river-based transportation objectives, operational Locks could provide additional benefits. Officials from Wilsonville Concrete, Inc., and Marine Industrial Construction, LLC, have indicated that 15–30 total jobs could be impacted if the Locks are not re-opened on a permanent basis.

Wilsonville Concrete and Marine Industrial Construction, which has used the Locks for 127 years, currently conducts extensive work along the Willamette and Columbia Rivers for various businesses and agencies for marine repair and dredging operations, and historically have moved substantial amounts of aggregate to Wilsonville from down river. Each barge carries the volume of aggregate equivalent to 30–35 loaded dump trucks. On an annual basis, regular use of the river to transport aggregate to Wilsonville could reduce truck traffic in the city by more than 5,000 dump-truck trips and more than 360,000 truck miles annually on the Oregon roads systems.

Operational Locks would also allow the City to consider establishing a “port,” which could be eligible for various state and federal funding programs. Eventual development of a port at Wilsonville, the second highest navigable city on the Willamette River, could add to the sustainable logistics hub that Wilsonville is known for historically, while creating additional employment by attracting logistic firms to the area.

The Locks being open would also support the US Coast Guard-required maintenance schedule for the Canby Ferry at roughly 10% of the cost structure needed without the Locks being open. Additionally, state and local law enforcement would have additional capacity available for movement along the river if the Locks are operational.

As the City develops a tourism strategy, recreational access to and use of the Willamette River continues to rise as an issue deserving of further study and consideration. In addition to activities such as float trips on the Willamette River Water Trail, river cruises from Portland to Oregon wine country are a potential tourist attraction that could be developed if the Locks were operational.

### **NOVEMBER 3 CITY COUNCIL MEETING AGENDA**

The following leaders of the efforts to restore the Willamette Falls Locks are scheduled to present before the City Council:

**Work Session:** Peggy Sigler, Oregon Field Officer for the National Trust for Historic Preservation, and Sandy Carter, “One Willamette River Coalition” Facilitator, Willamette Falls Heritage Foundation, will present on the *Willamette Locks Economic Potential Report*.

**Meeting:** Former Congresswoman Darlene Hooley and Lisa Naito, Principals of Hooley & Naito LLC, are scheduled to present on the proposed Resolution.

### **CURRENT YEAR BUDGET IMPACTS**

No current fiscal year budget impacts are anticipated. A \$2,500 contribution authorized by the City Council in January 2014 was made in the prior fiscal year; only staff time is anticipated for the current fiscal year.



**FINANCIAL REVIEW / COMMENTS:**

Reviewed by:                      Date:

No material budget impacts are anticipated.

**LEGAL REVIEW / COMMENTS**

Reviewed by: MEK    Date: 10/20/2014

The Resolution is approved as to form.

**CITY MANAGER COMMENT**

Support for reopening of the Locks is in alignment with City Council goals and City policies.

**ATTACHMENTS**

- A.** *Willamette Locks Economic Potential Report*, September 30, 2014, by ECONorthwest, under contract to the Willamette Falls Heritage Foundation [Note: This product is bound separately from the Council packet.]
- B.** "Willamette Falls Navigation Canal and Locks: A National Treasure in West Linn, Oregon," by the National Trust for Historic Preservation, August 2014.
- C.** Article: "Willamette Falls Locks deemed non-operational, could put jobs at risk," *The Oregonian / OregonLive.com*, December 21, 2011.





# Willamette Locks Economic Potential Report

September 30, 2014

PREPARED BY:

**ECON**orthwest

ECONOMICS • FINANCE • PLANNING



## **ECONorthwest**

ECONOMICS • FINANCE • PLANNING

Ed MacMullan, Lisa Rau, and Carsten Jensen prepared this report.

ECONorthwest is solely responsible for its content.

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## TABLE OF CONTENTS

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1 – Introduction

5 – River Locks Transfers

10 – The Locks and River Users

17 – Economic Potential

20 – Appendix

20 – Operating Scenarios

25 – Supplemental Tables

27 – Acknowledgements



## INTRODUCTION

On January 1, 1873, the Willamette Falls Locks (WFL) opened and allowed passage around Willamette Falls, the second largest waterfall by volume in the US behind Niagara Falls. The WFL were one of the first multi-lift tandem navigation locks<sup>1</sup> built in the US.<sup>2</sup> The initial design for the way the WFL gates are beveled upstream came directly from drawings by Leonardo da Vinci. The locks were considered an engineering marvel at the time and dramatically reduced transit times and transportation costs.<sup>3</sup>

Fast-forward 138 years. In response to dwindling commercial tonnage passing through the WFL, and a mounting bill for deferred maintenance and repairs, the US Army Corps of Engineers (ACoE) changed the operational status of the WFL from “caretaker status” to “non-operational status” in December 2011.<sup>4</sup> That decision effectively cut the Willamette River in two. Commercial and recreational users upstream from Oregon City and Willamette Falls (Falls) can no longer access markets, customers, or recreation sites downstream via the river. Likewise, downstream business and recreational river users can no longer access sites upstream from the Falls.



Willamette Locks, 1894.

<sup>1</sup>Each of the WFL's four tandem or adjacent lift-chambers provide 10-12 feet of elevation change.

<sup>2</sup>Lewis, Alan. No Date. Conquering the Falls, The Willamette Falls Locks. Willamette Falls Heritage Foundation. [www.willamettefalls.org/hisLocks](http://www.willamettefalls.org/hisLocks); Willamette River Initiative. Willamette Falls. <http://willametteinitiative.org/topics/willamette-falls>.

<sup>3</sup>Clackamas County Historical Society. 2013. Willamette Falls Locks: Past, Present, and Future — Army Corps of Engineers at MOOT. OregonLive blog. [http://blog.oregonlive.com/my-oregon-city//print.html?entry=/2013/09/willamette\\_falls\\_locks\\_past\\_pr.html](http://blog.oregonlive.com/my-oregon-city//print.html?entry=/2013/09/willamette_falls_locks_past_pr.html). September 27; Dungca, Nicole. 2009. Second Chance for Willamette Falls Locks, An Oregon Treasure. OregonLive blog. [http://blog.oregonlive.com/clackamascounty\\_impact/print.html?entry=/2009/10/second\\_chance\\_for\\_an\\_oregon\\_tr.html](http://blog.oregonlive.com/clackamascounty_impact/print.html?entry=/2009/10/second_chance_for_an_oregon_tr.html). October 28.

<sup>4</sup>Oregon Solutions. Willamette Falls Locks. <http://orsolutions.org/osproject/willamette-falls-locks>, accessed July 2014; Clackamas County Historical Society, 2013; In a December 1, 2011 press release, the ACoE indicated that “caretaker status” involved operating the locks at least once a month for maintenance. “Non-operational status” means they will not operate the locks at all. US Army Corps of Engineers, Portland District. News Release, Corps Changes Status of Willamette Falls Locks. Release Number 11-076, December 1, 2011; As we understand, the ACoE changed the locks status from “operational” to “caretaker” sometime prior to 2011. This change reduced funding, operations and number of lockages., and effectively began the process of shutting down the locks, which occurred with the change from “caretaker” to “non-operational” status.



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## “The recreational boating use (both motorized and non-motorized) and commercial tourist boating on the Willamette River will grow and could become a significant tourism asset for Oregon and the Willamette Valley region.” -Travel Oregon

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The ACoE's decision to close the WFL does not reflect their historical and navigational significance, especially to Oregonians. In 1974, the WFL were listed on the National Register of Historic Places.<sup>5</sup> In 1991, they were designated a State Historic Civil Engineering Landmark by the American Society of Civil Engineers.<sup>6</sup> In 2012, the WFL were named a National Trust for Historic Preservation “National Treasure,” and the Historic Preservation League of Oregon (now Restore Oregon) named it one of the ten “Most Endangered Places.” The WFL facilitates movement on the Willamette River, which has been designated both an American Heritage River and a National Water Trail.<sup>7</sup>

Local interest in the WFL is also reflected in the efforts taken by Oregonians to keep them open and to describe their navigation and economic significance. These efforts include:<sup>8</sup>

- In 2005, then U.S. Representative Darlene Hooley convened a Willamette River United conference, which explored ideas for keeping the WFL open.
- Governor Ted Kulongoski designated keeping the WFL open an Oregon Solutions project. This led to a Declaration of Cooperation in May 2006, signed by more than 20 public and private organizations, to collectively commit to keep WFL open:

- The ACoE signed an agreement with Oregon Department of Transportation (ODOT) and Clackamas County to accept funds raised locally and provided by state agencies, that helped keep the locks open during 2006 and 2007.
- The City of West Linn submitted annual Congressional Budget requests, which provided O&M funding. The funding amount in the fiscal year 2008 appropriations was \$157,000.
- The Willamette Falls Heritage Foundation provides public education and outreach regarding the WFL and their historical significance. Their work includes sponsoring the annual Lock Fest celebration, which included rides through the locks prior to the ACoE shutting them down.
- Clackamas County coordinated with the Willamette Falls Heritage Foundation and took on the responsibility and cost of nominating the WFL as a National Historic Landmark.
- Inca Engineering undertook a \$50,000 engineering study that provided the first assessment of the locks' structural and operational conditions. The Clackamas Heritage Partners managed and administered the funds donated for the study commissioned by the One Willamette River Coalition, which came from: The Kinsman Foundation, Metro, Oregon Department of Parks

and Recreation, Oregon State Marine Board, Columbia River Yachting Association, Clackamas County, and the City of Keizer.

- Travel Oregon provide \$26,000 to fund public outreach and education about WFL. This project also produced a new name for partners collaborating to keep the locks open: The One Willamette River Coalition.
- ODOT contributed \$118,000 to fund the ACoE's inspection of the locks.
- The Oregon Solutions partnership secured \$1.8 million in stimulus funding to complete needed structural inspections.

In 2009, the Oregon Solutions project organized another Declaration of Cooperation, signed by public and private parties in support of keeping the WFL open. Signers included: Clackamas County, Wilsonville Concrete, the Governor's Economic Revitalization Team, ODOT, Clackamas Heritage Partners, Oregon Marine Board, the City of Oregon City, Oregon Department of Parks and Recreation, Portland General Electric, Travel Oregon, Willamette Falls Heritage Foundation, Northwest Oregon Resource Conservation & Development Council, ACoE, the Port of Portland, and the City of West Linn. A number of signers noted the significance of keeping WFL open including:

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<sup>5</sup>Clackamas County Historical Society, 2013.

<sup>6</sup>Lewis, A. 2004. “The Willamette Falls Canal,” *American Canals*, Bulletin of the American Canal Society. Vol. 33, No. 2, Spring, pp 1 – 4.

<sup>7</sup>Clackamas County Historical Society, 2013.

<sup>8</sup>Oregon Solutions. Declaration of Cooperation, The Willamette Falls Locks' Oregon Solution, May 2009.





believe the revitalized locks at Willamette Falls can play a key role in the reintroduction of thriving commercial river traffic along the entire navigable length of the Willamette River.”<sup>10</sup>

The efforts described above reflect local, regional and state interests in the locks and how much stakeholders value the locks’ scenic, historic, transportation, and engineering attributes.

Between 2001 and 2006, the number of lockages steadily declined. Lockages increased between 2006 and 2007, which coincided with a temporary increase in funding for WFL operations brought about by an innovative community partnership agreement that allowed an ODOT Transportation Enhancement grant to be used for operations for two years. Funding, operations and lockages declined again in 2008, and the locks were closed in 2009 for inspection. Operations and lockages increased dramatically in 2010 as a result of the funding provided through the Oregon Solutions project.<sup>11</sup> One could interpret these two episodes of lockages and use responding to increased funding and operations as indicative of pent-up demand for the types of river access that the WFL provide.

In 2005, BST Associates completed a report for the Clackamas County Tourism Development Council and Oregon Tourism Commission that described an analysis of the costs of keeping the WFL open, and the economic spending by the primarily recreational users. The authors concluded that the economic benefits of keeping the WFL open far outweighed the costs.<sup>12</sup> In a 2008 report for the One Willamette River Coalition, CEDER, Synergy

■ Travel Oregon: “We continue to believe that recreational boating use (both motorized and non-motorized) and commercial tourist boating on the Willamette River will grow and could become a significant tourism asset for Oregon and the Willamette Valley region.”<sup>9</sup>

■ Port of Portland: “The Port of Portland is pleased to support the repair and refurbishment of the locks at Willamette Falls. Our hope is that this investment will allow a historical piece of infrastructure to contribute to the economic growth of the region for another 100 years to come. Moreover, we

<sup>9</sup>Oregon Solutions, 2009, p. 13.

<sup>10</sup>Oregon Solution, 2009, p. 17.

<sup>11</sup>U.S. Army Corps of Engineers, Lock Performance Monitoring System, <http://www.ndc.lwr.usace.army.mil/lpms/lpms.htm>; U.S. Army Corps of Engineers, Corps of Engineers Financial Management System year-end 3011a reports.

<sup>12</sup>BST Associates. 2005. Willamette Falls Locks Economic Impact Analysis Final Report. Prepared for Clackamas County Tourism Development Council and Oregon Tourism commission. March.





and Chenoweth Consulting described the results of a case study of transferring ownership and operations of the WFL from the ACoE to another entity. The authors reviewed the transfer of three other locks from ACoE and the associated transfer issues, challenges and lessons learned.<sup>13</sup> In July of 2011, Michael Bernert outlined the economic and environmental advantages of shipping municipal waste, pulp and paper, steel, bulk agricultural commodities and bulk building materials such as sand and gravel via barge vs. rail or truck.<sup>14</sup>

Our report describes the economic potential of the WFL if they were functioning and operating on a regular schedule. By economic potential we mean describing the types of demand for river access that the WFL would facilitate. Our analysis builds on past studies of the WFL and includes three major parts. First, we summarized and updated the description by CEDER et al. (2008) of the three transfers to date of ACoE locks to other entities.

The ACoE's decision to change the status of the WFL to non-operational makes more challenging an assessment of the future economic potential of the WFL. Hence, we review experiences of other lock transfers for insights into the WFL's future economic potential. Second, we describe the results of our assessment of the demand for WFL services based on key-informant interviews we conducted with representatives from various stakeholder groups. Third, we outline three potential operating scenarios for the WFL with varying number of lockages, operating costs, and revenues.

The remaining sections of this report are as follows. In *River Locks Transfers*, we describe the issues behind the ACoE transferring ownership or operations of three sets of locks to state or regional groups. The circumstances that led to the transfers are similar to conditions at the WFL today. All of the locks were built at a time when rivers provided the main transportation mode for commerce. Eventually rail and then road systems competed with river transport. As a result, the amount of commerce transported by river and through the locks gradually declined. As commercial lockages declined, however, recreational lockages increased. In spite of the increased recreational use, the ACoE, guided by the WFL's strictly "navigation authorization," eventually decided that the small amounts of commerce passing through the locks did not justify the expense of operating them. Prior to closure in 2011, recreational boaters were the dominant users of the locks' services, with limited commercial use.

In *The Locks and River Users*, we describe the results of our assessment of the demand for the types of river access that the WFL provide. Our assessment relies on our interviews with key-informants from stakeholder groups including: recreational users; commercial or industrial users; economic development officials from area jurisdictions; and county and state emergency managers.

In *Economic Potential*, we describe our conclusions based on information in the proceeding sections.

In the Appendix we describe three different operating scenarios. The assumptions in our scenarios reverse the ramp down in WFL operations that the ACoE implemented over the previous years. That is, we start with limited service during summer months, increase service to six months, then increase to twelve months of operations. The first two scenarios rely primarily on recreational users. We assume that for the most part, commercial shippers will not begin using the WFL until they have some assurances that the locks will operate on a regular basis, so our third scenario assumes both recreational and commercial users. We include in our operating scenarios estimated lockages, operations and maintenance costs, revenues generated by user fees, and revenues that could be generated by a transportation district established to support the WFL. The spreadsheet accompanying this report has the details of our assumptions, analyses and results.

<sup>13</sup>CEDER, Synergy Northwest, LLC, and Chenoweth Consulting. 2008. The Willamette Falls Locks: A Case Study Analysis of Potential Transfer Issues. Prepared for the One Willamette River Coalition. October 23.

<sup>14</sup>Bernert, Michael. 2011. Reclaim Our River, Environmental, Economic and Community Advantages of a United Willamette River. July 17.



## RIVER LOCKS TRANSFERS

The ACoE's decision to change the status of the WFL from "caretaker status" to "non-operational status," makes more challenging the task of estimating future demand for, and use of, the WFL. For insights into the future economic potential of the WFL, we collected and reviewed information on three locks systems that the ACoE transferred to other entities. We began by reviewing the CEDER et al. (2008) report that describes transfer issues in general, and issues specific to the three locks systems. We then reviewed other sources, e.g., web sites, and contacted representatives of the locks with follow up questions and requests for information. At the end of our summary for each lock system, we describe similarities, differences and other insights relative to the WFL.

### Locks Case Studies

We summarize the available information on current operations and usage details for three systems of locks that the ACoE turned over to regional or state entities:

- Muskingum River Parkway Locks in Ohio
- Kentucky River Locks in Kentucky
- Lower Fox River Locks in Wisconsin

We also summarize use and operations information for the Hiram Chittenden Locks in Seattle. The

ACoE operates these locks, but we include them in our summary because of their geographic proximity to the WFL, and because their mix of recreation and commercial users is comparable to what could be expected at the WFL. We also mention other lock systems that the ACoE currently owns and maintains in "non-operational" status that local stakeholders are interested in transferring ownership from the ACoE to other entities.

### Muskingum River Parkway Locks, Ohio

The ACoE transferred ownership of the Muskingum River Parkway Locks to the State of Ohio in 1958. The flat-water lock system consists of ten, hand-operated locks distributed along a 112-mile stretch of the Muskingum River in southeast Ohio. Operating the locks employs 14 seasonal workers.<sup>15</sup> Most of the locks are 184 feet long, 36 feet wide, and accommodate boats up to 160 feet long.<sup>16</sup> The Ohio State Parks (OSP) department manages locks operations and maintenance.

The locks currently operate seasonally, with daytime operating hours on Saturdays and Sundays from May 10, 2013 through October 12, 2014, and additional Friday and Monday hours between Memorial Day weekend and early September. Special arrangements for lockages outside of normal operational hours can be made with 48 hours notice and an additional fee. Public launch ramps are provided at five of the ten locks.<sup>17</sup>

The Ohio State Parks charge daily user fees of \$5, annual fees of between \$15 and \$50, and special fees for lockages outside of normal operations times of \$15 or \$25.<sup>18</sup> Gross user fees collected in 2013 totaled \$8,501. Revenues from user fees goes into the State's general fund and does not directly offset the costs of operating and maintaining the locks. Annual maintenance costs totaled \$67,000 in recent years.<sup>19</sup>

As is the case with many of the country's older locks systems, the Muskingum River Locks have a backlog of needed repairs. Locks #7 and #10 needed emergency repair work in recent years. The Ohio Department of Natural Resources, which oversees the OSP, place a priority on bringing the locks to full operations before peak summer seasons.<sup>20, 21</sup> This can be challenging at times. For example, Lock #11 is currently under repair and not operational for the 2014 summer recreational season.

Today, most of the lockages are for recreational boaters and anglers who fish from boats.<sup>22</sup> The river has a reputation among fishers for the unique "pools" between locks that contain a variety of bass and catfish species.<sup>23</sup> The number of recreational boaters has been estimated at roughly 7,000 per year.<sup>24</sup> Staff at the Ohio Department of Parks and Recreation report recent declines in the number of lockages, primarily due to weather causing poor boating conditions.

<sup>15</sup>Ohio State Parks representative, July 3rd, 2014, Interview.

<sup>16</sup>American Society of Civil Engineers. Muskingum River Navigation System. <http://www.asce.org/People-and-Projects/Projects/Landmarks/Muskingum-River-Navigation-System/>. Accessed July 2014.

<sup>17</sup>Ohio State Parks, Ohio Department of Natural Resources Division. Muskingum River State Park. <http://parks.ohiodnr.gov/muskingumriver>. Accessed July 2014.

<sup>18</sup>LAWriter Ohio Laws and Rules. 1501:41-2-30 Muskingum river parkway lock fee. <http://codes.ohio.gov/oac/1501:41-2-30>

<sup>19</sup>Ohio State Parks representative, July 3rd, 2014, Interview.

<sup>20</sup>Hannahs, Nichole. 2013. Canal Leak Serious Issue. <http://www.whiznews.com/content/news/local/2013/01/15/canal-leak-serious-issue>. January 15.

<sup>21</sup>Ohio State General Assembly. Balderson Announces Funding For Emergency Repairs To The Muskingum River Parkways Lock. 2012. <http://www.ohiosenate.gov/senate/balderson/press/balderson-announces-funding-for-emergency-repairs-to-the-muskingum-river-parkway-lock>. April 24.

<sup>22</sup>Most of the locks are 184-feet long and 36 feet wide, with the ability to handle boats up to 160 feet long.

<sup>23</sup>OhioBassAngler.com. Muskingum River Update. 2013. <http://www.ohiobassangler.com/blog/2013/1/Muskingum-River-Update>. January 13.

<sup>24</sup>Ohio Water Trails. Muskingum River Water Trail. <http://watercraft.ohiodnr.gov/Portals/watercraft/pdfs/maps/wtmuskingum.pdf>. Accessed July 2014.



## Comparison with WFL:

- Ten sets of flat-water locks spread over 110 miles vs. a bypass canal with four 210-foot tandem lift locks, a boat basin and a 210-foot guard lock, all in less than one-half mile for WFL.<sup>25</sup>
- Operating the locks takes 14 seasonal workers. When last operational, the WFL employed two fulltime workers.
- Lockages driven primarily by fishing demand, and factors that affect fishing, e.g., weather, will also affect demand for lockages. Lockages at WF served a broader group of users and the lock chambers contain no fish.
- Locks were transferred from the ACoE 56 years ago, which shows it's possible for an entity other than the ACoE to operate and maintain a system of locks over a long time.
- Users pay fees to access the locks. The ACoE did not charge user fees for the WFL. Our operating scenarios include user fees.

## Kentucky River Locks, Kentucky

The Kentucky River Locks consist of 14 flat-water lock and dam sites along 245 miles of the Kentucky River. The Commonwealth of Kentucky took over ownership of locks #5 through #14 in 1986, under the administration of the Kentucky River Authority(KRA), which was established to manage the system. The KRA also manages the ACoE-owned locks #1 through #4. The ACoE is

currently in the process of transferring ownership of these four locks to the KRA.<sup>26</sup>

Currently, only two of the 14 locks are operational. These are locks #3 and #4, two of the locks managed, but not currently owned, by the KRA. These two locks operate seasonally, Friday and Saturday, between May 23rd and October 26th.<sup>27</sup> The KRA plan to bring an additional three locks back into service.<sup>28</sup>

The locks upstream from Frankfort are not operational.<sup>29</sup> Locks above this point are primarily used for pooling water that creates a water source for the local population. The ACoE conducted a study published in February 2014 that recommended the "disposal" of these locks (permanent blockage by concrete barriers) or removal of many of the locks upstream. The KRA is assessing the stability of the locks and dams for their impacts on ecosystem restoration projects and water supply.

The KRA's most recent budget is approximately \$4 million. Fees assessed on water users supplied by the pool behind the locks upstream from Frankfort generate approximately \$250,000. Revenues allocated from the State general fund make up the shortfall between water fees and operating costs.<sup>30</sup>

The KRA does not operate the locks for commercial traffic.<sup>31</sup> The areas between dams are frequented by anglers attracted by the area's healthy fish stocks,<sup>32</sup> but the dams pose a risk to small vessels like kayaks and canoes that try to pass over them.<sup>33</sup>



## Comparison with WFL:

- A larger number of flat-water locks spread out over a much longer stretch of river relative to the WFL.
- Some locks provide pooling, which supplies water users. Fees from water users help fund locks O&M. The WFL has no user fees under the ACoE.
- State ownership with support from the State general fund makes up the large majority of operating funds. ACoE funds the current "non-operational status" of the WFL.

<sup>25</sup>Lewis, 2004.

<sup>26</sup><http://finance.ky.gov/offices/Pages/LocksandDams.aspx>

<sup>27</sup><http://finance.ky.gov/offices/Documents/2014/2014%20Lock%20Schedule.doc>

<sup>28</sup>Jerry, Kentucky River Authority, July 3rd, 2014, Interview.

<sup>29</sup><http://www.kentucky.com/2009/10/19/982597/kentucky-river-a-river-to-nowhere.html>

<sup>30</sup>Jerry Graves, Kentucky River Authority, July 3rd, 2014, Interview.

<sup>31</sup>Jerry Graves, Kentucky River Authority, July 3rd, 2014, Interview.

<sup>32</sup><http://www.worldfishingnetwork.com/news/post/good-fish-populations-in-kentucky-river>

<sup>33</sup><http://www.lrl.usace.army.mil/Portals/64/docs/CWProjects/Green%20and%20Barren%20dispo/Main%20Report.pdf>



## Lower Fox River Locks, Wisconsin

The Lower Fox River Locks system, located along the Lower Fox River in Wisconsin, consists of eight locks sites along 39 river miles, with three sites of five, four, and three locks each, and five sites with only one lock. The sites with five and three locks, as well as one of the single locks, are currently undergoing restoration. The vertical drop across the Lower Fox River locks is approximately 180 feet.<sup>34</sup>

The State of Wisconsin took ownership of the lock system in September 2004. The State created the Fox River Navigational System Authority (Authority) to manage the lock system. The Authority is a public body overseen by a board of nine directors, consisting of two representatives from each of the counties from where the locks are located and the additional three designated by the Department of Natural Resources, Department of Transportation, and Director of the State Historical Society.<sup>35</sup>

Among the eight operational locks, service is provided on a seasonal basis, with start dates for 2014 ranging from April 18th to May 23rd, with regular service ending on either September 1st or October 5th. Days of operation vary, with some operating on weekdays and all operating Friday through Sunday.

Funding for the transfer, rehabilitation, and operation and maintenance of the locks is outlined in a joint funding agreement between the state and the ACoE. The agreement outlines the creation of a

Figure 1. Annual Lockages, Craft, and Passengers Passing Through Lower Fox River Locks

Year	Lockages	Craft	Passengers
2007	3,781	6,158	23,925
2008	3,300	5,073	20,226
2009	4,001	6,051	23,263
2010	3,297	5,223	20,303
2011	3,377	5,095	19,233
2012	3,876	5,921	23,298
2013	3,467	4,954	20,723
Average	3,586	5,496	21,567

Source: Fox River Navigational System Authority, reported by lock tenders as boats travel through the locks

trust consisting of combined funds of roughly \$22.8 million dollars. The agreement stated that the ACoE would contribute \$11.8 million, the State of Wisconsin would contribute \$5.5 million and the federal government would contribute \$5.5 million in matched funds. The State responsibility of \$5.5 million is broken into \$2.75 million from the state general fund and \$2.75 million in local and private funds to be raised by the contractor operating the locks, which is the Fox River Navigation System Authority.<sup>36</sup> Based on the most recent May 2014 reporting by the Authority, funds are currently stable at roughly \$20.1 million available and is considered within budget.<sup>37</sup>

The Authority currently charges user fees through daily or seasonal permits. Daily permits cost either \$6 or \$12, based on boat length and seasonal permits are either \$120 or \$140, depending on the intended use. Special lockages are available, with

12 hours notice, on an hourly basis for between \$15 and \$50 per hour with a two hour minimum charge.<sup>38</sup>

Currently, recreational use dominates lock usage, but there is potential for more commercial use.<sup>39</sup> Figure 1 shows total lockages for all lock sites. These include lockages of commercial and recreational craft. The number of operational locks changes over time; only three locks operated between 2007 and 2010.<sup>40</sup>

Comparisons with WFL:

- The lock system is much larger and includes many more locks than the WFL.
- Lower Fox River locks operations and maintenance is supported by funds including those supplied by the ACoE, the State of Wisconsin, and the Federal government.

<sup>34</sup><http://www.friendsofthefox.org/friendsofthefox/river+navigation/lock+and+bridge+schedules++procedures.asp>; [http://foxriverlocks.org/index.php?option=com\\_content&view=article&id=11&Itemid=4](http://foxriverlocks.org/index.php?option=com_content&view=article&id=11&Itemid=4).

<sup>35</sup>[http://foxriverlocks.org/index.php?option=com\\_content&view=article&id=3&Itemid=6](http://foxriverlocks.org/index.php?option=com_content&view=article&id=3&Itemid=6).

<sup>36</sup><https://docs.legis.wisconsin.gov/statutes/statutes/237/08/2>

<sup>37</sup>[http://foxriverlocks.org/frnsa\\_committeeminutes/2014/052714.pdf](http://foxriverlocks.org/frnsa_committeeminutes/2014/052714.pdf)

<sup>38</sup><http://www.friendsofthefox.org/friendsofthefox/river+navigation/lock+and+bridge+schedules++procedures.asp>

<sup>39</sup>Harlan Kiesow, Fox River Locks CEO. July 22nd, 2014. Interview

<sup>40</sup>[http://foxriverlocks.org/index.php?option=com\\_content&view=article&id=6&Itemid=5](http://foxriverlocks.org/index.php?option=com_content&view=article&id=6&Itemid=5)



- A mix of recreational and commercial vessels use the lock system, similar to the expected use of the WFL.
- Users pay fees to access the locks. When operated by the ACoE, the WFL had no user fees. We include user fees in our operating scenarios.

#### Hiram M. Chittenden (Ballard Locks), Washington

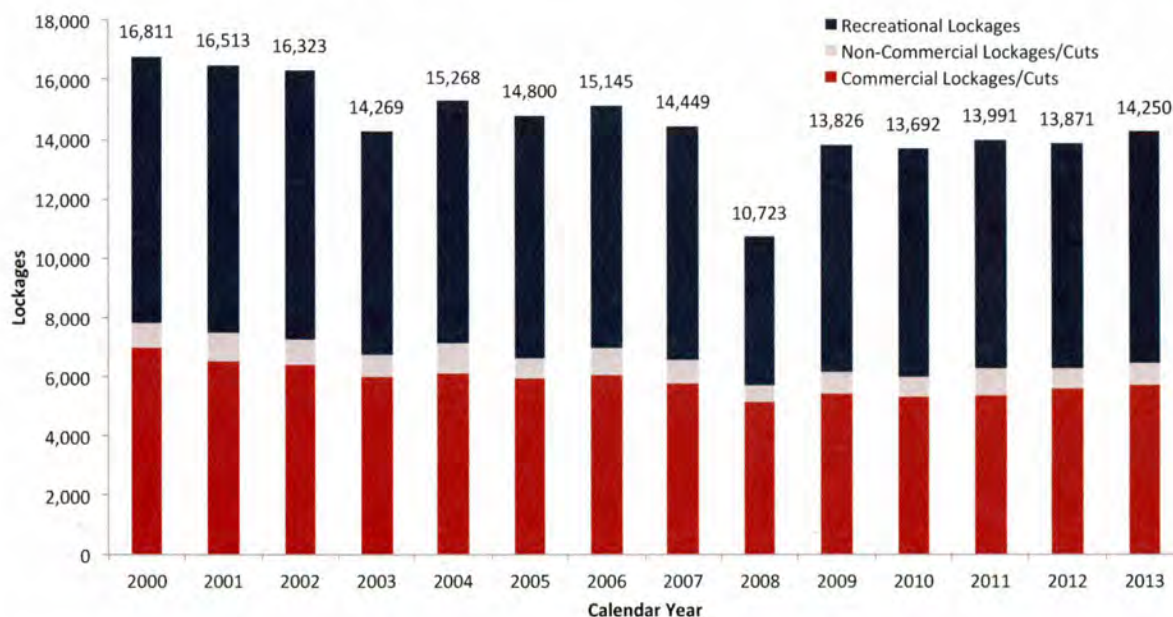
The Hiram M. Chittenden Locks, known as the Ballard Locks, in Seattle, Washington is a single site lock, like the WFL, consisting of one larger lock, with a length of 825 feet and width of 80 feet, and an auxiliary lock that is 150 feet long and 28 feet wide. The Ballard Locks are currently owned and operated by the ACoE.<sup>41</sup> The Ballard Locks are authorized for both navigation (commercial cargo) and recreational use.<sup>42</sup>

The locks operate all days of the year and at all hours. The locks employ roughly 60 staff, including visitor center personnel and administration. The budget for the locks fluctuates greatly due to capital investments, but it is usually in excess of \$5 million, annually.<sup>43</sup> The ACoE does not charge user fees to access the locks.

The ACoE Navigation Data Center reported that the lockages for recreational purposes have generally been slightly more than half of all lockages on an annual basis, as shown in Figure 2.<sup>44</sup>

Use of the locks is highly seasonal. Commercial users include sand and gravel barges, tugboats,

Figure 2. Ballard Locks Lockages by User Type



Source: OHSU, ECONorthwest, IMPLAN 2012 data

north Pacific fishing fleet, fuel barges, and drydock and repair traffic.<sup>45</sup>

#### Comparison with WFL:

- The locks have an authorization for both navigation (commercial cargo movement) and recreation. The WFL have a navigation authorization only, though there is interest and efforts in expanding the ACoE authorization for the WFL to include recreational use.<sup>46</sup>

- The locks are proximate to a larger population than the WFL.
- Both locks serve recreational and commercial users.
- ACoE maintains the locks and does not charge user fees. ACoE no longer operates the WFL.
- The staff and operating budget are significantly larger than that for the WFL when they were operating.

<sup>41</sup><http://www.nws.usace.army.mil/Missions/CivilWorks/LocksandDams/ChittendenLocks.aspx>

<sup>42</sup>Personal Communication. 2014. Peggy Sigler, National Trust for Historic Preservation.

<sup>43</sup>Jay Wells, ACOE Visitor Center Representative. July 2, 2014. Interview.

<sup>44</sup><http://www.navigationdatacenter.us/lpms/lock2013web.htm>

<sup>45</sup>Jay Wells, ACOE Visitor Center Representative, July 2, 2014, Interview.

<sup>46</sup>Personal communication, Sandy Carter, Willamette Falls Heritage Foundation, 2014.<sup>47</sup><http://www.kittanningpaper.com/2014/01/20/fundraising-to-reopen-river-locks-starting-soon/42955>



### Allegheny River Locks

The WFL is not the only ACoE-owned locks looking for alternative ownership or operations arrangements. The Allegheny River Locks, located in Pennsylvania, has struggled to maintain regular operations of its roughly 90-year old locks with the sole source of funding provided through the ACoE. A local non-profit, the Allegheny River Development Corporation (ARDC) and the local county commissioners, both interested in seeing the reopening of many of the system's 23 locks and dams, have organized to apply for the ability to contribute funds to the repair and operations of the locks.<sup>47</sup> The County would serve as a pass-through entity to provide funds to the ACoE.

The recently enacted 2013 Water Resources Reform Development Act, signed by President Obama on June 10, 2014, means that this process will become simpler. The Act allows non-profits to negotiate directly with the local ACoE.<sup>48</sup> Although raising funds is still an issue, this Act will allow interested parties more options for supporting locks operations. Local stakeholders are considering this option as a means of funding operations for the WFL as well.<sup>49</sup>



<sup>47</sup><http://www.kittanningpaper.com/2014/01/20/fundraising-to-reopen-river-locks-starting-soon/42955>

<sup>48</sup><http://www.boatlocal.com/articles/2014/ardc-gets-approval>

<sup>49</sup>Personal communication, Sandy Carter, Willamette Falls Heritage Foundation, 2014.



## THE LOCKS AND RIVER USERS

The trend in use of WFL mirrors that of the three locks described in the previous section. The WFL were built at a time when rivers were the primary transportation mode for personal or commercial travel. Railroads and then highways eventually provided alternative means of moving people and cargo. Commercial use of the WFL declined, while recreational use increased. In response to declining commercial tonnage passing through the WFL, which caused a lack of funds for inspection and maintenance, the ACoE closed the locks in December of 2011 for safety reasons.

As part of our evaluation of the economic potential of the WFL, we conducted an assessment of the likely future demand for the WFL if they were reopened and operating on a regular schedule. Our assessment included interviews with key-informants from stakeholder groups (e.g., recreational users; commercial or industrial users; economic development officials from area jurisdictions; and county and state emergency managers), as well as reviewing literature and reports that pertain to stakeholder groups.

Our assessment of demand also help inform the details of the three operating scenarios, which we describe in the appendix.

### Recreation

The recreational demand for WFL services would come primarily from three user groups: non-motorized vessel users, motorized vessel users, and commercial recreational users.

To inform our assessment of the demand for recreational use of the Willamette River and the



WFL, we conducted interviews with the following key informants:

- Dennis Corwin, Explorer Tours (Portland Spirit)
- Kate Ross, Willamette Riverkeeper, Outreach and Education Coordinator
- Alexandra Phillips, Oregon Parks and Recreation, Water Recreation Coordinator
- Eric Dye, Sportcraft Landing Moorages
- Sam Drevo, eNRG Kayaks

### Non-motorized vessel users

Non-motorized users include paddling vessels such as kayaks, canoes, and rafts, and can include both long and short distance trips. The Willamette River is a nationally recognized water body for paddling. In 2012, the Secretary of the Interior designated the Willamette River a National Water Trail. The Willamette River Water Trail (Trail) stretches from Creswell to St. Helens, Oregon and includes 187 miles of the Willamette River as well as 29 miles of connecting rivers. The Trail passes



through the heart of the Willamette Valley, flowing past urban and rural landscapes where seventy percent of Oregonians live.<sup>50</sup> The Willamette Riverkeeper, a non-profit organization dedicated to the preservation of the Willamette River, manage the Trail.<sup>51, 52</sup> *Canoeroots* magazine profiled the Trail and described it as one of the 13 "awesome canoe trips of a lifetime." The group of 13 includes the Yukon River.<sup>53</sup> The Oregon Parks and Recreation Department manages Willamette Greenway sites from upstream of Eugene to Portland that facilitate access and recreation along the Trail.<sup>54</sup>

Although there are no formal records kept on the number of paddlers that use the river each year, Willamette Riverkeeper and the Oregon Parks and Recreation Department reported that they receive many inquiries from Oregonians and interested paddlers from other states and countries about paddling the river. Inquiries have increased since the Willamette's addition to the National Water Trail System.

According to the staff at Willamette Riverkeeper, many paddlers travel the entire length of the Trail. Most through-paddles of the Willamette River occur during the summer months, and include several organized trips that occur annually. These trips include Paddle Oregon and the Corvallis-Portland Row. The 2014 Paddle Oregon begins in Corvallis and ends at Canby, upriver from

Figure 3. SCORP Water-based Recreation Participation, Region 2 and 3, 2011

	Using Personal Water Craft, Such As Jet Ski		Power Boating (Cruising/Water Skiing)		Flat-Water Canoeing, Sea Kayaking, Rowing, Stand-Up Paddling, Tubing/Floating		Beach Activities (Lakes, Reservoirs, Rivers, Etc.)	
	# of trips	% of region population	# of trips	% of region population	# of trips	% of region population	# of trips	% of region population
Region 2	558,185	3.6%	2,600,014	12.8%	1,717,149	9.9%	3,728,314	30.0%
Region 3	221,999	4.6%	1,600,679	17.4%	456,208	12.8%	2,810,191	36.5%

Source: OSU College of Forestry, Oregon Resident Outdoor Recreation Demand Analysis

Willamette Falls and the WFL. But for the fact that WFL are not operating, the trip could extend all the way downstream to Portland and the confluence with the Columbia River.<sup>55</sup>

There is also demand from a growing community of paddlers seeking new and less congested options for paddling day trips in the Portland area. Demand for flat-water paddling and tubing activities in Oregon Department of Parks and Recreation Region 2, which includes the Portland and Salem metropolitan regions and the Willamette River north of Albany, is significant and includes participation by almost 10 percent of the Region's population. Demand from Region 3, which includes Benton, Linn and non-coastal Lane Counties, amounts to almost 13 percent of the Region's population. Additional details of local recreational demand based on the 2011 survey completed in preparation for the 2013-2017 Oregon Statewide Comprehensive Outdoor Recreation Plan can be found in Figure 3.<sup>56</sup>

Most paddlers end their trip upstream of the Willamette Falls because of the challenging logistics of portaging around them. Moving past the Falls requires a several-mile vehicle trip, with takeout and put-in on opposite sides of the river. According to Willamette Riverkeeper staff, many paddlers inquire about going through the WFL and are disappointed when they learn that this is not an option. The last organized paddles or cruises by Willamette Riverkeeper through the locks occurred in 2005.

### Motorized vessel users

Motorized vessels include anything from yachts to smaller recreational motorboats and personal watercraft. In the past, yacht clubs based on the Willamette and Columbia Rivers took two- or three-day trips up the river and through the WFL. The SCORP results in Figure 3 show that a significant percentage of Oregonians living in the Willamette River drainage are involved in powerboating.

<sup>50</sup>National Water Trails System, <http://www.nps.gov/WaterTrails/Trail>.

<sup>51</sup><http://www.nps.gov/WaterTrails/Trail/Info/36>

<sup>52</sup><http://willamette-riverkeeper.org/WRK/about.html>

<sup>53</sup>Willamette River Water Trail, <http://willamettewatertrail.org/>.

<sup>54</sup>[http://www.oregonstateparks.org/index.cfm?do=parkPage.dsp\\_parkHistory&parkId=194](http://www.oregonstateparks.org/index.cfm?do=parkPage.dsp_parkHistory&parkId=194)

<sup>55</sup>Paddle Oregon, <http://www.paddleoregon.org/>.

<sup>56</sup>[http://www.oregon.gov/oprd/PLANS/docs/scorp/2013-2018\\_SCORP/Demand\\_Analysis.pdf](http://www.oregon.gov/oprd/PLANS/docs/scorp/2013-2018_SCORP/Demand_Analysis.pdf)





Closing the WFL increased the costs of maintaining recreational docks and moorages upstream. Prior to closure, tugboats and crane barges were easily transported upstream. After the closure, equipment needed upstream is either transported around the WFL, at greater cost, or contractors use more costly construction and maintenance methods. Two dredges, three tugboats and four barges were able to negotiate passing downstream through the WFL during the specially scheduled opening for Canby Ferry in 2013, which needed to be repaired in Portland.<sup>57</sup>

### Commercial recreational users

Commercial recreational users include commercial tour boats, charter boats, and other local river-based recreation businesses. River cruises would likely take advantage of the re-opened WFL to expand their offerings on the Willamette River. Prior to the closure, Explorer Tours, which runs the Portland Spirit, was looking into the feasibility of starting a through-locks tour. Representatives of the company believe that the tours would sell well.

If implemented, the tours would occur weekly from June through September, and could accommodate 35 people per tour.

Some river-based recreation businesses, such as eNRG Kayaks, locate near the falls and WFL to take advantage of the tourism and recreation interest in these attractions. Their customers and other paddlers visit the falls every year. According to representatives of these businesses, there would be strong demand from river paddlers for the types of river access that the WFL would facilitate.

### Past Recreational Use and Demand

Figure 4 shows the number of recreational vessels that passed through the WFL in previous years. The decline in use reflects the trend of reduced operating budgets and months and days of operations. The two spikes in use, in 2007 and 2010, are in response to two episodes of temporary funding increases and operations. One could interpret these increases in use as indicative of pent up recreational demand for access through the WFL.

### Tourism and Economic Development

Prior to closure the WFL were a tourism destination for local and regional visitors. Prior to the ACoE's closure, visitors came to see the locks operate and to learn about their historical significance.

For information on the tourism and economic development potential of the WFL, we contacted economic development officials in municipal jurisdictions along the Willamette River. We asked if their economic development plans included river access or river activities that could be affected by the reopening of the WFL. We conducted interviews with staff at the following jurisdictions:

Figure 4. Recent Recreational WFL Activity

Year	Recreational Vessels	Recreational Lockages
2000	2,548	1,221
2001	1,831	731
2002	1,068	605
2003	756	408
2004	787	160
2005	612	227
2006	795	304
2007	1,053	406
2008	2	0
2009	0	0
2010	899	380
2011	11	5

Source: US Army Corps of Engineers Navigation Data Center

- City of Wilsonville
- City of Oregon City
- Marion County
- Clackamas County Tourism and Cultural Affairs Office

<sup>57</sup>[http://www.oregonlive.com/west-linn/index.ssf/2013/01/willamette\\_falls\\_locks\\_open\\_br.html](http://www.oregonlive.com/west-linn/index.ssf/2013/01/willamette_falls_locks_open_br.html)



## Historical and Cultural Tourism

The WFL provide a multi-faceted recreational experience unmatched in the region. According to Willamette Riverkeeper, many paddlers express interest in learning about the history of the river. The WFL are a key feature of that history, and provided an additional draw for many paddlers, from both the local area and outside the region. The SCORP data on historical visits by Oregonians in Figure 5, shows a significant percent of the population has an interest in learning about the state's historic sites.

**Figure 5. SCORP Historic Site Recreation, Region 2 and 3, 2011**

Visiting Historic Sites/History-Themed Parks (History-Oriented Museums, Outdoor Displays, Visitor Centers, Etc.)		
	# of trips	% of region population
Region 2	4,238,756	43.3%
Region 3	905,598	42.4%

Source: OSU College of Forestry, Oregon Resident Outdoor Recreation Demand Analysis

A coalition of those interested in protecting and making more accessible the historical and cultural resources of the Willamette Falls and the WFL recently completed a feasibility study of creating a Willamette Falls Heritage Area.<sup>58</sup> The report describes the historical and cultural importance of the Falls and WFL area. The coalition includes stakeholders from political, business, Tribal, utilities, and non-profit groups, and illustrates the widespread support for the area's cultural resources.

## Economic Development

Many of the local jurisdictions included access to the river or the river itself as an asset for tourism-driven economic development. The City of Wilsonville's Tourism Development Strategy notes "increasing access and recreation on the river, including the Willamette River Trail" as a key opportunity and consideration in their strategy going forward. The strategy document also notes that additional infrastructure development is needed to move river recreation up to a priority status in terms of strong markets for their target audiences.<sup>59</sup> Reopening the WFL would help support the City's river-related economic development goals.

The City of Oregon City commented that the river and river access support area tourism and recreation businesses, and that reopening the WFL would provide new tourism opportunities.

Marion County noted that tourism is an economic development priority and that any development that draws tourists will increase economic activity. The river is not specifically mentioned in the County's economic development plan, but, increasing activities such as kayaking, boating, and fishing are. Reopening the WFL may strengthen these activities. Lack of river access is a limiting factor.

The Clackamas County Tourism and Cultural Affairs Office stated that supporting river-based recreation is a County priority.<sup>60</sup> Reopening the WFL would allow tourism access that connects downstream and upstream portions of the river. The County could then promote river recreation all the way downriver to Portland, which the County believes would be popular among local

recreationists and tourists. Boating, fishing, and kayaking have become very popular near the WFL, but lack of connectivity to the river and through the locks or around the falls limits the tourism and recreation potential. The historical aspect of the WFL draws tourists to the area. If the locks were not maintained, it would be a lost historical and cultural opportunity. The County currently owns and operates a boat landing on the south side of the WFL. If the locks were operational, the County expects this landing would get more use.

## Commercial and Industrial

Commercial and industrial users of the WFL include industries or businesses that produce goods that could be, or had previously been, transported via barge down the Willamette River. These include aggregate producers, agricultural and logging companies, trash transport, and marine construction.

To inform our assessment of the demand for commercial or industrial use of the Willamette River and the WFL, we conducted interviews with the following key informants:

- Dave Bernert, Wilsonville Concrete Products and Marine Industrial Construction
- Baker Rock Resources
- Oregon Concrete and Aggregate Producers Association
- Ross Island Sand and Gravel
- Oregon Seed Association
- Marion Agricultural Services

<sup>58</sup>Willamette Falls Heritage Area Coalition, 2013. Willamette Falls Heritage Area A National Heritage Area Feasibility Study. August.

<sup>59</sup><http://ci.wilsonville.or.us/DocumentCenter/View/6023>

<sup>60</sup>[https://www.mthoodterritory.com/Scripts/tiny\\_mce/jscripts/tiny\\_mce/plugins/filemanager/files/master\\_plan.pdf](https://www.mthoodterritory.com/Scripts/tiny_mce/jscripts/tiny_mce/plugins/filemanager/files/master_plan.pdf)



- Oregon Feed and Grain Association
- Dr. Starr McMullen, Oregon State University, Professor of Economics, transportation researcher
- Oregon Forest Industries Council
- Dr. Darius Adams, Oregon State University, College of Forestry
- Oregon Marine Construction
- Sportcraft Landing Moorages/Ken's Flotation Services Inc.
- Portland Metro
- Pacific Northwest Waterway Association
- Portland General Electric

### Aggregate

Aggregate, typically in the form of sand or gravel, can be found in relative abundance along the Willamette River. Moving aggregate and other heavy materials can cost less by barge than by truck, but, moving materials by truck may require less handling. Producers who source gravel close up or downstream from the WFL could benefit from reopening the locks. Producers further from the WFL may not move significant amounts of aggregate through the locks given the abundance of aggregate and the possibility of additional handling steps and associated costs.

Loading and unloading aggregate requires minimal infrastructure. Barges or riverside sites with portable conveyors and hoppers are sufficient. Investments in large or permanent infrastructure are not required. Moving aggregate further upstream from the WFL may require dredging the navigation channel. Also, not all aggregate producers have barges that would fit through the locks.

Data compiled by the ACoE lists "sand and gravel" as the only commodity shipped on the Willamette River between Portland and Harrisburg in recent years.<sup>61</sup> The ACoE, however, do not track all materials moved along the river and thus relying on the ACoE data would give an incomplete picture of river transport upstream and downstream from the locks.

### Agriculture and Lumber

Rail companies prefer consolidating rail shipments at central rail yards. This requires grain or seed producers to transport their products by truck to rail lines. Rail companies do not stop for small volumes of materials, preferring instead to assemble large rail shipments at central yards and not stopping along their route to add small shipments of one or a few cars. According to the local agricultural producers we spoke with, the Willamette Valley does not produce grain in sufficient volumes to support multiple shipping points.

The seed and grain key informants expressed the following concerns regarding moving grain by barge:

- The uncertainty of adding barge to their current transportation modes
- The lack of loading and unloading infrastructure specific to barge transport
- The additional handling step and cost of moving grain from truck to barge to truck, or truck to barge to rail

Logging and forestry key informants expressed the same reservations to barging as agricultural producers:

- The lack of loading and unloading facilities; and



- The additional handling step and cost of moving logs from truck to barge to truck or truck to barge.

These informants stated that barging would likely cost less per mile, but the additional handling and costs required to add barge transport could negate the cost-per-mile savings. The actual cost benefits or increases of barging relative to other transportation modes are unknown at this time. We note that containerized wood products produced upriver of the locks currently travel to Portland, Rainer, Tacoma, or Seattle for export.

<sup>61</sup>2006 through 2011, the most recent data available.



## Construction and Maintenance

Marine-based construction key-informants expressed varied interest in the reopening the WFL. One marine construction key informant stated that they have made investments in infrastructure and rolling stock that suit their needs and business model. These investments do not include barges and moving material through the WFL. Another key informant from a construction operation that focuses on recreational docks and facilities expressed strong interest in having the WFL available again. He used the WFL to transport tugs and crane barges upstream to repair and construct docks. Without the WFL, his costs have increased because he must either take equipment out of the water and transport it around the falls, or use more time consuming and expensive construction techniques. He indicated a willingness to pay a fee for using the locks.

Trash haulers noted higher costs and dredging concerns as factors that could inhibit moving trash by barge through the WFL. In the past, barging through the WFL was considered a competing mode for transporting trash, which placed pressure on truck and rail modes to keep prices down. Closing the locks foreclosed this competition pressure to keep prices down.<sup>62</sup>

Portland General Electric commented that the WFL might have a slight beneficial effect on their operations in that they could possibly use them to help facilitate maintenance on their equipment and facilities at the Falls.

## Past Commercial and Industrial Use and Demand

Figure 6 shows the general decline in commercial lockages over time. It also shows how commercial users responded to the two episodes of increased funding and operations in 2006 and 2010 by increasing lockages.

In the past, the WFL facilitated river transport as an alternative to truck and rail, which helped promote competition and reduced transportation costs. Closing the WFL foreclosed the competition option. The importance of the WFL to industrial and commercial users will likely increase in the future with continued economic growth in the I-5 corridor, increased congestion on road and rail lines, and uncertainty over reducing congestion at the I-5 Columbia River crossing.

## Transportation and Emergency Planning

Jurisdictions in the area recognize the benefits that the WFL could provide for transportation more generally. For example, the City of Wilsonville includes the WFL and river access as part of their transportation plan. The City's 2013 Transportation System Plan (TSP) establishes the continued maintenance of access to the Willamette River as a policy and supports the availability of river access for potential future transportation purposes. The TSP's goals include improving access for public docking, and designating sites for potential future ports. The TSP also suggests that the City would benefit from increased marine and barge traffic on the river. The TSP describes the City's past and ongoing support of the ACoE's of Engineer's efforts to maintain the WFL and periodically

Figure 6. Recent Commercial WFL Activity

Year	Commercial Vessels	Commercial Lockages
2000	443	272
2001	338	190
2002	229	180
2003	145	140
2004	149	149
2005	84	76
2006	231	181
2007	215	174
2008	10	6
2009	61	61
2010	183	160
2011	113	98
2012	2	2

Source: US Army Corps of Engineers Navigation Data Center

dredge the channel to maintain the river as a viable transportation facility.<sup>63</sup>

We also spoke to emergency managers to ask about the benefits of using the Willamette River and the WFL for transportation in the aftermath of a natural disaster, such as an earthquake that destroys bridges, roads, and rail transportation systems. Clackamas County's hazards plan does not specifically mention using the river for transportation. However, they noted that it has possibilities. Yamhill County does not include the river in its hazard mitigation planning.

According to staff from the State of Oregon's Office of Emergency Management, the river will be an important transportation asset in the event of a natural disaster.

<sup>62</sup>Personal Communication, Metro staff, 2014.

<sup>63</sup><http://or-wilsonville.civicplus.com/DocumentCenter/Home/View/661>



River transport may be one of the few transportation routes serving areas along the river. The WFL would facilitate moving longer distances down and up river. ODOT Director Matt Garrett also commented that the WFL could have a potentially important role as a redundant transportation mode in the aftermath of the Cascadia earthquake.<sup>64</sup> Some relevant questions when assessing the role of the WFL in the event of a natural disaster include the extent to which they would function in the aftermath of an earthquake, and how debris flows would affect their operations.

Overall, Emergency Managers at the State level see the WFL as a potential asset for facilitation transport in the aftermath of a natural disaster, while local emergency managers had more questions or concerns.

### Sociocultural Values

We can describe the types of demand for WFL using market and nonmarket values. The assessments of likely future demand described above are examples of market measures. For example, data can be collected on the numbers of paddlers and expenditures per paddler that pass through a reopened WFL. Likewise, tons of gravel and value per ton moved through the WFL are market measures. Examples of nonmarket values are the sociocultural values that people and society place on WFL. Such values are typically more difficult to quantify and so analysts describe them qualitatively.



A number of researchers describe these values in general and for structures or places.<sup>65</sup> For example, a report by the Getty Conservation Institute in Los Angeles, describes the types of sociocultural values that benefit society from facilities such as the WFL:

“Sociocultural values are the traditional core of conservation—values attached to an object, building, or place because it holds meaning for people or social groups due to its age, beauty, artistry, or association with a significant person or event or (otherwise) contributes to processes of cultural affiliation.”<sup>66</sup>

The range of sociocultural values for structures such as the WFL can include:

- Historical
- Cultural
- Social
- Aesthetic<sup>67</sup>

<sup>64</sup>Personal communication, Peggy Sigler, Oregon Field Officer, National Trust for Historic Preservation.

<sup>65</sup>These include: Archimedes. No date. Cultural Heritage as a Socio-Economic Development Factor. <http://www.med-pact.com/Download/Archimedes/11%20Introduction%20Paper%20Cultural%20Heritage%20and%20Ec%20Dvlpmt.pdf>; Dumcke, C. and M. Gnedovsky. 2013. The Social and Economic Value of Cultural Heritage: Literature Review. European Expert Network on Culture (EENC). EENC Paper, July; Manatu Taonga – Ministry for Culture and Heritage. 2013. Value and Culture an Economic Framework. Wellington, New Zealand; The J. Paul Getty Trust. 2002. Assessing the Values of Cultural Heritage. Research report edited by Marta de la Torre. The Getty Conservation Institute, Los Angeles.

<sup>66</sup>The J. Paul Getty Trust, 2002, page 11.

<sup>67</sup>The J. Paul Getty Trust, 2002.



## ECONOMIC POTENTIAL

The economic potential of WFL is multidimensional. The WFL are a unique historical, commercial and recreational piece of Oregon's transportation infrastructure. Demands for the locks' services changed over time. Commercial use dominated the large majority of years the locks were in service. More recently, demand from paddlers and boaters eclipsed that from commercial users. The locks proximity to Willamette Falls generates demand from those interested in the region's historic and cultural aspects.

In this section we provide a summary of the main points regarding the WFL's economic potential.

### Recreational and Tourism Demand

The primary demand for lock services comes from recreational and tourism use.

- The shift from predominantly commercial to predominantly recreational demand for locks services is similar to the changes in demand at other locks that the ACoE turned over.
- Our analysis of demand for WFL services found strong demand from local recreational and tourism groups and participants.
- Facilitating recreational and tourism access up and downstream on the Willamette River would help support economic development goals of jurisdictions along the river.
- The locks provide a unique draw for visitors interested in the region's historical and cultural attributes.
- Developing the former Blue Heron Paper Company site across the river will draw more attention to



Willamette Falls and WFL, and increase the public's awareness of the area's attributes.<sup>68</sup>

### User Fees and Other Funding

- Any entity that takes over ownership and operation of the WFL will need a dedicated funding source. (See Appendix.)
- User fees will cover but a small portion of the costs to operate and maintain the locks. This situation is common to the other locks that the ACoE turned over. (See Appendix.)
- Oregon Statutes include a range of funding mechanisms that jurisdictions throughout the state use to support the services they provide. These funding mechanisms could potentially be used to support locks operations. (See Appendix.)

- Our illustrative operating scenarios based on funding from a transportation district found that supporting the locks would require very small increases in tax assessments per \$1,000 of assessed value. For example, our six-month operating scenario resulted in a tax per \$1,000 of assessed value of between 0.3 and 0.4 cents. (See Appendix.)
- Our operating scenarios also found that the net tax increase to tax payers would also be very small. For our six-month operating scenario and a property with \$300,000 in assessed value, the tax increase would be approximately \$1.20 per year. (See Appendix.)

<sup>68</sup>Willamette Falls Legacy Project. <http://www.rediscoverthefalls.com/>.



## Commercial Demand

Even though the locks were originally built to satisfy commercial demand, we would expect only modest demand for lockages from commercial users at this time.

- A few commercial operators that currently transport commodities, mostly aggregate, up and down the Willamette River would take advantage of the locks reopening.
- We would also expect one-off demands from other users with special transportation needs. For example, moving ferries or other vessels to and from Portland for repairs. Clackamas County Director of Transportation and Development Cam Gilmour, stated that moving the Canby Ferry through the WFL in 2013 for repairs and biannual Coast Guard inspection saved Clackamas County \$500,000.<sup>69</sup>
- We would not expect significant commercial demand until the locks are operating on a regular schedule for a period of time. Another necessary condition is that commercial operators have confidence that the locks will be operating in the future. Without this assurance, it is unlikely that potential commercial users would make the necessary investments in barges and related infrastructure.
- The amount of commodities that currently move through Oregon includes commodities that could potentially move by barge through the WFL. See Figures A-4 and A-5 in the Appendix for information on these commodities.

Other factors that could contribute to increasing demand from commercial users for locks services include:

- The region's projected population increase and resulting demands on transportation infrastructure.
- Congestion on the region's roads. A recent study ranked Portland as the ninth worst for traffic congestion in the US.<sup>70</sup>
- Congestion on the region's rail system. This could become especially problematic if coal exports increase in the future.<sup>71</sup>
- A report prepared for the Oregon Business Council and Portland Business Alliance described the consequences of congested road and rail systems to the region's economy:

"The state's economy is transportation-dependent. Despite Oregon's excellent rail, marine, highway and air connections to national and international destinations, projected growth in freight and general traffic cannot be accommodated on the current system. Increasing congestion and travel time delay—even with currently planned improvement—will significantly impact the state's ability to maintain and grow business, as well as our quality of life."<sup>72</sup>

- When the Cascadia earthquake hits, the Willamette River could revert to a major transportation route in the likely event of downed bridges and other disruptions to road and rail systems. To the extent that the locks function after the event, they would be critical to moving goods and people up and down the river.

## Transfer and Related Issues

Transferring ownership of the locks from the ACoE to another entity will require both parties and interested stakeholders addressing a number of issues. The report by CEDER, et al., describes these issues for the WFL, which include clearing property titles, addressing existing easements, and other real estate matters.<sup>73</sup> The WFL status on the National Register of Historic Places means that the ACoE must fulfill certain requirements that protect and preserve historic resources as part of changing ownership. For example, in this instance, Section 110 of the National Historic Preservation Act(Act) requires that the ACoE preserve and maintain the WFL, or pay other entities to preserve and maintain them.<sup>74</sup> On this topic, CEDER, et al., compared the preservation needs of the WFL with three locks transferred from ACoE to other entities and found that the needs specific to the WFL, "... are both resolvable and of smaller scope."<sup>75</sup> As we noted in *River Locks Transfer*, the ACoE, the State of Wisconsin, and the Federal government entered into a joint funding agreement that established a trust of \$22.8 million for the transfer, rehabilitation, and operation and maintenance of the Lower Fox River locks.

As we understand it, the ACoE must also fulfill requirements under Section 106 of the Act. This section requires that the ACoE mitigate for any adverse effects on the WFL caused by their decision to move the locks to non-operational status. ACoE did not complete a Section 106 assessment prior to shutting down the locks due to their determination

<sup>69</sup>Wilsonville Area Chamber of Commerce, 2012, Canby Ferry Closed for Retrofitting. December 12. <http://business.wilsonvillechamber.com/news/details/canby-ferry-closed-for-retrofitting>.

<sup>70</sup>Loos, Mary. 2014, "Study Ranks Portland 9th Worst for Traffic Congestion." KATU.com. June 5. <http://www.katu.com/news/local/New-study-ranks-Portland-for-traffic-congestion-261860261.html>.

<sup>71</sup>Stewart, Bonnie. 2013. Northwest Railroads Will Need Improvements to Handle Coal Trains. OBP.org. April 1. <http://earthfix.opb.org/communities/article/northwest-railroads-already-congested/>.

<sup>72</sup>Economic Development Research Group. 2007. The Cost of Highway Limitation and Traffic Delay to Oregon's Economy. Executive Summary. March. Prepared for Oregon Business Council and Portland Business Alliance. Page 1.

<sup>73</sup>See the CEDER et al., 2008, report for the complete list of transfer issues.

<sup>74</sup>National Historic Preservation Act of 1966, Public Law 102-575, <http://www.nps.gov/history/local-law/nhpa1966.htm>.

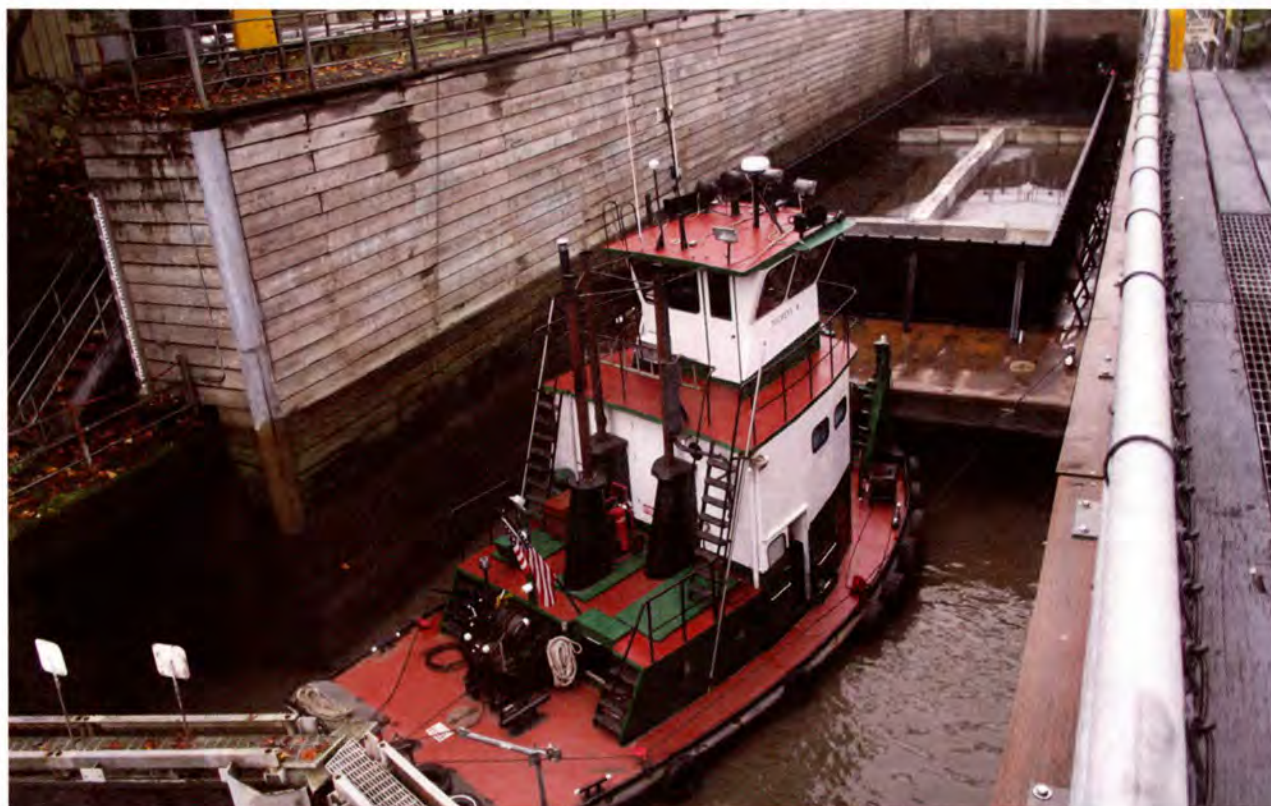
<sup>75</sup>CEDER et al., 2008, page 27.



of safety concerns of continued operations.<sup>76</sup> In a May 15, 2014 letter to the Oregon State Historic Preservation Office, the ACoE stated that, “We have...determined that the closure of the locks to vessel traffic has had—and may continue to have—adverse effects on the character defining features and qualities that made the locks eligible for listing in the National Register.”<sup>77</sup> Future meetings between ACoE staff and stakeholders will address the next steps regarding mitigating the adverse effects on the WFL caused by the ACoE closure.<sup>78</sup>

Even though our report focuses on WFL operations after transfer from the ACoE to another entity, a number of transfer and related issues could affect the economic potential of the locks and so we mention them here.

- The recent determination under Section 106 of the National Historic Preservation Act (Act) that the ACoE's shutting down the locks caused adverse effects on the locks' historical attributes is significant. This means the ACoE must take actions to mitigate the adverse effects. In this case, those actions could include addressing some of the locks' deferred maintenance issues.
- As evidenced by the Oregon Solutions projects, and current efforts by the Willamette Falls Heritage Foundation and other local groups, there is significant support among the region's population, government entities, non-profit interest groups, and area business to reopen the locks.



- The ACoE has contributed funding to the repair and maintenance of locks it transferred to other entities. As we note in *River Locks Transfer*, the ACoE, the State of Wisconsin, and the Federal government entered into a joint funding agreement that established a trust of \$22.8 million for the transfer, rehabilitation, and operation and maintenance of the Lower Fox River locks. A comparable funding agreement may be feasible for the WFL.
- In addition to transferring ownership and operations of the locks, stakeholders are interested

in exploring the option of expanding the ACoE's authorization for the WFL to include recreational use. This could increase the likelihood of additional ACoE funding for the locks.

- Local stakeholders are also considering how the recently passed Water Resources Reform Development Act, which allows non-profits to provide funding to ACoE in support of locks operations, could be used to help fund WFL operations.

<sup>76</sup>Willamette Falls Heritage Foundation, 2013, Winter Newsletter, December. [www.willamettefalls.org](http://www.willamettefalls.org); Willamette Falls Heritage Foundation, 2014, Spring Newsletter, March. [www.willamettefalls.org](http://www.willamettefalls.org).

<sup>77</sup>Casey, J. 2014. Letter to Mr. Roger Roper, Deputy State Historic Preservation Officer, Oregon Parks and Recreation Department, State Historic Preservation Office, RE: Continued Section 106 Consultation Regarding the Caretaker Status of the Willamette Falls Locks, Oregon, City, Clackamas County, Oregon. May 15, p. 1.

<sup>78</sup>Casey, 2014.



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## Appendix: Operating Scenarios and Supplementary Tables

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## OPERATING SCENARIOS

Our economic analysis of operating scenarios for the WFL begins after ownership of the locks has transferred to another entity. That is, our analysis focuses on use of the locks and associated costs and revenues after necessary preservation repairs and maintenance issues have been dealt with and transfer of ownership has occurred. We developed the details of the three operating scenarios based on past studies of the locks, historical ACoE records of lock usage and operations and maintenance costs, and our recent interviews.<sup>79</sup> The ACoE records show that through the mid to late 1990s the locks operated year round. Between 1999 and 2004, the ACoE operated the locks six months per year. After 2005, operations dropped to summer months only.

Our scenarios reverse the ACoE's ramping down lock operations over the years.<sup>80</sup> Our first scenario assumes three months of operations during the summer. Our second scenario assumes six months of operations. Our third scenario assumes year-round operations. We anticipate that demand for the locks will come primarily from recreational and tourism users. As we describe in the *Locks and River Users* section, it is unlikely that commercial haulers, e.g., barge operators, would use the locks to any significant degree until they are operating consistently on a regular basis. This is a likely necessary condition before commercial users would make investments and expand the transportation modes they use to include barging in addition to road and rail modes.

In each of our scenarios, we describe a high and low estimated number of lockages, operating costs, user fees, and tax revenues that support locks operations. We estimated the number of lockages based on available ACoE records of lockages over the years.<sup>81</sup> We estimated operations and maintenance costs based on the costs reported by BST Associates in their 2005 analysis, which was the average cost from 2002 to 2004.<sup>82</sup> During those years, the WFL operated for 6-months annually. We recalculated this average to account for inflation.<sup>83</sup> This amount was halved for the 3-month operating scenario, and doubled for the 12-month operating scenario. We also included a contingency factor of from 0 to 30 percent to account for the uncertainty of projecting future operating costs.

Our model also includes two other costs specific to operating and maintaining the WFL. Given the fact that the WFL were constructed over 140 years ago, and the findings of the CEDER et al. report regarding the recommendations for maintaining structures of that age, our model includes options of adding costs for deferred maintenance and a set-aside for future capital upgrades. Our annual deferred maintenance amounts in the model range from \$0 to \$225,000, and the annual capital set-aside ranges from \$0 to \$150,000. Our use of the term, operating costs, includes costs for operations and maintenance, deferred maintenance and set-aside capital amounts.

In addition to incurring costs from operating the locks, the new entity that takes over the WFL could generate revenues through user fees. Our model includes a range of user fees per lockage from \$0 to \$15. We know, however, based on our review of data from the other locks that the ACoE turned over, and from our analysis of the WFL, that user fees will cover only a small portion of operating costs, and possibly not enough to offset the cost of administering the fee. We therefore considered other possible funding sources to make up the shortfall.

Aside from single-owner options such as the State of Oregon leasing from the ACoE, Oregon statute includes provisions for a number of possible funding models that could support the WFL operations. We considered four possibilities and included the one we felt was most likely in our model. The first is creating a public corporation.<sup>84</sup> A public corporation can provide services, generate operating funds via taxes (though not through property taxes), is self-governed, but must be approved by the State legislature. Examples include the Port of Portland, TriMet and Oregon Health Sciences University.

The next possibility we considered was creating a new transportation agency via intergovernmental agreement, as described under Oregon Statute 190.<sup>85</sup> Government parties to the agreement must decide on the operating and financing details of the agreement and the services provided. Funding cannot come from property taxes. Establishing a new agency would include additional administrative fees, staff, and offices.

<sup>79</sup>US Army Corps of Engineers, Corps of Engineers Financial Management System (CEFMS), <http://www.usace.army.mil/FinanceCenter.aspx>.

<sup>80</sup>Contact the Willamette Falls Heritage Foundation, 503-650-9570, for a copy of the spreadsheet model that accompanies this report.

<sup>81</sup>Army Corps of Engineers, Locks Performance Monitoring System (LPMS), <http://www.ndc.iwr.usace.army.mil/lpms/lpms.htm>.

<sup>82</sup>BST Associates, 2005.

<sup>83</sup>Using the US Producer Price Index.

<sup>84</sup>[www.oregonlaws.org](http://www.oregonlaws.org).

<sup>85</sup>2011 ORS § 190.010 Authority of local governments to make intergovernmental agreement, <http://www.oregonlaws.org/ors/190.010>.



The third option is creating a service district, as described in Oregon Statute 451.<sup>86</sup> Creating such a district would require negotiations among entities that would form the boundary of the district. Examples of services districts formed in Oregon include districts for water and sewer services, parks and recreation, solid waste disposal, and emergency medical services, e.g., ambulance. Typically, the district services directly benefit the users who pay district fees.

The fourth option, and the one we include in our model, is forming a transportation district as described in Oregon Statute 391.550.<sup>87</sup> Currently, eleven transportation districts operate in Oregon including, TriMet, South Clackamas Transportation District, Salem Area Mass Transit District, and Land Transit District.<sup>88</sup> A district can be formed across jurisdictional boundaries of interested constituents. We included the transportation district option in our analysis because they are prevalent across the state, the process for establishing a district is relatively well known, and transportation districts can be funded by property taxes.

To help illustrate the amounts of revenues that a WFL-specific transportation district could generate, we developed transportation districts using jurisdictional boundaries of four entities. We stress that these transportation districts are illustrative only. We use these jurisdictional boundaries for convenience because assessed values for property taxes are available for these boundaries, and because they illustrate districts covering a range of geographies, from large to small. We use jurisdictional boundaries for the Port of Portland, Metro, TriMet, and Clackamas County in our model.

**Figure A-1: Illustrative Model Run #1**

Operating Scenario: 3 Months (300 to 600 lockages)  
 Transportation District: Clackamas County Boundary  
 Deferred Maintenance: \$25,000

Set-Asides For Future Capital Improvements: \$50,000  
 User Fees: \$5 per lockage

Costs	Low Estimate	High Estimate
Operations & Maintenance	\$156,900	\$156,900
O&M Contingency (10%)	0	15,690
Deferred Maintenance	25,000	25,000
Set-Asides For Capital Improvements	50,000	50,000
Total	\$231,900	\$247,590
Revenues	Low Estimate	High Estimate
From User Fees	\$1,500	\$3,000
From Clackamas County Boundary	231,900	246,090
Total	\$233,400	\$249,090
Tax Impacts		
Tax per \$1,000 Assessed Value	0.81¢	0.89¢
Net Tax Increase	0.04%	0.04%

Our model calculates tax revenues generated from each jurisdictional boundary that would be needed to make up the revenue shortfall between user fees and operating costs. Our model calculates total revenues generated from a transportation district, the tax amount per \$1,000 of assessed value, and the percent net tax increase attributed to the district-specific tax amounts.

As described above, our model includes a number of assumptions and choices that affect the number of lockages, operating costs, and revenues. We reproduce results from three illustrative model runs using different assumptions and choices.

Model Run #1 assumes three months of operations, a 10% contingency factor for operating costs, \$25,000 a year in deferred maintenance, \$50,000 per year set-aside for future capital improvements, a \$5 per lockage user fee, and a transportation district equivalent to the Clackamas County boundary.

<sup>86</sup>2011 ORS § 451.010 Facilities and services provided by service districts, <http://www.oregonlaws.org/ors/451.010>.

<sup>87</sup>2011 ORS § 391.550 Powers of Mass Transportation Financing Authority, <http://www.oregonlaws.org/ors/391.550>.

<sup>88</sup>Oregon Blue Book, Transit Districts, <http://bluebook.state.or.us/local/other/other05.htm#r>. <sup>89</sup>Metro, Adopted Budget FY 2013-14. [www.oregonmetro.gov](http://www.oregonmetro.gov).



**Figure A-2: Illustrative Model Run #2**

Operating Scenario: 6 Months (1,000 to 1,500 lockages)

Set-Asides For Future Capital Improvements: \$100,000

Transportation District: Metro Region Boundary

User Fees: \$8 per lockage

Deferred Maintenance: \$50,000

Costs	Low Estimate	High Estimate
Operations & Maintenance	\$313,800	\$313,800
O&M Contingency (10%)	0	31,380
Deferred Maintenance	50,000	50,000
Set-Asides For Capital Improvements	100,000	100,000
Total	\$463,800	\$495,180
Revenues	Low Estimate	High Estimate
From User Fees	\$8,000	\$12,000
From Metro Region Boundary	463,800	487,180
Total	\$471,800	\$499,180
Tax Impacts		
Tax per \$1,000 Assessed Value	0.34¢	0.37¢
Net Tax Increase	0.02%	0.02%

Model Run #2 assumes six months of operations, a 10% contingency factor for operating costs, \$50,000 a year in deferred maintenance, \$100,000 per year set-aside for future capital improvements, a \$8 per lockage user fee, and a transportation district equivalent to the Metro boundary.

**Figure A-3: Illustrative Model Run #3**

Operating Scenario: 12 Months (1,700 to 2,500 lockages)

Set-Asides For Future Capital Improvements: \$150,000

Transportation District: Port of Portland District Boundary

User Fees: \$0 per lockage

Deferred Maintenance: \$100,000

Costs	Low Estimate	High Estimate
Operations & Maintenance	\$627,600	\$627,600
O&M Contingency (10%)	0	62,760
Deferred Maintenance	100,000	100,000
Set-Asides For Capital Improvements	150,000	150,000
Total	\$877,600	\$940,360
Revenues	Low Estimate	High Estimate
From User Fees	\$0	\$0
From Port of Portland District Boundary	877,600	940,360
Total	\$877,600	\$940,360
Tax Impacts		
Tax per \$1,000 Assessed Value	0.58¢	0.64¢
Net Tax Increase	0.03%	0.03%

Model Run #3 assumes twelve months of operations, a 10% contingency factor for operating costs, \$100,000 a year in deferred maintenance, \$150,000 per year set-aside for future capital improvements, a \$0 per lockage user fee, and a transportation district equivalent to the Port of Portland jurisdictional boundary.



Our three illustrative model runs show results across a range of operating possibilities for the WFL. Despite this range, we can draw a number of conclusions about the outcomes of likely future operations of the WFL.

- User fees will cover but a small portion of operating costs. If actual lockages were greater than the numbers in our operating scenarios, it is unlikely that the impacts on user fees would significantly reduce the demand for supplemental funding from other sources, e.g., a transportation district.
- The revenues provided by a transportation district based on the boundaries in our analysis would result in less than a tenth of a percent increase in taxes paid by property owners within the district boundaries.
- The highest operating costs from our illustrative model run #3, in which we assume 12 months of operations, would represent a very small portion of current budgets for area jurisdictions. For example, Metro's fiscal year (FY) 2013-14 total budget is \$490 million. The \$940 thousand WFL operating costs for 12 months works out to less than 0.2% of Metro's budget.<sup>89</sup> TriMet's adopted budget for FY 2014-15 is comparable to Metro's, at \$494 million,<sup>90</sup> as is the Port of Portland's adopted budget for FY 2014-15, of \$489 million.<sup>91</sup> Clackamas County's FY 2014-15 adopted budget is \$606 million.<sup>92</sup> Costs of operating WFL for 12 months represents 0.16% of the County's budget.

Readers interested in running alternative operating scenarios to those reported above can select from a menu of values for model inputs and the model will generate new results.<sup>93</sup>



<sup>89</sup> Metro. Adopted Budget FY 2013-14. [www.oregonmetro.gov](http://www.oregonmetro.gov)

<sup>90</sup> Tri-County Metropolitan Transportation District of Oregon. Adopted Budget 2014-2015. [Trimet.org/budget/](http://Trimet.org/budget/).

<sup>91</sup> Port of Portland, 2014-15 Adopted Budget, [www.portofportland.com/strategicplanbudget.aspx](http://www.portofportland.com/strategicplanbudget.aspx).

<sup>92</sup> Clackamas County, Amended FY 2013-14 vs. Adopted FY 2014-15 Budgets. [www.clackamas.us/budget/documents/budportala.pdf](http://www.clackamas.us/budget/documents/budportala.pdf).

<sup>93</sup> Contact the Willamette Falls Heritage Foundation, 503-650-9570, for a copy of the spreadsheet model that accompanies this report.



## SUPPLEMENTAL TABLES

Figure A-4: Shipments Originating in Oregon, by Transportation Mode

Mode type	Value (millions)	Tons (thousands)	Ton-miles (millions)
Single modes			
Truck	\$101,093	149,917	27,962
Rail	3,353	7,204	9,889
Water	1,859	8,454	379
Air*	5,262	13	21
Pipeline	23	89	1
Subtotal, single modes	\$111,590	165,677	38,252
Multiple modes	28,450	8,312	11,083
Other and unknown modes	6,846	10,749	514
Total	\$146,886	184,738	49,849

\*Includes truck & air multi-mode

Source: 2007 Commodity Flow Survey, U.S. Bureau of Transportation Statistics.



Figure A-5: Shipments Originating in Oregon, by Commodity

Commodity type	Value (millions)	Tons (thousands)	Ton-miles (millions)
Cereal grains (includes seed)	\$3,262	14,541	34
Agricultural products (excludes animal feed, cereal grains, and forage products)	5,340	3,190	3,795
Animal feed, eggs, honey, and other products of animal origin	ND	ND	279
Meat, poultry, fish, seafood, and their preparations	1,864	561	151
Milled grain products and preparations and bakery products	2,009	1,533	571
Other prepared foodstuffs and fats and oils	8,112	6,344	5,262
Alcoholic beverages	1,474	1,130	149
Tobacco products	137	3	ND
Monumental or building stone	ND	ND	60
Natural sands	ND	2,147	63
Gravel and crushed stone (excludes dolomite and slate)	404	47,978	1,148
Other nonmetallic minerals, nec	111	1,442	309
Metallic ores and concentrates	ND	8	ND
Gasoline and aviation turbine fuel	4,614	7,076	228
Fuel oils	2,580	4,292	215
Other coal and petroleum products, nec	1,938	5,468	368
Basic chemicals	765	617	146
Pharmaceutical products	ND	ND	2
Fertilizers	358	892	209
Chemical products and preparations, nec	3,141	1,002	508
Plastics and rubber	3,828	1,234	657
Logs and other wood in the rough	ND	357	ND
Wood products	11,076	23,169	19,530
Pulp, newsprint, paper, and paperboard	2,754	4,251	3,503
Paper or paperboard articles	1,985	1,668	442
Printed products	1,511	493	348
Textiles, leather, and articles of textiles or leather	5,666	135	127
Nonmetallic mineral products	5,023	ND	ND
Base metal in primary or semifinished forms and in finished basic shapes	4,439	2,791	950
Articles of base metal	4,434	980	478
Machinery	6,270	485	441
Electronic and other electrical equipment and components and office equipment	21,208	262	104
Motorized and other vehicles (including parts)	6,958	835	618
Transportation equipment, nec	993	19	23
Precision instruments and apparatus	8,441	51	103
Furniture, mattresses and mattress supports, lamps, lighting fittings, and illuminated signs	1,227	152	98
Miscellaneous manufactured products	5,760	806	584
Waste and scrap	1,258	4,363	320
Mixed freight	14,834	4,926	1,030
Total	\$146,886	184,738	49,849

ND = Not disclosed.

Source: 2007 Commodity Flow Survey, U.S. Bureau of Transportation Statistics.



This study was conducted and produced by ECONorthwest for the Willamette Falls Heritage Foundation, Inc. and funded through the generosity of the following entities:

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City of Oregon City

City of West Linn

City of Wilsonville

Clackamas County

J & A Fuel

METRO

National Trust for Historic Preservation

Portland General Electric Company

The Kinsman Foundation

The Portland Spirit Cruises

Willamette Falls Heritage Area Coalition

Wilsonville Concrete Products





# Willamette Falls Navigation Canal and Locks

A NATIONAL TREASURE IN WEST LINN, OREGON

## National Treasures at a Glance

National Treasures are beloved places that reveal the richness and diversity of our shared American story. These irreplaceable historic places, landscapes, and neighborhoods reflect our past and have the potential to enrich our future, but they are endangered as never before.

That is why the National Trust for Historic Preservation has launched coordinated campaigns to help save them, taking direct action that leverages our significant preservation, advocacy, legal, marketing, and fundraising expertise.

America's National Treasures:

- Represent a growing portfolio of historic places in imminent danger or facing significant threat
- Include diverse places in communities throughout the United States
- Retain their essential integrity and have made a significant contribution to our nation's story
- Catalyze local supporters and provide solutions that can be replicated across America

The National Trust for Historic Preservation, a privately-funded non-profit organization, works to save America's historic places.

## History of the Willamette Falls Canal and Locks

Located at the end of the historic Oregon Trail, this National Treasure is an important commercial water navigation link for the region, part of a popular recreation corridor, and an integral piece of the pioneering history of the Northwest.

Willamette Falls Canal and Locks opened in 1873 to connect the upper and lower Willamette River and break the

monopoly on river transportation. Based upon a gate design by Leonardo da Vinci, the canal and locks bypassing the falls retain high integrity through original routing, design, and materials. Massive wood-encased steel gates allow the filling and emptying of the chambers through a system of shutter-like wickets in the gate leaves, creating a roaring waterfall during lockage, unlike the subterranean fill of modern locks. To get around the 42-foot cascade of Willamette Falls, each of the four 210-foot-long by 40-foot-wide chambers lifts or lowers boats between 10 and 15 feet. This resource is the oldest continuously-operating, multiple-lift bypass canal in the United States.

This rare example of a bypass canal was a workhorse for 120 years on the early highway that was the Willamette River. Up until the past decade, the locks were well-managed and maintained by the Army Corps of Engineers, who took ownership in 1915.

## Threat

This threat came suddenly in November 2011, when, after investing \$2 million in repairs to the historic facility, the Corps moved the canal and locks to "non-operational" status, closing them indefinitely and eliminating opportunities for commerce, recreation, and tourism. This status change also eliminates any future funding opportunities.



Aerial view of Willamette Falls and surrounding industrial complexes, with the Canal and Locks running along the left bank of the river. PHOTO COURTESY OF BOB HEIMS/US ARMY CORPS OF ENGINEERS, WIKIMEDIA

TOP PHOTO COURTESY OF BRIAN ROCKWELL



**National Trust for  
Historic Preservation**  
*Save the past. Enrich the future.™*



## Plan of Action

With our extensive connections and technical expertise, the Trust is uniquely positioned to work with local partners and the Army Corps to develop a solution that preserves this National Treasure for future generations to experience and enjoy.

We will consider this National Treasure saved once a sustainable long-term plan is created to put Willamette Falls Canal and Locks back to work. Our success will set a precedent for other communities working with the Army Corps, save tax-payer dollars, and avoid the closure of a truly extraordinary place.

## Learn More and Take Action

Visit <http://savingplaces.org/treasures/willamette-falls-navigation-canal-and-locks> or contact Peggy Sigler, Oregon Field Officer, by email at [psigler@savingplaces.org](mailto:psigler@savingplaces.org) or call 503.333.3900.



Crewing sculls seen from the gate at Lock Fest 2007. PHOTO COURTESY OF SANDY CARTER

## National Treasures

**Ancestral Places of Southeast Utah:** Cultural resources from numerous prehistoric and historic peoples

**Annapolis, MD:** National Historic Landmark threatened by climate change and coastal flooding

**The Astrodome, TX:** A marvel of space-age design and America's first domed, air-conditioned, indoor stadium

**Battle Mountain Sanitarium, Hot Springs, SD:** National Home for Disabled Volunteer Soldiers, opened 1907

**Bridges of Yosemite Valley, CA:** Rustic stone bridges crossing the Merced River

**Charleston, SC:** One of the most beloved, best preserved U.S. cities

**Cooper-Molera Adobe, Monterey, CA:** 3-acre property preserving life in pre-statehood California

**Courthouses of Texas:** Architecturally significant civic structures statewide

**Delta Queen, Chattanooga, TN:** America's only surviving historic overnight passenger steamboat

**Ellis Island, NY, NJ:** Long-overlooked hospital buildings on the island's southern side

**Fort Monroe, Hampton, VA:** Birthplace of self-emancipation for enslaved African Americans

**Hinchliffe Stadium, Paterson, NJ:** Sprawling Art Deco stadium hosted Negro League baseball

**Historic Post Office Buildings:** Endangered by U.S.P.S. cost cutting; no clear review process in place

**Hudson River Palisades, Englewood Cliffs, NJ:** Natural basalt cliffs along the Eastern shore of the Hudson

**Joe Frazier's Gym, Philadelphia, PA:** Training center and gymnasium owned by heavyweight champion

**Lyndhurst, NY:** National Trust Historic Site, one of the nation's finest Gothic Revival mansions

**Malcolm X-Ella Little-Collins House, Boston, MA:** Boyhood home of the human rights activist

**Manhattan Project Sites, NM, TN, WA:** Historic sites integral to development of the atom bomb

**Miami Marine Stadium, Miami, FL:** Dramatic Modern stadium completed 1963

**Milwaukee VA Soldiers Home, WI:** 90-acre veterans' residence opened in 1867

**Mississippi Delta National Heritage Area:** 18-county region rich in history and culture

**Mount Taylor, NM:** 12,000-foot pilgrimage site for Native Americans

**New York State Pavilion, New York, NY:** Philip Johnson's "Tent of Tomorrow" from the 1964-1965 World's Fair

**Panama Hotel, WA:** 1910 hotel and museum recounting the internment of Japanese Americans during WWII

**Pawtucket Dam, Lowell, MA:** Rare 19th century hydraulic dam spanning the Merrimack River

**Pond Farm, Guerneville, CA:** Studio and home of noted potter and German refugee Marguerite Wildenhain

**Princeton Battlefield, NJ:** Site of George Washington's 1777 victory over British troops

**Pullman Historic District, Chicago, IL:** Community designed by railroad magnate for factory employees

**Rosenwald Schools, Southern US:** Community schools built for African-American students, 1913-1932

**Sweet Auburn Historic District, Atlanta, GA:** Once-thriving commercial area in historically African-American neighborhood

**Theodore Roosevelt's Elkhorn Ranch, ND:** Presidential historic landscape in Theodore Roosevelt National Park

**Union Station, Washington, DC:** Historic Beaux Arts gateway to the nation's capital

**Villa Lewaro - Madam CJ Walker Estate, Irvington, NY:** Home of cosmetics pioneer and self-made millionaire

**Waikiki Natatorium, Honolulu, HI:** Living memorial to Hawaiian WWI soldiers on the shores of Waikiki Beach

**Washington National Cathedral, DC:** Sixth largest cathedral in the world, severely damaged by 2011 earthquake

**Whitney Studio, New York, NY:** Art studio of sculptor and arts patron Gertrude Vanderbilt Whitney

**Willamette Falls Navigation Canal and Locks, West Linn, OR:** 19th-century bypass canal and lock

**Woodlawn/Pope-Leighey, Alexandria, VA:** National Trust Historic Site with 1805 Federal mansion and 1940 Frank Lloyd Wright house



**National Trust for  
Historic Preservation™**

The Watergate Office Building  
2600 Virginia Avenue NW Suite 1000  
Washington, DC 20037

[www.PreservationNation.org](http://www.PreservationNation.org)



# Willamette Falls Locks deemed non-operational, could put jobs at risk



By **Everton Bailey Jr., The Oregonian**

on December 05, 2011 at 9:00 PM, updated December 21, 2011 at 2:45 PM



Everton Bailey Jr./The Oregonian

Dave Bernert, owner of Wilsonville Concrete Products and Marine Industrial Construction, says the recent abrupt closure of the Willamette Falls Locks leaves him with two dredges, three tugboats and four barges stranded upstream.

**WEST LINN --** The owner of two Wilsonville businesses expects to cut 10-15 jobs after the **U.S. Army Corps of Engineers** abruptly closed the Willamette Falls Locks this month, stranding some of his equipment upstream.

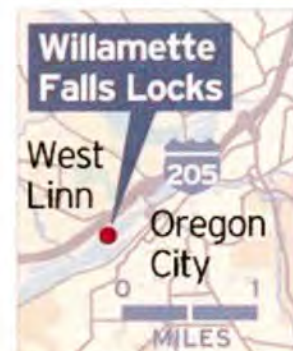
The 138-year-old locks provide passage on the Willamette River above the Willamette Falls in Oregon City and in recent years received more than \$2 million in federal funds for rehabilitation intended to keep them operating.

Dave Bernert, owner of Wilsonville Concrete Products and Marine Industrial Construction, said the indefinite closure of the locks means he can't retrieve two dredges, three tugboats and four barges from the upper portion of the river. It also cuts him off from his moorage site in Wilsonville, leaving him to look for alternatives downstream.

The idled equipment also means he'll need fewer workers for his marine business. About 75 people work full time for his two companies. Bernert said he hopes to retrain the laid-off workers and fold them into his concrete business.

"It's a big concern," he said. "We're going to do our best to make sure we don't have to let anybody go. But if we can't work jobs with 20 percent of the equipment, we don't need the people."

The Corps announced last week that the locks was in "non-operational" status and its gudgeon anchors, which connect the gates to the lock wall, have corroded so severely that a



THE OREGONIAN



shutdown was needed to prevent putting passing vessels at jeopardy or risking further infrastructure damage. Scott Clemans, a spokesman for the Corps' Portland division, said the locks had been open one day a month primarily for maintenance, but anchors for three of the locks' seven gates are near failure.

"The level of risk of something bad happening has reached the point where we cannot in good conscience continue operating those locks for any reason," he said. "At this point, given funding constraints that we've been operating under, we just don't know if or when we're going to be able to make any of the repairs needed to return the locks to operational status."

The Willamette Falls Locks opened in 1873 and were purchased by the Corps in 1915. After a federal infusion to rehabilitate the facility in 2009, U.S. Rep. Kurt Schrader, D-Ore, **touted the locks' potential area for promoting job growth.**

### **138 years of history**

Willamette Falls Locks: More than 3,500 feet long, with seven gates and four chambers that raise or lower vessels around Willamette Falls.

Opening day: Jan. 1, 1873

Original cost: \$600,000

Each gate weighs: Up to 68,000 pounds

Billed as: The oldest continually operating multichambered canal and navigation lock system in the United States.

"There is a big overwhelming interest on the part of Congress to help support local communities' economic development," he said. "And this is an opportunity for huge development."

Staff said Schrader was unavailable Monday for comment.

The locks have been opened on a limited basis in recent years due to maintenance and funding issues.

Clemans said the Corps received \$75,000 from Congress in 2008 and the agency rerouted \$436,000 from other funds to begin Hydraulic Steel Structure inspection to rehabilitate the gates. A year later, the Corps was allocated \$2.1 million to conduct the inspection. Clemans said the work was completed at the end of 2009.

The Corps received \$230,000 to **open the locks for commercial and recreational users** from May to September in 2010. Congress also allocated \$595,000 that year to conduct a comprehensive evaluation of the condition of the locks.

The report, completed this year, identified the anchors as a source of concern. Clemans said it wasn't a surprise.

"We've known for years that the locks has a laundry list of issues," said Clemans. "We've spent the money that Congress asked us to spend to do the things Congress has asked us to do. But that's only a fraction of what's needed to return the locks to full operational ability."





U.S. Army Corps of Engineers  
A sternwheeler navigates the Willamette Falls Locks in 1888. Steamboats continued to use locks to move passengers and freight into the 1930s.

The proposed 2011 budget for the Willamette Falls Locks was \$92,000, but only for maintenance. Clemans said the Corps received a budget late in the fiscal year, causing them to mostly operate at the 2010 level of \$84,000.

"As much as we understand, appreciate and want to honor the local community's desire to see those locks operational, we just really don't foresee getting the type of funding to do that at any point in the future," Clemans said.

Bernert's family has operated tugboats and marine construction businesses that have been moving materials through the locks since the 1880s. He said he's reached out to the Corps to see if his businesses can help get the locks reopened.

"We're willing to help out in any way that we can," he said. "But it's really going to come down to the level of funds and desire willing to be put forth."



## RESOLUTION NO. 2496

### A RESOLUTION OF THE CITY OF WILSONVILLE SUPPORTING THE REOPENING OF THE WILLAMETTE FALLS LOCKS

WHEREAS, On January 1, 1873, the Willamette Falls Locks opened to allow passage around the waterfall at Oregon City thereby providing access to a one river system; and

WHEREAS, in 1915, the U.S. Army Corps of Engineers purchased the Locks from the private operator thereby ensuring free public passage through the Locks; and

WHEREAS, in 1974, the Willamette Falls Locks were listed on the National Register of Historic Places; it was the first significant facility built to improve navigation on the Columbia-Snake River Inland Waterway system and through 1939, the most important; and

WHEREAS, in 1991, the Willamette Falls Locks was designated as a State Historic Civil Engineering Landmark by the American Society of Civil Engineers; and

WHEREAS, in 2006, Governor Kulongoski designated the Willamette Falls Locks as an Oregon Solutions project and formed the Willamette Falls Locks Oregon Solutions Task Force, which continues today as the One Willamette River Coalition coordinated by the Willamette Falls Heritage Foundation, to preserve the Locks and support its continued operation; and

WHEREAS, on October 23, 2008, the Center for Economic Development Education and Research released a report under contract to the Willamette Falls Heritage Foundation, entitled *The Willamette Falls Locks: A Case Study Analysis of Potential Transfer Issues*; and

WHEREAS, from 2006 through 2010, funding provided to the Corps from the Oregon Department of Transportation, Clackamas County and the U.S. Congress allowed for seasonal operations and selected structural upgrades, including \$2.2 million in funds from the American Recovery and Reinvestment Act of 2009 (PL 111-5); and

WHEREAS, in November, 2011, the Willamette Falls Locks were placed into "non-operational" status and on short notice were closed to vessel passage based upon an engineering assessment that identified safety concerns of potential failure; and

WHEREAS, closure has placed a severe hardship on commercial, recreational and tribal river users, including Wilsonville-based recreationalists and businesses such as Wilsonville



Concrete, Inc., and Marine Industrial Construction, LLC, which have used the Willamette Falls Locks for 127 years for transporting aggregate, logs and other goods and conducting dredging and towing operations and has 15–30 jobs that could be impacted if the Locks are not reopened on a permanent basis; and

WHEREAS, in March 2012, the National Trust for Historic Preservation declared the Willamette Falls Locks as one of the most threatened National Treasures, thereby providing added technical assistance; and

WHEREAS, in 2012, the Historic Preservation League of Oregon (now Restore Oregon) named the Willamette Falls Locks as one of its 10 “Most Endangered Places”; and

WHEREAS, the Locks are a primary historic asset under applications being prepared for designation of the area at the Willamette Falls as State and National Heritage Areas; and

WHEREAS, on September 23, 2013, the Corps of Engineers gave notice of their intent to initiate a public consultation process under Section 106 of the National Historic Preservation Act to determine whether the closure action has an adverse effect on the historic integrity of the Locks based upon the defining qualities and features that made the Locks eligible for listing on the National Register of Historic Places; and

WHEREAS, on May 15, 2014, the Corps of Engineers released their finding of historic adverse effect under Section 106 of the Historic Preservation Act and announced their intent to proceed with development of an agreement to establish how to best “avoid, minimize or mitigate” the identified adverse effect to the historic character of the Locks; and

WHEREAS, on June 17, 2013, the Wilsonville City Council adopted the *Wilsonville Transportation System Plan 2013*, that states in part:

The City’s policy is to “[m]aintain access to the Willamette River so that the river may be used for transportation purposes in the future. Acquire or improve access to Willamette River for public docking purposes and consider the potential development of a new port or ports.” Chapter 2: The Vision, Policy 25, page 2-8.

“[The] Willamette River Port can be considered to support businesses that ship goods using barges on the Willamette River.” Chapter 3: The Standards, Freight Routes, page 3-8.



“The City of Wilsonville...supports efforts by [the] Corps of Engineers to maintain...the Locks at Oregon City.” Chapter 4: The Needs, Water Needs, page 4-16; and

WHEREAS, on January 6, 2014, the Wilsonville City Council approved \$2,500 in funding support to the Willamette Falls Heritage Foundation for an economic analysis of reopening the Willamette Falls Locks; and

WHEREAS, on May 5, 2014, the Wilsonville City Council adopted the *Wilsonville Tourism Development Strategy* that called for the City to improve recreational access and use of the Willamette River to promote tourism; and

WHEREAS, on September 30, 2014, economics consulting firm ECONorthwest, under contract to the Willamette Falls Heritage Foundation, published the *Willamette Locks Economic Potential Report* providing information on potential operating costs and community benefits of reopening the Locks.

NOW, THEREFORE, THE CITY OF WILSONVILLE RESOLVES AS FOLLOWS:

1. The City of Wilsonville urges the Corps of Engineers to reopen the Willamette Falls Locks to general public commercial, recreational and cultural marine traffic.
2. The City of Wilsonville thanks the Corps of Engineers for working with local stakeholders to assess and mitigate the adverse effects of the closure and urges the Corps of Engineers to expedite the needed repairs and craft a plan for sustainable operations of the Locks.
3. The City of Wilsonville supports recognition of the Willamette Falls Locks in the Regional Transportation Plan and inclusion of the Willamette Falls Locks as a Metro JPACT federal priority.
4. The City of Wilsonville supports creation of a State Task Force to work with the Corps of Engineers to develop a plan for sustainable operations of the Willamette Falls Locks.
5. The City of Wilsonville urges the Oregon Congressional delegation to support the expedited repair and reopening of the Willamette Falls Locks.



ADOPTED by the Wilsonville City Council at a regular meeting on November 3, 2014,  
and filed with the Wilsonville City Recorder this date.

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TIM KNAPP, MAYOR

ATTEST:

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Sandra C. King, City Recorder, MMC

**SUMMARY OF VOTES:**

Mayor Knapp	_____
Councilor Goddard	_____
Councilor Starr	_____
Councilor Fitzgerald	_____
Councilor Stevens	_____



## CITY COUNCIL MEETING STAFF REPORT

<b>Meeting Date:</b>  November 03, 2014	<b>Subject: Resolution No. 2495</b> IGA Amendment with City of Sherwood – Segment 3B Water Transmission Pipeline  <b>Staff Member:</b> Eric Mende, Capital Projects Engineering Manager <b>Department:</b> Engineering
<b>Action Required</b> <input type="checkbox"/> Motion <input type="checkbox"/> Public Hearing Date: <input type="checkbox"/> Ordinance 1 <sup>st</sup> Reading Date: <input type="checkbox"/> Ordinance 2 <sup>nd</sup> Reading Date: <input checked="" type="checkbox"/> <b>Resolution</b> <input type="checkbox"/> Information or Direction <input type="checkbox"/> Information Only <input type="checkbox"/> Council Direction <input checked="" type="checkbox"/> <b>Consent Agenda</b>	<b>Advisory Board/Commission Recommendation</b> <input type="checkbox"/> Approval <input type="checkbox"/> Denial <input type="checkbox"/> None Forwarded <input type="checkbox"/> Not Applicable  <b>Comments:</b>
<b>Staff Recommendation:</b> Approve on Consent	
<b>Recommended Language for Motion:</b> If Not on Consent: I move to approve Resolution 2495.	
<b>PROJECT / ISSUE RELATES TO:</b> <i>[Identify which goal(s), master plans(s) issue relates to.]</i>	
<input type="checkbox"/> Council Goals/Priorities	<input type="checkbox"/> Adopted Master Plan(s)
<input checked="" type="checkbox"/> Not Applicable	

**ISSUE BEFORE COUNCIL:** A substantive amendment to one provision (Section 4.9) of the IGA with the City of Sherwood concerning cost sharing of future environmental mitigation and monitoring costs for the jointly owned water line project.

### EXECUTIVE SUMMARY:

In March 2013, the Cities of Sherwood and Wilsonville approved an Intergovernmental Agreement documenting an ownership, management, and cost sharing arrangement for the Segment 3B Water Transmission Pipeline (Resolution 2402). This project was successfully



completed in May 2014, and cost reconciliation with Sherwood was successfully accomplished in June 2014, with the exception of establishment of a jointly funded sinking fund to pay for future mitigation and monitoring activities.

This sinking fund provision (Section 4.9 of the IGA) established a specific funding value of \$100,000, and a specific time frame of 2 years. Before closeout, both the value and schedule for this provision were determined to be incorrect. This IGA Amendment provides a correction. The revised Section 4.9 incorporates a corrected value of \$11,100/year, or \$55,500 for five years, instead of \$100,000, and incorporates the permit required schedule of five years instead of two years. No other changes to the IGA are being made with this amendment.

**EXPECTED RESULTS:**

Both Sherwood and Wilsonville can reduce their respective budgets for this activity. We expect no change in the administration of this capital line item. Sherwood will pay when we invoice.

**TIMELINE:**

The City of Sherwood will also need to pass the IGA Amendment before it is effective. They have a Resolution on their Council Agenda for mid-November.

**CURRENT YEAR BUDGET IMPACTS:**

The FY 14/15 budget for this CIP (#1126) will be reduced accordingly, including the Sherwood contribution. The work will be completed within the lower budget. Future years will also be budgeted lower.

**FINANCIAL REVIEW / COMMENTS:**

Reviewed by: SCole Date: 10/23/14

*No additional comments.*

**LEGAL REVIEW / COMMENT:**

Reviewed by: MEK\_\_\_\_\_ Date: 10/23/2014\_\_\_\_\_

Resolution approved as to form.

**COMMUNITY INVOLVEMENT PROCESS:** None

**POTENTIAL IMPACTS or BENEFIT TO THE COMMUNITY** (businesses, neighborhoods, protected and other groups):

n/a

**ALTERNATIVES:** n/a

**CITY MANAGER COMMENT:**

**ATTACHMENTS**



## RESOLUTION NO. 2495

**A RESOLUTION OF THE CITY OF WILSONVILLE AUTHORIZING THE CITY MANAGER TO EXECUTE ADDENDUM ONE AMENDING SECTION 4.9 OF THE INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF SHERWOOD AND THE CITY OF WILSONVILLE REGARDING COST, CONSTRUCTION OWNERSHIP, AND OPERATION OF SEGMENT 3B OF A 48-INCH DIAMETER WATER TRANSMISSION LINE FROM THE TERMINUS OF SEGMENT 3A IN KINSMAN ROAD TO THE BEGINNING POINT OF SEGMENT 4 NEAR THE INTERSECTION OF THE PROPOSED, AS YET TO BE COMPLETED, SEGMENT OF KINSMAN ROAD AND BOECKMAN ROAD, A LENGTH OF APPROXIMATELY 2,400 FEET**

WHEREAS, the cities drafted Section 4.9 of the above titled Intergovernmental Agreement based upon estimates of the cost of mitigation required by state and federal agencies; and

WHEREAS, subsequent research and analysis demonstrates that cost more precisely, and the proposed amendment reflects that analysis;

NOW, THEREFORE, THE CITY OF WILSONVILLE RESOLVES AS FOLLOWS:

Section 1. The City Council authorizes the amendment of Section 4.9 of the aforementioned Intergovernmental Agreement between the City of Sherwood and the City of Wilsonville, replacing Section 4.9's current language with the following:

4.9 *Mitigation Funding.* Following the date of substantial completion, the Parties agree to establish a mitigation fund in the amount of \$55,000.00 for the purpose of funding environmental mitigation, monitoring, and maintenance, as required by the Oregon Division of State Lands and the United States Army Corp of Engineers, including but not limited to landscaping and wetland mitigation. Sherwood shall pay to Wilsonville the amount of \$23,054.70, which the Parties agree is equal to Sherwood's percentage obligation of \$55,000.00 calculated according to the cost-sharing methodology set forth in the Segment 3A Agreement and the final "true-up" percentage calculated under Section 4.7.1 above. Wilsonville shall retain these funds for a period of up to five years following the date of substantial completion. The funds shall be deposited in a separate



account and used only for the purpose of mitigation, monitoring, and maintenance related to the Segment 3B Project. At the end of the retention period, Wilsonville shall return Sherwood's percentage portion of any unused funds, including interest thereon, to Sherwood. During the retention period, Wilsonville shall provide a financial accounting of the funds to Sherwood upon request but not more than quarterly.

Section 2. The City Manager is authorized to execute Addendum One to the Intergovernmental Agreement Between the City of Sherwood and the City of Wilsonville Regarding Cost, Construction Ownership, and Operation of Segment 3B of a 48-inch Diameter Water Transmission Line from the Terminus of Segment 3A in Kinsman Road to the Beginning Point of Segment 4 Near the Intersection of the Proposed, as Yet To Be Completed, Segment of Kinsman Road and Boeckman Road, a Length of Approximately 2,400 Feet, a copy of which is marked **Exhibit A**, attached hereto and incorporated by reference herein.

Section 3. This resolution is effective upon adoption.

ADOPTED by the Wilsonville City Council at a regular meeting there of this \_\_\_\_ day of November 2014, and filed with the Wilsonville City Recorder this date.

---

TIM KNAPP, MAYOR

ATTEST:

---

Sandra C. King, MMC, City Recorder

SUMMARY OF VOTES:

Mayor Knapp  
Council President Starr  
Councilor Goddard  
Councilor Fitzgerald  
Councilor Stevens



Attachments:

Exhibit A: Addendum One to the Sherwood-Wilsonville Intergovernmental Agreement  
Regarding Transmission Segments 3B



## **ADDENDUM ONE TO SHERWOOD-WILSONVILLE SEGMENT 3B IGA**

### **AN ADDENDUM TO THE INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF SHERWOOD AND THE CITY OF WILSONVILLE REGARDING COST, CONSTRUCTION OWNERSHIP, AND OPERATION OF SEGMENT 3B OF A 48-INCH DIAMETER WATER TRANSMISSION LINE FROM THE TERMINUS OF SEGMENT 3A IN KINSMAN ROAD TO THE BEGINNING POINT OF SEGMENT 4 NEAR THE INTERSECTION OF THE PROPOSED, AS YET TO BE COMPLETED, SEGMENT OF KINSMAN ROAD AND BOECKMAN ROAD, A LENGTH OF APPROXIMATELY 2,400 FEET**

This Addendum ("Addendum") to the Sherwood-Wilsonville Segment 3B Intergovernmental Agreement is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2014, by and between the City of Sherwood, an Oregon municipal corporation ("Sherwood"), and the City of Wilsonville, an Oregon municipal corporation ("Wilsonville"), referred to collectively as "the Parties."

#### **RECITALS**

The Parties agree upon the following Recitals:

**A. WHEREAS,** the cities drafted section 4.9 of the aforementioned Intergovernmental Agreement based upon estimates of the cost of mitigation required by state and federal agencies; and

**B. WHEREAS,** subsequent research and analysis demonstrates that cost more precisely, and the proposed amendment reflects that analysis;

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

**1. Recitals.** The recitals set forth above are incorporated by reference and made a part of this Agreement.

**2. Consideration.** In consideration of the terms and conditions set forth below, the Parties enter into this Addendum.



**3. Term.** This Addendum becomes effective on the date of execution by the last signatory party and shall remain in effect until the completion of the term of mitigation unless otherwise agreed to by the Parties in writing.

**4. Amendment.** The current language of Section 4.9 of the aforementioned Intergovernmental Agreement between the City of Sherwood and the City of Wilsonville is replaced to read as follows:

4.9 *Mitigation Funding.* Following the date of substantial completion, the Parties agree to establish a mitigation fund in the amount of \$55,500.00 for the purpose of funding environmental mitigation, monitoring, and maintenance, as required by the Oregon Division of State Lands and the United States Army Corp of Engineers, including but not limited to landscaping and wetland mitigation. Into a separate fund established by Wilsonville for that purpose, Sherwood shall deposit \$23,054.70, being equal to Sherwood's percentage obligation of \$55,500 calculated according to the cost-sharing methodology set forth in the Segment 3A Agreement, and the final trued up percentages calculated in June 2014. Wilsonville shall manage these funds for a period of up to five years following the date of substantial completion. The funds shall be used only for the purpose of mitigation, monitoring, and maintenance related to the Segment 3B Project. At the end of the retention period, Wilsonville shall return Sherwood's percentage portion of any unused funds, including interest thereon, to Sherwood. During the retention period, Wilsonville shall provide a financial accounting of the funds to Sherwood upon request but not more than quarterly.

*(signatures on following page)*



IN WITNESS WHEREOF, the Parties have, pursuant to official action of their respective governing bodies duly authorizing the same, caused their respective officers to execute this Agreement on their behalf.

**CITY OF SHERWOOD**  
an Oregon municipal corporation

**CITY OF WILSONVILLE**  
an Oregon municipal corporation

\_\_\_\_\_  
City Manager

\_\_\_\_\_  
City Manager

Attested to:

Attested to:

\_\_\_\_\_  
City Recorder

\_\_\_\_\_  
City Recorder

Approved as to Form:

Approved as to Form

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
City Attorney



## CITY COUNCIL MEETING STAFF REPORT

<b>Meeting Date:</b>  November 3, 2014	<b>Subject: Resolution No. 2492</b> Declaration of Surplus Property  <b>Staff Member:</b> Kristin Retherford <b>Department:</b> Community Development	
<b>Action Required</b> <input type="checkbox"/> Motion <input type="checkbox"/> Public Hearing Date: <input type="checkbox"/> Ordinance 1 <sup>st</sup> Reading Date: <input type="checkbox"/> Ordinance 2 <sup>nd</sup> Reading Date: <input checked="" type="checkbox"/> Resolution <input type="checkbox"/> Information or Direction <input type="checkbox"/> Information Only <input type="checkbox"/> Council Direction <input type="checkbox"/> Consent Agenda	<b>Advisory Board/Commission Recommendation</b> <input type="checkbox"/> Approval <input type="checkbox"/> Denial <input type="checkbox"/> None Forwarded <input checked="" type="checkbox"/> Not Applicable  <b>Comments:</b>  <div style="height: 80px;"></div>	
<b>Staff Recommendation:</b> Staff recommends Council adopt Resolution No. 2492.		
<b>Recommended Language for Motion:</b> I move to approve Resolution No. 2492.		
<b>PROJECT / ISSUE RELATES TO:</b> <i>[Identify which goal(s), master plans(s) issue relates to.]</i>		
<input checked="" type="checkbox"/> Council Goals/Priorities Council Goal B "Ensure efficient, cost-effective and sustainable development and infrastructure.	<input type="checkbox"/> Adopted Master Plan(s)	<input type="checkbox"/> Not Applicable

### ISSUE BEFORE COUNCIL:

Should the City Council declare as surplus a piece of property near the Villebois planned development?

### EXECUTIVE SUMMARY:

The terms of a development agreement with Polygon Northwest (approved by Council on June 16, 2014 with adoption of Resolution No. 2480) requires that Grahams Ferry Road be reconstructed and widened, between Barber Street and Tooze Road. However, in order to complete the Grahams Ferry Road project, it was necessary for the City to acquire tax lot 3S-



1W-14BD #01503 (TL #01503) , a small piece of land that lies outside of two planned Villebois developments. After dedicating the necessary right-of-way, TL #01503 measures 5,103 square feet. And after establishing a 10-foot public utility easement (PUE), the unencumbered area measures 3,688 square feet.

TL #01503 is sandwiched between Grahams Ferry Road on the west and developer-constructed and owned parks in Villebois on the east. It will not be possible to provide access to it from nearby streets because of its isolated location and access spacing requirements. The developer has expressed an interest taking over ownership and maintenance responsibility for this property and incorporating it into their development as open space.

Given that the City has no public purpose for TL #01503 after construction of Grahams Ferry Road and establishment of a public utility easement, it is in the City's best interest to declare this property surplus in order to avoid ongoing maintenance costs and responsibility.

Declaring the unused property surplus at this time would allow legal staff to include the disposition and ongoing maintenance of this parcel in a development agreement and allow for its inclusion in an operation and maintenance agreement with the developer.

#### **EXPECTED RESULTS:**

Disposition of surplus property will decrease staff time and maintenance expenses anticipated for its on-going care.

#### **TIMELINE:**

Final disposition of the property is expected to occur within nine months of a surplus declaration.

#### **CURRENT YEAR BUDGET IMPACTS:**

Not applicable

#### **FINANCIAL REVIEW / COMMENTS:**

Reviewed by: SCole Date: 10/23/14

No additional comments – see legal review for fiscal considerations.

#### **LEGAL REVIEW / COMMENT:**

Reviewed by: MEK Date: 10-14-2014

Resolution approved as to form. The remnant parcel was necessary to acquire for road and sidewalk use, as reported, leaving an even smaller parcel. It also was encumbered by an access easement to property that was purchased for the Calais subdivision whose development rendered the easement unnecessary. The smaller remnant parcel abuts a wooded open space area that is to remain so under the Villebois Master Plan. The City could undertake the cost of advertising to solicit bids, but would be a waste of resources as a practical matter there is no market demand for the property given it can't be developed due to location and size and under the Villebois Master Plan would be required to be used as open space. The adjacent land owner developer is willing to take it over in exchange for taking on the cost of maintenance and care of the property.



**COMMUNITY INVOLVEMENT PROCESS:**

A public notice and public hearing occurred to declare the property as surplus property and no longer needed for a public interest.

**POTENTIAL IMPACTS or BENEFIT TO THE COMMUNITY** (businesses, neighborhoods, protected and other groups):

The sale of this surplus property will decrease staff demands and maintenance costs related to on-going maintenance needs.

**ALTERNATIVES:**

Retain the property in public ownership.

**CITY MANAGER COMMENT:****ATTACHMENTS:**

Attachment 1 - Location Map



# Attachment 1 - Location Map

Tax Lot 3S-1W-14BD #01503





## **RESOLUTION NO. 2492**

### **A RESOLUTION OF THE CITY OF WILSONVILLE DECLARING CITY-OWNED REAL PROPERTY DESCRIBED AS 3S-1W-15BD TAX LOT #01503 as SURPLUS PROPERTY AND AUTHORIZING STAFF TO DISPOSE OF THE PROPERTY THROUGH SALE.**

WHEREAS, under and by virtue of the laws of the State of Oregon the City of Wilsonville is duly authorized and empowered to efficiently and economically dispose of real property that is determined by the City to be surplus; and

WHEREAS, the City acquired a piece of real property described as 3S-1W-15BD tax lot #01503 (the "Property") which was needed as right-of-way to reconstruct and widen Grahams Ferry Road, between Barber Street and Tooze Road; and

WHEREAS, after construction of Grahams Ferry Road and establishment of the required public utility easement, the City has no public use for the Property; and

WHEREAS, the Property is described in the legal description attached hereto and fully incorporated herein as Exhibit A; and

WHEREAS, it is in the City's best interest to declare this property surplus in order to avoid ongoing maintenance costs and responsibility; and

WHEREAS, the property is located between Grahams Ferry Road on the west and developer-constructed and owned park to the east in Villebois; and

WHEREAS, the developer of the park to the east has expressed interest in taking over ownership and maintenance responsibility for the Property and incorporating it into their development as open space; and

WHEREAS, to use the Property for open space would conform to the Villebois Master Plan; and

WHEREAS, after construction of Grahams Ferry Road to the west and the park to the east, the Property will be isolated and its best use would be as part of the Villebois Master Plan park and open space; and

WHEREAS, it is in the public interest to convey the Property to the developer after Grahams Ferry Road construction is complete in order to avoid ongoing maintenance costs and responsibility; and



WHEREAS, declaring the Property surplus at this time will allow legal staff to include the disposition and ongoing maintenance of this area in a development agreement and allow for its inclusion in an operation and maintenance agreement for the adjacent development.

NOW, THEREFORE, THE CITY OF WILSONVILLE RESOLVES AS FOLLOWS:

1. As set forth in the facts, findings, and conclusions stated in the above recitals and incorporated as reference herein, the property described as 3S-1W-15BD tax lot #01503 is hereby declared surplus property and no longer needed by the City of Wilsonville for public use.
2. Given the limited use of the small parcel and likelihood of little or no demand for the property, and the public interest in advancing the Villebois Master Plan, City staff is authorized to negotiate the terms of disposition and conveyance of this property with the adjacent developer as well as the provision of ongoing maintenance of the Property.
3. The City Council authorizes the City Manager to execute all necessary agreements and deeds relating to this transaction.
4. This resolution is effective upon adoption.

ADOPTED by the City of Wilsonville at a regular meeting thereof this 3rd day of November, 2014 and filed with the Wilsonville City Recorder this date.

---

TIM KNAPP, Mayor

ATTEST:

---

Sandra C. King, MMC, City Recorder

SUMMARY OF VOTES:

Mayor Knapp	_____
Councilor Goddard	_____
Councilor Starr	_____
Councilor Fitzgerald	_____
Councilor Stevens	_____





EXHIBIT "A"

October 14, 2014

**LEGAL DESCRIPTION**  
Resultant Parcel

Job No. 103-005

A parcel of land owned by the City of Wilsonville per Document No. 2014-037149, Clackamas County Deed Records, being in the Northwest Quarter of Section 15, Township 3 South, Range 1 West, Willamette Meridian, Clackamas County, Oregon, more particularly described as follows:

BEGINNING at the Southwest corner of Tract "L", plat of "Calais at Villebois";

thence along the northerly line of Tract "III", plat of "Tonquin Woods at Villebois No. 7" and its extension, North  $88^{\circ}34'09''$  West, a distance of 69.34 feet to an angle point on the easterly Right-of-Way line of SW Grahams Ferry Road (County Road No. 13);

thence along said easterly Right-of-Way line, North  $17^{\circ}14'42''$  East, a distance of 152.97 feet to the most westerly corner of Tract "M", plat of "Calais at Villebois";

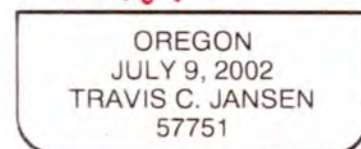
thence along the westerly plat line of "Calais at Villebois", South  $09^{\circ}12'39''$  East, a distance of 149.76 feet to the POINT OF BEGINNING.

Containing 5,103 square feet, more or less.

Basis of bearings being plat of "Calais at Villebois", Clackamas County Plat Records.



*DRAFT*



RENEWS: 6/30/2015

Property Vested In:  
City of Wilsonville  
Section: 351W15  
Tax Lot: 1503



N:\proj\103-005\09 Drawings\06 Survey\Legal\103005 Resultant Parcel.dwg - SHEET: TAX LOT 1503 Oct 14, 14 - 8:51 AM dloke

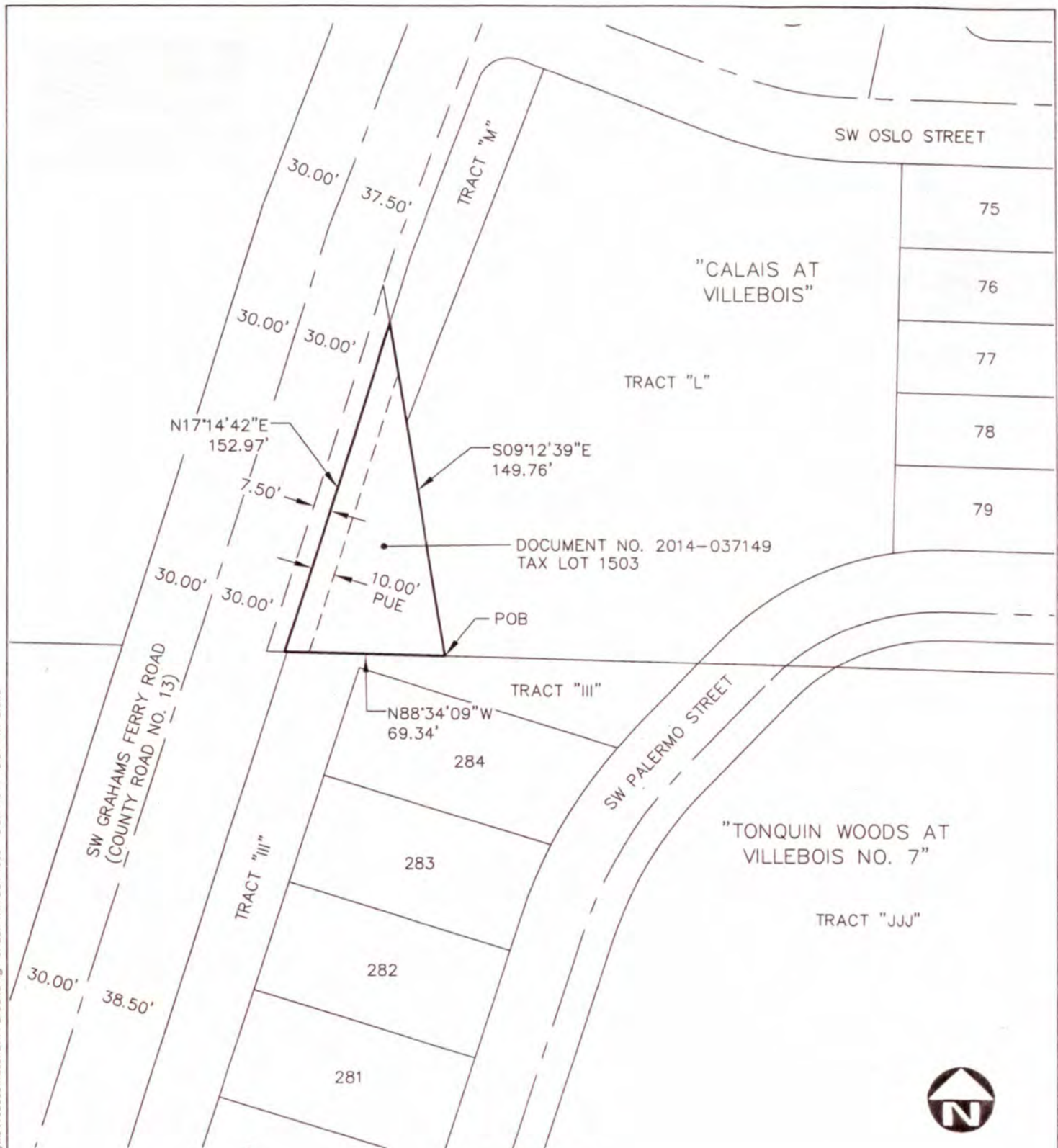


EXHIBIT "B"  
RESULTANT PARCEL

DRAWN BY: BAA DATE: 10/14/2014  
REVIEWED BY: TCJ DATE: 10/14/2014  
PROJECT NO.: 103-005  
SCALE: 1"=60'

PAGE 1 OF 1



12564 SW Main St  
Tigard, OR 97223  
[T] 503-941-9484  
[F] 503-941-9485

Resolution No. 2492



## CITY COUNCIL MEETING STAFF REPORT

<b>Meeting Date:</b>  November 3, 2014	<b>Subject: Resolution No. 2494</b> Acquisition of easements necessary for the water pipeline replacement project (CIP #1121)  <b>Staff Member:</b> Kristin Retherford <b>Department:</b> Community Development	
<b>Action Required</b> <input type="checkbox"/> Motion <input type="checkbox"/> Public Hearing Date: <input type="checkbox"/> Ordinance 1 <sup>st</sup> Reading Date: <input type="checkbox"/> Ordinance 2 <sup>nd</sup> Reading Date: <input checked="" type="checkbox"/> Resolution <input type="checkbox"/> Information or Direction <input type="checkbox"/> Information Only <input type="checkbox"/> Council Direction <input type="checkbox"/> Consent Agenda	<b>Advisory Board/Commission Recommendation</b> <input type="checkbox"/> Approval <input type="checkbox"/> Denial <input type="checkbox"/> None Forwarded <input checked="" type="checkbox"/> Not Applicable <b>Comments:</b>  	
<b>Staff Recommendation:</b> Staff recommends Council adopt Resolution No. 2494.		
<b>Recommended Language for Motion:</b> I move to approve Resolution No. 2494.		
<b>PROJECT / ISSUE RELATES TO:</b> <i>[Identify which goal(s), master plans(s) issue relates to.]</i>		
<input checked="" type="checkbox"/> Council Goals/Priorities Council Goal B "Ensure efficient, cost-effective and sustainable development and infrastructure.	<input type="checkbox"/> Adopted Master Plan(s)	<input type="checkbox"/> Not Applicable

### ISSUE BEFORE COUNCIL:

Council authorization is necessary to acquire three permanent easements and two temporary construction easements necessary for the water pipeline replacement project (CIP #1121 in the City's 2014/15 adopted budget).

### EXECUTIVE SUMMARY:



An existing 2-inch public water pipeline that serves two businesses on the west side of Wilsonville is failing due to age and must be replaced. A new 8-inch ductile iron pipeline will be installed which will provide reliable service, meet current standards, improve water flow and provide required volume to a future fire hydrant needed for long-term fire protection services.

**EXPECTED RESULTS:**

Staff expects to have appraisals completed by mid-January, 2015 and offers extended to property owners by the end of January; construction will begin after property acquisitions are complete.

**TIMELINE:**

Appraisal activities and outreach to property owners will begin in early November 2014. Offers will be made after appraisals have been completed. Acquisitions are expected to be finalized by early April of 2015 unless condemnation becomes necessary. If that is the case, staff will return to Council for further direction before proceeding with condemnation activities.

**CURRENT YEAR BUDGET IMPACTS:**

This Capital Improvement Project is in the FY 2014/15 Budget with funding provided from the City's Water Operating Fund.

**FINANCIAL REVIEW / COMMENTS:**

Reviewed by: SCole Date: 10/23/14

**LEGAL REVIEW / COMMENT:**

Reviewed by: MEK\_\_\_\_\_ Date: 10/23/2014\_\_\_\_\_  
Resolution approved as to form.

**COMMUNITY INVOLVEMENT PROCESS:** Not Applicable

**POTENTIAL IMPACTS or BENEFIT TO THE COMMUNITY** (businesses, neighborhoods, protected and other groups):

This project will replace failing water pipelines to preserve community health and welfare.

**ALTERNATIVES:** Not Applicable

**CITY MANAGER COMMENT:**

**ATTACHMENTS:**

Attachment 1 - Location Map



Vicinity Map





## **RESOLUTION NO. 2494**

### **A RESOLUTION OF THE CITY OF WILSONVILLE AUTHORIZING ACQUISITION OF PROPERTY INTEREST RELATED TO THE REPLACEMENT OF A WATER PIPELINE (CIP PROJECT #1121).**

WHEREAS, under and by virtue of the laws of the State of Oregon, the City of Wilsonville is duly authorized and lawfully empowered to construct certain planned public improvement projects, and to acquire real property as may be deemed necessary and proper for such planned public improvements; and

WHEREAS, the City's water pipeline maintenance history indicates that an existing water pipeline serving several business owners on the west side of Wilsonville is failing due to age, and requires on-going maintenance for leak repairs; and

WHEREAS, this project is included in the City of Wilsonville 2014/15 adopted budget as Project #1121; and

WHEREAS, this project is currently estimated to cost \$452,690 with funding to be provided from the City's Water Operating Fund; and

WHEREAS, in order to construct these improvements, the City needs to acquire a water pipeline easement together with a temporary construction easement from property located at 3S1W14D #01501, currently owned by Riverwood Partners, LLC; a water pipeline easement together with a temporary construction easement from property located at 3S1W14D #01301, currently owned by J&A Properties, LLC; and a water pipeline easement from property located at 3S1W14D #01300, currently owned by Jay & Tammy Puppo; and

WHEREAS, these easements are described in legal descriptions attached hereto and fully incorporated herein as Exhibit A, Exhibit B and Exhibit C; and

WHEREAS, the City acquires real property in accordance with guidelines set forth in its Urban Renewal Agency's adopted "*Appraisal and Acquisition Policies*"; and

WHEREAS, in comparing the cost amount for the aforementioned construction and the property interest along with the existing use of the subject property, the alternative presented herein reflects the least amount of private property interest to ensure safe, efficient and adequate public improvements; and



WHEREAS, construction is scheduled to occur as soon as the necessary property rights have been obtained and a construction contract has been awarded; and

WHEREAS, title to the acquired property interest shall vest directly in the name of the City of Wilsonville in order to provide for necessary care, maintenance and public safety authority.

NOW, THEREFORE, THE CITY OF WILSONVILLE RESOLVES AS FOLLOWS:

1. There is needed and required, for the public purpose of providing public improvements as described above, the properties described in Exhibits A, Exhibit B and Exhibit C, incorporated herein by this reference.

2. These property interests are to be acquired as a result of the aforementioned public improvements, and the improvements have been planned and located in a manner most compatible with the greatest public good and the least private injury.

3. City staff and the City Attorney are authorized and directed to negotiate with the owners of the real properties herein described as to the compensation to be paid to acquire the properties and, in the event agreement cannot be reached, then to commence and prosecute to final determination such condemnation proceedings as may be necessary to acquire the real properties or property interests.

4. Upon trial of an action of condemnation, the attorneys for the City are authorized to make such stipulation, agreement or admission as in their judgment may be in the best interests of the City.

5. City staff anticipates it will acquire the above-described property in the winter of 2015 and cause construction to initially begin as soon as property acquisition is complete.

6. Title to the acquired property interests shall vest directly in the name of the City of Wilsonville.

7. This resolution is effective upon adoption.

ADOPTED by the Wilsonville City Council at a regular meeting thereof this 3rd day of November, 2014, and filed with the Wilsonville City Recorder this date.

---

TIM KNAPP, MAYOR



ATTEST:

---

Sandra C. King, MMC, City Recorder

SUMMARY OF VOTES:

Mayor Knapp \_\_\_\_\_

Councilor Goddard \_\_\_\_\_

Councilor Starr \_\_\_\_\_

Councilor Fitzgerald \_\_\_\_\_

Councilor Stevens \_\_\_\_\_

Exhibits:

Exhibit A ~ Legal Descriptions for Riverwood Partners, LLC

Exhibit B ~ Legal Descriptions for J&A Properties, LLC

Exhibit C ~ Legal Description for Jay & Tammy Puppo



**WATERLINE EASEMENT**

City of Wilsonville  
July 18, 2014  
Project No. 1197-014

**PROPERTY DESCRIPTION**

A tract of land situated in the Southeast One-Quarter of Section 14, T. 3 S., R. 1 W., W.M., City of Wilsonville, Clackamas County, Oregon, being portions of Parcel I of that tract of land as conveyed by deed to Riverwood Partners, an Oregon General Partnership in Document No. 92-70370, recorded November 4, 1992, Clackamas County Deed Records and being more particularly described as follows:

A 15.00 foot wide strip of land being 7.50 feet on each side of the following described centerline:

Commencing at the most southerly west corner of Parcel I of said Riverwood Partners Tract, said point bears North 65°04'27" East; 308.70 feet from the South One-Quarter Corner of said Section 14;

Thence, along the West line of Parcel I of said Riverwood Partners Tract, North 00°09'00" East, 17.76 feet to the True Point of Beginning;

Thence, North 88°39'59" East 36.70 feet to Point "A".

Thence, continuing North 88°39'59" East 11.81 feet to the terminus.

TOGETHER WITH the following strip of land:

A 15.00 foot wide strip of land being 7.50 feet on each side of the following described centerline:

Beginning at Point "A" as described above:

Thence South 01°20'01" East, 18.46 feet to the North line of the Puppo Tract, Document No. 2005-083173, Clackamas County Deed Records.

Subject to lengthening and/or shortening of sidelines so that they terminate on the proper boundaries.

Containing 892 square feet, more or less.

Bearings are based on Survey No. PS-16487,  
Clackamas Country Survey Records.

Property Vested in:  
Riverwood Partners  
Taxlot 1501, Map 31W14D

J:\1197-014\14\Survey\CAD\WORK\Revisions 2014-07-18\_ddl\1197-014\_PD\_TL1501\_PE\_2014-07-18.doc

REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

*Douglas D. Liles*

OREGON  
AUGUST 14, 1998  
DOUGLAS D. LILES  
2861

RENEWS: 12-31-2014





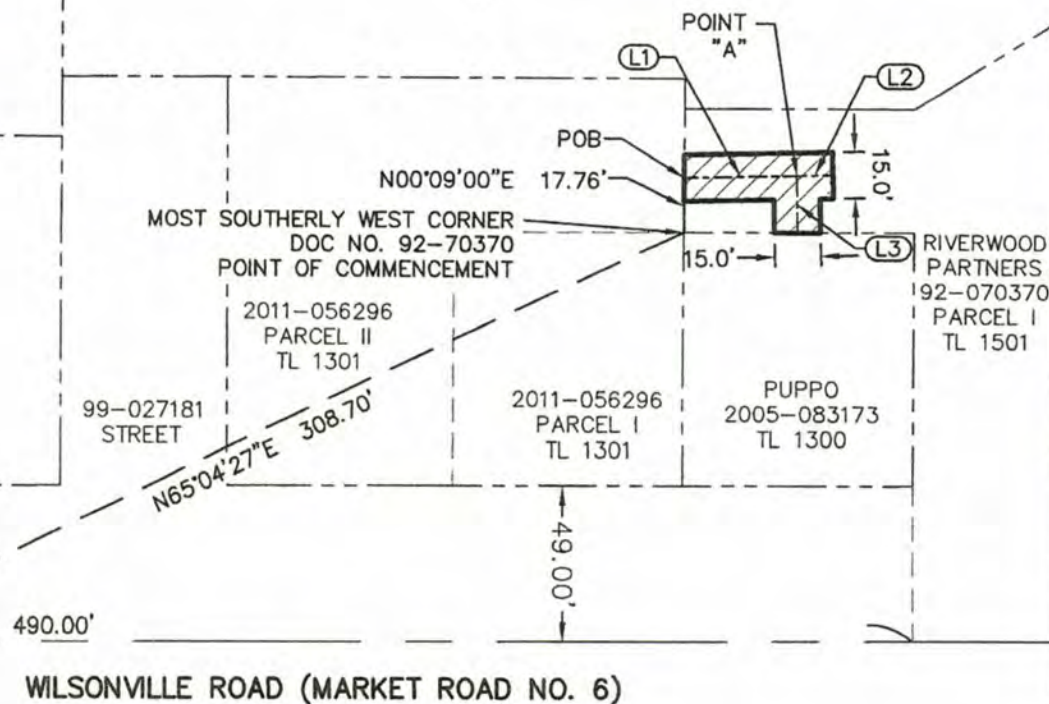
0 30' 60'  
SCALE: 1"=60'

OREGON ELECTRIC RAILROAD



PERMANENT WATERLINE EASEMENT

LINE DATA TABLE		
LINE#	BEARING	LENGTH
L1	N88°39'59"E	36.70'
L2	N88°39'59"E	11.81'
L3	S01°20'01"E	18.46'



SOUTH 1/4 CORNER  
SECTION 14



WILSONVILLE ROAD (MARKET ROAD NO. 6)

REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

*Douglas D. Liles*

OREGON  
AUGUST 14, 1998  
DOUGLAS D. LILES  
2861

RENEWALS: 12-31-2014

LOCATED IN THE SE 1/4 OF SECTION 14  
TOWNSHIP 3 S., RANGE 1 W., W.M.  
CITY OF WILSONVILLE  
CLACKAMAS COUNTY, OREGON

DATE	2014-07-18
DRAWN BY	DDL
CHECKED BY	TGB
REVISION	1
JOB NO.	1197-014

**WESTLAKE**  
CONSULTANTS INC.

ENGINEERING ♦ SURVEYING ♦ PLANNING

PACIFIC CORPORATE CENTER  
15115 S.W. SEQUOIA PARKWAY, SUITE 150 (503) 684-0652  
TIGARD, OREGON 97224 FAX (503) 624-0157



City of Wilsonville  
July 18, 2014  
Project No. 1197-014

### TEMPORARY CONSTRUCTION EASEMENT

A tract of land situated in the Southeast One-Quarter of Section 14, T. 3 S., R. 1 W., W.M., City of Wilsonville, Clackamas County, Oregon, being portions of Parcel I of that tract of land as conveyed by deed to Riverwood Partners, an Oregon General Partnership in Document No. 92-70370, recorded November 4, 1992, Clackamas County Deed Records and being more particularly described as follows:

Commencing at the most southerly west corner of Parcel I of said Riverwood Partners Tract, said point bears North 65°04'27" East; 308.70 feet from the South One-Quarter Corner of said Section 14;

Thence, along the West line of said Riverwood Partners Tract, North 00°09'00" East, 25.26 feet to the True Point of Beginning;

Thence, North 00°09'00" East, 13.16 feet;

Thence, North 89°53'00" East, 47.99 feet;

Thence, South 01°20'01" East, 12.14 feet;

Thence, South 88°39'59" West, 48.32 feet to the Point of Beginning;

Containing 609 square feet, more or less

Bearings are based on Survey No. PS-16487, Clackamas Country Survey Records.

Property Vested in:  
Riverwood Partners  
Taxlot 1501, Map 31W14D



RENEWS: 12-31-2014





0 30' 60'  
SCALE: 1"=60'

OREGON ELECTRIC RAILROAD



TEMPORARY CONSTRUCTION EASEMENT

SOUTH 1/4 CORNER  
SECTION 14

14  
23

490.00'

WILSONVILLE ROAD (MARKET ROAD NO. 6)

99-027181  
STREET

N65°04'27"E 308.70'

MOST SOUTHERLY WEST CORNER  
DOC NO. 92-70370  
POINT OF COMMENCEMENT

2011-056296  
PARCEL II  
TL 1301

2011-056296  
PARCEL I  
TL 1301

PUPPO  
2005-083173  
TL 1300

N89°53'00"E 47.99'  
N00°09'00"E 13.16'  
POB  
N00°09'00"E 25.26'

S01°20'01"E  
12.14'

S88°39'59"W 48.32'

RIVERWOOD  
PARTNERS  
92-070370  
PARCEL I  
TL 1501

49.00'

REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

*Douglas D. Liles*

OREGON  
AUGUST 14, 1998  
DOUGLAS D. LILES  
2861

RENEWS: 12-31-2014

LOCATED IN THE SE 1/4 OF SECTION 14  
TOWNSHIP 3 S., RANGE 1 W., W.M.  
CITY OF WILSONVILLE  
CLACKAMAS COUNTY COUNTY, OREGON

DATE	2014-07-18
DRAWN BY	DDL
CHECKED BY	TGB
REVISION	1
JOB NO.	1197-014



**WESTLAKE**  
CONSULTANTS INC.

ENGINEERING ♦ SURVEYING ♦ PLANNING

PACIFIC CORPORATE CENTER  
15115 S.W. SEQUOIA PARKWAY, SUITE 150 (503) 684-0652  
TIGARD, OREGON 97224 FAX (503) 624-0157



**WATERLINE EASEMENT**

City of Wilsonville  
July 18, 2014  
Project No. 1197-014

**PROPERTY DESCRIPTION**

A tract of land situated in the Southeast One-Quarter of Section 14, T. 3 S., R. 1 W., W.M., City of Wilsonville, Clackamas County, Oregon, being portions of Parcel I and Parcel II of that tract of land as conveyed by deed to J & A Properties LLC. in Document No. 2011-056296, recorded October 4, 2011, Clackamas County Deed Records and being more particularly described as follows:

A 15.00 foot wide strip of land being 7.50 feet on each side of the following described centerline:

Commencing at the Northwest corner of Parcel II of said J & A Properties Tract, said corner bears North 35°51'37" East; 221.79 feet from the South One-Quarter Corner of said Section 14;

Thence, along the West line of Parcel II of said J & A Properties Tract, South 00°08'00" East, 35.39 feet to the True Point of Beginning;

Thence, North 88°39'59" East 85.88 feet to Point "A".

Thence, continuing North 88°39'59" East 64.14 feet to the East line of said J & A Properties Tract and the terminus.

TOGETHER WITH the following strip of land:

A 15.00 foot wide strip of land being 7.50 feet on each side of the following described centerline:

Beginning at Point "A" as described above:

Thence South 01°20'01" East, 35.31 feet to the terminus.

Subject to lengthening and/or shortening of sidelines so that they terminate on the proper boundaries.

Containing 2,668 square feet, or 0.06 Acres more or less

Bearings are based on Survey No. PS-16487, Clackamas Country Survey Records.

Property Vested in:  
J & A Properties  
Taxlot 1301, Map 31W14D

REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

*Douglas D. Liles*

OREGON  
AUGUST 14, 1998  
DOUGLAS D. LILES  
2861





0 30' 60'  
SCALE: 1"=60'

OREGON ELECTRIC RAILROAD



PERMANENT WATERLINE EASEMENT

NW COR DOC  
2011-056296  
POINT OF COMMENCEMENT

S00°08'00"E 35.39'

POB

N35°51'37"E 221.79'

99-027181  
STREET

N88°39'59"E 85.88'

POINT  
"A"

2009-054415  
PARCEL II  
TL 1400

N88°39'59"E 64.14'

15.0'

15.0'

J & A PROPERTIES

2011-056296  
PARCEL II  
TL 1301

2011-056296  
PARCEL I  
TL 1301

2005-083173  
TL 1300

S01°20'01"E 35.31'

92-070370  
PARCEL I  
TL 1501

49.00'

SOUTH 1/4 CORNER  
SECTION 14

14  
23

340.00'

WILSONVILLE ROAD (MARKET ROAD NO. 6)

REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

*Douglas D. Liles*

OREGON  
AUGUST 14, 1998  
DOUGLAS D. LILES  
2861

RENEWS: 12-31-2014

LOCATED IN THE SE 1/4 OF SECTION 14  
TOWNSHIP 3 S., RANGE 1 W., W.M.  
CITY OF WILSONVILLE  
CLACKAMAS COUNTY, OREGON

DATE	2014-07-18
DRAWN BY	DDL
CHECKED BY	TGB
REVISION	1
JOB NO.	1197-014



**WESTLAKE**  
CONSULTANTS INC.

ENGINEERING ♦ SURVEYING ♦ PLANNING

PACIFIC CORPORATE CENTER  
15115 S.W. SEQUOIA PARKWAY, SUITE 150 (503) 684-0652  
TIGARD, OREGON 97224 FAX (503) 624-0157



City of Wilsonville  
July 18, 2014  
Project No. 1197-014

**TEMPORARY CONSTRUCTION EASEMENT**

A tract of land situated in the Southeast One-Quarter of Section 14, T. 3 S., R. 1 W., W.M., City of Wilsonville, Clackamas County, Oregon, being portions of Parcel I and Parcel II of that tract of land as conveyed by deed to J & A Properties LLC. in Document No. 2011-056296, recorded October 4, 2011, Clackamas County Deed Records and being more particularly described as follows:

Commencing at the Northwest corner of Parcel II of said J & A Properties Tract, said corner bears North 35°51'37" East; 221.79 feet from the South One-Quarter Corner of said Section 14;

Thence, along the West line said J & A Properties Tract, South 00°08'00" East, 19.48 feet to the True Point of Beginning,

Thence, North 86°41'11" East, 18.60 feet,

Thence, along a 4.00 foot radius curve to the left, through a central angle of 83°36'37", (chord bears North 44°52'52" East, 5.33 feet) a distance of 5.84 feet

Thence, North 03°04'34" East, 13.09 feet;

Thence, North 89°49'24" East, 119.00 feet;

Thence, South 01°24'08" West, 10.06 feet;

Thence, North 89°53'00" East, 8.29 feet to the East line of said J & A Properties Tract;

Thence, along said East line thereof, South 00°09'00" West, 13.16 feet;

Thence, South 88°39'59" West, 150.06 feet to the West line thereof;

Thence, along said west line, North 00°08'00" West, 8.40 feet to the point of Beginning;

Containing 3,244 square feet, or 0.07 Acres more or less.

Bearings are based on Survey No. PS-16487, Clackamas Country Survey Records.

Property Vested in:  
J & A Properties  
Taxlot 1301, Map 31W14D

REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

*Douglas D. Liles*

OREGON  
AUGUST 14, 1998  
DOUGLAS D. LILES  
2861





0 30' 60'  
SCALE: 1"=60'

OREGON ELECTRIC RAILROAD



TEMPORARY CONSTRUCTION EASEMENT

NW COR DOC  
2011-056296  
POINT OF COMMENCEMENT

S00°08'00"E 19.48'  
POB

N00°08'00"W 8.40'

N35°51'37"E 221.79'

99-027181  
STREET

CURVE DATA TABLE					
CURVE#	LENGTH	RADIUS	DELTA	CH. BEARING	CH. LEN.
C1	5.84'	4.00'	83°36'37"	N44°52'52"E	5.33'

2009-054415  
PARCEL II  
TL 1400

N86°41'11"E 18.60'

N89°49'24"E 119.00'

N03°04'34"E 13.09'

S01°24'08"W 10.06'

N89°53'00"E 8.29'

S00°09'00"W 13.16'

92-070370  
PARCEL I  
TL 1501

S88°39'59"W 150.06'

J & A PROPERTIES

2011-056296  
PARCEL II  
TL 1301

2011-056296  
PARCEL I  
TL 1301

2005-083173  
TL 1300

49.00'

SOUTH 1/4 CORNER  
SECTION 14

14  
23

340.00'

WILSONVILLE ROAD (MARKET ROAD NO. 6)

REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

*Douglas D. Liles*

OREGON  
AUGUST 14, 1998  
DOUGLAS D. LILES  
2861

RENEWS: 12-31-2014

LOCATED IN THE SE 1/4 OF SECTION 14  
TOWNSHIP 3 S., RANGE 1 W., W.M.  
CITY OF WILSONVILLE  
CLACKAMAS COUNTY, OREGON

DATE	2014-07-18
DRAWN BY	DDL
CHECKED BY	TGB
REVISION	1
JOB NO.	1197-014

**WESTLAKE**  
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TIGARD, OREGON 97224 FAX (503) 624-0157



## **WATERLINE EASEMENT**

City of Wilsonville  
July 18, 2014  
Project No. 1197-014

## **PROPERTY DESCRIPTION**

A tract of land situated in the Southeast One-Quarter of Section 14, T. 3 S., R. 1 W., W.M., City of Wilsonville, Clackamas County, Oregon, being portions of that tract of land as conveyed by deed to Jay Puppo and Tammy Puppo in Document No. 2005-083173, recorded August 29, 2005, Clackamas County Deed Records and being more particularly described as follows:

A 15.00 foot wide strip of land being 7.50 feet on each side of the following described centerline:

Commencing at the Northeast corner of said Puppo Tract, said corner bears North 69°49'44" East; 378.22 feet from the South One-Quarter Corner of said Section 14;

Thence, along the North line said Puppo Tract, South 89°45'30" West, 37.90 feet to the True Point of Beginning;

Thence, South 01°20'01" East 15.86 feet to the terminus.

Subject to lengthening and/or shortening of sidelines so that they terminate on the proper boundaries.

Containing 238 square feet more or less.

Bearings are based on Survey No. PS-16487, Clackamas Country Survey Records.

Property Vested in:  
Jay & Tammy Puppo  
Taxlot 1300, Map 31W14D

J:\1197-014.14\Survey\CAD\WORK\Revisions 2014-07-18\_ddl\1197-014\_PD\_TL1300\_PE\_2014-07-18.doc



RENEWS: 12-31-2014





0 30' 60'  
SCALE: 1"=60'

OREGON ELECTRIC RAILROAD



PERMANENT WATERLINE EASEMENT

99-027181  
STREET

2011-056296  
PARCEL II  
TL 1301

NE COR DOC 2005-083173  
POINT OF COMMENCEMENT

S89°45'30"W 37.90'

POB

92-070370  
PARCEL I  
TL 1501

S01°20'01"E  
15.86'

15.0'

2011-056296  
PARCEL I  
TL 1301

PUPPO  
2005-083173  
TL 1300

N69°49'44"E 378.22'

49.00'

150.00'

SOUTH 1/4 CORNER  
SECTION 14

14  
23

340.00'

WILSONVILLE ROAD (MARKET ROAD NO. 6)

REGISTERED  
PROFESSIONAL  
LAND SURVEYOR

*Douglas D. Liles*

OREGON  
AUGUST 14, 1998  
DOUGLAS D. LILES  
2861

RENEWS: 12-31-2014

LOCATED IN THE SE 1/4 OF SECTION 14  
TOWNSHIP 3 S., RANGE 1 W., W.M.  
CITY OF WILSONVILLE  
CLACKAMAS COUNTY, OREGON

DATE	2014-07-18
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## CITY COUNCIL MEETING STAFF REPORT

<b>Meeting Date:</b>  October 20, 2014	<b>Subject: Ordinance No. 750</b> An Ordinance of the City of Wilsonville Amending Wilsonville Code Chapter 5, Vehicles and Traffic, Section 5.210, Prohibited Parking or Standing  <b>Staff Member:</b> Michael Kohlhoff, City Attorney Christopher Griffith, Legal Intern  <b>Department:</b> Legal	
<b>Action Required</b> <input type="checkbox"/> Motion <input type="checkbox"/> Public Hearing Date: <input checked="" type="checkbox"/> Ordinance 1 <sup>st</sup> Reading Date: <input type="checkbox"/> Ordinance 2 <sup>nd</sup> Reading Date: <input type="checkbox"/> Resolution <input type="checkbox"/> Information or Direction <input type="checkbox"/> Information Only <input type="checkbox"/> Council Direction <input type="checkbox"/> Consent Agenda	<b>Advisory Board/Commission Recommendation</b> <input checked="" type="checkbox"/> Approval <input type="checkbox"/> Denial <input type="checkbox"/> None Forwarded <input type="checkbox"/> Not Applicable  <b>Comments:</b> Unless further defined by objective criteria, the City's current prohibition on living and sleeping in vehicles parked on City streets is probably unconstitutional following a recent Ninth Circuit opinion. The proposed ordinance amends the code provision to protect the City from legal challenge.	
<b>Staff Recommendation:</b> Staff recommends Council adopt Ordinance No. 750.		
<b>Recommended Language for Motion:</b> I move to approve Ordinance No. 750.		
<b>PROJECT / ISSUE RELATES TO:</b>		
<input type="checkbox"/> Council Goals/Priorities	<input type="checkbox"/> Adopted Master Plan(s)	<input checked="" type="checkbox"/> Not Applicable

### ISSUE BEFORE COUNCIL:

Should the City Council amend the City's prohibition of sleeping or living in vehicles on public streets in order to allow the police to retain its enforcement power and avoid legal challenges?



## **EXECUTIVE SUMMARY:**

A recent Ninth Circuit opinion held that Los Angeles' prohibition of using vehicles as "living quarters" is unconstitutionally vague in violation of the Fourteenth Amendment. *Desertrain v. Los Angeles*, No. 11-56957 (9th Cir. June 19, 2014). In short, the court ruled that the ordinance's language did not sufficiently inform citizens of what activity it actually prohibited. The Los Angeles Police Force formed a task force to target homeless individuals on Venice Beach and used their ordinance prohibiting use of a vehicle as living quarters aggressively. Cited individuals sued, claiming that they could not have predicted that the ordinance prohibited the activities for which the police issued the citations. The Ninth Circuit agreed, stating that "[s]electively preventing the homeless and the poor from using their vehicles for activities many other citizens also conduct in their cars [is inappropriate.]" *Id. at* \*22. Whether the United States Supreme Court would agree that the ordinance is unconstitutionally vague is debatable, but a simple amendment to the Wilsonville City Code can avoid the problem and make the provision clearer.

The Wilsonville Code prohibits using a vehicle or trailer to "camp in, sleep in, or live in while parked upon a City street." WC 5.210(12). While the Ninth Circuit found that term "living quarters" is unconstitutionally vague, the term "live in" provides no more guidance and thus requires clarification. In order to better protect the City from liability, the amendment clarifies the meaning of all the prohibited activities: camping, sleeping, and living in vehicles. The revised ordinance targets individuals who are using vehicles as a dwelling for extended periods of time and excludes reasonable behavior.

## **EXPECTED RESULTS:**

The ordinance will clarify what activities are prohibited and better protect the City from legal challenges.

**TIMELINE:** N/A

**CURRENT YEAR BUDGET IMPACTS:** N/A

## **FINANCIAL REVIEW / COMMENTS:**

Reviewed by: \_\_\_\_\_CAR\_\_\_\_\_ Date: \_\_\_\_\_10/9/14\_\_\_\_\_

There is no financial impact.

## **LEGAL REVIEW / COMMENT:**

Reviewed by: [MEK] Date: 10/6/14

Approved as to form.

**COMMUNITY INVOLVEMENT PROCESS:** None

**POTENTIAL IMPACTS or BENEFIT TO THE COMMUNITY** (businesses, neighborhoods, protected and other groups):



The ordinance clarifies the existing ordinance and continues to protect health, safety, and welfare within Wilsonville.

**ALTERNATIVES:**

City Council could choose to 1) leave the ordinance in place and risk litigation, or 2) repeal the ordinance. The amendment reduces the risk of legal challenges. The City does not have a large problem with people sleeping in vehicles, but the issue does come up periodically. Camping, sleeping in, or living in vehicles creates health and safety risks as noted in the supporting memorandum.

**CITY MANAGER COMMENT:**

**ATTACHMENTS:**

- A. Ordinance No. 750.
- B. Supporting Memorandum



## ORDINANCE NO. 750

### AN ORDINANCE OF THE CITY OF WILSONVILLE AMENDING WILSONVILLE CODE CHAPTER 5, VEHICLES AND TRAFFIC, SECTION 5.210, PROHIBITED PARKING OR STANDING

WHEREAS, Wilsonville Code Chapter 5, Vehicles and Traffic, regulates parking, traffic, and impoundment of vehicles on the streets and property of the City of Wilsonville; and

WHEREAS, W.C. 5.210(12) prohibits the use of vehicles for sleeping, camping, or living while parked upon a City street; and

WHEREAS, following a recent opinion issued by the Ninth Circuit, *Desertrain v. The City of Los Angeles*, the City's current ordinance prohibiting sleeping, camping, and living in vehicles is probably unconstitutionally vague; and

WHEREAS, individuals sleeping, camping, and living in exposed conditions is a matter of public health and safety to themselves and others; and

WHEREAS, to protect the health and welfare of Wilsonville's residents and visitors from incidental activities often associated with such persons sleeping, camping, or living in vehicles parked on City streets, such as using public or private property for restroom or sanitation purposes rather than facilities, littering, lighting of camp fires, and indecent exposure; and

WHEREAS, either through the City Community Services, Clackamas County Social Services, or the nearby French Prairie Rest Area on I-5, other more appropriate alternatives to sleeping, camping, or living in a vehicle for the traveling public and/or those needing social service resources exist and can be accessed;

NOW, THEREFORE, THE CITY OF WILSONVILLE ORDAINS AS FOLLOWS:

1. Wilsonville Code Section 5.210, Prohibited Parking and Standing, Subsection (12) is amended to read as follows:

“(12) Unless in a designated area for camping, no person shall, for a period of more than two hours, use any vehicle or trailer to camp in, sleep in, or live in while parked upon any City property, City right-of-way, City easement, or City street.

(a) For the purposes of this Section,



(i) The term “camp” has the same meaning given it in Code Section 10.425.

(ii) The term “sleep” means the natural periodic suspension of consciousness, during which the powers of the body are restored, or resting or meditating in a manner which leads a reasonable person to conclude that consciousness is suspended.

(iii) The term “live” means the use of a vehicle or trailer for a home, dwelling place, residence, or domicile. Engaging in or the presence of items used for cooking, sleeping, bathing, or other activities normally associated with home life may serve as evidence that a person is living in a vehicle.

(b) It shall be an affirmative defense to “sleep in” if the sleeping was caused by a medical condition and not induced by alcohol, controlled substances, or medication that warns of causing drowsiness or sleepiness, or warnings to that effect.

(c) It shall be an affirmative defense to “live in,” if a legally permissible explanation is provided of the items present or the activity engaged in that a reasonable person could find plausible under the circumstances then and there present.”

2. The City Recorder is directed to amend Wilsonville Code Section 5.210(12) by replacing the existing text with the text as approved above, and to make such format, style, and conforming changes to match the format and style of the Animal section of the Wilsonville Code.
3. Except as set forth above, Chapter 5 of the Wilsonville City Code remains in full force and effect, as written.

SUBMITTED to the Wilsonville City Council and read for the first time at a meeting thereof on the 20<sup>th</sup> day of October, 2014, and scheduled for second reading on \_\_\_\_\_, commencing at the hour of 7 p.m., at the Wilsonville City Hall, 29799 SW Town Center Loop East, Wilsonville, Oregon.

---

Sandra C. King, MMC, City Recorder



ENACTED by the City Council on the \_\_\_\_ day of \_\_\_\_\_, 2014, by the following votes:                      Yes: \_\_\_\_                      No: \_\_\_\_

\_\_\_\_\_  
Sandra C. King, MMC, City Recorder

DATED and signed by the Mayor this \_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
TIM KNAPP, MAYOR

**SUMMARY OF VOTES:**

Mayor Knapp  
Council President Starr  
Councilor Goddard  
Councilor Fitzgerald  
Councilor Stevens



## MEMORANDUM AND PROPOSED ORDINANCE

To: Michael E. Kohlhoff, City Attorney

From: Christopher T. Griffith, Legal Intern

Date: July 15, 2014

Regarding: Proposed Changes to Wilsonville's Prohibition on Sleeping, Camping, and Living in Vehicles

---

### Amending the Prohibition on Sleeping, Camping, and Living in Vehicles

#### I. Issue

Should Wilsonville amend the City Code provision prohibiting sleeping, camping, and living in vehicles following a recent court case regarding the constitutionality of such ordinances?

#### II. Short Answer

Yes, the City should amend the provision because it is likely unconstitutional. The Ninth Circuit recently found a similar Los Angeles ordinance to be unconstitutionally vague. The City should fix the vagueness in its own statute to avoid possible litigation.

#### III. Discussion

##### a. Introduction

The Wilsonville Code currently states that “[n]o person shall use any vehicle or trailer to camp in, sleep in, or live in while parked upon a City street.” Wilsonville Code, Section 5.210 (11). The Ninth Circuit recently struck down a similar Los Angeles ordinance prohibiting the use of a vehicle as “living quarters” while parked on city property, finding the term to be unconstitutionally vague. *Desertrain v. City of Los Angeles*, No. 11-56957 (9th Cir. 2014). The Wilsonville code provision is probably unconstitutional after the *Desertrain* decision because of the similarly vague “live in” language.

Prior to the *Desertrain* opinion, the issue of people living in cars has recently been in the news due to the continually struggling economy. The issue attracted local attention due to efforts in Sherwood and Tigard to restrict the activity after Walmart announced new locations in those cities. The Oregonian, *Walmart prompts Tigard councilors to consider ‘community impact’ when approving development* (December 11, 2013), at [http://www.oregonlive.com/tigard/index.ssf/2013/12/tigard\\_councilors\\_eyeing\\_ways.html](http://www.oregonlive.com/tigard/index.ssf/2013/12/tigard_councilors_eyeing_ways.html). That focus highlights not only the importance of staying ahead of the issue legally, but also ensuring



that the community remains safe and livable. Wilsonville should clarify its own provision in order to provide residents with clear guidance on what is prohibited in order to avoid litigation.

**b. Standard of constitutional vagueness**

The City of Wilsonville should amend its code provision because, like the Los Angeles provision in *Desertrain*, it is unconstitutionally vague. In *Desertrain*, the Los Angeles ordinance struck down by the Ninth Circuit prohibited using a vehicle as “living quarters either overnight, day-to-day, or otherwise.” No. 11-56957. According to the court, the provision failed to inform citizens of what activity it actually prohibited. *Id.* at 18–19. That vagueness made the provision unconstitutional. *Id.* An ordinance is unconstitutionally vague if it is “so vague and standardless that it leaves the public uncertain as to the conduct it prohibits . . .” *Desertrain*, No. 11-56957, at 17 (quoting *Giaccio v. Pennsylvania*, 382 U.S. 399, 402 (1966)). Furthermore, “[a] statute is vague on its face when ‘no standard of conduct is specified at all. As a result, men of common intelligence necessarily guess at its meaning.’” *Desertrain*, No. 11-56957, at 17 (quoting *Coates v. City of Cincinnati*, 402 U.S. 611, 614 (1971)). Vague statutes are also unconstitutional because the lack of specificity allows enforcing authorities to apply them discriminatorily.<sup>1</sup> *City of Chicago v. Morales*, 527 U.S. 41, 56 (1999). The Wilsonville City Code provision should be amended to be more specific in order to comply with that constitutional standard.

**c. Applying constitutional vagueness standard to terms of WC 5.210(12).**

City of Wilsonville’s code provision 5.210(12) states that “[n]o person shall use any vehicle or trailer to camp in, sleep in, or live in while parked upon a City street.” Wilsonville Code, Section 5.210 (12). The terms “camp in” and “sleep in” are probably specific enough to survive judicial scrutiny, but “live in” is unconstitutionally vague without further explanation. The proposed ordinance implementing the recommended changes explained in this section is attached.

**i. “Camp”**

The term “camp in” can probably survive a judicial challenge on vagueness grounds following the *Desertrain* opinion. The term “camp” is defined elsewhere in the Code as “to set up, or remain in or at, a campsite for the purpose of establishing or maintaining a temporary place to live.” WC, Section 10.425 (2). “Campsite” is defined as “any place where any bedding, sleeping bag, or other sleeping matter, or any stove or fire is placed, established, or maintained, whether or not such place incorporates the use of any tent, lean-to, shack, or any other structure or any vehicle or part thereof.” *Id.* at (3). Referencing the definitions of camp and campsites in the proposed ordinance decreases the vagueness. Those definitions, along with the common understanding of the term camp, inform a citizen of what the provision prohibits and the police could not use its vagueness to arbitrarily target certain individuals. Therefore, the term “camp” is probably sufficiently defined to pass constitutional muster because the Code apprises the public of what the term prohibits.

**ii. “Sleep”**

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<sup>1</sup> In *Desertrain*, the police were targeting the homeless population of Venice Beach. No. 11-56957, at 4.



The term "sleep" is likewise probably specific enough to survive a constitutional challenge. Everyone of normal intelligence knows what the term "sleep" means. Other circuits have held prohibitions on "sleeping" to be constitutionally appropriate, especially when combined with other terms. See *Hershey v. Clearwater*, 834 F.2d 937, 939-940 (1987). In *Hershey*, the Eleventh Circuit held that an ordinance prohibiting "sleeping" and "lodging" in vehicles to be constitutional. *Id.* However, the court did follow different logic than the Ninth Circuit: "Clearwater's apparent purpose in passing the ordinance: to prevent use of motor vehicles, lacking basic amenities or sanitation facilities, as *living quarters* . . . ." *Id.* at 940 (emphasis added); see also *Whiting v. Westerley*, 942 F.2d 18, 22 (1991) (The First Circuit held that plaintiffs did not have standing to challenge ordinance prohibiting "sleeping" in public on vagueness grounds because they were caught doing precisely that.). However, further defining the term would strengthen it against a challenge. Adding a definition will provide added clarity of what, exactly, the City wishes to prohibit, thereby protecting the ordinance from a claim of unconstitutional vagueness.

Furthermore, the City may want to place a time limit on sleeping in vehicles in order to target the specific activity it wishes to prohibit. As the ordinance is written, falling asleep in a vehicle on a public street even momentarily is prohibited. While doubtful that the City intended such a strict prohibition, it is within the City's authority to do so. The City might consider amending the provision in order to more narrowly target the activity it wishes to prevent. Presumably, the City intends to prohibit individuals from sleeping overnight or for extensive periods of time. The City probably does not intend to criminalize a short nap while waiting for a dentist appointment or for a child to get done with a sports practice. The proposed ordinance could include a definition of "sleep in" which specifies that to violate the provision a person must sleep in a vehicle for longer than two hours. Furthermore, it could specify that the time period is cumulative throughout the course of any twenty four hour period in order to avoid someone sleeping for a period and then moving their vehicle to continue sleeping. Under that amended definition, a brief nap is not prohibited while using the car as a place to sleep overnight or for a long period of time is. However, enforcement might become problematic because proving a person was asleep for longer than two hours, unless continuously watched is difficult. A second approach is to prohibit overnight or day to day use, which is much more easily enforced.

As a matter of public policy, the City should also include an affirmative defense excluding individuals who fall asleep overnight in a vehicle due to a medical condition such as narcolepsy. Such an exemption is unlikely to have a major effect on the functionality of the ordinance while avoiding the injustice of criminalizing a behavior an individual cannot control.

### iii. "Live"

The term "live in" a vehicle is problematic after the *Desertrain* opinion. "Live in" provides no more guidance than the term "living quarters" in the Los Angeles ordinance.<sup>2</sup>

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<sup>2</sup> "Plaintiffs are left guessing as to what behavior would subject them to citation and arrest by an officer. Is it impermissible to eat food in a vehicle? Is it illegal to keep a sleeping bag? Canned food? Books? What about speaking on a cell phone? Or staying in the car to get out of the rain? These are all actions Plaintiffs were taking



*Desertrain*, No. 11-56957, at 17–18. The public cannot determine what activity the term “live in” encompasses as the ordinance is currently written. Under the provision, a man “of common intelligence” can only speculate as to what the term prohibits. *Coates*, 402 U.S. at 614. Furthermore, the *Desertrain* opinion makes the term an easy target for a challenge. Therefore, a reasonable course of action is to either remove the term from the ordinance or define it.

A preferable course of action is to keep the phrase and amend the ordinance to make it more specific. The term “live in” conveys the essence of what the City is trying to prohibit, although not specifically enough in its current form to pass constitutional muster. The Ninth Circuit found that the term “living quarters” does not tell a person what activity it actually bans. *Desertrain*, No. 11-56957, at 17–18. The proposed ordinance defines “live in” as the use of a vehicle for a dwelling place, residence, or domicile. That definition, while broad in order to encompass unforeseen circumstances, specifies that the City is prohibiting the use of a vehicle as the equivalent of a home. The terms home, residence, dwelling, and domicile all convey the idea that the City is outlawing using a vehicle as a substitute for a traditional home for obvious sanitary and health purposes. Black’s Law Dictionary defines “domicile” as “[t]he place at which a person has been physically present and that the person regards as home; a person’s true, fixed, principal, and permanent home, to which that person intends to return and remain even though currently residing elsewhere.” BLACK’S LAW DICTIONARY 558 (9th ed. 2009). That definition is far more specific than the closest definition for “live” which is “to occupy a home.” WEBSTER’S NEW COLLEGIATE DICTIONARY 667 (1979). Adding a definition to clarify the term increases the likelihood that the code provision could survive a potential constitutional challenge.

The proposal can also avoid charges of vagueness by defining what will constitute evidence of living in a vehicle. The proposal also states that “[e]ngaging in or the presence of items used for cooking, sleeping, bathing, or other activities normally associated with home life may serve as evidence that a person is living in a vehicle.” By explaining what evidence would implicate an individual, a member of the public can more accurately discern what activity is prohibited. However, as a practical matter, many of these items are routinely present in vehicles for innocuous purposes. For example, the purpose of the ordinance is not to criminalize a family on their way through the City to go camping. To avoid that problem, the proposed ordinance includes an affirmative defense which gives the individual an opportunity to explain the presence of the household items or why they are engaged in an activity normally associated with home life. The evidentiary provision makes the term “live” significantly clearer and provides the public adequate notice as to what it prohibited.

The City should amend its code provision prohibiting sleeping, camping, and living in cars to be more specific. Adding more specific definitions and increasing the specificity regarding time are two ways to do so.

#### **IV. Conclusion**

The City should amend the ordinance in order to comply with the constitutional standard laid out in *Desertrain*.

---

when arrested for violation of the ordinance, all of which are otherwise perfectly legal.” *Desertrain*, No. 11-56957, at 18.







## Proposed Ordinance

### **5.210 Prohibited Parking or Standing**

(12) Unless in a designated area for camping, no person shall, for a period of more than two hours, use any vehicle or trailer to camp in, sleep in, or live in while parked upon any City property, City right-of-way, City easement, or City street.<sup>3</sup>

(a) For the purposes of this section,

(i) The term “camp” has the same meaning given it in Code Section 10.425.<sup>4</sup>

(ii) The term “sleep” means the natural periodic suspension of consciousness during which the powers of the body are restored or resting or meditating in a manner which leads a reasonable person to conclude that consciousness is suspended.<sup>5</sup>

(iv) The term “live” means the use of a vehicle or trailer for a home, dwelling place, residence, or domicile. Engaging in or the presence of items used for cooking, sleeping, bathing, or other activities normally associated with home life may serve as evidence that a person is living in a vehicle.

(b) It shall be an affirmative defense to “sleep in” if the sleeping was caused by a medical condition, not induced by alcohol, controlled substances, or medication that warns of causing drowsiness or sleepiness or warning to that effect.

(c) It shall be an affirmative defense to “live in,” if a legally permissible explanation is provided of the items present or the activity engaged in that a reasonable person could find plausible under the circumstance then and there present.

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<sup>3</sup> Most cities have a more comprehensive list than just “City street.” While amending the provision, it makes sense to make the language more comprehensive.

<sup>4</sup> **10.425 Camping on Public Property and Rights of Way**

(1) It shall be unlawful for any person or persons to camp on public property or right-of-way without prior approval of the City, except that unauthorized overnight camping on City parks or park facilities is governed by WC 3.000(16).

(2) “To camp” means to set up, or remain in or at, a campsite for the purpose of establishing or maintaining a temporary place to live.

(3) “Campsite” means any place where any bedding, sleeping bag, or other sleeping matter, or any stove or fire is placed, established, or maintained, whether or not such place incorporates the use of any tent, lean-to, shack, or any other structure or any vehicle or part thereof.

<sup>5</sup> Definition adapted from Webster’s New Collegiate Dictionary, 1083 (1979).



## CITY COUNCIL MEETING STAFF REPORT

<b>Meeting Date:</b>  October 20, 2014	<b>Subject: Ordinance No. 751</b> An Ordinance of the City of Wilsonville Adding Section "10.550 Civil Exclusion" to Chapter Ten of the Wilsonville City Code  <b>Staff Member:</b> Michael Kohlhoff, City Attorney Chris Griffith, Legal Intern  <b>Department:</b> Legal	
<b>Action Required</b> <input type="checkbox"/> Motion <input type="checkbox"/> Public Hearing Date: <input checked="" type="checkbox"/> Ordinance 1 <sup>st</sup> Reading Date: <input type="checkbox"/> Ordinance 2 <sup>nd</sup> Reading Date: <input type="checkbox"/> Resolution <input type="checkbox"/> Information or Direction <input type="checkbox"/> Information Only <input type="checkbox"/> Council Direction <input type="checkbox"/> Consent Agenda	<b>Advisory Board/Commission Recommendation</b> <input checked="" type="checkbox"/> Approval <input type="checkbox"/> Denial <input type="checkbox"/> None Forwarded <input type="checkbox"/> Not Applicable  <b>Comments:</b> Mayor requested that the legal department provide an exclusionary trespass ordinance. After a review of other cities' approaches, legal department staff has drafted an exclusion ordinance.	
<b>Staff Recommendation:</b> Staff recommends Council adopt Ordinance No. 751.		
<b>Recommended Language for Motion:</b> I move to approve Ordinance No. 751		
<b>PROJECT / ISSUE RELATES TO:</b>		
<input type="checkbox"/> Council Goals/Priorities	<input type="checkbox"/> Adopted Master Plan(s)	<input checked="" type="checkbox"/> Not Applicable

### ISSUE BEFORE COUNCIL:

Should the City Staff provide a means for the police to exclude disruptive or dangerous individuals from public places?



## **EXECUTIVE SUMMARY:**

The Mayor has expressed a concern over individuals who disrupt the public peace and safety on public property. Police in Clackamas County currently have the power to exclude individuals from private property when empowered by the property owner. Clackamas County has also adopted an exclusionary trespass ordinance for public property. On occasion, the City has had trouble with disruptive and dangerous individuals in the past. From time to time, the police have had difficulties preventing individuals from repeatedly camping on public property, threatening city staff, or engaging in disruptive behavior. The proposed ordinance empowers Wilsonville police to issue exclusions to individuals who engage in criminal, disruptive, or dangerous activity on public property. Those exclusions would prohibit the individual from reentering that public place until the exclusion expires.

Officers can exclude individuals from public property and subsequently arrest them for trespass should they reenter. Residents within Wilsonville have taken advantage of that opportunity to protect private property. City police officers have also noted concern that they do not currently have a corresponding power on City property.

Exclusions from public property can create Constitutional First Amendment problems if administered incorrectly. The legal department designed the ordinance's procedural requirements—variances, appeals, etc.—to avoid those problems. The procedures create exceptions from the exclusion in order to ensure that an individual can engage in protected free speech activities and that the exclusion does not violate their basic rights.

As Wilsonville continues to develop into a larger, more populous City, the power to exclude disruptive and dangerous individuals will be a valuable tool for police to keep City Staff, residents, and visitors safe.

## **EXPECTED RESULTS:**

Passage of the ordinance gives the Wilsonville Police Department an additional tool to protect public safety by excluding an individual from public property, such as City Hall or a park. Essentially, the ordinance extends the Police Department's power to exclude individuals from private property and public property.

**TIMELINE:** N/A

**CURRENT YEAR BUDGET IMPACTS:** N/A

## **FINANCIAL REVIEW / COMMENTS:**

Reviewed by:   CAR                     Date:   10/9/14              
There is no financial impact.

## **LEGAL REVIEW / COMMENT:**

Reviewed by: [MEK] Date: 10/6/14  
Approved as to form.



**COMMUNITY INVOLVEMENT PROCESS: N/A**

**POTENTIAL IMPACTS or BENEFIT TO THE COMMUNITY:**

The ordinance gives the police a valuable tool to reduce repeat offenses against public order and safety. Discouraging an individual from returning to public property could reduce the incidence of repeat offenders.

**ALTERNATIVES:**

City Staff also considered implementing a civil exclusion zone, which would have applied the exclusions to entire areas such as the downtown district. While other cities such as Eugene and Portland have implemented those exclusion zones in the past, Staff determined that Wilsonville does not have a significant enough problem to justify the use of this tool.

**CITY MANAGER COMMENT:**

**ATTACHMENTS**

- A. Ordinance No.751
- B. Supporting Memorandum



## ORDINANCE NO. 751

### AN ORDINANCE OF THE CITY OF WILSONVILLE ADDING SECTION "10.550 CIVIL EXCLUSION" TO CHAPTER 10 OF THE WILSONVILLE CITY CODE

WHEREAS, Wilsonville citizens have recently raised concerns about individuals' unlawful disruption of the peace or engaging in illegal activities in public spaces, which actions do not involve the lawful rights of free speech, assembly, or petitioning the government; and

WHEREAS, police officials in Wilsonville recently raised concerns that the City has not adopted the plenary authority to reasonably exclude a disruptive, criminal, or dangerous individual from public spaces; and

WHEREAS, many private property owners have granted police the power to exclude such individuals from private property; and

WHEREAS, to protect the safety of those using Wilsonville's parks and other public property from individuals who act *in violation of applicable law or regulations in or on City property*; and

WHEREAS, to protect Wilsonville's quality of life and citizen's enjoyment of public space; and

WHEREAS, to encourage appropriate use of City parks and other property; and

WHEREAS, to protect City facilities from destruction, vandalism, and degradation and to deter individuals from engaging in such actions; and

WHEREAS, to provide police in Wilsonville with a tool to prevent dangerous or troublesome individuals from engaging in recurring unlawful behavior; and

WHEREAS, in anticipation of challenges accompanying the expected growth and development of Wilsonville;

NOW, THEREFORE, THE CITY OF WILSONVILLE ORDAINS AS FOLLOWS:

1. The following is added to Chapter 10 of the Wilsonville City Code as Section 10.550 Civil Exclusion:

#### **"10.550 Civil Exclusion**

- (1) Definitions. For purposes of this provision:



(a) "Applicable provision of law" includes any applicable provision of this Code, or any City ordinance, or of any rule or regulation promulgated by the Council under this Title, any applicable criminal or traffic law of the State of Oregon, any law regarding controlled substances or alcoholic beverages, or any applicable County ordinance or regulation.

(b) "Excluding officer" means any police officer or City employee authorized by the City Manager to issue exclusions.

(c) "City property" means any property including, but not limited to, parks, greenways, buildings, parking lots, or other land or physical structures owned or managed by the City.

(2) Exclusion. In addition to other remedies provided for violation of this Code, or of any laws of the State of Oregon, any excluding officer may exclude any person who violates any applicable provision of law *or regulation* in or on any City Property from that City Property in accordance with the provisions of this Section. Provided, further, the removal of a person for disturbing a City Council or other public meeting shall not be the basis for exclusion from future City Council or other public meetings under this ordinance; but may be used as evidence in any other civil or criminal proceeding that may result in a future exclusion.

(3) Period of Exclusion. An exclusion issued under the provisions of this Section shall be for thirty (30) days. If the person to be excluded has been excluded from any City property at any time within two years before the date of the present exclusion, the exclusion shall be for (90) days. If the person to be excluded has been excluded from City property on two or more occasions within two years before the date of the present exclusion, the exclusion shall be for 180 days.

(4) Warning Prior to Exclusion. Before issuing an exclusion under this Section, the excluding officer shall first give the person a warning and a reasonable opportunity to desist from the violation. An exclusion shall not be issued if the person promptly complies with the direction and desists from the violation. Notwithstanding the provisions of this Subsection, no warning shall be required if the person is to be excluded for engaging in conduct that:

(a) Is classified as a felony or misdemeanor under the following Chapters of the Oregon Revised Statutes, or is an attempt, solicitation, or conspiracy to commit any such felony or misdemeanor defined in ORS.

1. Chapter 162 – Offenses Against the State and Public Justice;
2. Chapter 163 – Offenses Against Persons;
3. Chapter 164 – Offenses Against Property, except for ORS 164.805, Offensive Littering;
4. Chapter 165 – Offenses Involving Fraud or Deception;
5. Chapter 166 – Offenses Against Public Order; Firearms and Other Weapons; Racketeering;



6. Chapter 177 – Offenses Against Public Health, Decency and Animals;
7. Chapter 475 – Controlled Substances; Illegal Drug Cleanup; Paraphernalia; Precursors; or
- (b) Otherwise involves a controlled substance or alcoholic beverage; or
- (c) Has resulted in injury to any person or damage to any property; or
- (d) Constitutes a violation of any of the following provisions of this Code:
  1. 10.130 Minor – Purchase or Possession of Liquor
  2. 10.230 Killing of Birds or Animals Prohibited
  3. 10.300 Public Intoxication and Drinking
  4. 10.310 Panhandling
  5. 10.320 Public Kept in Decency
  6. 10.350 City Property, Destruction
  7. 10.390 Posted Notices, Defacement
  8. 10.410 Diving from Public Pilings
  9. 10.410 Unlawful Operating or Riding a Skateboard in a Prohibited Area
  10. 10.420 Intentionally Causing Damage to Town Center Park Properties by or for Skateboarding
  11. 10.425 Camping on Public Property and Rights of Way
  12. 10.510 Attempt to Commit Offenses
- (e) Is conduct for which the person previously has been warned or excluded for committing on any City Property.

(5) Written Notice. Written notice signed by the excluding officer shall be given to any person excluded from any City property under this Section. The notice shall specify:

- (a) the date of the exclusion's issuance,
- (b) length of exclusion,
- (c) City property from which the person is excluded;
- (d) identify the provision of law the person has violated and shall contain a brief description of the offending conduct;
- (e) inform the excluded person of the right to appeal, including the time limit and the place of delivering the appeal;
- (f) inform the excluded person of the right to petition for a waiver of all or any portion of the exclusion; and
- (g) the consequences for failure to comply shall be prominently displayed on the notice.

(6) Appeal of Exclusion. A person receiving such notice of exclusion may appeal, in writing, to the Wilsonville Municipal Court Clerk.

- (a) A hearing shall be held at the next regularly scheduled session of the Wilsonville Municipal Court.



1. The excluded individual may request, in writing, setting forth the reason therefor, that the hearing be postponed, and the Clerk shall grant such a postponement upon a showing of necessity.
- (b) The municipal judge shall dissolve the exclusion upon a showing that:
  1. The excluding officer lacked probable cause; or
  2. The excluded individual was engaged in the lawful exercise of any right or privilege guaranteed under the United States Constitution, Constitution of the State of Oregon, or any other law.

(7) Waiver of Exclusion. At any time within the period of exclusion, a person receiving such notice of exclusion may apply, in writing, to the Municipal Judge for waiver of some or all of the effects of the exclusion for good reason. If the Municipal Judge grants a waiver under this Subsection, the Municipal Judge shall promptly notify the excluding officer. In exercising discretion under this Subsection, the Municipal Judge shall consider the seriousness of the violation for which the person has been excluded, the particular need of the person to be within the area from which they are excluded during some or all of the period of exclusion, such as for work or to attend or participate in a particular event (without regard to the content of any speech associated with that event), and any other criterion the Municipal Judge determines to be relevant to the determination of whether or not to grant a waiver. The decision of the Municipal Judge to grant or deny, in whole or in part, a waiver under this Subsection is committed to the sole discretion of the Municipal Judge and is not subject to appeal or review.

1. The Municipal Judge shall grant the waiver if the excluded individual wishes to participate in any free speech activity protected by the Constitution of the United States or the Oregon Constitution.

(8) Stay During Appeal. If an appeal of the exclusion is timely filed under \_\_\_\_\_, the effectiveness of the exclusion shall be stayed, pending the outcome of the appeal. If the exclusion is affirmed, the remaining period of exclusion from the time of the stay shall be effective immediately upon the issuance of the Municipal Judge's decision, unless the Municipal Judge specifies a later effective date.

(9) Appropriate Length of Exclusion. If a person is issued a subsequent exclusion while a previous exclusion is stayed pending appeal (or pending judicial review, should a court stay the exclusion), the stayed exclusion shall be counted in determining the appropriate length of the subsequent exclusion under Subsection (3). If the predicate exclusion is set aside, the term of the subsequent exclusion shall be reduced as if the predicate exclusion had not been issued. If multiple exclusions issued to a single person or a single facility are simultaneously stayed pending appeal, the effective periods of those which are affirmed shall run consecutively.



(10) Violation of Exclusion. No person shall enter or remain on City property at any time during which there is in effect a notice of exclusion issued under this Section excluding the person from that property.

(a) If a person who received notice of exclusion from City property subsequently remains or returns to that building or property, that person may be arrested on criminal trespass charges.

(b) A prosecution for criminal trespass is not an exclusive remedy. The person violating an exclusion order may also be liable for civil trespass and any other charge or liability under common, local, state, or federal law.”

2. The City Recorder is directed to add Wilsonville Code Section 10.550, as approved above, and to make such format, style, and conforming changes to match the format and style of the Offenses section of the Wilsonville Code.
3. Except as set forth above, Chapter 10 of the Wilsonville City Code remains in full force and effect, as written.

SUBMITTED to the Wilsonville City Council and read for the first time at a meeting thereof on the 20<sup>th</sup> day of October, 2014, and scheduled for second reading on \_\_\_\_\_, commencing at the hour of 7 p.m. at the Wilsonville City Hall, 29799 SW Town Center Loop East, Wilsonville, Oregon.

\_\_\_\_\_  
Sandra C. King, MMC, City Recorder

ENACTED by the City Council on the \_\_\_\_ day of \_\_\_\_\_, 2014, by the following votes:                      Yes: \_\_\_\_                      No: \_\_\_\_

\_\_\_\_\_  
Sandra C. King, MMC, City Recorder

DATED and signed by the Mayor this \_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_



TIM KNAPP, MAYOR

**SUMMARY OF VOTES:**

Mayor Knapp

Council President Starr

Councilor Goddard

Councilor Fitzgerald

Councilor Stevens



# MEMORANDUM

TO: Michael E. Kohlhoff, City Attorney

FROM: Christopher T. Griffith, Law Clerk

DATE: September 22, 2014

RE: **Legality of Exclusion/Trespass Ordinances**

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## I. Statement

The City of Wilsonville is interested in giving City police and other officials the power to exclude disruptive, criminal, or violent individuals from public space. Clackamas County uses a private property program to allow City police to exclude individuals from private property. The City is interested in developing a corresponding program for public property. Among the City of Wilsonville's top priorities is to maintain a high standard of livability in the community. Disruptive, dangerous, or criminal elements in the community quickly degrade the City's quality of life. The City of Wilsonville currently lacks an effective method of excluding those individuals from public space. Many Oregon communities have passed various types of exclusion ordinances to protect public property. As this memorandum discusses, those ordinances range in scope, severity, and enforcement. The Mayor and Chief of Police have requested that the City Attorney's Office develop an ordinance to empower Wilsonville police with a similar power.

In the past several years, the City encountered a number of circumstances justifying an exclusion ordinance. Given Wilsonville's location on Interstate 5, transient individuals will often stay in Wilsonville overnight or longer while using the freeway. The City's accessibility, while desirable in many ways, leaves it open to the encroachment of undesirable elements. Public space is sometimes used as living quarters for individuals. Additionally, disgruntled individuals have threatened and intimidated city officials. While an exclusion ordinance may not solve those problems, it would provide the police with an effective tool to mitigate a portion of the negative effects.

Wilsonville could authorize police to take a variety of actions to address the problem of disruptive individuals. Police could be authorized to issue warnings, requests to stop, complaints, exclusions, or arrests. The City should tailor an ordinance to fit the scope of the problem. Another issue of scope is the geography of the exclusions. Many cities have exclusion ordinances targeting parks, and some have ordinances targeting other specific areas or buildings.

While possible to craft an effective regulation, City Staff and City Council should appreciate the gravity of the power to exclude an individual from public space. While it may be a proper and desirable power for city officials to exercise, the power summarily removes a community



member's basic ability to be in a public area. That access is a key function of belonging to a community. Partially for that reason, both the federal and state constitutions place certain restrictions on governments' ability to issue exclusions. Beyond the legal ramifications of an exclusion ordinance addressed by this memorandum, the social, moral, and political ramifications merit discussion prior to enactment of an exclusion ordinance.

## **II. Legal Issues**

1. Under Oregon and Federal law, how can the City of Wilsonville grant police and other City officials the power to exclude individuals who engage in illegal or disruptive behavior on City property from those areas?
2. What are the legal vulnerabilities of exclusion ordinances?
3. When does the Constitution permit a City to exclude an individual from a public place?

## **III. Short Answers**

1. Oregon cities use several methods to grant police and City employees the power to exclude individuals from public property. Wilsonville could choose an overall public lands exclusion policy or a more targeted one for specific areas such as parks or the Town Center based upon specific conduct.
2. Exclusion ordinances face challenges under both the Oregon and the United States Constitutions regarding the suppression of free speech, deprivation of due process, and double jeopardy.
3. Given the problems Wilsonville faces, a "civil exclusion" ordinance is probably the appropriate approach for the City. The ordinance will need to incorporate specific elements in order to survive a legal challenge.

## **IV. Discussion**

### **A. Introduction**

Exclusion/trespass ordinances empower officials to exclude individuals from certain areas, after which those persons may be cited for criminal trespass if they reenter or refuse to leave. The "Notice of Exclusion/Trespass" form currently in use by the Clackamas County Sheriff's Department lists the following as "Criteria for Exclusion from [the designated premises]:" 1) Makes unreasonable noise; 2) Engages in fighting or in violent, tumultuous, or threatening behavior; 3) Substantially interferes with any right, comfort, or convenience of (name of premises) resident or employee; 4) Engages in any activity which constitutes a criminal offense; 5) Damages, defaces or destroys property belonging to (name of premises) or name of Premises (sic) resident or employee; 6) Litters on (name of premises); or 7) Drives in a reckless manner; 8) Consumes or possesses an open container of any alcoholic beverage in the common areas; 9) Violates the State Curfew Statute 419c.680; 10) Camps, urinates, or otherwise remains on (name



of premises) without a discernible legitimate purpose.”<sup>1</sup> The form does not differentiate between public and private premises.<sup>2</sup> The form also contains another category for exclusion from businesses.<sup>3</sup> Also, the form contains “Criteria for Exclusion from Clackamas County Parks” which is substantially the same as the list for premises with the exception of the prohibition on consumption of alcohol and camping. It also adds a section about violation of motor vehicle codes.<sup>4</sup> The Clackamas County notice does not contain a section which states how long the exclusion lasts.

Exclusion ordinances vary widely in scope, application, and process. The approaches, even those which can be lumped together categorically, take varied approaches to the problem of disruptive individuals. The varied approaches may be explained by the different circumstances municipalities face. For example, the vagrancy, crime, and drug issues Portland faces exceed those in Troutdale or Salem. Because these ordinances are not one size fits all, Wilsonville should learn from the experience of other cities and craft an approach which targets the City’s particular problems while carefully avoiding potentially sensitive issues raised by excluding an individual from public space. The Clackamas County Sheriff’s form serves as a guide; the City has a contract with the Sheriff’s department to provide police service and following its form allows for ease of administration. However, the City may wish to consider going beyond Clackamas County’s provisions to give the department additional power, or to allow other City officials to exclude disruptive individuals.

The Wilsonville Code already contains enforcement provisions. For example, based on due process, the Code authorizes officials to issue fines and potentially imprison an individual for violations of park rules.<sup>5</sup> The City is interested in allowing the police to exercise the exclusion tool in addition to those preexisting remedies. Exclusion, by prohibiting a person from returning to a place for a specified period of time, serves a different function than the current provisions.

## **B. Approaches to Exclusion/Trespass**

### **1. Exclusion Specified by Activity Within a Zone or Area**

Cities utilize several alternatives to exclude undesirable activity from areas. Some cities exclude an individual who engages in a specified activity in an area. For example, Portland enforced both “Drug-Free Zones” and “Prostitution-Free Zones.”<sup>6</sup> Due to political pressure, those ordinances expired in 2007, but they provide an example of the approach.<sup>7</sup> The zones were situated in high crime areas in order to increase livability and desirability by excluding individuals who participate in the criminal activity. If an individual was caught engaging in the prohibited activity in that area, a police officer could exclude them from the zones for a specified period of time. An individual could be arrested for criminal

<sup>1</sup> CLACKAMAS COUNTY SHERIFF, NOTICE OF EXCLUSION/TRESPASS.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> WC 10.430.

<sup>6</sup> PORTLAND, OR., CITY CODE [hereinafter PCC], 14B.20.010 Drug-Free Zones; PCC 14B.30 Prostitution-Free Zones.

<sup>7</sup> PCC 14B.30.020; PCC 14B.020.



trespass if they violated that exclusion order. Historically, although not always, exclusion for these types of crimes were a condition of probation.<sup>8</sup> The efficacy of these measures is much disputed and they raise controversial legal and policy questions.

Activity specific ordinances contain “exceptions” and “variances.” Exceptions are permissible reasons to violate the exclusion order such as visiting a doctor, attorney, or traveling through an area.<sup>9</sup> Certain ordinances contain extensive lists of automatic exceptions such as accessing a personal residence, attending required government functions, meeting with an attorney, and traveling through on major thoroughfares.<sup>10</sup> An individual can request a variance from the exclusion in order to access essential services.<sup>11</sup> Those services often congregate near the center of cities or other low income areas which coincide with the exclusion zones.<sup>12</sup> Since barring an individual from an area which could be important to them is a harsh penalty, these variances and exceptions provide a necessary balancing of interests.<sup>13</sup> Exceptions and variances make the exclusion/trespass ordinances more palatable both legally and politically.

Excluding individuals who take part in certain activities from certain areas is probably an inappropriate approach for Wilsonville which, unlike larger cities such as Portland and Seattle, does not have known concentrations of drugs and prostitution. As a result of different cultures, good government, and good policing, the downtown area and other commercial districts are relatively safe and calm compared to other cities. However, the City might consider activity oriented exclusions as a preventative measure to target areas which could foreseeably develop those problems. Although Wilsonville is unlikely to adopt the approach, activity exclusion zones help to illustrate potential legal and policy problems which generally arise from barring individuals from public areas. Many of the legal and political principals which affect drug and prostitution free zones also apply to action Wilsonville is more likely to take.

## **2. Exclusion Specified by Activity at a Park or Public Property/Civil Exclusion Zones**

Many Northwest cities have either park exclusions, “civil exclusion zones,” or both.<sup>14</sup> Civil and park exclusions are discussed together because they are essentially the same, but apply to different areas. These ordinances give the police and certain City officials the power to exclude individuals from particular public property.<sup>15</sup> Such ordinances are increasingly common across the United States and can be effective tools for the City and police to handle unruly individuals on public property. A park exclusion ordinance grants the police or other authorities the power to exclude individuals from a public park for

<sup>8</sup> KAREN H. BANCROFT, J. of Soc. & Soc. Welfare, Sept. 2012, at 69–70.

<sup>9</sup> See e.g. PCC 14B.30.30(c).

<sup>10</sup> *Id.*

<sup>11</sup> PCC 14B.30.030(c); PCC 14B.30.060(d); 14B.20.050(d); 14B.20.030(c).

<sup>12</sup> Bancroft, *supra*, note 5, at 69–70.

<sup>13</sup> As discussed subsequently, these exceptions and variances can also be leveraged in order to avoid difficult First Amendment, free speech issues.

<sup>14</sup> See BANCROFT, *supra*, note 5, at 63–64.

<sup>15</sup> BEND, OR., CITY CODE, 5.40.010 Civil Exclusion Zones; SALEM, OR., REVISED CODE, 95.740.



certain violations. They are a common strategy to combat vagrancy and the problems associated with homelessness. A “civil exclusion zone” is basically an extension of the park exclusion to other public areas. Bend, for example, lists “Public Parks” and “Public Places” in its “civil exclusion” code provision.<sup>16</sup> Bend specifically lists public places, but the code states that the list is not exclusive.<sup>17</sup> Clackamas County’s Code goes into great detail in its code about excluding individuals from public libraries, but does not mention parks.<sup>18</sup> The County empowered officials and police to issue exclusions for other areas by board order.<sup>19</sup> Wilsonville may wish to extend the exclusion zone to all City property in order to give officials a dynamic tool with which to address disruptive or dangerous individuals.

Park and Civil Exclusion ordinances range greatly in specificity and detail, and some of them may run afoul of the legal issues presented subsequently.<sup>20</sup> Some ordinances—Troutdale for example—briefly explain the excluding authority’s power and give a citizen or enforcing authority next to no guidance.<sup>21</sup> Others explicitly list offenses justifying exclusion, the information required on the notification, and the appeals process.<sup>22</sup> Some explicitly list different exceptions and allow for variances, while others make no mention of exceptions at all.<sup>23</sup> As discussed subsequently, exceptions and variances substantially increase the chance that an ordinance can survive a Constitutional challenge. Some give the power to grant variances to an appellate body, while others give the issuing officer the ability to grant a variance on the spot. Others—like Portland—allow for variances for good cause throughout the exclusion period.<sup>24</sup> Exceptions and variances are a key feature of the exclusion ordinances.

### C. Legal Questions Surrounding Exclusion/Trespass Ordinances

Both types of exclusion ordinances present substantially the same legal issues. These issues often arise along with probable cause concerns, particularly in the case of the drug free and prostitution free zones.<sup>25</sup> Individuals who are excluded challenge whether the officer had probable cause to justify issuing the notice of exclusion.

While some case law addresses the issue, few cases are appealed and comprehensively address the issues which could arise. In 2001, Portland issued 2,537 exclusions and thirty-three

<sup>16</sup> BEND, OR., CITY CODE, 5.40.010(A)(1)–(2).

<sup>17</sup> *Id.*

<sup>18</sup> CLACKAMAS COUNTY, OR., 6.09.

<sup>19</sup> CLACKAMAS COUNTY, OR., CLACKAMAS COUNTY COMMISSIONERS APPROVE LIBRARY SAFETY CHANGES AND ADOPT BOARD ORDER AIMED AT ENSURING PUBLIC SAFETY IN FACILITIES, available at <http://www.clackamas.us/pressreleases/pr20131022.html>. The City empowered a “person in charge” of the County facility to order an individual to leave the property, after which they are engaged in criminal trespass. *Id.*

<sup>20</sup> PCC 20.12.265 Park Exclusions; TROUTDALE, OR., CITY CODE, 13.20.380 Authority to Eject and Exclude

<sup>21</sup> *See, e.g.*, TROUTDALE, OR., CITY CODE, 13.20.380 Authority to Eject and Exclude

<sup>22</sup> *See, e.g.*, PCC 20.12.265(D).

<sup>23</sup> *See, e.g.*, SALEM, OR., CITY CODE, 95.750 Variance from Exclusion

<sup>24</sup> PCC 20.12.265.

<sup>25</sup> *State v. Williams*, 178 Or. App. 52, 62–63 (Or. App. 2001) (rejecting a claim that the officer issuing an exclusion order lacked probable cause to establish that she was engaged in prostitution in a prostitution-free zone).



were appealed.<sup>26</sup> While that statistic refers to an outdated code provision, it demonstrates the low incidence of appeal. By their nature, exclusion ordinances target those without access to resources to challenge, appeal, or otherwise pursue legal relief. That disparity may explain the low number of cases.<sup>27</sup> It could also be evidence that the police were exercising the power judiciously. However, some clear principles have emerged from those controversies which did proceed to court.

## 1. First Amendment

An exclusion ordinance can easily infringe constitutionally protected free speech as an incidence of dissuading illegal or undesirable conduct in public places. An exclusion ordinance's purpose is to regulate public activity in public places. For example, in *Yeakle v. City of Portland*, the District Court of Oregon found that the City of Portland's Park Exclusion statute infringed on the plaintiff's First Amendments rights as applied and was overbroad.<sup>28</sup> Although Portland subsequently amended the ordinance, the case is illustrative of the defects plaguing exclusion ordinances. In the *Yeakle* case, a Portland Police Officer cited a medical marijuana activist soliciting signatures for a ballot measure for placing a sign on a lamp post.<sup>29</sup> Along with the citation, the officer issued the plaintiff an exclusion order, barring her from the park.<sup>30</sup> She argued successfully that the order infringed her free speech and that the ordinance was overbroad because it swept up clearly protected speech.<sup>31</sup> According to the plaintiff, the exclusion from the public forum itself infringed upon her freedom of speech.<sup>32</sup>

### i. Violation of individual's free speech?

The *Yeakle* court analyzed whether the exclusion order infringed the plaintiff's right to free speech under the standard first amendment methodology.<sup>33</sup> Under that methodology, the court determines (1) if the plaintiffs were engaged in protected free speech; (2) the nature of the forum; and (3) whether the defendant's justification for excluding the plaintiffs from the forum was constitutional.<sup>34</sup> Under the first step, both parties agreed that the First Amendment protected the plaintiff's signature gathering.<sup>35</sup> The second question is to identify the nature of the forum. In *Yeakle*, the restriction took place at Pioneer Courthouse Square.<sup>36</sup> Both parties agreed that public

<sup>26</sup> *Yeakle*, 322 F.Supp.2d 1119, 1130–1131 (D. Or. 2004).

<sup>27</sup> Bancroft, *supra*, note 5 at 63–64. Courts dismiss cases when the individual did not pursue the appeals process. See, i.e., *State v. Barnes*, 232 Or. App. 70, 74 (Or. App. 2009). Because that process is relatively short, there is a good chance that the period passed without the person securing legal counsel or understanding the consequences of that failure. PCC 14B.20.060 (C). (Portland's drug-free zone ordinance allows for either five or fifteen days to appeal).

<sup>28</sup> *Yeakle*, 322 F.Supp. at 1127.

<sup>29</sup> *Id.* at 1122–1123.

<sup>30</sup> *Id.* at 1123.

<sup>31</sup> *Id.* at 1127.

<sup>32</sup> *Id.* at 1124.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.* (citing *Cornelius v. N.A.A.C.P. Legal Def. & Educ. Fund, Inc.*, 473 U.S. 788 (1985)).

<sup>35</sup> *Id.*

<sup>36</sup> *Id.* at 1122.



parks and squares like Pioneer Courthouse Square are prototypical public forums.<sup>37</sup> Exclusion ordinances almost always target public forums such as streets, sidewalks, parks, or meeting halls. Therefore, Wilsonville should design an ordinance which protects excluded individual's first amendment right to free speech while achieving the City's goal of maintaining livability.

The third question is whether the justification for excluding the plaintiff was Constitutional.<sup>38</sup> "Where a content-neutral regulation, as applied, punishes conduct that is interwoven with speech activity, the regulation is justified if: (1) the government is constitutionally authorized to regulate the conduct; (2) the regulation serves a substantial governmental interest; (3) the governmental interest is not related to the suppression of speech; and (4) any incidental burden on speech is no more than necessary."<sup>39</sup> Because the ordinance was content neutral, or not directed at a particular subject, and courts have long recognized cities' power to regulate for "esthetic objectives,"<sup>40</sup> the contested issue was whether the governmental interest was sufficiently substantial to justify the effect of the ordinance on plaintiffs' freedom of speech, and whether that effect is no greater than necessary to accomplish the City's purpose."<sup>41</sup> The Court stated that the fourth prong was the most problematic for the City because alternatives existed which would have allowed for a less intrusive means.<sup>42</sup> The Court outlined several alternatives which would have avoided the problem, such as allowing plaintiffs to return for lawful First Amendment activities, only excluding them from repeating the activity, or shortening the duration.<sup>43</sup> The Court concluded that the City of Portland needed to take additional steps to ensure that the ordinance did not prohibit the plaintiff from exercising their right to protected free speech.

## ii. Overbreadth

The *Yeakle* court found that the Portland ordinance was overbroad as applied. In order to protect the constitutionally guaranteed right of freedom of speech, the Supreme Court states that an ordinance is overbroad if it sweeps up protected first amendment activities.<sup>44</sup> An ordinance is overbroad if it is "greater than necessary."<sup>45</sup> In *Yeakle*, the court found that, since the ordinance prohibited the plaintiff from actually being in the public forum, it prohibited them from participating in protected

<sup>37</sup> *Id.* (citing *N.A.A.C.P. v. City of Richmond*, 943 F.2d 1346, 1355 (9th Cir. 1984) and *Gerritsen v. City of Los Angeles*, 994 F.2d 570, 576 (9th Cir. 1993) ("public parks ... represent the quintessential public forum ....")).

<sup>38</sup> *Id.* at 1124-1125.

<sup>39</sup> *Yeakle*, 322 F.Supp.2d at 1124-1125 (citing *City of Erie v. Pap's A.M.*, 529 U.S. 277, 296 (2000)).

<sup>40</sup> *Id.* at 1125.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> *Id.* at 1125-1126. Portland's current park exclusion ordinance contains provisions allowing an excluded individual to gain a waiver. PCC 20.12.265 Park Exclusions ("In exercising discretion [to grant a waiver] the Commissioner shall consider the seriousness of the violation for which the person has been excluded, the particular need of the person to be in the Park during some or all of the period of exclusion, such as for work or to attend or participate in a particular event (*without regard to the content of any speech associated with that event*), and any other criterion the Commissioner determines to be relevant to the determination of whether or not to grant a waiver.").

<sup>44</sup> *Thornhill v. Alabama*, 310 U.S. 88 (1940).

<sup>45</sup> *Id.* at 1125.



first amendment activity.<sup>46</sup> Furthermore, Portland's ordinance did not allow authorities to tailor the exclusion to match the crime or prevent it from recurring.<sup>47</sup> Wilsonville should design its ordinance to allow for variations to protect a person's free speech rights. Based on the *Yeakle* court's reasoning, the City should consider allowing for individualized variation of the exclusion.

Since *Yeakle*, the City of Portland apparently amended its code to state that "[n]othing in this Section shall be construed to authorize the exclusion of any person lawfully exercising free speech rights or other rights protected by the state or federal constitutions."<sup>48</sup> Following *Yeakle*, Ashland also amended its City Code.<sup>49</sup> The Ashland ordinance now has defined appeal procedures and allows the plaintiff to request a waiver for a portion of the exclusion.<sup>50</sup> Portland's ordinance makes clear that the City contemplated that exercising protected First Amendment rights would justify a variance.<sup>51</sup> Wilsonville should adopt similar language into its ordinance.<sup>52</sup>

Since exclusion ordinances attempt to do substantially the same thing no matter how they are framed—regulate undesirable activity in the public forum—they have similar legal vulnerabilities. An attempt to regulate conduct will often incidentally prohibit free speech. The Clackamas County "Criteria for Exclusion" could easily cause First Amendment problems if misapplied. Furthermore, removing the citizen's right to be on the public property essentially halts their ability to exercise free speech in that public forum. Therefore, Wilsonville's ordinance should include language to make clear that free speech remains protected and allow the City to provide for protected activities.

### iii. Public meetings

Another example of exclusions affecting an individual's free speech is in City Council meetings. In most cases regarding removal of an individual from a city council meeting, the ordinance in question specifically targets speech.<sup>53</sup> The Oregon District Court recently addressed this issue in *Osborne v. City of Burns*.<sup>54</sup> The District

<sup>46</sup> *Id.* at 1125–1126.

<sup>47</sup> *Yeakle*, 322 F.Supp.2d at 1127 ("A narrowly-tailored ordinance would not have a one-size-fits-all thirty-day exclusion irrespective of the nature of the violation.")

<sup>48</sup> PCC 20.12.265(B).

<sup>49</sup> CITY OF ASHLAND, OR., COUNCIL COMMUNICATION, Oct. 6, 2009 ("The proposed ordinance updates AMC 10.68.350 to comply with *Yeakle v. City of Portland*, a park exclusion case from 2004 that created a limited exception to park exclusions for first amendment activities.")

<sup>50</sup> ASHLAND, OR., MUNICIPAL CODE, 10.68.350 Violation – Penalty ("Nothing in this Section shall be construed to authorize the exclusion of any person lawfully exercising free speech rights or other rights protected by the state or federal constitutions.")

<sup>51</sup> PCC 20.12.265 Park Exclusions (G). Other cities have adopted identical language. *See, i.e.*, TIGARD, OR., ORDINANCE NO.08-18 (Oct. 28, 2008).

<sup>52</sup> The City Manager or Municipal Judge are obvious choices. If the Council decides on the City Manager, it may be wise to have a clear understanding that if any issue arises implicating first amendment issues, they should consult with the legal department. An explicit, individualized denial of free speech is likely to lead to litigation.

<sup>53</sup> *See, e.g.*, *Acosta v. City of Costa Mesa*, 781 F.3d 800, 810–811 (2013).

<sup>54</sup> 2012 U.S. Dist. LEXIS 36523; 2012 WL 930815.



Court of Oregon summarized the Ninth Circuit case law on the issue; according to the court, an individual may be removed from a City Council meeting if (1) they are not being excluded because of their viewpoint, and (2) they are actually disruptive.<sup>55</sup> According to the Ninth Circuit, city council meetings are a “limited public forum” in which the government can constrain the exercise of free speech to a limited extent.<sup>56</sup> In *Osborne*, the members of the Burns, Oregon city council allegedly had an individual removed from the premises of a city council meeting prior to any disturbance.<sup>57</sup>

Wilsonville already has the ability to bar an individual from a City Council meeting: “[a]ny person whose conduct at a council meeting intentionally, recklessly, or knowingly causes or attempts to cause a disturbance of the order or decorum of the proceedings may be barred from the Council meeting by a majority vote of the Council.” WC 2.003(17). Unlike an exclusion ordinance, the Code provision only allows City Council to bar an individual from the meeting in question. An exclusion ordinance would bar an individual prospectively, potentially barring them from future meetings. According to the rules laid out in *Osborne* and the cases cited by the court, Wilsonville should consider including city council meetings as an exception in the exclusion ordinance. While case law does not directly address whether an individual can be excluded from a future meeting for a disturbance, it is clear that an individual can only be removed from a meeting if they actually disrupt the proceedings.<sup>58</sup>

Given the latitude of free speech associated with City Council meetings and the time between Council meetings, if a second incident were to occur, a WC 2.003(17) barment is available and seeking court relief then would probably be more effective than trying to impose the exclusionary trespass ordinance. Therefore, Wilsonville’s ordinance should specifically exempt city council and other public meetings. Wilsonville should design an ordinance which provides the flexibility necessary to defend an individual’s First Amendment rights.

## 2. Substantive Due Process

Exclusion ordinances can also violate substantive due process. “Where an ordinance impairs a fundamental right, in order to pass constitutional muster, the government’s objective must be compelling and the relation between that objective and the means must be necessary.”<sup>59</sup> In *Yeakle*, the Court stated that, since the ordinance infringed the plaintiff’s fundamental rights of freedom of travel and freedom of speech, the ordinance must be narrowly tailored.<sup>60</sup> According to the court, Portland failed to establish that the violation

<sup>55</sup> *Id.* at \*14–15 (citing *Dehne v. City of Reno*, 222 Fed. Appx. 560, 562 (9th Cir. 2007); *Felton v. Griffin*, 185 Fed. Appx. 700, 702 (9th Cir. 2006)).

<sup>56</sup> *White v. City of Norwalk*, 900 F.2d 1421, 1425 (9th Cir. 1990).

<sup>57</sup> *Osborne*, 2012 U.S. Dist. LEXIS 36523; 2012 WL 930815.

<sup>58</sup> *See Osborne*, 2012 U.S. Dist. LEXIS 36523; 2012 WL 930815.

<sup>59</sup> *Yeakle*, 322 F.Supp.2d at 1128 (citing *County of Santa Cruz, Cal. v. Ashcroft*, 279 F.Supp.2d 1192, 1201 (N.D.Cal. 2003) (citing *Shapiro v. Thompson*, 394 U.S. 618, 627–35)).

<sup>60</sup> *Id.*



justified the exclusion and that the exclusion was narrowly tailored to achieve City goals.<sup>61</sup> Therefore, the exclusion ordinance violated substantive due process. Wilsonville can comply with substantive due process requirements by designing an ordinance which can narrowly tailor an exclusion to match the crime and the individual violator's circumstances.

### 3. Procedural Due Process

Plaintiffs also challenge exclusion ordinances under the due process clause, alleging that the summary nature of the exclusion denies them procedural due process. Exclusion ordinances often ban individuals from public space without requiring a conviction, or even an arrest in many cases. The police officer or city authority need only witness what they deem to be inappropriate or illegal activity in order to bar an individual from an area. That feature presents a prime opportunity for official abuse. Courts analyze three factors to determine if an ordinance satisfies procedural due process: (1) "the private interest that will be affected by the official action;" (2) "the risk of an erroneous deprivation of such interests through procedures used, and the probable value, if any, of additional or substitute procedures or safeguards;" and (3) "finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail."<sup>62</sup> The court in *Yeakle* determined that Portland's ordinance violated procedural due process because the ordinance did not provide for a pre-deprivation hearing or stay the exclusion pending appeal.<sup>63</sup> Portland subsequently amended the ordinance to allow for a stay during an appeal in order to comply with the court's ruling.<sup>64</sup> The City should assess any proposed ordinance under that rubric to ensure that it complies with procedural due process.

Exclusion ordinances' notice requirements are also subject to challenge. In *State v. Johnson*, Portland charged the plaintiff with criminal trespass for violating an exclusion order issued under Portland's drug-free zone ordinance after filing an appeal.<sup>65</sup> Johnson argued that the notice failed to satisfy due process because it did not specify that the exclusion was still in place during the appeal process.<sup>66</sup> The Oregon Court of Appeals applied the *Mathews v. Eldridge* test to conclude that the City did not need to inform the excluded individual of the appeals process at the time of the notice.<sup>67</sup> The Court of Appeals determined that notice of the process had no bearing on the *Mathews* test.<sup>68</sup> However, it is probably good practice for Wilsonville to include some explanation of the appeals process.

<sup>61</sup> *Id.* at 1129.

<sup>62</sup> *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976); *see also Yeakle*, 322 F.Supp.2d at 1129.

<sup>63</sup> *Id.*

<sup>64</sup> PCC 110.12.265(H) ("If an appeal of the exclusion is timely filed under Section 20.12.265(F), the effectiveness of the exclusion shall be stayed, pending the outcome of the appeal.").

<sup>65</sup> *State v. Johnson*, 163 Or. App. 74, 76 (1999).

<sup>66</sup> *Id.* at 77.

<sup>67</sup> *Id.* at 79.

<sup>68</sup> *Id.*



Courts generally uphold exclusion statutes so long as they provide adequate process for appeals.<sup>69</sup> Wilsonville's statute should include an immediate appeals process in order to satisfy procedural due process.

#### 4. Individual Substantive Requirements

Interestingly, case law is relatively silent on the issue of individual substantive prohibitions in regards to exclusion ordinances. In most cases, the ordinances use pre-existing laws or regulations to justify an individual's exclusion, rather than creating new violations.<sup>70</sup> Therefore, plaintiffs generally challenge the underlying law rather than the park exclusion ordinance. For example, in *State v. Crowe*, the plaintiff challenged the underlying ordinance which required them to follow a "request to obey any reasonable direction of the park officers or employees or officers of the Bureau of Police."<sup>71</sup> The Court found the ordinance to be constitutional because it imposed a reasonableness standard upon the authority.<sup>72</sup> In that case, a park officer issued the defendant a written order excluding him from Pioneer Courthouse Square, but the defendant did not challenge the exclusion ordinance.<sup>73</sup> Wilsonville may want to add provisions to give the police or enforcing authority more power to exclude individuals from City property beyond just violations of pre-existing laws. Along with the exclusion ordinance, those provisions must individually pass Constitutional scrutiny.

#### 5. Double Jeopardy

Plaintiffs also claim that exclusion ordinances violate the constitutional prohibition on double jeopardy.<sup>74</sup> Under the double jeopardy protection, an individual may not be prosecuted for the same crime twice. In *Lhasawa*, the defendant argued that Portland's drug-free zone ordinance violated both the Oregon Constitution and United States Constitution's protections against double jeopardy.<sup>75</sup> The Oregon Supreme Court stated that the concept of double jeopardy applies "only to multiple criminal *prosecutions*" of a single crime.<sup>76</sup> According to the Court in *Lhasawa*, the second prosecution was for trespass, which was in itself a new violation.<sup>77</sup> The Oregon Supreme Court analyzed the Fifth Amendment challenge to Portland's drug-free zone ordinance under the rubric of *United States v. Hudson*'s seven factors to conclude that the ordinance did not implicate double jeopardy.<sup>78</sup> Essentially, the Court found that the City applied the exclusion as an additional punishment for the original crime, rather than a new prosecution for the same crime. Therefore, double jeopardy was not an issue under federal or state law.

<sup>69</sup> As a side note, courts dismissed a number of reported cases because the individual failed to follow through the available appeals process, and therefore could not challenge the process' adequacy.<sup>69</sup>

<sup>70</sup> PCC 20.12.265(D).

<sup>71</sup> 143 Or. App. 512, 516 (Or. App. 1996).

<sup>72</sup> *Id.*

<sup>73</sup> *Id.* at 514.

<sup>74</sup> *State v. Lhasawa*, 334 Or. 543 (Or. 2002).

<sup>75</sup> *Id.* at 547.

<sup>76</sup> *Id.* at 548.

<sup>77</sup> *Id.*

<sup>78</sup> *Id.* at 556.



#### **D. Political Controversy Surrounding Exclusion/Trespass**

Homeless advocates strenuously criticize park exclusion ordinances, drug free zones, and prostitution free zones.<sup>79</sup> According to those activists, exclusion ordinances deny the homeless and the disadvantaged access to facilities which provide them with the basic necessities of life.<sup>80</sup> Furthermore, many argue that these ordinances are applied exclusively to those society considers undesirable. Others argue that exclusion ordinances are applied disproportionately against young people. However, proponents argue that the exclusion ordinances have significantly increased the livability and desirability of historically crime ridden areas.<sup>81</sup>

The City of Eugene engaged in a particularly contentious political fight over its “Downtown Crime Prevention Zone.”<sup>82</sup> Eugene essentially attempted to fuse the two types of exclusionary policies in order to create a crime free downtown zone. The City zoned a certain area for crime prevention and then stated that if a person committed any crime or violation in the area they could be excluded.<sup>83</sup> While the ordinance was in effect from 2008 to 2013, the police could banish individuals from the downtown area for minor violations. The police used this power aggressively to keep individuals from loitering or decreasing the desirability of the downtown commercial district. Excluding vulnerable citizens from the downtown area upset many members of the public, and Eugene’s City Council allowed the law to sunset in the fall of 2013. However, many downtown business owners and residents supported the law and thought that it significantly decreased criminal elements in the downtown area. Overall, the episode starkly highlights the benefits and drawbacks of an exclusion policy.

#### **E. Summary of Recommendations Wilsonville’s Ordinance**

Wilsonville should adopt an ordinance which gives the police and City authority the power to exclude disruptive or criminal individuals from City parks or property for a specified period of time. The City should build flexibility into that ordinance to protect the excluded individual’s constitutional rights.

##### **1. Scope of Wilsonville’s exclusion ordinance**

In order to decrease friction between the City and residents, the exclusion ordinance’s scope should be as narrow as possible. Giving the police or other authorities the power to exclude disruptive individuals when it is not necessary invites litigation. If the City is primarily having issues in parks, the proper course of action is to restrict the exclusion ordinance to parks. However, if other areas are attracting problems, those can be included. The attached draft ordinance encompasses City property generally, but could easily be narrowed to parks only.

<sup>79</sup> See BANCROFT, *supra*, note 5, at 63.

<sup>80</sup> JESSICA WYSE, THE MICH. J. OF PUB. AFF., Summer 2004, 10–11.

<sup>81</sup> *Id.* at 4–5.

<sup>82</sup> See generally HEATHER MAREK, EUGENE’S EXCLUSION ORDINANCE: A DILEMMA FOR CIVIL LIBERTIES, PUBLIC SPACE, AND THE HOMELESS, Conflict and Dispute Resolution Program, University of Oregon School of Law, May 2010.

<sup>83</sup> *Id.* at 15–16.



## **2. Addressing First Amendment issues**

The ordinance must explicitly adopt provisions which protect the City from charges that the ordinance infringes on the excluded individual's First Amendment rights. The Portland allowing waivers based on individualized circumstances would be an effective method. The City could delegate that authority to the Police Chief to begin with and include a provision allowing the Chief to delegate the responsibility to a subordinate should it prove to be a large administrative task.<sup>84</sup> From the beginning, the authority reviewing the waivers should understand that any issues implicating the First Amendment should be discussed with the legal department.

## **3. Exceptions**

The City of Wilsonville should create a list of exceptions which will allow excluded individuals to access City facilities for essential activities such as attending court or public meetings. The exceptions list should also include things such as visiting doctors and lawyers and obtaining education.

## **4. Variances/Waivers**

Variances or waivers are a valuable tool which can allow the City to narrowly tailor its exclusions both to avoid First Amendment issues and to mitigate the harshness of an exclusion. The city should liberally allow variances and the ordinance should require that they be granted for free speech activities.

## **5. Appeals**

An adequate appeals process is necessary to satisfy procedural due process. In order to avoid erroneous deprivation, the City should stay the effects of an exclusion during an appeal. Ideally, the appeal process will be swift and an individual who deserves to be excluded will have their penalty reimposed.

## **V. Conclusion**

If Wilsonville is careful to frame its ordinance correctly, it could give police and authorities a powerful tool to maintain desirable atmosphere and maintain the peace on City property.

att.

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<sup>84</sup> Predicting the number of exclusions is impossible and largely depends on whether officers and officials decide to use it aggressively. That depends on how effective it is as a tool.



## CITY COUNCIL MEETING STAFF REPORT

<b>Meeting Date:</b>  November 3, 2014	<b>Subject: Ordinance No. 752</b> Adding Water Safety Regulations to Chapter 3 of W.C.  <b>Staff Member:</b> Michael Kohlhoff, City Attorney Stan Sherer, Parks & Recreation Direction Todd Blankenship, Parks Supervisor Chris Griffith, Legal Intern  <b>Departments:</b> Legal and Parks and Recreation
<b>Action Required</b> <input type="checkbox"/> Motion <input type="checkbox"/> Public Hearing Date: <input checked="" type="checkbox"/> Ordinance 1 <sup>st</sup> Reading Date: <input type="checkbox"/> Ordinance 2 <sup>nd</sup> Reading Date: <input type="checkbox"/> Resolution <input type="checkbox"/> Information or Direction <input type="checkbox"/> Information Only <input type="checkbox"/> Council Direction <input type="checkbox"/> Consent Agenda	<b>Advisory Board/Commission Recommendation</b> <input checked="" type="checkbox"/> Approval <input type="checkbox"/> Denial <input type="checkbox"/> None Forwarded <input type="checkbox"/> Not Applicable  <b>Comments:</b> The State Marine Board and the Parks and Recreation Department desires to prohibit fishing, swimming, and diving at the boat dock in Memorial Park to eliminate conflicts between boaters and non-boaters.
<b>Staff Recommendation:</b> Staff recommends that Council adopt Ordinance No. 752	
<b>Recommended Language for Motion:</b> I move to approve Ordinance No. 752	
<b>PROJECT / ISSUE RELATES TO:</b>	
<input type="checkbox"/> Council Goals/Priorities	<input type="checkbox"/> Adopted Master Plan(s)
<input checked="" type="checkbox"/> Not Applicable	

### ISSUE BEFORE COUNCIL:

This ordinance would allow City Staff to prohibit swimming, fishing, and diving at the Memorial Park boat dock and on other public property upon a finding that such activity is unsafe or inappropriate.



## **EXECUTIVE SUMMARY:**

The State Marine Board and Wilsonville's Parks & Recreation Department desire to prohibit swimming, fishing, and diving at Wilsonville's boat dock at Memorial Park. The City has previously had signs prohibiting the activity at the dock. However, upon review, it has come to light that the code does not grant explicit authority to prohibit the activities. Rather than restricting the ordinance only to the boat dock, City Staff decided to draft the ordinance to allow the prohibition anywhere the City determines necessary "upon a finding that such activity is unsafe or impedes use of a facility or City property as designed." The City may very well determine that other areas are unsafe for water recreation and wish to implement similar prohibitions. Although probably protected by governmental immunities in most cases, the ability to prohibit the activities could also protect the City from liability. Water recreation can be an extremely dangerous activity. KATU, *Is Oregon Doing Enough to prevent Drownings?*, The Oregonian, 'We probably need to push a little harder,' at <http://www.katu.com/news/investigators/KATU-uncovers-difference-in-water-safety-plans-in-Oregon-and-Washington-266611311.html> (reporting on July 10, 2014 that there had been 10 drowning in 10 days in Oregon and Southwest Washington). Thus, City Staff feels that prohibiting certain types of water recreation in particularly dangerous areas is a prudent safety measure. The ordinance would give staff the power to do so.

## **EXPECTED RESULTS:**

Passage of the ordinance would allow the City to protect the public by prohibiting certain types of water recreation in areas where it might conflict with a designated use or otherwise be dangerous.

**TIMELINE:** N/A

**CURRENT YEAR BUDGET IMPACTS:** N/A

## **FINANCIAL REVIEW / COMMENTS:**

Reviewed by:     CAR     Date:   10/9/14  

No financial impact expected.

## **LEGAL REVIEW / COMMENT:**

Reviewed by: MEK Date: 10/12/2014  
Ordinance approved as to form

**COMMUNITY INVOLVEMENT PROCESS:** N/A

## **POTENTIAL IMPACTS or BENEFIT TO THE COMMUNITY**

Allowing the Parks & Recreation Department to prohibit swimming, fishing, and diving would allow the City to better protect public safety.



**ALTERNATIVES:**

Staff also considered 1) leaving the City without the power to prohibit these activities, or 2) only prohibiting the swimming, diving, and fishing at the boat dock rather than giving the City a broader power. As stated in the executive summary, Staff believes that the City should be able to prohibit these activities on public property.

**CITY MANAGER COMMENT:****ATTACHMENTS:**

A. Ordinance No. 752



## ORDINANCE NO. 752

### AN ORDINANCE OF THE CITY OF WILSONVILLE ADDING SECTION 3.022 WATER SAFETY REGULATIONS TO THE WILSONVILLE CITY CODE

WHEREAS, recreation on rivers can be extremely dangerous and kills numerous Oregonians each year; and

WHEREAS, the City maintains docks and property along the Willamette River and other waterways; and

WHEREAS, swimming, diving, or fishing may be incompatible with other activities;

NOW, THEREFORE, THE CITY OF WILSONVILLE ORDAINS AS FOLLOWS:

1. The following is added to Chapter 3 of the Wilsonville City Code as Section 3.022 Water Safety Regulations:

#### **"3.022 Water Safety Regulations**

(1) No person shall swim, dive, or fish in a prohibited area in any park or on any other City property.

(2) The City Manager or his/her designee may prohibit swimming, diving, or fishing in any public park or on other City property upon a finding that such activity is unsafe or impedes use of a facility or City property as designed."

2. The City Recorder is directed to amend Wilsonville Code Chapter 3, as approved above, and to make such format, style, and conforming changes to match the format and style of the Parks and Playgrounds section of the Wilsonville Code.
3. Except as set forth above, Chapter 3 of the Wilsonville City Code remains in full force and effect, as written.

SUBMITTED to the Wilsonville City Council and read for the first time at a meeting thereof on the 20<sup>th</sup> day of October, 2014, and scheduled for second reading on

\_\_\_\_\_



commencing at the hour of 7 p.m. at the Wilsonville City Hall, 29799 SW Town Center Loop East, Wilsonville, Oregon.

\_\_\_\_\_  
Sandra C. King, MMC, City Recorder

ENACTED by the City Council on the \_\_\_\_ day of \_\_\_\_\_, 2014, by the following votes:            Yes: \_\_\_\_            No: \_\_\_\_

\_\_\_\_\_  
Sandra C. King, MMC, City Recorder

DATED and signed by the Mayor this \_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
TIM KNAPP, MAYOR

**SUMMARY OF VOTES:**

Mayor Knapp  
Council President Starr  
Councilor Goddard  
Councilor Fitzgerald  
Councilor Stevens



## CITY COUNCIL MEETING STAFF REPORT

<b>Meeting Date:</b> November 3, 2014	<b>Subject: Ordinance No. 753</b> City Code, Chapter 8 – Environment <b>Staff Member/Department:</b> Kerry Rappold/ Community Development Delora Kerber/Public Works
<b>Action Required</b> <input type="checkbox"/> Motion <input type="checkbox"/> Public Hearing Date: <input type="checkbox"/> Ordinance 1 <sup>st</sup> Reading Date: October 20, 2014 <input checked="" type="checkbox"/> Ordinance 2 <sup>nd</sup> Reading Date: November 5, 2014 <input type="checkbox"/> Resolution <input type="checkbox"/> Information or Direction <input type="checkbox"/> Information Only <input type="checkbox"/> Council Direction <input type="checkbox"/> Consent Agenda	<b>Advisory Board/Commission Recommendation</b> <input type="checkbox"/> Approval <input type="checkbox"/> Denial <input type="checkbox"/> None Forwarded <input checked="" type="checkbox"/> Not Applicable  <b>Comments:</b>
<b>Staff Recommendation:</b> Staff recommended that Council adopt Ordinance No. 753 on second reading.	
<b>Recommended Language for Motion:</b> I move to approve Ordinance No. 753 on second reading.	
<b>PROJECT / ISSUE RELATES TO:</b> <i>Storm water Master Plan</i>	
<input type="checkbox"/> Council Goals/Priorities	<input type="checkbox"/> Adopted Master Plan(s)
<input checked="" type="checkbox"/> Not Applicable	

### ISSUE BEFORE COUNCIL:

In response to comments and questions received at the Council meeting on October 20, 2014 revisions have been made to the proposed amendments to City Code, Chapter 8 – Environment.

### EXECUTIVE SUMMARY:

Chapter 8 of the City Code was originally developed to address policies related to Water Conservation, Sanitary Sewer Use, Industrial Pretreatment Regulations, Solid Waste, and Business Recycling with the expectation that a section on stormwater would be added at a later date. Thus, Section 8.500 was reserved for the policies related to stormwater.



With the completion of the 2012 Stormwater Master Plan, Chapter 8 is being amended to incorporate Stormwater policies identified in the Plan. In addition, the amendments to Chapter 8 will provide the City the ability to enforce the National Pollution Discharge Elimination System (NPDES) Stormwater Permit requirements.

Due to the addition of the stormwater section, other portions of Chapter 8 needed to be modified to provide clarity between sanitary sewers and stormwater sewers. Modifications include adding the word "sanitary" where appropriate, adding or revising definitions, and relocating requirements to a more appropriate section of the Chapter.

At the Council work session and public hearing on October 20, 2014, Council had comments and questions about the stormwater section. Staff agreed to review the proposed code and recommend revisions to address the Council's concerns. These revisions include the following, which are shaded in gray in the attached code (Exhibit A):

1. Section 8.508 (Powers and Authorities of Inspectors)  
Revision: Changed title to "Right of Entry." The section was reworded to make it consistent with the State of Oregon requirements for building inspectors. The revised wording clarifies there must be a "reasonable cause" to believe a violation has occurred, and the inspector must make a "reasonable effort" to contact the property owner before entering the property.
2. Section 8.524 (Accidental Spill Prevention and Control)  
Revision: The requirement for a Spill Prevention and Control Plan was linked to documented instances of spills or releases regulated under OAR 340-142-0005(9), which is attached as Exhibit B.
3. Section 8.532 (Requirement to Monitor and Analyze)  
Revision: Added a statement about monitoring, sampling and testing completed by a third party.

**EXPECTED RESULTS:**

Ensuring the City's ability to enforce the NPDES Stormwater Permit requirements and providing clarification to other miscellaneous unwritten policies related to sanitary sewers.

**TIMELINE:** Not Applicable

**CURRENT YEAR BUDGET IMPACTS:** *[Identify current FY budget issues.]*

There are no anticipated financial impacts for revisions to Chapter 8.

**FINANCIAL REVIEW / COMMENTS:** *[Item must be sent to Finance for review and comment.]*

Reviewed by: \_\_\_\_\_ Date: \_\_\_\_\_

**LEGAL REVIEW / COMMENT:**

Reviewed by: MEK\_\_\_\_\_ Date: 10/24/14\_\_\_\_\_



The Resolution with revisions is approved as to form. The Right of Entry section provides for contacting the owner or person in charge or control of the premises before entry and for when such person is not available or circumstances warrant entry without notice. It parallels what the state has adopted for building inspectors. It meets due process standards. The spill plan requirements references an Oregon Administrative rule in this regard which incorporates reporting quantity. A copy of the OAR is attached to this report. The monitor, sampling, and testing provision provides the City with the ability, if deemed necessary, to require a third party provide to monitor, sample and test.

**COMMUNITY INVOLVEMENT PROCESS:**

A public hearing will be held for public comments on Chapter 8. Previously, there was public outreach for the Stormwater Master Plan and the sanitary and stormwater NPDES permits.

**POTENTIAL IMPACTS or BENEFIT TO THE COMMUNITY**

Benefits to the community include: improved level of awareness of the requirements of the NPDES Stormwater Permit; ability to enforce the NPDES Stormwater Permit; codification of current unwritten policies related to sewer lateral; and updating the Pretreatment Enforcement Matrix.

**ALTERNATIVES:**

Not Applicable.

**CITY MANAGER COMMENT:**

**ATTACHMENTS**

- A. Exhibit A – Chapter 8 with revisions shown via tracked changes
- B. State of Oregon Spill Reporting Requirements



## ORDINANCE NO. 753

### **AN ORDINANCE OF THE CITY OF WILSONVILLE AMENDING WILSONVILLE CODE CHAPTER 8, ENVIRONMENT TO ADD A STORMWATER SECTION AND MAKE OTHER MODIFICATIONS.**

WHEREAS, Chapter 8 was last modified via Ordinance 689 in January 2011; and

WHEREAS, portions of Chapter 8, Environment needs to be revised to update standards and comply with State and Federal laws and regulations; and

WHEREAS, the City of Wilsonville (City) was issued a National Pollutant Discharge Elimination System (NPDES) Municipal Separate Storm Sewer System (MS4) Discharge Permit from the Oregon Department of Environmental Quality, which was renewed on March 16, 2012; and

WHEREAS, the NPDES MS4 Discharge Permit requires the City to have the legal authority to enforce the provisions of the permit; and

WHEREAS, Implementation Measure SC-1a of the 2012 Stormwater Master Plan requires the City to update Chapter 8, Environment to address implementation of the Stormwater Program and the requirements of the NPDES MS4 Discharge Permit; and

WHEREAS, the City Council has conducted a properly noticed public hearing on the proposed changes, and based upon the staff report in the matter and the entire record of the hearing, concludes the code amendments comport with law and are otherwise in the public interest;

NOW, THEREFORE, THE CITY OF WILSONVILLE ORDAINS AS FOLLOWS:

Section 1. The above recitals are incorporated by reference as if fully set forth herein.

Section 2. Chapter 8, Environment of the Wilsonville Code is modified and amended as set forth in Exhibit A, attached hereto and incorporation by reference as if fully set forth herein.

Section 3. The City Recorder shall conform these amendments to the City's code format and to correct any scrivener's errors.



SUBMITTED to the Wilsonville City Council and read for the first time at a regular meeting thereof on the 20<sup>th</sup> day of October, 2014 and scheduled for a second reading at the regular meeting thereof on the 5<sup>th</sup> day of November, 2014, commencing at the hour of 7:00 P.M. at the Wilsonville City Hall.

\_\_\_\_\_  
Sandra C. King, MMC, City Recorder

ENACTED by the City Council on the 5<sup>th</sup> day of November, 2014 by the following votes:

Yes: \_\_\_\_ No: \_\_\_\_

\_\_\_\_\_  
Sandra C. King, MMC, City Recorder

DATED and signed by the Mayor this \_\_\_\_ day of \_\_\_\_, 2014.

\_\_\_\_\_  
TIM KNAPP, Mayor

SUMMARY OF VOTES:

Mayor Knapp -

Council President Starr -

Councilor Goddard -

Councilor Fitzgerald -

Councilor Stevens -



**EXHIBIT A**  
**WILSONVILLE CODE**  
**CHAPTER 8 - ENVIRONMENT**

**GENERAL PROVISIONS**

- 8.000 General Provisions
- 8.002 Administration
- 8.004 Abbreviations
- 8.006 Definitions
- 8.008 Miscellaneous Provisions

**WATER CONSERVATION**

- 8.101 Declaration of Emergency
- 8.102 Notice of Declaration of Emergency
- 8.108 Standards – Purpose
- 8.112 Standards – Application
- 8.114 Standards – Wasted Water
- 8.116 ~~Section Not Used~~ ~~Standards – Vehicle Wash Installations~~
- 8.118 Standards – General
- 8.120 Section Not Used
- 8.130 Use of Water During Emergency – Prohibited Uses of Water
- 8.132 Use of Water During Emergency – Exemptions
- 8.134 Use of Water During Emergency – Length of Restriction
- 8.136 Use of Water During Emergency – Declaration Period
- 8.140 Authority of Officer
- 8.150 Penalties

**PUBLIC ~~SANITARY~~ SEWER USE**

- 8.200 General Provisions
- 8.202 Use of Public Sanitary Sewer Required
- 8.204 Private Sewage Disposal
- 8.205 Conflict
- 8.206 Buildings Sanitary Sewers and Connections
- 8.208 Use of Public Sanitary Sewers
- 8.210 Public Sanitary Sewers – Construction
- 8.212 Public Sanitary Sewers - Property Damage Prohibited
- 8.214 Powers and Authorities of Inspectors

**INDUSTRIAL WASTEWATER REGULATIONS**

- 8.300 General Provisions
- 8.301 Applicability
- 8.302 General Sanitary Sewer Use Requirements
- 8.304 Pretreatment of Wastewater
- 8.306 Wastewater Discharge Permit
- 8.308 Wastewater Permit Issuance
- 8.310 Reporting Requirements
- 8.312 Compliance Monitoring
- 8.314 Confidential Information



**EXHIBIT A**  
**WILSONVILLE CODE**

- 8.316 Publication of Users in Significant Noncompliance
- 8.318 Affirmative Defense
- 8.320 Pretreatment Charges and Fees

**SOLID WASTE DISPOSAL**

- 8.400 Garbage – General Regulations
- 8.402 Contract Garbage Hauler
- 8.404 Violation

**STORMWATER**

~~8.500—Reserved for Expansion~~

- 8.500 General Provisions
- 8.502 Stormwater System Construction
- 8.504 Use of Public Stormwater System
- 8.506 Public Stormwater System – Property Damage Prohibited
- 8.508 ~~Powers and Authorities of Inspectors~~ Right of Entry
- 8.510 Discharge of Pollutants
- 8.512 Discharge in Violation of Permit
- 8.514 Waste Disposal Prohibitions
- 8.516 General Discharge Prohibitions
- 8.518 Compliance with Industrial NPDES Stormwater Permits
- 8.520 Compliance with Local, State, and Federal Regulations
- 8.522 Conflicts with Existing and Future Regulatory Requirements of Other Agencies
- 8.524 Accidental Spill Prevention and Control
- 8.526 Notification of Spills
- 8.528 Requirement to Eliminate Illicit Connections
- 8.530 Requirement to Remediate
- 8.532 Requirement to Monitor and Analyze
- 8.534 Erosion Prevention and Sediment Control

**ENFORCEMENT**

- 8.602 Administrative Enforcement Remedies
- 8.604 Judicial Enforcement Remedies
- 8.606 Supplemental Enforcement Action

**BUSINESS RECYCLING REQUIREMENTS**

- 8.700 Definitions
- 8.710 Purpose
- 8.720 Business Recycling Requirements
- 8.730 Exemption from Business Recycling Requirements
- 8.740 Compliance with Business Recycling Requirements
- 8.750 Violations



**EXHIBIT A**  
**WILSONVILLE CODE**

**INDUSTRIAL PRETREATMENT PROGRAM ENFORCEMENT RESPONSE PLAN**

Section I	Introduction
Section II	Enforcement Remedies
Section III	Assessment of Administrative Fines
Section IV	Noncompliance Defined
Section V	Range of Enforcement Responses
Section VI	Enforcement Procedures
Section VII	Time Frames for Enforcement Action and Follow Up
Section VIII	Responsibilities of Personnel
Section IX	Enforcement Response Matrix



# **EXHIBIT A**

## **WILSONVILLE CODE**

### **ENVIRONMENT**

#### **GENERAL PROVISIONS**

##### **8.000 General Provisions – Environment**

(1) Chapter 8 of this Code is enacted for the purpose of promoting the general public welfare by ensuring procedural due process in the administration and enforcement of the City's Comprehensive Plan, Design Review, Permitting Process, Building Code, Development Standards and Public Works Standards.

(2) This Chapter shall be known as the Environment Ordinance and includes those ordinances familiarly referred to as the Water Conservation Ordinance, Public Sanitary Sewer Use Ordinance, Industrial Wastewater Ordinance, Storm Water Ordinance, and Garbage Disposal Ordinance, and Environment Enforcement, etc.

##### **8.002 Administration.**

Except as otherwise provided herein, the Public Works Director, hereinafter referred to as “Director”, shall administer, implement and enforce the provisions of this Chapter. Any powers granted to or duties imposed upon the Director may be delegated by the Director to a duly authorized representative.

##### **8.004 Abbreviations.** The following abbreviations shall have the designated meanings:

(1)	<u>BOD</u>	Biochemical Oxygen Demand
(2)	<u>BMP</u>	Best Management Practices
(3)	<u>BMR</u>	Baseline Monitoring Reports
(4)	<u>CFR</u>	Code of Federal Regulations
(5)	<u>CIU</u>	Categorical Industrial User
(6)	<u>COD</u>	Chemical Oxygen Demand
(7)	<u>DEQ</u>	Oregon Department of Environmental Quality
(8)	<u>US EPA</u>	U.S. Environmental Protection Agency
(9)	<u>gpd</u>	Gallons Per Day
(10)	<u>IU</u>	Industrial User
(11)	<u>mg/l</u>	Milligrams per liter
(12)	<u>NPDES</u>	National Pollutant Discharge Elimination System
(13)	<u>NSCIU</u>	Non-Significant Categorical Industrial User
(14)	<u>O&amp;M</u>	Operation and Maintenance
(15)	<u>POTW</u>	Publicly Owned Treatment Works
(16)	<u>RCRA</u>	Resource Conservation and Recovery Act
(17)	<u>SIC</u>	Standard Industrial Classification
(18)	<u>SIU</u>	Significant Industrial User
(19)	<u>SNC</u>	Significant Non-Compliance
(20)	<u>SWDA</u>	Solid Waste Disposal Act (42 U.S.C. 6901, <u>et seq.</u> )
(21)	<u>TSS</u>	Total Suspended Solids



**EXHIBIT A**  
**WILSONVILLE CODE**

(22) USC United States Code

**8.006 Definitions.** For the purpose of this Chapter, the following terms, words, phrases and their derivations shall have the meaning given herein, unless the context specifically indicates otherwise:

(1) Act or "the Act". The Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 U.S.C. 1251 et seq.

(2) Approval Authority. The Oregon Department of Environmental Quality (DEQ).

(3) Authorized or Duly Authorized Representatives of the User.

(a) If the user is a corporation, authorized representative shall mean:

1) The president, secretary, or a vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or

2) The manager of one or more manufacturing, production, or operation facilities, provided the manager is authorized to make management decisions that govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiate or direct other comprehensive measures to assure long-term environmental compliance with environmental laws and regulation; can ensure that the necessary systems are established or action taken to gather complete and accurate information for individual wastewater discharge permit requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(b) If the user is a partnership, or sole proprietorship, an authorized representative shall mean a general partner or the proprietor, respectively.

(c) If the user is a Federal, State or local government facility the highest official appointed or designated to oversee the operation and performance of the activities of the government facility, or their designee.

(d) The individuals described in paragraphs (3) (a)-(c) above may designate a duly authorized representative if the authorization is in writing, the authorization specifies the individual or position responsible for the overall operation of the facility from which the discharge originates or having overall responsibility for environmental matters for the company, and the authorization is submitted to the City.



## EXHIBIT A

### WILSONVILLE CODE

(4) Biochemical Oxygen Demand (BOD). The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure, five (5) days at 20° centigrade expressed in terms of weight and concentration (milligrams per liter mg/l).

(5) Best Management Practices or BMP's means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to implement the prohibitions listed in 40 CFR 403.5(a)(1) and (b). BMP's include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw materials storage. BMP's may also include alternative means (i.e., management plans) of complying with, or in place of certain established categorical Pretreatment Standards and effluent limits.

(6) Building Drain. Shall mean that part of the lowest piping of a drainage system which receives the discharge from soil, waste and other drainage pipes inside the exterior walls of the buildings and which conveys it to the building sewer, which begins ~~five two (52)~~ feet (~~-6 1.524~~ meters) outside of the building exterior wall.

(7) Building Sewer (Sanitary). Shall mean that part of the horizontal piping of a drainage system that extends from the end of a building drain and that receives the sewage discharge of the building drain and conveys it to a public sanitary sewer, private sanitary sewer, private sewage disposal system, or other point of disposal (aka sanitary sewer lateral).~~conveying wastewater and/or other wastes from the end of the building drain to either the POTW, municipal storm drain system, private sanitary sewer or storm drainage, or individual sanitary sewer disposal system or storm drainage system.~~

(8) Building Sewer (Storm). Shall mean that part of the horizontal piping of a drainage system that extends from the end of a building drain and that receives the -stormwater or other approved drainage, but no sewage discharge from aef the building drain, and conveys it to a public stormwater system, private stormwater system or other point of disposal (aka storm sewer lateral).

~~(7)~~

~~(8)~~(9) Categorical Pretreatment Standard or Categorical Standard. Any regulation containing pollutant discharge limits promulgated by the EPA in accordance with Section 307(b) and (c) of the Act (33 U.S. C. 1317) that applies to a specific category of users and that appears in 40 CFR Chapter I, Subchapter N, Parts 405-471, incorporated herein by reference.

~~(9)~~(10) Categorical Industrial User. An Industrial User subject to a categorical Pretreatment Standard or categorical Standard.

~~(10)~~(11) Chemical Oxygen Demand (COD). A measure of oxygen required to oxidize all compounds, both inorganic and organic in water. COD is expressed as the amount of oxygen consumed from chemical oxidant in mg/l during a specific test.

(12) City. The City of Wilsonville, Oregon or the City Council of Wilsonville, Oregon or a designated representative of the City of Wilsonville, Oregon.



## EXHIBIT A WILSONVILLE CODE

~~(11)~~(13) City Authorized Representative for Stormwater. A Representative selected by the Community Development Director to oversee stormwater activities and enforcement.

~~(12)~~(14) Color. The optical density at the visual wavelength of maximum absorption, relative to distilled water. One hundred percent (100%) transmittance is equivalent to zero (0.0) optical density.

~~(13)~~(15) Combined Sewer. Shall mean a sewer receiving both surface runoff and sewage.

~~(14)~~(16) Commercial. Shall mean for the purposes of this Chapter ~~Sections 8.108 and 8.112~~, all buildings or structures of which are not designed for the purposes of these sections as residential or industrial in keeping with the City's zoning and building code provisions. Commercial when used in the context of this chapter's pretreatment standards shall mean industrial.

~~(15)~~(17) Composite Sample. The sample resulting from the combination of individual wastewater samples taken at selected intervals based on either an increment of flow or time.

~~(16)~~(18) Contractor. Shall mean a person or persons, corporation, partnership or other entity who is a party to an agreement with the City.

~~(17)~~(19) Cooling Water. The water discharged from any use such as air conditioning, cooling or refrigeration, to which the only pollutant added, is heat.

~~(18)~~(20) Control Authority. The City of Wilsonville, Oregon or designated representative of the City, tasked with the administration of this Chapter.

~~(19)~~(21) Customer. Shall mean any individual, firm, company, association, society, corporation, group or owner, who receives utility services from the City such as water, sanitary sewer, stormwater and streetlights.

~~(20)~~(22) Daily Maximum. The arithmetic average of all effluent samples for a pollutant collected during a calendar day.

~~(21)~~(23) Daily Maximum Limits. The maximum allowable discharge limit of a pollutant during a calendar day. Where Daily Maximum Limits are expressed in units of mass, the daily discharge is the total mass discharged over the course of a day. Where Daily Maximum Limits are expressed in terms of a concentration, the daily discharge is the arithmetic average measure of the pollutant concentration derived from all the measurements taken that day.

~~(22)~~(24) Department of Environmental Quality or DEQ. The Oregon Department of Environmental Quality or where appropriate, the term may also be used any duly authorized official of the Department.



## EXHIBIT A WILSONVILLE CODE

~~(23)~~(25) Director. The City of Wilsonville Public Works Director ~~or Director of Public Works~~ for the City of Wilsonville or designated representative of the Director.

~~(24)~~(26) Discharge. The discharge or the introduction of pollutants into the POTW from any non-domestic source regulated under Section 307(b), (c) or (d), of the Act.

~~(25)~~(27) Environmental Protection Agency or EPA. The US Environmental Protection Agency or, where appropriate, the term may also be used as a designation for the Regional Water Management Division Director, the Regional Administrator or other duly authorized official of said agency.

~~(26)~~(28) Existing Source. Any source of discharge that is not a “new source”.

~~(27)~~(29) Garbage. Shall mean all refuse and solid wastes, including ashes, rubbish in cans, debris generally, dead animals, street cleaning and industrial wastes and things ordinarily and customarily dumped, solid wastes from domestic and commercial preparation, cooking and dispensing food, and from the handling, storage and sale of product, but not including source separated recyclable material purchased from or exchanged by the generator for fair market value for recycling sewage and body waste.

(30) Grab Sample. A sample that is taken from a waste stream on a one-time basis without regard to the flow in the waste stream over a period of time not to exceed 15 minutes.

(31) Holding Tank Waste. Any waste from holding tanks such as vessels, chemical toilets, campers, trailers, septic tanks, and vacuum-pump tank trucks.

(32) Illicit Discharge. Any discharge to the public or natural stormwater conveyance system that is not composed entirely of stormwater, except discharges governed by and in compliance with an NPDES permit.

~~(28)~~—

~~(29)~~(33) Indirect Discharge or Discharge. The introduction of pollutants into the POTW from a non-domestic source.

~~(30)~~(34) Instantaneous Limit. The maximum concentration of a pollutant allowed to be discharged at any time, determined from the analysis of any discrete or composite sample collected, independent of the industrial flow rate and the duration of the sampling event.

~~(31)~~—Holding Tank Waste. Any waste from holding tanks such as vessels, chemical toilets, campers, trailers, septic tanks, and vacuum pump tank trucks.

~~(32)~~(35) Industrial. Shall mean in the context of building sanitary sewer permits and connections, all buildings or structures in which a product is manufactured, stored, or distributed, or any combination of the above in keeping with the City's zoning and building



## EXHIBIT A **WILSONVILLE CODE**

code provisions. It shall otherwise mean in the context of this Chapter for pretreatment standards, non-domestic.

~~(33)~~(36) Industrial User. A source of indirect discharge.

~~(34)~~(37) Industrial Wastewater. Any non-domestic wastewater originating from a nonresidential source.

~~(35)~~(38) Interference. A discharge, which, alone or in conjunction with a discharge or discharges from other sources:

(a) Inhibits or disrupts the POTW, its treatment processes or operations, or its sludge processes; use or disposal; and

(b) Therefore is a cause of a violation of the City's NPDES permit (including an increase in the magnitude or duration of a violation) or of the prevention of sewage sludge use or disposal in compliance with the following statutory provisions and regulations or permits issued there under (or any more stringent State or local regulations): Section 405 of the Clean Water Act, the Solid Waste Disposal Act (SWDA) (including Title II, more commonly referred to as the Resource Conservation and Recovery Act (RCRA), the Clean Air Act, the Toxic Substances Control Act, and the Marine Protection Research and Sanctuaries Act.

~~(36)~~(39) Local Limits. Specific discharge limits developed and enforced by the City upon industrial or commercial facilities to implement the general and specific discharge prohibitions listed in this Chapter.

~~(37)~~(40) Maximum Allowable Headwork's Loading. The maximum pollutant loading that can be received at the headwork's of the POTW and be fully treated to meet all disposal limits and without causing interference. This value is calculated in the derivation of Technically Based Local Limits.

~~(38)~~(41) Major Sanitary Sewer Line Extension. Shall mean the extension of a sanitary mainline that is, or will be, located within public rights-of-way or dedicated easements.

~~(39)~~(42) Medical Waste. Isolation wastes, infectious agents, human blood and blood products, pathological wastes, sharps, body parts, contaminated bedding, surgical wastes, potentially contaminated laboratory wastes, and dialysis wastes.

~~(40)~~(43) Monthly Average. The sum of all "daily discharges" measured during a calendar month divided by the number of "daily discharges" measured during the month.

~~(41)~~(44) Monthly Average Limits. The highest allowable average of "daily discharges" over a calendar month, calculated as the sum of all "daily discharges" measured during a calendar month divided by the number of "daily discharges" measured during that month.



## EXHIBIT A

### WILSONVILLE CODE

(45) National Pretreatment Standard. National pretreatment standard is defined in 40 CFR 403.3(l) as any regulation containing pollutant discharge limits promulgated by EPA under Section 307(b) and (c) of the Clean Water Act applicable to users, including the general and specific prohibition found in 40 CFR 403.5.

~~(42)~~(46) Municipal Separate Storm Sewer System (MS4). A system of conveyances, including roads, ditches, catch basins, and storm drains that are owned or operated by a public entity.

~~(43)~~(47) New Source.

(a) Any building, structure, facility or installation from which there is or may be a discharge of pollutants, the construction of which commenced after the publication of Proposed Pretreatment Standards under Section 307(c) of the Act which will be applicable to such source if such Standards are hereafter promulgated in accordance with that section provided that:

- 1) The building, structure, facility or installation is constructed at a site at which no other source is located; or
- 2) The building, structure, facility or installation completely replaces the process of production equipment that causes the discharge of pollutants at the existing source or
- 3) The production of wastewater generating processes of the buildings, structure, facility or installation is substantially independent of an existing source at the same site. In determining whether these are substantially independent factors, such as the extent to which the new facility is integrated with the existing plant, and the extent to which the new facility is engaged in the same general type of activity, as the existing source should be considered.

(b) Construction on a site at which an existing source is located results in a modification rather than a new source if the construction does not create a new building, structure, facility or installation meeting the criteria of paragraphs (a) (1), (2) of this section but otherwise alters, replaces or adds to existing process or production equipment.

(c) Construction of a new source as defined under this paragraph has commenced if the owner or operator has:

- 1) Begun, or caused to begin as part of a continuous on-site construction program;
  - a) Any placement, assembly, or installation of facilities or equipment; or



## EXHIBIT A

### WILSONVILLE CODE

b) Significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities for equipment or

2) Entered into a binding or contractual obligation for the purchase of facilities of equipment that is intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this paragraph.

(48) Non-contact Cooling Water. Water used for cooling that does not come into contact with any raw material, intermediate product, waste product or finished product.

(49) NPDES Stormwater Permit. A National Pollutant Discharge Elimination System permit issued pursuant to Section 402 of the Clean Water Act (33 U.S.C. 1342).

~~(44)~~(50) NPDES Waste Discharge Permit. A National Pollutant Discharge Elimination System permit issued pursuant to ORS 468B.050 and the Federal Clean Water Act.

~~(45)~~(51) Official. Shall be the Building Official for the City of Wilsonville.

~~(46)~~(52) Owner. Shall mean the person(s) who may hold title to or lease the property for which water service has or will be provided.

~~(47)~~(53) Pass Through. A discharge which exits the POTW into waters of the United States in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, is a cause of a violation of the City's NPDES Permit (including an increase in the magnitude or duration of a violation).

~~(48)~~(54) Person. Any individual, partnership, co-partnership, firm, company, corporation, association, joint stock company, trust, estate, governmental entity or any other legal entity, or their legal representatives, agents or assigns. This definition includes all Federal, state, or local governmental entities.

~~(49)~~(55) pH. A measure of the acidity or alkalinity of a solution, expressed in standard units.

~~(50)~~(56) Pollutant. Any dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, medical wastes, chemical wastes, biological materials, radioactive materials, heat, wrecked or discharged equipment, rock, sand, cellar dirt, municipal, agricultural and industrial wastes and certain characteristics of wastewater (e.g. pH, temperature, TSS, turbidity, color, BOD, COD, toxicity, or odor).



## EXHIBIT A

### WILSONVILLE CODE

~~(51)~~(57) Pretreatment. The reduction of the amount of pollutants, the elimination of pollutants, or the alteration in the nature of pollutant properties in wastewater prior to or in lieu of introducing such pollutants into the POTW. This reduction or alteration may be obtained by physical, chemical or biological processes, by process changes or by other means except by diluting the concentration of the pollutant unless allowed by the applicable Pretreatment Standard.

~~(52)~~(58) Pretreatment Requirement. Any substantive or procedural requirements related to the pretreatment, other than national pretreatment standards, imposed on an industrial user.

~~(53)~~(59) Pretreatment Standard or Standard. Prohibited discharge standards, categorical Pretreatment standards and Local Limits.

~~(54)~~(60) Prohibited Discharge Standards or Prohibited Discharges. Absolute prohibitions against the discharge of certain types or characteristics of wastewater as established by EPA, DEQ, and/or the Director.

~~(55)~~(61) Properly Shredded Garbage. Shall mean the wastes from the preparation, cooking and dispensing of food that have been shredded to such a degree that all particles will be carried freely under the flow conditions normally prevailing in public sanitary sewers, with no particle greater than one half (1/2) inch (1.27 centimeters) in any dimension.

(62) Public Sewer. Shall mean a sewer, either sanitary or storm, in which all the owners of abutting property have equal rights, and which is controlled by public authority.

~~(56)~~(63) Public Stormwater System. A stormwater system owned or operated by the City of Wilsonville.

~~(57)~~(64) Publicly Owned Treatments Works or POTW. A “treatment works” as defined in Section 212 of the Act, (33 U.S.C. 1292) which is owned by the City. This definition includes any devices or systems used in collection, storage, treatment, recycling and reclamation of sewage, ~~Stormwater discharges~~ or industrial wastes, and any conveyances which convey wastewater to a treatment plant or other point of discharge. The term also means the municipal entity having responsibility for the operation and maintenance of the system.

~~(58)~~(65) Public Works Director. The person designated by the City to supervise the operation of the POTW and who is charged with certain duties and responsibilities by this Chapter or their duly authorized representative.

~~(59)~~(66) Residential. Shall mean for the purposes of this Chapter ~~Section 8.108 and 8.112~~, building sewers and connections, buildings or structures, which are built to be occupied for living purposes in keeping with the City’s zoning and building code provisions.

~~(60)~~(67) Residential Users. Persons only contributing sewage wastewater to the municipal wastewater system.



## EXHIBIT A WILSONVILLE CODE

~~(61)~~(68) Receiving Stream or Water of the State. All streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, reservoirs, aquifers, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface or underground, natural or artificial, public or private, which are contained within, flow through, or border upon the State of Oregon or any portion thereof.

~~(62)~~(69) Sanitary Sewer. Shall mean a City sewer which carries sewage and to which storm, surface and ground water are not intentionally admitted.

~~(63)~~(70) Septic Tank Waste. Any sewage from holding tanks such as vessels, chemical toilets, campers, trailers, and septic tanks.

~~(64) — Service Connection. Shall, in the case of potable water, mean the installation which conveys connects the water from the water main up to and including the property's water meter and service line with the building water service, which includes, but shall not be limited to, the following: meter, meter box, meter vault, check valves, fittings, seals any or other materials to make such connection as deemed necessary by the Director. In the case of sewer, it shall mean the installation that connects the public sewer service line with the building sewer service lines.~~

~~(65)~~(71) Sewage. Human excrement and gray water (household showers, dishwashing operations, etc.)

(72) Sewer. Shall mean a pipe or conduit for carrying sewage in the case of sanitary (wastewater) sewer lines. Shall mean a pipe or conduit for carrying stormwater runoff, surface waters or drainage in the case of storm water lines.

~~(66)~~(73) Sewer Lateral. See Building Sewer – Sanitary and Storm definitions.

~~(67)~~(74) Significant Industrial User.

(a) Except as provided in paragraph (b) of this section, the term Significant Industrial User means:

1) An industrial users subject to Categorical Pretreatment Standards  
or

2) Any other industrial user that discharges an average of 25,000 gallons per day or more of process wastewater to the POTW (excluding sanitary, non-contact cooling and boiler blow-down wastewater); contributes a process waste stream which makes up 5 per cent of more of the average dry weather hydraulic or organic capacity of the POTW or is designated as such by the City on the basis that the industrial user has a reasonable potential for adversely affecting the POTW's operation or for



## EXHIBIT A **WILSONVILLE CODE**

violating any pretreatment standard or requirement (in accordance with 40 CFR 403.8(f)(6)).

(b) The City may determine that an Industrial User subject to the categorical Pretreatment Standards is a Non-significant Categorical Industrial User rather than a Significant Industrial User on a finding that the Industrial User never discharges more than 100 gallons per day (gpd) of total categorical wastewater (excluding sanitary, non-contact cooling and boiler blowdown wastewater, unless specifically included in the Pretreatment Standard) and the following conditions are met.

- 1) The Industrial User, prior to City's findings, has consistently complied with all applicable categorical Pretreatment Standards and Requirements;
- 2) The Industrial User annually submits the certification statement required in Section 8.310(14) together with any additional information necessary to support the certification statement; and
- 3) The Industrial User never discharges any untreated concentrated wastewater.

(c) Upon finding that an industrial user meeting the criteria in paragraph (a)(2) of this section has no reasonable potential for adversely affecting the POTW's operation or for violating any pretreatment standard or requirement, the City may at any time, on its own initiative or in response to a petition received from an industrial user or POTW, and in accordance with CFR 403.8(F)(6), determine that such industrial user is not a significant industrial user.

~~(68)~~(75) Slug Load or Slug Discharge. Any discharge at a flow rate or concentration which has the potential to cause a violation of the specific discharge prohibitions of this article. A slug discharge is any discharge of a non-routine, episodic nature, including but not limited to an accidental spill or a non-customary batch discharge, which has a reasonable potential to cause interference or pass through, or in any other way violate the POTW's regulations, Local Limits of Permit conditions.

~~(69)~~(76) State. State of Oregon.

~~(70)~~(77) Storm Drain. (Sometimes termed "storm sewer"). Shall mean a sewer which carries storm and surface waters and drainage, but excludes sewage and industrial wastes, other than unpolluted cooling waters.

~~(71)~~(78) Stormwater. Any flow occurring during or following any form of natural precipitation and resulting there from, including snow melt.

~~(72)~~(79) Suspended Solids or Total Suspended Solids (TSS). The total suspended matter that floats on the surface of, or is suspended in, water, wastewater, or other liquid which is removable by laboratory filtering.



## EXHIBIT A WILSONVILLE CODE

~~(73)~~(80) Toxic Pollutant. One of the pollutants or combination of those pollutants listed as toxic in regulations promulgated by the Environmental Protection Agency under the provision of Section 307 (33 U.S.C. 1317) of the Act.

~~(74)~~(81) Treatment Plant Effluent. Any discharge of pollutants from the POTW into waters of the state.

~~(75)~~(82) User or Industrial User. Any person who contributes, or causes or allows the contribution of sewage, ~~Stormwater~~ or industrial wastewater into the POTW, including persons who contribute such wastes from mobile sources.

~~(76)~~(83) Wastewater. The liquid and water-carried industrial wastes, or sewage from residential dwellings, commercial buildings, industrial and manufacturing facilities, and institutions, whether treated or untreated, which is contributed to the municipal wastewater system.

~~(77)~~(84) Wastewater Treatment Plant or Treatment Plant. That portion of the POTW which is designed to provide treatment of municipal sewage and industrial waste.

~~(78)~~(85) Water is water from the City water supply system

~~(79)~~(86) Water Course. Shall mean a channel in which a flow of water occurs, either continuously or intermittently.

### **8.008 Miscellaneous Provisions**

(1) Pretreatment Charges and Fees. The City may adopt, from time to time, by Administrative Authority Resolution, in the City's Master Fee Schedule reasonable charges and fees for reimbursement of costs of setting up and operating the City's Pretreatment Program which may include;

- (a) Fees for permit applications including the cost of processing such applications;
- (b) Fees for monitoring, inspection and surveillance procedures including the cost of reviewing monitoring reports submitted by industrial users;
- (c) Fees for reviewing and responding to accidental discharge procedures and construction;
- (d) Fees for filing appeals;
- (e) Other fees as the City may deem necessary to carry out the requirements contained herein. These fees relate solely to the matters covered by this Chapter and are



**EXHIBIT A**  
**WILSONVILLE CODE**

separate from all other fees, system development charges, fines and penalties chargeable by the City.

(2) Non-exclusivity. Enforcement of pretreatment violations will generally be in accordance with the City's enforcement response plan. However, the Director may take other action against any industrial user when the circumstances warrant. Further, the Director is empowered to take more than one enforcement action against any non-compliant industrial user.



**EXHIBIT A**  
**WILSONVILLE CODE**

**ENVIRONMENT**

**WATER CONSERVATION**

**8.101 Declaration of Emergency**

A. When the City Water supply has become, or is about to become, depleted to such an extent as to cause a serious water shortage in the City, the Mayor shall have the authority to declare an emergency water shortage and to direct that the provision of Section 8.101, 8.102 and 8.130 of this article of the Code be enforced.

B. In the event the Mayor is unavailable to declare an emergency, the following shall be the order of succession of authority, based upon availability:

~~a. The Water Commissioner;~~

~~b.~~ a. The President of the Council;

~~c.~~ b. Any other council person;

~~d.~~ c. The City Manager;

~~e.~~ d. The Public Works Director

**8.102 Notice of Declaration of Emergency**

When a declaration of emergency is announced by the Mayor, the City Manager shall make the declaration public in a manner reasonably calculated to provide reasonable notice to the public. This provision shall not be construed as requiring personal delivery or service of notice or notice by mail.

**8.108 Standards – Purpose.**

This Section is established because during the summer months and in other times of emergency there is or may be insufficient water in the City water supply system to allow irrigation and other uses of water at all times by all parties; and the level of water supplied by the City is at certain times dangerously low; and it is imperative to the public well-being that certain uses of water not essential to health, welfare and safety of the City be restricted from time to time.

**8.112 Standards – Application.**

The provisions of this Section shall apply to all persons using water, both in and outside the City, regardless of whether any person using water shall have a contract for water services with the City.

**8.114 Standards – Wasted Water.**

(1) Where water is wastefully or negligently used on a customer's premises, seriously affecting the general service, the City may discontinue the service if such conditions are not corrected after due notice by the City.



## EXHIBIT A WILSONVILLE CODE

(2) Water shall not be furnished except through a meter to any premises where ~~t~~There are defective or leaking pipes, faucets, closets or other fixtures, or where there are water closets or urinals without self-closing valves and, when such leakage or other defects are discovered and not corrected, the City may discontinue service after giving due notice and until repairs are made. If significant deficiencies are not corrected in a timely manner, as defined by the Public Works Director, the City may introduce enforcement action in conformance with Section 8.150 Violations.

(3) Water must not be allowed to run to waste~~r~~ through any faucet or fixture or kept running any time longer than actually necessary. Sprinkling of lawns, gardens, and parking strips shall be confined to what is actually needed and no running to waste on sidewalks, streets, and gutters shall be permitted. When any such waste is discovered, the water service to the premises may be discontinued.

### **8.116 Section Not Used~~Standards – Vehicle Wash Installations.~~**

- ~~— (1) Vehicle wash shall be covered~~
- ~~— (2) Stormwater shall be protected from soap, wax, or other pollution runoff from vehicle wash facility entrance and exits.~~
- ~~— (3) Vehicle wash installations shall be equipped with a water recycling system approved by the Public Works Director. Best available technology shall be utilized for the pretreatment system of any drainage to the sanitary sewer system.~~
- ~~— (4) No coin operated vehicle wash shall be installed or used until plans have been submitted to and approved by the City. The plans shall show the method of connections to an approved pretreatment system before discharging into the sanitary sewer system, disposal of rain or surface water and the protection of the potable water system. No rain or surface water shall be conveyed to or through the sanitary sewer system.~~
- ~~— (5) Any water connective device or appliance requiring a continuous flow of five GPM of more and not previously listed in this section shall be equipped with an approved water recycling system.~~

### **8.118 Standards – General.**

(1) In all new construction and in all repair and/or replacement of fixtures or trim, only fixtures or trim not exceeding the following flow rates and/or water usage shall be installed. These rates are based on a presence at the fixture of 40 to 50 PSI.

Water closets, tank type	–	1.6 gallons per flush.
Water closets, flush-o-meter type	-	1.6 gallons per flush
Urinals, tank type	-	1.0 gallons per flush
Shower heads	-	2.5 GPM
Lavatory, sink faucets	-	2.5 GPM
Metered faucets	-	0.25 gallons per use



## **EXHIBIT A**

### **WILSONVILLE CODE**

(2) Faucets on lavatories located in restrooms intended for the transient public in service stations, park toilet rooms, train stations and similar facilities shall be metering or self-closing.

(3) Any water connective device or appliance requiring a continuous flow of five GPM of more and not previously listed in this section shall be equipped with an approved water recycling system.

#### **8.120 Section Not Used**

#### **8.130 Use of Water During Emergency – Prohibited Uses of Water.**

(1) When a declaration of emergency is announced and notice has been given in accordance with this Section, the use and withdrawal of water by any person may be limited and include prohibition of the following:

- (a) Sprinkling, watering or irrigating shrubbery, trees, lawns, grass, groundcovers, plants, vines, gardens, vegetables, flowers or any other vegetation.
- (b) Washing automobiles, trucks, trailers, trailer houses, railroad cars, or any other type of mobile equipment
- (c) Washing sidewalks, driveways, filling station aprons, porches and other surfaces.
- (d) Washing the outside of dwellings, washing the inside or outside of office buildings.
- (e) Washing and cleaning any business or industrial equipment and machinery.
- (f) Operating any ornamental fountain or other structure making a similar use of water.
- (g) Maintaining swimming and wading pools not employing a filter and re-circulating system.
- (h) Permitting the escape of water through defective plumbing.

#### **8.132 Use of Water During Emergency – Exemptions.**

At the discretion of the Mayor, one or more of the uses specified in Section 8.130 may be exempted from the provisions of this section. The exemption shall be made public as provided in Section 8.102 of this Chapter.



**EXHIBIT A**  
**WILSONVILLE CODE**

**8.134 Use of Water During Emergency – Length of Restriction.**

The prohibition shall remain in effect until terminated by an announcement by the Mayor in accordance with Sections 8.102~~10 to 8.150~~.

**8.136 Use of Water During Emergency – Declaration Period.**

(1) The Mayor shall cause each declaration made by him pursuant to Sections 8.101~~0~~ to 8.150 to be publicly announced by means of posting notice in three (3) public and conspicuous places in the City, and he may cause such declaration to be further announced in a newspaper of general circulation within the City when feasible. Each announcement shall prescribe the action taken by the Mayor, including the time it became or will become effective, and shall specify the particular use for which the use of water will be prohibited.

(2) Whenever the Mayor shall find the conditions which gave rise to the water prohibition in effect pursuant to Sections 8.101~~0~~ to 8.150 no longer exist, he may declare the prohibition terminated in whole or in part in the manner prescribed by these sections, effectively immediately upon announcement.

(3) The Mayor shall make or cause to be made a record of each time and date when any declaration is announced to the public in accordance with this section, and this includes the notice of termination, both in whole or in part.

**8.140 Authority of Officer.**

Any police officer of the City, Clackamas County or designated employee of the City may enter the premises of any person for the purpose of shutting off or reducing the flow of water being used contrary to the provisions of Sections 8.101~~0~~ to 8.150.

**8.150 Penalties.**

A person convicted of a violation of any provisions of Sections 8.101~~0~~ to 8.140 shall be punished upon a first conviction thereof for a violation pursuant to Section 1.012, and upon a subsequent conviction thereof for a Class C Misdemeanor pursuant to Section 1.011. Each day such a violation is committed or permitted to continue shall constitute a separate offense and shall be punished as such hereunder.



**EXHIBIT A**  
**WILSONVILLE CODE**

**PUBLIC SANITARY SEWER USE**

**8.200 Public Sanitary Sewer Use – General Provision**

(1) Purpose. Provides for the required use of public sanitary sewer facilities except as otherwise set forth, for the regulation of the building of and connection to public sanitary sewer facilities and for the uniform regulation of indirect discharge to the Publicly Owned Treatment Works (POTW) through the issuance of permits to certain non-domestic users and through enforcement of general requirements for other users, authorizes monitoring and enforcement activities, establishes administrative review procedures, requires user reporting, and provides for the setting of fees for the equitable distribution of costs resulting from the program established herein.

(2) Application to Users within and outside of City limits. Provisions of this article shall apply to users within the City limits and to users outside the City limits who, by contract or agreement with the City, are included as users of the municipal wastewater system.

**8.202 Use of Public Sanitary Sewer Required.** Except as herein provided in this chapter:

(1) It shall be unlawful for any person to place, deposit or permit to be deposited in any manner as described herein on public or private property within the City of Wilsonville, or in any area under the jurisdiction of said City, any human or animal excrement, garbage or other objectionable waste.

~~—(2) It shall be unlawful to discharge in or into any natural outlet or stormwater sewer inlet (catch basin, grate, roof downspout, etc.) within the City of Wilsonville, or in any area under the jurisdiction of said City, any sewage or other polluted water.~~

(~~2~~3) It shall be unlawful to construct or maintain any privy, privy vault, septic tank, cesspool or other facility intended or used for the disposal of sewage.

(~~3~~4) The owner of any house, building, or property used for human occupancy, employment, recreation or other purposes, situated within the City and abutting on any street, alley or right-of-way, in which there is now located or may in the future be located, a public sanitary ~~or combined~~ sewer of the City, is hereby required, at his expense, to install suitable toilet facilities therein and to connect such facilities directly with the proper public sanitary sewer in accordance with the provisions of this section of the Code within ninety (90) days after the date of official notice to do so, provided that said public sanitary sewer for the residential use is within three hundred (300) feet of the property. Commercial and industrial buildings or structures shall connect no matter what the distance is from the public sanitary sewer to the property to be served.

**8.204 Private Sewage Disposal.**

(1) Where a public sanitary ~~or combined~~ sewer is not available under the provisions of Section 8.202(4), the building sewer shall be connected to a private sewage disposal system.



**EXHIBIT A**  
**WILSONVILLE CODE**

(2) Before commencement of construction of a private sewage disposal system, the owner shall first obtain a written permit signed by the City.

(a) The application for such permit shall be made on a form furnished by the City, and shall be supplemented by any plans, specifications and other information as are deemed necessary by the City. The appropriate Type B Construction Permit and plan check fee shall be paid by the City at the time the application is filed.

(b) A permit for a private sewage disposal system shall not become effective until the installation is completed to the satisfaction of the City. Inspection of the work in any stage of construction shall be allowed and, in any event, the applicant for the permit shall notify the City when the work is ready for final inspection, and before any underground portions are covered. The inspection shall be made within forty-eight (48) hours of the receipt of notice by the City.

(3) The type, capacities, location and layout of a private sewage disposal system shall comply with all recommendations to the Oregon State Board of Health. No permit shall be issued for any private sewage disposal system employing subsurface soil absorption facilities where the area of the lot is less than ten thousand (10,000) square feet. No septic tank or cesspool shall be permitted to discharge any natural outlet. If it is determined by the City that a health hazard would be created or that the soil is unable to transfer the sewage runoff through the soil as an effective means of treatment of sewage disposal, the City shall reject the septic or private sewage disposal system, and require, at the owner's expense, construction of an adequately sized sanitary sewer line as approved by the City to connect to an existing public sanitary sewer system. The owner shall construct the sanitary sewer by those requirements of the Public Works Standards of the City of Wilsonville

(4) At such time as a public sanitary sewer becomes available to a property served by a private sewage disposal system, as provided in Section 8.202(4), a direct connection shall be made to the public sanitary sewer in compliance with this Code, and any septic tanks, cesspools and similar disposal facilities shall be removed or opened and filled with sand or gravel in accordance with the Oregon Plumbing Specialty Code.

(5) Where existing buildings are too low to be served by gravity by an available sanitary sewer, the existing septic tank facilities shall be maintained in use and, when so ordered by the City under Section 8.202(4), approved pumping facilities shall be installed to pump the septic tank effluent to the available sanitary sewer system.

(6) The owner shall operate and maintain private sewage disposal or pumping facilities in a sanitary manner at all times, at no expense to the City.

**8.205 Conflict**

No statement contained in this section shall be construed to interfere with any additional requirements that may be imposed by State health officials.



**EXHIBIT A**  
**WILSONVILLE CODE**

**8.206 Buildings Sanitary Sewers and Connections.**

(1) No unauthorized person shall uncover, make any connections to or opening into, use, alter or disturb any ~~service-connection~~ sanitary sewer lateral or appurtenance thereof without first obtaining a written permit from the Building Official. In each case, the owner or their agent, shall make application on a special form furnished by the City. The permit applications shall be supplemented by any plans, specifications or other information considered pertinent in the judgment of the official.

(2) There shall be three (3) classes of building sanitary sewer ~~service-connection-lateral~~ permits:

- (a) Residential, Single, and Multifamily,
- (b) Commercial; and
- (c) Industrial Service.

(3) All costs and expenses incident to the installation and connection of the building sanitary sewer shall be borne by the owner. The owner shall indemnify the City from any loss or damage to the City that may directly or indirectly be occasioned by the installation of the building sanitary sewer.

(4) A separate and independent building sanitary sewer shall be provided for every building; except, however, when one building stands at the rear of another on an interior lot and no private sanitary sewer is available or can be constructed to the rear building through an adjoining alley, courtyard, or driveway, then the building sanitary sewer from the front building may be extended to the rear building and the whole considered as one building sewer.

(5) Old building sanitary sewers may be used in connection with new buildings only when they are found, on examination or through tests, by the Official, to meet all requirements of this Code Chapter.

(6) The size, slope, alignment, construction material of a building sanitary sewer, and the methods to be used excavating, placing of the pipe, jointing, testing and backfilling the trench, shall all conform to the requirements of the Oregon Structural Specialty Code and the Oregon Plumbing Specialty Code and other applicable rules and regulations of the City.

(7) Whenever possible, the building sanitary sewer shall be brought to the building at an elevation below the basement floor. In all buildings in which any building drain is too low to permit gravity flow to the public sanitary sewer, sanitary sewage carried by such building drain shall be lifted by an approved means and discharged to the building sanitary sewer.

(8) No person shall make connection of roof down spouts, areaway drains, or other sources of ~~s~~stormwater runoff to a building sanitary sewer or sewer drain which, in turn, is connected directly or indirectly to the public sanitary sewer.

(9) The connection of the building sanitary sewer into the public sanitary sewer shall conform to the requirements of the ~~Uniform Building Code in effect at the time and~~ the State of



## **EXHIBIT A**

### **WILSONVILLE CODE**

Oregon Specialty Plumbing Code in effect at the time, and other applicable rules and regulations of the City. All such connections shall be made gas-tight and water-tight. Any deviation from prescribed procedures and materials must be approved by the Building Official before installation.

(10) The applicant for the building permits shall notify the Building Official when the building sanitary sewer is ready for inspection. The connection shall be made under the supervision of the Building Official or designated representative. Streets, sidewalks, parkways, and other public property disturbed in the course of the work shall be restored at the applicant's or owner's expense in a manner satisfactory to the City, in accordance with adopted Public Works Standards.

(11) All excavations for building sanitary sewer installation shall be adequately guarded with barricades and lights so as to protect the public from hazard.

(12) The property owner is responsible for the maintenance, repair and replacement of the sanitary sewer lateral from the building to the sanitary sewer main. Sewer lateral maintenance work, which, as used herein, includes pipe clean-out, clog removal, root removal, foaming and any other work or protocol required to ensure proper flow. Repair and replacement work for the sewer lateral shall be done in accordance with the City's Public Works Standards and the City's Right of Way Permit.

#### **8.206 Equipment and/or Vehicle Washing Facilities**

(1) Equipment and/or Vehicle wash areas shall be covered

(2) Equipment and/or Vehicle washing facilities shall be equipped with a water recycling system approved by the Public Works Director.

(3) Best available technology shall be utilized for the pretreatment system of any drainage to the sanitary sewer system.

(4) No coin operated equipment and/or vehicle washing facilities shall be installed or used until plans have been submitted to and approved by the City. The plans shall show the method of connections to an approved pretreatment system before discharging into the sanitary sewer system, disposal of rain or surface water and the protection of the potable water system. No rain or surface water shall be conveyed to or through the sanitary sewer system.

#### **8.208 Use of Public Sanitary Sewers.**

(1) No unauthorized person shall uncover, make any connections with or openings into, use, alter, or disturb, any public sewer or appurtenance thereof without first obtaining a written permit from the City.



## EXHIBIT A WILSONVILLE CODE

~~(2) Stormwater shall be discharged to storm sewers and natural outlets under the authority and regulation of the NPDES Stormwater Permit Program, administered by the Oregon DEQ.~~

(3) When required by the City, the owner of any property serviced by a building sanitary sewer carrying industrial wastes or large quantities of discharge shall install a suitable control manhole together with such necessary meters and other appurtenances in the building sanitary sewer to facilitate observation, sampling, and measurement of the wastes. Such manhole, when required, shall be accessible and safely located, and shall be constructed in accordance with plans approved by the City. The manhole shall be installed by the owner at the owner's expense, and shall be maintained by the owner so as to be safe and accessible at all times.

(4) All measurements, tests and analysis of the characteristics of water wastes to which reference is made in this chapter of the Code shall be determined in accordance with the current edition of the "Standard Methods for the Examination of Water and Wastewater", published by the American Public Health Association, and shall be determined at the control manhole provided, or upon testing of suitable samples taken at said control manhole.

In the event that no special manhole has been required, the control manhole shall be considered to be the nearest downstream manhole in the public sanitary sewer to the point at which the building sanitary sewer is connection. Sampling shall be carried out by customarily accepted methods to reflect the effect of constituents upon the sewage works and to determine the existence of hazards to life, limb, and property. When customary measurement for BOD characteristics is impractical due to time constraints and the necessity to have immediate measurable results, mg/l of BOD may be based on forty-two percent (42%) of measured C.O.D.

(5) Grease, oil and sand interceptors shall be provided when, in the opinion of the Director or Building Official, they are necessary for the proper handling of wastewater containing excessive amounts of grease, flammable substances, sand, or other harmful substances; except that such interceptors shall not be required for residential users. All interception units shall be of type and capacity approved by the Director or Building Official and shall be so located to be easily accessible for cleaning and inspection. Such interceptors shall be inspected, cleaned, and repaired regularly, as needed, by the owner, at his expense.

(6) Separation of Domestic and Industrial Waste Streams. All new and domestic wastewaters from restrooms, showers, drinking fountains, etc., unless specifically included as part of a categorical pretreatment standard, shall be kept separate from all industrial wastewaters until the industrial wastewaters have passed through a required pretreatment system and the industrial user's monitoring facility. When directed to do so by the Director, industrial users must separate existing domestic waste streams.

(7) Hauled Wastewater. Septic tank waste (septage) or hauled septage shall not be accepted into the municipal wastewater system.

(8) Vandalism. No person shall maliciously, willfully or negligently break, damage, destroy, uncover, deface, tamper with or prevent access to any structure, appurtenance or



## EXHIBIT A

### WILSONVILLE CODE

equipment, or other part of the municipal wastewater system. Any person found in violation of this requirement shall be subject to the sanctions set out in Section 8.604

#### **8.210 Public Sanitary Sewers – Construction**

(1) No person shall construct, extend or connect to any public sanitary sewer without first obtaining a written permit from the City and paying all fees and connection charges and furnishing boards as required herein and the Public Works Standards for the City of Wilsonville. The provisions of this section requiring permits shall not be construed to apply to contractors constructing sanitary sewers and appurtenances under contracts awarded and entered into by the City.

(2) The application for a permit for public sanitary sewer construction shall be accompanied by complete plans, profiles and specifications, complying with all applicable sections of the Code, rules and regulations of the City prepared by a registered civil engineer in the State of Oregon showing all details of the proposed work based on an accurate survey of the ground. The application, together with the plans, profiles and specifications shall be examined by the City Engineer or and authorized representative of the City Engineer who shall within twenty (20) days, approve them as filed or require them to be modified as he may deem necessary.

(3) All sewer works plans, specifications and construction procedure shall conform to Public Works Standards for the City of Wilsonville.

(4) Prior to issuance of a permit for public sanitary sewer construction, the applicant shall furnish to the City a performance bond, or cash deposit, in the amount of the total estimated cost of the work. Such performance bond, or cash deposit, shall be conditioned upon the performance of the terms and conditions of the permit and shall guarantee the correction of faulty workmanship and replacement of defective materials for a period of one (1) year from and after the date of acceptance of the work by the City.

(5) Except as provided, the extension of the public sewage facilities to serve any parcel or tract of land shall be done by and at the expense of the owner. The size of all sanitary sewer mains and other sewage facilities shall be as required by the City Engineer to lay sewer pipe larger than that required for his own purposes, to accommodate other users, and may be reimbursed under the provisions of Section 3.116 of the Wilsonville Code for the difference in cost between the size of the line installed and that which would be required for his own use.

(6) Where special conditions exist, in the opinion of the City Engineer, relating to any reimbursement agreement pursuant to the provisions of this section, The City may, either in addition to, or in lieu of any of the provisions of the section, authorize a special reimbursement contract between the City and the person or persons constructing public sewerage facilities. Said special reimbursement agreement shall be made and entered into prior to the issuance of a permit for the work by the City.



## EXHIBIT A **WILSONVILLE CODE**

(7) Vehicle maintenance installations shall be covered and equipped with oil/water separation and spill protection approved by the Public Works Director for any drainage to the sanitary system.

(8) Vehicle fueling installations shall be covered and equipped with oil/water separators, spill control manholes, ion, shut off valves and spill protection approved by the Public Works Director for any drainage to the sanitary system.

(9) Outside storage areas for grease, oil, waste products, recycling, garbage, and other sources of contaminants shall be equipped with oil/water separators, shut off valves and spill protection approved by the Public Works Director for any drainage to the sanitary sewer system. ~~a covered enclosure adequately sized to allow all containers to be accessible.~~ No drainage is allowed to enter the storm sewer system

### **8.212 Public Sanitary Sewers – Property Damage Prohibited.**

No unauthorized person shall with intent to cause substantial inconvenience or with intent to cause damage, break, destroy, uncover, deface or tamper with any structure, appurtenance, or equipment which is a part of the sewage works which is a municipal public utility. Any person violating this provision and as a result thereof damages any part of the sewage works, shall be subject o arrest and prosecution under the laws of the State of Oregon as set forth in OPRS 164.345 through 164.365.

### **8.214 Powers and Authorities of Inspectors**

(1) In addition to the authority set forth in Section 8.312, the Director and other duly authorized employees of the City bearing proper credentials and identification shall be permitted to enter all properties for the purposes of inspection, observation, measurement, sampling and testing, in connection with the provisions and regulations of City sewage collection and treatment system as provided for in this Chapter.

(2) While performing the necessary work on private properties referred to in Section 8.312(1) and 8.214(1) above, the owner of the premises or representative shall notify the City or duly authorized employee of the City to observe all safety rules applicable to the premises established by the owner. The premises shall be maintained in a safe condition and the owner or representative shall have a duty to notify the Director and any duly authorized representative of the City of any unsafe conditions.

(3) The City or duly authorized employee of the City bearing proper credentials and identification shall be permitted to enter all private properties through which the City holds a negotiated easement, of for the purposes of, but not limited to, inspection, observation, measurement, sampling, repair and maintenance of any portion of the sewage works which is connected to or lying within an easement. All entry and subsequent work, if any, on said easement of any connection thereto, on the sanitary system shall be done according to those regulations as stipulated in the Code of the City of Wilsonville.



**EXHIBIT A**  
**WILSONVILLE CODE**

**ENVIRONMENT**

**INDUSTRIAL WASTEWATER REGULATIONS**

**8.300– General Provisions.**

(1) Purpose and Policy This chapter sets forth uniform requirements for Users of the (POTW) for the City of Wilsonville and enables the City to comply with all applicable State and Federal laws, including the Clean Water Act (33 United States Code [U.S.C.] Section 1251 et seq.) and the General Pretreatment Regulations (Title 40 of the Code of Federal Regulations [CFR] Part 403). The objectives of this chapter are:

(a) To prevent the introduction of pollutants into the POTW that will interfere with its operation;

(b) To prevent the introduction of pollutants into the POTW, inadequately treated, into receiving waters or the atmosphere or otherwise be incompatible with the POTW;

(c) To protect both POTW personnel who may be affected by wastewater and sludge in the course of their employment and the general public;

(d) To promote reuse and recycling of industrial wastewater and sludge from the POTW;

(e) To enable the City to comply with its National Pollutant Discharge Elimination System permit conditions, sludge use and disposal requirements and any other Federal or State laws which the POTW is subject thereto.

(f) This Chapter authorizes the issuance of individual wastewater discharge permits; provides for monitoring, compliance, and enforcement activities; establishes administrative review procedures; and requires User reporting.

**8.301 Applicability.**

This Chapter shall apply to all Users of the POTW, whether inside or outside of the City limits, by contract, permit, or agreement with the City.

**8.302 General Sanitary Sewer Use Requirements**

(1) Prohibited Discharge Standards

(a) General Prohibitions. No user shall introduce or cause to be introduced into the POTW any pollutant or wastewater which will cause Interference or Pass Through. These general prohibitions apply to all Users of the POTW whether or not they are subject to categorical Pretreatment Standards or any other National, State or local pretreatment standards or requirements.



**EXHIBIT A**  
**WILSONVILLE CODE**

(b) Specific Prohibitions. No User shall introduce or cause to be introduced into the POTW the following pollutants, substances, or wastewater:

- 1) Pollutants which create fire or explosion hazard in the POTW, including but not limited to waste streams with a closed cup flash point of less than 140°F (60°C) using the test methods prescribed in 40 CFR 261.21.
- 2) Solid or viscous substances in amounts which will obstruct the flow in the POTW resulting in Interference.
- 3) Petroleum oil, non-biodegradable cutting oil, or products of mineral oil origin, in amounts that will cause Interference or Pass Through.
- 4) Waste streams having a pH less than 5.5 or more than 10.0, or which may otherwise cause corrosive structural damage to the POTW, City personnel or equipment. In cases where pH is continuously monitored, a violation is deemed to have occurred if the pH falls outside the 5.5 to 10.0 range more than 60 minutes in any one calendar day beginning at midnight and/or more than seven hours 26 minutes in any one calendar month, except that any discharge below 5.0 or above 11.0 is a violation.
- 5) Pollutants, including oxygen- demanding pollutants (BODs, etc) released at a flow rate and/ or pollutant concentration- which, either singly or by interaction with other pollutants, to pass through or interfere with the POTW, any wastewater treatment or sludge process, or constitute a hazard to humans or animals.
- 6) Noxious or malodorous liquids, gases, or solids or other wastewater which, either singly or by interaction with other wastes, are sufficient to create a public nuisance or hazard to life or are sufficient to prevent entry into the sanitary sewers for maintenance and repair.
- 7) Any substance which may cause the treatment plant effluent or any other residues, sludges, or scums to be unsuitable for reclamation and reuse or to interfere with the reclamation process. In no case, shall a substance discharged to the system cause the City to be in noncompliance with sludge use or disposal regulations or permits issued under Section 405 of the Act; the Solid Waste Disposal Act, the Clean Air Act, the Toxic Substances Control Act, or other State requirements applicable to the sludge use and disposal practices being used by the City.
- 8) Any wastewater which imparts color which cannot be removed by the treatment process, such as, but not limited to, dye wastes and vegetable tanning solutions, which consequently imparts color to the treatment plants effluent thereby violating the City's NPDES permit. Color (in combination with turbidity) shall not cause the treatment plant effluent to reduce the depth of the compensation point for photosynthetic activity by more than ten percent (10%) from the seasonably established norm for aquatic life.



**EXHIBIT A**  
**WILSONVILLE CODE**

9) Any wastewater having a temperature greater than 150°F(55°C), or which will inhibit biological activity in the treatment plant resulting in interference, but in no case wastewater which causes the temperature at the introduction into the treatment plant to exceed 104°F(40°C).

10) Any wastewater containing any radioactive waste or isotopes except as specifically approved by the Director in compliance with applicable State Federal regulations.

11) Any pollutants which result in the presence of toxic gases, vapor or fumes within the system in a quantity that may cause worker health and safety problems.

12) Any trucked or hauled pollutants.

13) Stormwater, surface water, groundwater, artesian well water, roof runoff, subsurface drainage, deionized water, non-contacting cooling water and unpolluted industrial wastewater, unless specifically authorized by the Director.

14) Sludges, screenings, or other residues from the pretreatment of industrial wastes.

15) Medical wastes, except as specifically authorized by the Director in a wastewater discharge permit.

16) Material containing ammonia, ammonia salts, or other chelating agents which will produce metallic complexes that interfered with the POTW.

17) Material identified as hazardous waste according to 40 CFR Part 261 except as specifically authorized by the Director.

18) Wastewater causing, alone or in conjunction with other sources, the treatment plant effluent to fail toxicity test.

19) Recognizable portions of the human or animal anatomy.

20) Detergents, surface active agents, or other substances which may cause excessive foaming in the POTW.

21) Any wastewater from dry cleaning machines.

22) Wastewater discharging from Dental facilities which contain mercury shall be provided with an approved amalgam separator.

23) Wastes prohibited by this section shall not be processed or stored in such a manner that these wastes could be discharged to the POTW.



**EXHIBIT A**  
**WILSONVILLE CODE**

(2) National Categorical Pretreatment Standards

(a) Users must comply with the categorical Pretreatment Standards found in 40 CFR Chapter 1, Subchapter N, Parts 405-471 and incorporated herein. The City shall recognize any variance to the Categorical Standards authorized by the DEQ under 40 CFR 403.13 for fundamentally difference factors from those considered by the EPA when developing the categorical pretreatment standard.

(b) When wastewater subject to a categorical pretreatment standard is mixed with wastewater not regulated by the same standard, the Director shall impose an alternate limit using the combined waste stream formula in 40 CFR 403 .6(e) using the combined waste stream formula.

(c) Where a categorical Pretreatment Standard is expressed only in terms of either the mass or the concentration of a pollutant in wastewater, the City may impose equivalent concentration or mass limits in accordance with Section (1) and (2) of this section.

1) Equivalent Concentration Limits: When the limits in a categorical Pretreatment Standard are expressed only in terms of mass of pollutant per unit of production, the City may convert the limits to equivalent limitations expressed either as mass of pollutant discharged per day or effluent concentration for purposes of calculating effluent limitations applicable to individual Industrial Users.

2) The City may convert the mass limits of the categorical Pretreatment Standards of 40 CFR Parts 414, 419, and 455 to concentration limits for purposes of calculating limitations applicable to individual Industrial Users. The conversion is at the discretion of the Director.

When converting such limits to concentration limits, the City will use the concentrations listed in the applicable subparts of 40 CFR Parts 414, 419, and 455 and document that dilution is not being substituted for treatment as prohibited by Section 8.302(6) of this Chapter. In addition, the City will document how the equivalent limits were derived for any changes from concentration to mass limits, or vice versa, and make this information publicly available.

3) Once included in its permit, the Industrial User must comply with the equivalent limitations developed in this Section 8.302(2) in lieu of the promulgated categorical Standards from which the equivalent limitations were derived.

(d) Many categorical Pretreatment Standards specify one limit for calculating maximum daily discharge limitations and a second limit for calculating maximum Monthly Average, or 4-day average, limitations. Where such Standards are being applied, the same production or flow figure shall be used in calculating both the average and the maximum equivalent limitation.

(e) Any Industrial User operating under a permit incorporating equivalent mass or concentration limits calculated from a production-based Standard shall notify the City within two (2) business days after the User has a reasonable basis to know that the production level will significantly change within the next calendar month. Any User not notifying the City of such



## EXHIBIT A

### WILSONVILLE CODE

anticipated change will be required to meet the mass or concentration limits in its permit that were based on the original estimate of the long term average production rate.

(3) State Requirements. Users must comply with State requirements and limitations and discharges to the POTW shall be met by all users which are subject to such limitations in any instance in which they are more stringent than Federal requirements and limitations or those in this ordinance.

(4) Local Limits

(a) Authority to Establish Local Limits: The City is authorized to establish Local Limits pursuant to 40 CFR 403.5(c). The Director may develop BMP's by ordinance or in individual wastewater permits to implement Local Limits and 8.032.

(b) Numerical Local Limits.

1) No nonresidential user shall discharge wastewater containing restricted substances into the POTW in excess of limitations specified in its Wastewater Discharge Permit or adopted, by resolution, by the City. The Director shall publish and revise, from time to time, standards for specific restricted substances. These standards shall be developed in accordance with 40 CFR Section 403.5 and shall implement the objectives of this Chapter. Standards published in accordance with this Section will be deemed Pretreatment Standards for the purposes of Section 307(d) of the Act.

(a) At their discretion, the Director may impose mass limitations in addition to or in place of the concentration based limitations referenced above. The more stringent of either the categorical standards or the specific pollutant limitations for a given pollutant will be specified in the Wastewater Discharge Permit.

(b) Specific effluent limits shall not be developed and enforced without individual notices to persons or groups who have requested such notice and an opportunity to respond.

(5) City's Right to Revision. The City reserves the right to establish, by ordinance or in wastewater permit, more stringent limitations or requirements or discharges to the POTW if deemed necessary to comply with the objectives presented in this Chapter.

(6) Dilution. No user shall ever increase the use of process water, or in any way attempt to dilute a discharge as a partial or complete substitute for adequate treatment to achieve compliance with a discharge limitation unless expressly authorized by an applicable pretreatment standard, or requirement. The City may impose mass limitations on Users who are using dilution to meet applicable pretreatment standards or regulations, or in other cases when the impositions of mass limitation is appropriate.

(7) Authority to Condition or Deny Industrial Discharge. The City reserves the right to Condition or deny any, or all industrial discharges to the City Sanitary Sewer system.



**EXHIBIT A**  
**WILSONVILLE CODE**

**8.304 Pretreatment of Wastewater**

(1) Pretreatment Facilities

(a) Users shall provide necessary wastewater treatment as necessary to comply with this Chapter and shall achieve compliance with all categorical pretreatment standards, local limits and the prohibitions set out in Section 8.302, within the time limitations specified by the Director, EPA, or the State, whichever is more stringent. Any facilities necessary for compliance shall be provided, operated, and maintained at the user's expense. Detailed plans describing such facilities and operating procedures shall be submitted to the City for review, and shall be acceptable to the City before construction of the facility.

(b) The review of such plans and operating procedures will in no way relieve the user from the responsibility of modifying the facility as necessary to produce an acceptable discharge to the City under the provisions of this Chapter.

(2) Additional Pretreatment Measures

(a) Whenever deemed necessary, the Director may require users to restrict their discharge during peak flow periods, designate that certain wastewater be discharge only into specific sanitary sewers, relocate and/or consolidate points of discharge, separate sewage waste streams from industrial waste streams, and such other conditions as may be necessary to protect the POTW and determine the user's compliance with the requirements of this Chapter.

(b) The City may require any person discharging into the POTW to install and maintain, on their property and at their expense, a suitable storage and flow-control facility to ensure equalization of flow. An individual wastewater discharge permit may be issued solely for flow equalization.

(c) Users with the potential to discharge flammable substances may be required to install and maintain an approved combustible gas detection meter, even though a wastewater discharge permit is not issued.

(3) Accidental Discharge/Slug Discharge Control Plans. The City shall evaluate whether each SIU needs a discharge/Slug discharge control plan or other action to control Slug discharges. The City may require any User to develop, submit for approval and implement such a plan or take such other action that may be necessary to control Slug Discharges, Alternatively, the City may develop such plan for any User.

(a) An accidental discharge/Slug discharge plan shall address, at a minimum, the following:

- 1) Description of discharge practices; including non-routine batch discharges.
- 2) Description of stored chemicals.



**EXHIBIT A**  
**WILSONVILLE CODE**

3) Procedures for immediately notifying the Director of any accidental or Slug discharge, as required by this Chapter;

(4) Procedures to prevent adverse impact from any accidental or Slug discharge. Such procedures include, but are not limited to, inspection and maintenance of storage areas, handling and transfer of materials, loading and unloading operations, control of plant site runoff, worker training, building of containment structures or equipment, measures for containing toxic organic pollutants, including solvents, and/or measures and equipment for emergency response.

(5) Failure to comply with Spill/slug control plan conditions shall subject the permittee to enforcement action.

**8.306 Wastewater Discharge Permit**

(1) Authority to Require Data Disclosure. When requested by the Director, a Users whether operating under a wastewater discharge permit or not; and whether the User meets the criteria of a significant industrial user or not; the User must submit information on the nature and characteristics of all production processes; material storage, and their wastewater generated on site. The user must submit this data within thirty (30) days of the request. – The Director is authorized to prepare a form for this purpose and may periodically require industrial users to update this information.

(2) Wastewater Discharge Permit Requirement

(a) SIU Wastewater Discharge Permit Required. No significant industrial users shall discharge to the POTW without first obtaining an individual wastewater permit from the Director, except that a SIU that has filed a timely application pursuant to Section 8.306(3) of the chapter may continue to discharge for the period of time specified therein.

(b) Other Users May Obtain Wastewater Discharge Permit: The Director may require other users, to obtain individual wastewater permits as necessary to carry out the purposes of this chapter.

(c) Violation of Wastewater Discharge Permit. Any violation of the terms and conditions of an individual wastewater discharge permit shall be deemed a violation of this Chapter and subjects the wastewater discharge permittee to the sanctions set out in Sections 8.602 through 8.606 of this Chapter. Obtaining an individual wastewater discharge permit does not relieve a permittee of its obligation to comply with all Federal and State Pretreatment Standards or Requirements or with any other requirements of Federal, State, and local law.

(3) Permitting Existing Connections. Any user required to obtain an individual discharge permit who was discharging wastewater into the POTW prior to the effective date of this Chapter and who wishes to continue such discharges in the future, shall within ninety (90) days after said date, apply to the City for an individual wastewater permit in accordance with Section 8.306(5) below, and shall not cause or allow discharges to the POTW to continue after one hundred



**EXHIBIT A**  
**WILSONVILLE CODE**

eighty (180) days of the effective date of this Chapter except in accordance with the permit issues by the Director.

(4) Permitting New Connections. Any SIU proposing to begin or recommence discharging industrial waste into the POTW must obtain a wastewater permit prior to beginning or recommending such discharge. An application for this individual wastewater discharge permit must be filed at least ninety (90) days prior to the date upon which any discharge will begin or recommence.

(5) Wastewater Permit Application Contents. All users required to obtain a individual wastewater discharge permit must submit a permit application. Incomplete or inaccurate applications will not be processed and will be returned to the User for revision. The City may require Users to submit all or some of the following information as part of a permit application:

(a) Identifying Information. The name, mailing address and location (if different from mailing address) of the facility, including the name of the operator and owner, Contact information, descriptions of the activities, facilities, and plant production processes on the premises;

(b) Environmental Permits. A list of any environmental control permits held by or for the facility;

(c) Description of Operations. A brief description of the nature, average rate of production (including each product produced by type, amount, processes and rate of production) and Standard Industrial Classification (SIC) or North American Industry Classification System (NAIS) of the operations carried out by such user. This description should include a schematic process diagram which indicates points of discharge to the POTW from the regulated processes, codes for pretreatment the industry as a whole and any processes for which categorical pretreatment standards have been promulgated;

(d) Types of waste generated and a list of all raw materials and chemicals used at the facility which are or could accidentally or intentionally discharged to the POTW;

(e) Number and type of employees, and hours of operation, and proposed or actual hours of operation;

(f) Type and amount of raw materials processed (average and maximum per day);

(g) Site plans, floor plans, mechanical and plumbing plans, and details to show all sewers, floor drains and appurtenances by size, location and elevation and all points of discharge;

(h) Time and duration of the discharge;

(i) The location for monitoring all wastes covered by the permit;



**EXHIBIT A**  
**WILSONVILLE CODE**

(j) Flow Measurement. Information showing the measured average daily and maximum daily flow, in gallons per day, to the POTW from regulated process streams and other streams as necessary to use the combined waste stream formula in 40 CFR 403.6(e).

(k) Measurement of Pollutants.

1) The categorical Pretreatment Standards applicable to each regulated process and any new categorically regulated processes for Existing Sources.

2) The results of sampling and analysis identifying the nature and concentration, and/or mass, where required by the Standard or by the City, of regulated pollutants in the discharge from each regulated process.

3) Instantaneous, Daily Maximum, and long-term average concentrations, or mass, where required, shall be reported.

4) The sample shall be representative of daily operations and shall be analyzed in accordance with procedures set out in Section 8.310(10) of this Chapter. Where the Standard requires compliance with a BMP or pollution prevention alternative, the User shall submit documentation as required by the City or the applicable Standards to determine compliance with the Standard.

5) Sampling must be performed in accordance with procedures set out in Section 8.310(11) of this Chapter.

(l) Any other information as may be deemed by the Director to be necessary to evaluate the permit application.

(6) Application Signatories and Certification.

(a) All wastewater discharge permit applications, user reports and certification statements must contain the following certification statement and be signed by an authorized representative of the user:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

(b) If the designation of an Authorized Representative is no longer accurate because a different individual or position has responsibility for the overall operation of the facility or overall responsibility for environmental matters for the company, a new written authorization



## EXHIBIT A **WILSONVILLE CODE**

satisfying the requirements of this Section must be submitted to the City prior to or together with any reports to be signed by an Authorized Representative.

(c) A facility determined to be a Non-Significant Categorical Industrial User by the City must annually submit the signed certification statement in Section 8.310(14).

(7) Wastewater Permit Decisions The Director will evaluate the data furnished by the user and may require additional information. Within sixty (60) days of receipt of a complete permit application, the Director will determine whether or not to issue an individual wastewater discharge permit. The City may deny any application for a wastewater discharge permit. ▸

### **8.308 Wastewater Permit Issuance**

(1) Permit Duration. Permits shall be issued for a specific time period not to exceed five (5) years. A permit may be issued for a period less than five (5) years at the discretion of the Director. Each permit will indicate a specific date on which it will expire.

(2) Permit Contents. Wastewater discharge permits shall include such conditions as are reasonably deemed necessary by the Director to prevent pass through or interference and to protect the quality of the water body receiving the treatment plant's effluent, protect worker health and safety, facility sludge management and disposal, and protect against damage to the POTW.

(a) Wastewater Permits must contain:

1) A statement that indicates wastewater discharge permit issuance date, expiration date and effective date.

2) A statement that the wastewater discharge permit is nontransferable without prior notification to and approval from the City and provisions for furnishing the new owner or operator with a copy of the existing permit;

3) Effluent limits, including Best Management Practices, based on applicable standards in Federal, State, and local law;

4) Self monitoring, sampling, reporting, notification and record keeping requirements. These requirements shall include an identification of pollutants (or Best Management Practices) to be monitored, sampling location, sampling frequency, and sample type based on Federal State and local law;

5) A statement of applicable civil and criminal penalties for violation of pretreatment standards and requirements, and any applicable compliance schedule. Such schedule may not extend the time for compliance beyond that required by applicable Federal, State or local laws.

6) Requirement to control Slug Discharges, if determined by the Director to be necessary. Significant Industrial Users are required to notify the Director immediately of any changes at its facility affecting the potential for a Slug Discharge.



**EXHIBIT A**  
**WILSONVILLE CODE**

(b) Wastewater Discharge Permits may contain, but need not be limited to, the following:

1) Limits on the average and/or maximum rate of discharge, time of discharge, and/or requirements for flow regulation and equalization;

2) Requirements for the installation of pretreatment technology or construction of appropriate containment devices, etc., designed to reduce, eliminate or prevent the introduction of pollutants into the treatment works;

3) Requirements for the development and implementation of spill control plans or other special conditions including management practices necessary to adequately prevent accidental, unanticipated, or routine discharges.

4) Development and implementation of waste minimization plans to reduce the amount of pollutants discharged to the POTW;

5) The unit charge or schedule of user charges and fees for the management of the wastewater discharged into the POTW;

6) Requirements for installation and maintenance of inspection and sampling facilities and equipment;

7) A statement that compliance with permit does not relieve the permittee of responsibility for compliance with all applicable federal and state pretreatment standards, including those which become effective during the term of the permit;

8) Other conditions as deemed appropriate by the Director to ensure compliance with this Chapter; and State and Federal laws, rules, and regulations; the term of the permit.

(3) Permit Issuance Process

(a) Permit Appeals. Any person including the industrial user, may petition the City to reconsider the terms of the permit within ten (10) days of the issuance of the final permit.

(b) Failure to submit a timely petition for review shall be deemed a waiver of the administrative appeal.

(c) In its petition, the appealing party must indicate the permit provisions objected to, the reasons for this objection, and the alternative conditions, if any, it seeks to place in the permit.

(d) The effectiveness of the permit shall not be stayed pending the appeal.

(e) If the City fails to act within thirty (30) days, a request for reconsideration shall be deemed to be denied. Decisions not to reconsider a wastewater discharge permit, not to issue a



**EXHIBIT A**  
**WILSONVILLE CODE**

permit, or not modify a permit shall be considered final administrative action for purposes of judicial review.

(f) Aggrieved parties seeking judicial review of administrative permit decisions must do so by complaint with the Circuit Court for Clackamas County, State of Oregon within thirty (30) days of the final administrative decision.

(4) Permit Modifications. The Director may modify the permit for good cause and at any time including, but not limited to, the following:

(a) To incorporate any new or revised Federal, State, or local pretreatment standards or requirements;

(b) To address signification alterations or additions to the industrial user's operation, processes, or wastewater volume or character since the time of permit issuance;

(c) A change in the POTW that requires either a temporary or permanent reduction or elimination of the authorized discharge;

(d) Information indicating that the permitted discharge poses a threat to the POTW, City personnel, of the receiving waters;

(e) Violation of the terms or conditions of the wastewater discharge permit;

(f) Misrepresentation or failure to disclose fully all relevant facts in the permit application or in any required reporting;

(g) Revision of or a grant of variance from categorical pretreatment standards pursuant to 40 CFR 401.13;

(h) To correct typographical or other errors in the permit;

(i) To reflect a transfer of the facility ownership and/or operation to a new owner/operator.

(5) Permit Transfer.

(a) Wastewater Discharge Permits may be transferred to a new owner and/or operator only if the permittee gives at least thirty (30) days advance notice to the Director and the Director approves the permit transfer. Failure to provide advance notice of a transfer renders the permit void as of the date of facility transfer, and the new owner will be consider in violation of the City Codes for discharging without a permit. The notice must include a written certification to the new owner which:

1) States that the new owner has no immediate intent to change the facility's operations and processes;



**EXHIBIT A**  
**WILSONVILLE CODE**

- 2) Identifies the specific date on which the transfer is to occur;
- 3) Acknowledges full responsibility for complying with the existing permit.

**(6) Permit Revocation**

(a) Wastewater discharge permits may be revoked for the following reasons:

- 1) Failure to notify the City of significant changes to the wastewater prior to the changed discharge;
- 2) Failure to provide prior notification to the City of changed conditions pursuant to Section 8.310(5);
- 3) Misrepresenting or failure to fully disclose all relevant facts in the wastewater discharge permit application;
- 4) Falsifying self-monitoring reports;
- 5) Tampering with monitoring equipment;
- 6) Refusing to allow the City timely access to the facility premises and records;
- 7) Failure to meet effluent limitations;
- 8) Failure to pay fines;
- 9) Failure to pay sewer charges;
- 10) Failure to meet compliance schedules;
- 11) Failure to complete a wastewater survey or the wastewater discharge permit application;
- 12) Failure to provide advance notice of the transfer of business ownership of a permitted facility;
- 13) Violation of any pretreatment standard or requirement or any terms of the permit or this Chapter;
- 14) Upon cessation of operations.
- 15) Upon issuance of a new wastewater discharge permit to the User.

(7) Permit Renewal. A User with an expiring wastewater discharge permit shall apply for wastewater discharge permit renewal by submitting a complete permit application, in accordance



## EXHIBIT A

### WILSONVILLE CODE

with Section 8.306 of this Chapter, a minimum of ninety (90) days prior to the expiration of the User's existing wastewater discharge permit. The existing permit shall remain in effect until the renewed permit is issued, providing the User has submitted the renewal application ninety (90) days prior to the expiration of the User's existing wastewater discharge permit. If the User did not comply with the renewal application submittal criteria, the User will not be authorized to continue discharging past the expiration date of the existing permit without the written authorization of the City.

#### (8) Regulation of Wastewater Received From Other Jurisdictions.

(a) The City may accept wastewater from individual industrial users located in other jurisdictions, or other municipalities under the following conditions:

1) Municipalities – the municipality must develop and implement a sanitary sewer use ordinance that meets, or exceeds, the Wilsonville Industrial Wastewater Regulations, Chapter 8. The municipality must submit their request in writing and the request for Extra-Jurisdictional wastewater treatment a list of industrial users within their jurisdiction, the nature and volume of the industrial discharges, the combined discharge from the municipality that will be treated by the Wilsonville wastewater treatment plant. Municipalities will not be issued wastewater discharge permits. Municipalities must enter into an Extra-Jurisdictional Agreement between the City of Wilsonville and the requesting municipality.

2) Extra-Jurisdictional Industrial Users – the industrial user must submit a Wastewater Permit Application to the City. The Industrial User must agree to comply with the terms and conditions of the permit, including right-of-entry for purposes of inspection, and sampling, enforcement actions specified in the permit.

(b) An inter-jurisdictional agreement, as required by paragraph A, above, shall contain the following conditions:

1) A requirement for the contributing municipality to adopt a sanitary sewer use ordinance which is at least as stringent as this Chapter and Local Limits, including required Baseline Monitoring Reports (BMRs) which are at least as stringent as those set out in Section 8.302 of this Chapter. The requirement shall specify that such ordinance and limits must be revised as necessary to reflect changes made to the Wilsonville ordinance or Local Limits;

2) A requirement for the contributing municipality to submit a revised User inventory on at least an annual basis;

3) A provision specifying which pretreatment implementation activities, including wastewater discharge permit issuance, inspection and sampling, and enforcement, will be conducted by the contributing municipality; which of these activities will be conducted by the City; and which of these activities will be conducted jointly by the contributing municipality and the City;



**EXHIBIT A**  
**WILSONVILLE CODE**

- 4) A requirement for the contributing municipality to provide the City with access to all information that the contributing municipality obtains as part of its pretreatment activities;
- 5) Limits on the nature, quality, and volume of the contributing municipality's wastewater at the point where it discharges to the POTW;
- 6) Requirements for monitoring the contributing municipality's discharge;
- 7) A provision ensuring the City access to the facilities of Users located within the contributing municipality's jurisdictional boundaries for the purpose of inspection, sampling, and any other duties deemed necessary by the City; and
- 8) A provision specifying remedies available for breach of the terms of the inter-jurisdictional agreement.
- 9) Where the contributing municipality has primary responsibility for permitting, compliance monitoring, or enforcement, the inter-jurisdictional agreement should specify that Wilsonville shall have the right to take action to enforce the terms of the contributing municipality's ordinance or to impose and enforce Pretreatment Standards and Requirements directly against dischargers in the event the contributing jurisdiction is unable or unwilling to take such action.

**8.310 Reporting Requirements**

(1) Baseline Monitoring Reports.

(a) Users that become subject to new or revised categorical Pretreatment Standards are required to comply with the following reporting requirements even if they have been designated a Non-Significant Categorical Industrial Users

(b) Within either 180 days after the effective date of a categorical pretreatment standard, or 180 days after the final administrative decision on a category determination under 40 CFR 403.6(a) (4), whichever is later, existing Categorical industrial users currently discharging to or scheduled to discharge to the POTW shall submit to the City a report which contains the information listed in paragraph (b) below. At least ninety (90) days prior to commencement of their discharge, new sources, and sources that become Categorical Industrial Users subsequent to the promulgation of an applicable categorical Standard shall be required to submit to the City a report which contains the information listed in paragraph (b) below. A new source shall report the method of pretreatment it intends to use to meet applicable categorical standards. A new source shall also give estimates of its anticipated flow and quantity of pollutants discharged.

(c) Users described above shall submit the information set forth below:

- 1) All information required in Section 8.306(2) through Section 8.306(7)
- 2) Measurement of Pollutant.



**EXHIBIT A**  
**WILSONVILLE CODE**

The City may allow the submission of a baseline report which utilizes only historical data so long as the data provides information sufficient to determine the need for industrial pretreatment measures;

(a) The User shall take a minimum of one representative sample to compile that data necessary to comply with the requirements of this paragraph.

(b) Samples should be taken immediately downstream from pretreatment facilities if such exist or immediately downstream from the regulated process if no pretreatment exists. If other wastewaters are mixed with the regulated wastewater prior to pretreatment the User should measure the flows and concentrations necessary to allow use of the combined waste stream formula in 40 CFR 403.6(e) to evaluate compliance with the Pretreatment Standards. Where an alternate concentration or mass limit has been calculated in accordance with 40 CFR 403.6(e) this adjusted limit along with supporting data shall be submitted to the Control Authority;

(c) Sampling and analysis shall be performed in accordance with Section 8.310(10);

(d) The baseline report shall indicate the time, date and place of sampling and methods of analysis, and shall certify that such sampling and analysis is representative of normal work cycles and expected pollutant Discharges to the POTW

(e) Compliance Certification. A statement, reviewed by the User's authorized representative and certified to be a qualified professional, indicating whether pretreatment standards are being met on a consistent basis, and, if not, whether additional Operations and maintenance (O&M) and/or additional pretreatment is required in order to meet pretreatment standards and requirements.

(f) Compliance Schedule. If additional pretreatment and/or O&M will be required to meet the pretreatment standards; the shortest possible schedule by which the industrial user will provide such additional pretreatment and/or O&M. The completion date in this schedule not be later than the compliance date established for the applicable pretreatment standard. A compliance schedule pursuant to this Section must meet the requirements set out in Section 8.310(2) of this Chapter; and

(g) Signature and Report Certification. All baseline monitoring reports must be certified in accordance with Section 8.310(3) and signed by an Authorized Representative.

The baseline report shall indicate the time, date and place of sampling and methods of analysis, and shall certify that such sampling and analysis is representative of normal work cycles and expected pollutant Discharges to the POTW.

(2) Compliance Schedule Progress Reports. The following conditions shall apply to the compliance schedule required by Section 8.310(1) of this Chapter:

(a) The schedule shall contain progress increments in the form of dates for the commencement and completion of major events leading to the construction and operation of



## **EXHIBIT A**

### **WILSONVILLE CODE**

additional pretreatment required for the User to meet the applicable Pretreatment Standards (such events include, but are not limited to, hiring an engineer, completing preliminary and final plans, executing contracts for major components, commencing and completing construction, and beginning and conducting routine operation);

(b) No increment referred to above shall exceed nine (9) months;

(c) The User shall submit a progress report to the City no later than fourteen (14) days following each date in the schedule and the final date of compliance including, as a minimum, whether or not it complied with the increment of progress, the reason for any delay, and, if appropriate, the steps being taken by the User to return to the established schedule; and

(d) In no event shall more than nine (9) months elapse between such progress reports to the City.

#### **(3) Reports on Compliance with Categorical Pretreatment Standard Deadline**

a) Within ninety (90) days following the date for final compliance with applicable categorical Pretreatment Standards, or in the case of a New Source following commencement of the introduction of wastewater into the POTW, any User subject to such Pretreatment Standards and Requirements shall submit to the City a report containing the information described in Section 8.306(5) of this Chapter. For Users subject to equivalent mass or concentration limits established in accordance with the procedures in Section 8.302(2), this report shall contain a reasonable measure of the User's long-term production rate. For all other Users subject to categorical Pretreatment Standards expressed in terms of allowable pollutant discharge per unit of production (or other measure of operation), this report shall include the User's actual production during the appropriate sampling period. All compliance reports must be signed and certified in accordance with Section 8.310(14) of this Chapter. All sampling will be done in conformance with Section 8.310.

#### **(4) Periodic Compliance Reports.**

All SIUs are required to submit periodic compliance reports even if they have been designated a Non-Significant Categorical Industrial User under the provisions of Section 8.310(4).

(a) Except as specified in Section 8.310(4), all Significant Industrial Users must, at a frequency determined by the City submit no less than twice per year (June and December, or on dates specified, reports indicating the nature, concentration of pollutants in the discharge which are limited by Pretreatment Standards and the measured or estimated average and maximum daily flows for the reporting period. In cases where the Pretreatment Standard requires compliance with a Best Management Practice (BMP) or pollution prevention alternative, the User must submit documentation required by the City or the Pretreatment Standard necessary to determine the compliance status of the User.

(b) All periodic compliance reports must be signed and certified in accordance with Section 8.310(14) of this Chapter.



**EXHIBIT A**  
**WILSONVILLE CODE**

(c) All wastewater samples must be representative of the User's discharge. Wastewater monitoring and flow measurement facilities shall be properly operated, kept clean, and maintained in good working order at all times. The failure of a User to keep its monitoring facility in good working order shall not be grounds for the User to claim that sample results are unrepresentative of its discharge.

(d) If a User subject to the reporting requirement in this Section monitors any regulated pollutant at the appropriate sampling location more frequently than required by the City, using the procedures prescribed in Section 8.310(11) of this Chapter, the results of this monitoring shall be included in the report.

(5) Report of Changed Conditions. Each user must notify the Director of any significant changes to the User's operations or system which might alter the nature, quality, or volume at least thirty (30) days before the change.

(a) The Director may require the user to submit such information as may be deemed necessary to evaluate the changed condition, including the submission of a wastewater permit application under Section 8.306(5), if necessary.

(b) The Director may issue a wastewater permit under Section 8.308(7) or modify an existing wastewater discharge permit under Section 8.308(4) in response to changed conditions or anticipated changed conditions.

(6) Reports of Potential Problems.

(a) In the case of any discharge, including but not limited to accidental discharge non-routine, episodic nature, a non-customary batch discharge, a Slug Discharge or Slug Load, that might cause potential problems for the POTW the user shall immediately telephone and notify the City of the incident. This notification shall include the location and discharge, type of waste, concentration and volume, if known, and corrective actions taken by the user.

(b) Within five (5) days following an accidental discharge, the user shall, unless waived by the Director, submit a detailed written report describing the cause(s) of the discharge and the measures to be taken by the user to prevent similar future occurrences. Such notification shall not relieve the user of any expense, loss, damage, or other liability which may be incurred as a result of damage to the POTW, natural resources, or any other damage to person or property; nor shall such notification relieve the user of any fines, civil penalties, or other liability which may be imposed by this Chapter.

(c) A notice shall be permanently posted on the user's bulletin board or other prominent place advising employees who to call in the event of an accidental discharge as described above. Employers shall ensure that all employees who may cause or suffer such a discharge to occur are advised of all the emergency notification procedures.



## EXHIBIT A

### WILSONVILLE CODE

(d) Significant Industrial Users are required to notify the City immediately of any changes at its facility affecting the potential for a Slug Discharge.

(7) Reports from Un-Permitted Users. All users not required to obtain an individual wastewater permit shall provide appropriate reports to the City as the Director may require.

(8) Notice of Violation/Repeat Sampling and Reporting

(a) If sampling performed by a User indicates a violation, the User must notify the City within twenty-four (24) hours of becoming aware of the violation. The User shall also repeat the sampling and analysis and submit the results of the repeat analysis to the City within thirty (30) days after becoming aware of the violation.

(9) Notification of the Discharge of Hazardous Waste

(a) Any User who commences the discharge of hazardous waste shall notify the POTW, the EPA Regional Waste Management Division City, and State hazardous waste authorities, in writing, of any discharge into the POTW of a substance which, if otherwise disposed of, would be a hazardous waste under 40 CFR Part 261. Such notification must include the name of the hazardous waste as set forth in 40 CFR Part 261, the EPA hazardous waste number, and the type of discharge (continuous, batch, or other). If the User discharges more than one-hundred (100) kilograms of such waste per calendar month to the POTW, the notification also shall contain the following information to the extent such information is known and readily available to the User: an identification of the hazardous constituents contained in the wastes, an estimation of the mass and concentration of such constituents in the waste stream discharged during that calendar month, and an estimation of the mass of constituents in the waste stream expected to be discharged during the following twelve (12) months. All notifications must take place no later than one hundred and eighty (180) days after the discharge commences. Any notification under this paragraph need be submitted only once for each hazardous waste discharged. However, notifications of changed conditions must be submitted under Section 8.310(5) of this Chapter. The notification requirement in this Section does not apply to pollutants already reported by Users subject to categorical Pretreatment Standards under the self-monitoring requirements of Sections 8.310(1), 8.310(3), and 8.310(4) of this Chapter.

(b) Dischargers are exempt from the requirements of paragraph A, above, during a calendar month in which they discharge no more than fifteen (15) kilograms of hazardous wastes, unless the wastes are acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e). Discharge of more than fifteen (15) kilograms of non-acute hazardous wastes in a calendar month, or of any quantity of acute hazardous wastes as specified in 40 CFR 261.30(d) and 261.33(e), requires a one-time notification. Subsequent months during which the User discharges more than such quantities of any hazardous waste do not require additional notification.

(c) In the case of any new regulations under Section 3001 of RCRA identifying additional characteristics of hazardous waste or listing any additional substance as a hazardous waste, the User must notify the City, the EPA Regional Waste Management Waste Division City, and State



## EXHIBIT A

### WILSONVILLE CODE

hazardous waste authorities of the discharge of such substance within ninety (90) days of the effective date of such regulations.

(d) In the case of any notification made under this Section, the User shall certify that it has a program in place to reduce the volume and toxicity of hazardous wastes generated to the degree it has determined to be economically practical.

(e) This provision does not create a right to discharge any substance not otherwise permitted to be discharged by this Chapter, a permit issued hereunder, or any applicable Federal or State law.

#### (10) Analytical Requirements

All pollutant analyses, including sampling techniques, to be submitted as part of a wastewater discharge permit application or report shall be performed in accordance with the techniques prescribed in 40 CFR Part 136 and amendments thereto, unless otherwise specified in an applicable categorical Pretreatment Standard. If 40 CFR Part 136 does not contain sampling or analytical techniques for the pollutant in question, or where the EPA determines that the Part 136 sampling and analytical techniques are inappropriate for the pollutant in question, sampling and analyses shall be performed by using validated analytical methods or any other applicable sampling and analytical procedures, including procedures suggested by the City or other parties approved by EPA.

#### (11) Sample Collection.

(a) Samples collected to satisfy reporting requirements must be based on data obtained through appropriate sampling and analysis performed during the period covered by the report, based on data that is representative of conditions occurring during the reporting period.

(b) The City shall establish the frequency of monitoring necessary to assess and assure compliance by the User with applicable Pretreatment Standards and Requirements.

(c) Except as indicated in Section (d) and (e) below, the User must collect wastewater samples using 24-hour flow-proportional composite sampling techniques, unless time-proportional composite sampling or grab sampling is authorized by the City. Where time-proportional composite sampling or grab sampling is authorized by the City, the samples must be representative of the discharge. Using protocols (including appropriate preservation) specified in 40 CFR Part 136 and appropriate EPA guidance, multiple grab samples collected during a 24-hour period may be composited prior to the analysis as follows:

1) For cyanide, total phenols, and sulfides the samples may be composited in the laboratory or in the field;

2) for volatile organics and oil and grease, the samples may be composited in the laboratory.



## **EXHIBIT A**

### **WILSONVILLE CODE**

3) Composite samples for other parameters unaffected by the compositing procedures as documented in approved EPA methodologies may be authorized by the City, as appropriate. In addition, grab samples may be required to show compliance with Instantaneous Limits.

(d) Samples for oil and grease, temperature, pH, cyanide, total phenols, sulfides, and volatile organic compounds must be obtained using grab collection techniques.

(e) For sampling required in support of baseline monitoring and 90-day compliance reports required in Section 8.310(1) and 8.310(3), a minimum of four (4) grab samples must be used for pH, cyanide, total phenols, oil and grease, sulfide and volatile organic compounds for facilities for which historical sampling data do not exist; for facilities for which historical sampling data are available, the City may authorize a lower minimum. For the reports required by paragraphs Section 8.310(4), the Industrial User is required to collect the number of grab samples necessary to assess and assure compliance with applicable Pretreatment Standards and Requirements.

(12) Date of Receipt of Reports Written reports will be deemed to have been submitted on the date postmarked. For reports, which are not mailed, postage prepaid, into a mail facility serviced by the United States Postal Service, the date of receipt of the report shall govern.

(13) Recordkeeping Users subject to the reporting requirements of this Chapter shall retain, and make available for inspection and copying, all records of information obtained pursuant to any monitoring activities required by this Chapter, any additional records of information obtained pursuant to monitoring activities undertaken by the User independent of such requirements, and documentation associated with Best Management Practices established under Section 8.302(4). Records shall include the date, exact place, method, and time of sampling, and the name of the person(s) taking the samples; the dates analyses were performed; who performed the analyses; the analytical techniques or methods used; and the results of such analyses. These records shall remain available for a period of at least three (3) years. This period shall be automatically extended for the duration of any litigation concerning the User or the City, or where the User has been specifically notified of a longer retention period by the City.

(14) Certification Statements

(a) Certification of Permit Applications, User Reports and Initial Monitoring Waiver—The following certification statement is required to be signed and submitted by Users submitting permit applications in accordance with Section 8.306(6); Users submitting baseline monitoring reports under Section 8.310(1).; Users submitting reports on compliance with the categorical Pretreatment Standard deadlines under Section 8.310(3); Users submitting periodic compliance reports required by Section 8.310(4), and Users submitting an initial request to forego sampling of a pollutant on the basis of Section 8.310(4). The following certification statement must be signed by an Authorized Representative:

“I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or



**EXHIBIT A**  
**WILSONVILLE CODE**

persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

(b) Annual Certification for Non-Significant Categorical Industrial Users - A facility determined to be a Non-Significant Categorical Industrial User by the City must annually submit the following certification statement signed in accordance with the signatory requirements in Section 8.310(14). This certification must accompany an alternative report required by the City:

“Based on my inquiry of the person or persons directly responsible for managing compliance with the categorical Pretreatment Standards under 40 CFR \_\_\_\_, I certify that, to the best of my knowledge and belief that during the period from \_\_\_\_, \_\_\_\_ to \_\_\_\_,  
\_\_\_\_ [months, days, year]:

1) The facility described as \_\_\_\_ [facility name] met the definition of a Non-Significant Categorical Industrial User as described in Section 8.006 (b) 1-3.

2) The facility complied with all applicable Pretreatment Standards and requirements during this reporting period; and

3) The facility never discharged more than 100 gallons of total categorical wastewater on any given day during this reporting period.

4) The Facility never discharged concentrated untreated wastewater.

**8.312 Compliance Monitoring**

**(1) Right of Entry; Inspection and Sampling.**

(a) The City, an authorized representative of the US EPA and/or authorized representative of the Oregon DEQ shall have the right to enter the premises of any user to ascertain whether the purpose of this Chapter is being met and all requirements are being complied with. Users shall allow authorized personnel ready access to all parts of the premises for the purposes of inspection, sampling, records examination and copying, and the performance of any additional duties.

(b) Where a user has security measures in force that require proper identification and clearance before entry into their premises, the industrial user shall make necessary arrangements with its security guards, so that upon presentation of suitable identification, personnel from the City, State and US EPA will be permitted to enter, without delay, for the purposes of performing specific responsibilities.

(c) The City, State, and US EPA shall have the right to set up or require installation of, on the industrial user's property, such devices as are necessary to conduct sampling, and/or metering of the user's operations.



## **EXHIBIT A**

### **WILSONVILLE CODE**

(d) The City may require the User to install monitoring equipment as necessary. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the User at its own expense. All devices used to measure wastewater flow and quality shall be calibrated annually to ensure their accuracy. The location of the monitoring facilities shall provide ample room in or near the monitored facility to allow accurate sampling and preparation of samples and analysis and whether constructed on public or private property, the monitoring facilities should be provided in accordance with the City's requirements and all applicable local construction standards and specifications, and such facilities shall be constructed and maintained in such manner so as to enable the City to perform independent monitoring activities

(e) Any temporary or permanent obstruction to safe and easy access to the industrial facility to be inspected and/or sampled shall be promptly removed by the industrial user at the written or verbal request of the Director and shall not be replaced. The costs of clearing such access shall be borne by the user.

(f) Unreasonable delays in allowing the City access to the user's premises shall be a violation of this Chapter.

(2) Search Warrants. If the Director has been refused access to a building, structure or property or any part thereof, and if the Director has probable cause to believe that there may be a violation of this Chapter, or that there is a need to inspect as part of a routine inspection program of the City designed to protect the overall public health, safety and welfare of the community, then upon application by the City Attorney, the Municipal Court Judge of the City may issue a search and/or seizure warrant describing herein the specific location subject to the warrant. The warrant shall specify what, if anything, may be search and/or seized on the property described. Such warrant shall be served at reasonable hours by the Director in the company of a uniformed police officer of the City.

#### **8.314 Confidential Information**

(1) Information and data on a User obtained from reports, surveys, wastewater discharge permit applications, individual wastewater discharge permits, and monitoring programs, and from inspection and sampling activities, shall be available to the public without restriction, unless the User specifically requests, and is able to demonstrate to the satisfaction of the City, that the release of such information would divulge information, processes, or methods of production entitled to protection as trade secrets under applicable State law. Any such request must be asserted at the time of submission of the information or data. When requested and demonstrated by the User furnishing a report that such information should be held confidential, the portions of a report which might disclose trade secrets or secret processes shall not be made available for inspection by the public, but shall be made available immediately upon request to governmental agencies for uses related to the NPDES program or pretreatment program, and in enforcement proceedings involving the person furnishing the report. Wastewater constituents and characteristics and other effluent data, as defined at 40 CFR 2.302 shall not be recognized as confidential information and shall be available to the public without restriction.



**EXHIBIT A**  
**WILSONVILLE CODE**

**8.316 Publication of Users in Significant Noncompliance**

(1) The City shall publish annually, in a newspaper of general circulation that provides meaningful public notice within the jurisdictions served by the POTW, a list of the Users which, at any time during the previous twelve (12) months, were in Significant Noncompliance with applicable Pretreatment Standards and Requirements. The term Significant Noncompliance shall be applicable to all Significant Industrial Users or any other Industrial User that violates paragraphs (c), (d) or (h) of this Section and shall mean:

(a) Chronic violations of wastewater discharge limits, defined here as those in which sixty-six percent (66%) or more of all the measurements taken for the same pollutant parameter taken during a six (6) month period exceed (by any magnitude) a numeric Pretreatment Standard or Requirement, including Instantaneous Limits as defined in Section 8.302;

(b) Technical Review Criteria (TRC) violations, defined here as those in which thirty-three percent (33%) or more of wastewater measurements taken for each pollutant parameter during a six (6) month period equals or exceeds the product of the numeric Pretreatment Standard or Requirement including Instantaneous Limits, as defined by Section 8.302 multiplied by the applicable criteria (1.4 for BOD, TSS, fats, oils and grease, and 1.2 for all other pollutants except pH.

(c) Any other violation of a Pretreatment Standard or Requirement as defined by Section 8.302 (Daily Maximum, long-term average, Instantaneous Limit, or narrative standard) that the City determines has caused, alone or in combination with other discharges, Interference or Pass Through, including endangering the health of POTW personnel or the general public;

(d) Any discharge of a pollutant that has caused imminent endangerment to the public or to the environment, or has resulted in the City exercise of its emergency authority to halt or prevent such a discharge;

(e) Failure to meet, within ninety (90) days of the scheduled date, a compliance schedule milestone contained in an individual wastewater discharge permit or enforcement order for starting construction, completing construction, or attaining final compliance;

(f) Failure to provide within forty-five (45) days after the due date, any required reports, including baseline monitoring reports, reports on compliance with categorical Pretreatment Standard deadlines, periodic self-monitoring reports, and reports on compliance with compliance schedules;

(g) Failure to accurately report noncompliance; or

(h) Any other violation(s), which may include a violation of Best Management Practices, which the City determines will adversely affect the operation or implementation of the local pretreatment program.



**EXHIBIT A**  
**WILSONVILLE CODE**

**8.318 Affirmative Defense**

(1) Upset

(a) For the purposes of this Section, upset means an exceptional incident in which there is unintentional and temporary noncompliance with categorical Pretreatment Standards because of factors beyond the reasonable control of the User. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

(b) An upset shall constitute an affirmative defense to an action brought for noncompliance with categorical Pretreatment Standards if the requirements of paragraph (c), below, are met.

(c) A User who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

- 1) An upset occurred and the User can identify the cause(s) of the upset;
- 2) The facility was at the time being operated in a prudent and workman-like manner and in compliance with applicable operation and maintenance procedures; and
- 3) The User has submitted the following information to the City within twenty-four (24) hours of becoming aware of the upset. If this information is provided orally, a written submission must be provided within five (5) days:
  - a) A description of the indirect discharge and cause of noncompliance;
  - b) The period of noncompliance, including exact dates and times or, if not corrected, the anticipated time the noncompliance is expected to continue; and
  - c) Steps being taken and/or planned to reduce, eliminate, and prevent recurrence of the noncompliance.
- (d) In any enforcement proceeding, the User seeking to establish the occurrence of an upset shall have the burden of proof.
- (e) Users shall have the opportunity for a judicial determination on any claim of upset only in an enforcement action brought for noncompliance with categorical Pretreatment Standards.
- (f) Users shall control production of all discharges to the extent necessary to maintain compliance with categorical Pretreatment Standards upon reduction, loss, or failure of its treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies in the situation where, among other things, the primary source of power of the treatment facility is reduced, lost, or fails.



**EXHIBIT A**  
**WILSONVILLE CODE**

(2) Prohibited Discharge Standards. User shall have an affirmative defense to an enforcement action brought against it for noncompliance with the general prohibition and the specific prohibitions in Section 8.302 of this chapter if it can prove it did not know or have reason to know that its discharge alone or in conjunction with other discharges, would cause pass through or interference and that either:

(a) A local limit exists for each pollutant discharged and the user was in compliance with each limit directly prior to and during the pass through or interference; or

(b) No local limit exists, but the discharge did not change substantially in nature or constituents from the user's prior discharge when the City was regularly in compliance with the NPDES permit, and in the case of interference, in compliance with applicable sludge use or disposal requirements.

(3) Bypass.

(a) For the purposes of this Section

1) Bypass means the intentional diversion of waste streams from any portion of a User's treatment facility.

2) Severe property damage means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

(b) A User may allow any bypass to occur which does not cause pretreatment standards or requirements to be violated, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of (c) and (d).

(c) Bypass Notification

1) If a User knows in advance of the need for a bypass, it shall submit prior notice to the Control Authority, if possible at least 10 days before the date of the bypass.

2) An Industrial User shall submit oral notice of an unanticipated bypass that exceeds applicable Pretreatment Standards to the Director within twenty-four (24) hours from the time the Industrial User becomes aware of the bypass. A written submission shall also be provided within five (5) days of the time the Industrial User becomes aware of the bypass. The written submission shall contain a description of the bypass and its cause; the duration of the bypass, including exact dates and times, and, if the bypass has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence of the bypass. The Director may waive the written report on a case-by-case basis if the oral report has been received within twenty-four (24) hours.



**EXHIBIT A**  
**WILSONVILLE CODE**

(d) Bypass is prohibited, and the Director may take enforcement action against an Industrial User for a bypass, unless;

1) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage.

2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintaining during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventative maintenance; and

3) The Industrial User submitted notices as required under paragraph (c) of this section.

4) The Director may approve an anticipated bypass after considering its adverse affects, if the Director determines that it will meet paragraph (d) 1) of this Section.

**8.320 Pretreatment Charges and Fees**

(1) The City may adopt reasonable fees for reimbursement of costs of setting up and operating the City's Pretreatment Program, which may include:

(a) Fees for wastewater discharge permit applications including the cost of processing such applications;

(b) Fees for monitoring, inspection, and surveillance procedures including the cost of collection and analyzing a User's discharge;

(c) Fees for reviewing monitoring reports and certification statements submitted by Users;

(d) Fees for reviewing and responding to slug discharge procedures and construction;

(e) Fees for filing appeals;

(f) Fees to recover administrative and legal costs (not included in Section 8.604, Section 8.606 and 8.316) associated with the enforcement activity taken by the City to address IU noncompliance; and

(g) Other fees as the City may deem necessary to carry out the requirements contained herein.

(2) These fees relate solely to the matters covered by this Chapter and are separate from all other fees, fines, and penalties chargeable by the City.



**EXHIBIT A**  
**WILSONVILLE CODE**

**SOLID WASTE DISPOSAL**

**8.400 Garbage – General Regulations.**

(1) The regulation of the disposal and hauling of garbage in the City under the provisions of this Code shall be under the supervision of the City Council or an agent or employee of the City, duly assigned by the City Council and the powers and duties of said Council or as designated shall include, thought not exclusively, authority to conduct periodic inspections to insure full compliance with terms and provisions of these sections and to arbitrate or provide for arbitration of any and all disputes arising between the Garbage Contractor or Garbage Franchisee of the City and the citizens of the City.

(2) It shall be unlawful for any person in possession, charge or in control of any dwelling, apartment, trailer camp, restaurant, camp, place of business or manufacturing establishment where garbage is created or accumulated, to fail at all times to keep portable cans or containers of standard type and construction and to deposit said garbage therein, provided however, that stiff paper products and wooden or metal waste matter may remain outside of cans or containers, if neatly and orderly stored. Said cans or containers for garbage shall be strong, watertight, rodent proof, insect proof and be of capacity approved by the City and shall have tight fitting lids. Said cans or containers shall be kept tightly closed at all times except when being emptied or filled and shall be kept and maintained at a place or places reasonably accessible to garbage haulers at first floor or ground level. Recyclable materials containers may be open if the materials are not likely to attract animals.

(3) It shall be unlawful to burn, dump, collect, remove or in any other manner accumulate or dispose of garbage upon any street, alley, public place or private property, within the City, otherwise than as herein provided. Waste paper, rubbish and debris, brush, grass, wood and cuttings from trees, but excepting paper, cardboard or wood containers in commercial quantities, may be burned in furnaces, outside fireplaces or incinerators on private property in keeping with State and County laws, or upon special permit from the fire chief of the City, they may be burned in open fires. It shall always be unlawful to burn, within City limits, any wet garbage or other substance which creates foul or obnoxious odors. Any unauthorized accumulation of garbage on any premises is hereby declared to be a nuisance and is prohibited. Failure to remove any existing accumulation of garbage within thirty (30) days after the effective date of this Code shall be deemed in violation of this Section.

(4) It shall be unlawful for any person to haul garbage upon the streets and public thoroughfares of the City, except as otherwise provided herein.

(5) All persons in the City are hereby required to dispose of all perishable garbage before the same shall become offensive and to dispose of all non-perishable garbage promptly and not permit the same to accumulate on or about the premises and to dispose of the same by burning, burying or such manner as shall not create a nuisance and as permitted by these sections.



**EXHIBIT A**  
**WILSONVILLE CODE**

(6) Any person may transport garbage produced by himself or itself upon the streets of the City provided that such garbage must be hauled in such manner as to prevent leakage or litter upon the streets and must be deposited upon designated dumping grounds or disposed of in a manner not inconsistent with these sections.

(7) Except as provided herein, it shall be unlawful for any person, firm or corporation, other than a person, firm or corporation under contract with the City as provided in Section ~~8.304~~ 8.402 of this Code to gather and haul garbage over the streets of the City.

**8.402 Garbage – Contract Garbage Hauler**

(1) The Mayor of the City is hereby authorized and directed to enter into a contract with a person, firm or corporation for a period of five (5) successive years from and after the effective date of this Code granting to the said person, firm or corporation the exclusive right to collect, convey or dispose of all garbage as herein defined and which accumulates in the City. The terms and conditions of such contract to be first approved by the City Council. Upon expiration of said contract by the lapse of time or otherwise the Mayor of the City is hereby authorized to enter into a renewal contract or other contracts with other persons, firms, or corporations as may be required for the collection, conveyance, removal and disposal of garbage within the City.

(2) For the right to collect and haul garbage over the streets of the City, the Contractor shall pay to the City as a license and inspection fee, annually, and in advance, an amount equal to three percent (3%) of the gross revenue collected by the Contractor for garbage collections services; and fee to be based upon the prior year's gross revenue.

(3) The rates and compensation for the service rendered by the contract garbage hauler shall be reasonable and uniform and shall not be in excess of a schedule of charges and compensation to be fixed by the contract. Provided that such rates and charges may be changed from time to time after negotiations with the Contractor.

**~~8.404~~ 8.403 Garbage – Violation.**

~~(4)~~ —Any person violating any of these terms of this Chapter shall upon a first conviction thereof, be punished for a violation pursuant to Section 1.012 of the Wilsonville Code and upon a subsequent conviction thereof, be punished for a Class C Misdemeanor pursuant to Section 1.011 of the Wilsonville Code. In addition, upon a conviction, a person shall be liable for the costs of prosecution.



**EXHIBIT A**  
**WILSONVILLE CODE**

**STORMWATER**

**8.500 General Provisions**

- (1) Purpose. Provides for the building of and connection to public stormwater facilities and for the uniform regulation of discharges to the public -stormwater system (~~including creeks and rivers~~) through the issuance of permits and through enforcement of general requirements for other users, authorizes monitoring and enforcement activities, establishes administrative review procedures, requires user reporting, and provides for the setting of fees for the equitable distribution of costs resulting from the program established herein.
- (2) Application to Users within and outside of City limits. Provisions of this article shall apply to users within the City limits and to users outside the City limits who, by contract or agreement with the City, are included as users of the public stormwater system.

**8.502 Stormwater System Construction**

- (1) No unauthorized person shall uncover, make any connections to or opening into the public stormwater system, use, alter or disturb any storm~~water~~ sewer lateral ~~service connection~~ or appurtenance thereof without first obtaining a permit from the City. In each case, the owner or their agent, shall make application on a special form furnished by the City. The permit applications shall be supplemented by any plans, specifications or other information considered pertinent in the judgment of the City's authorized stormwater representative.
- (2) All costs and expenses incidental to the installation and connection of stormwater facilities shall be borne by the owner. The owner shall indemnify the City from any loss or damage to the City that may directly or indirectly be occasioned by the installation of stormwater facilities or connections to the public stormwater system.
- (3) The size, slope, alignment, construction materials of stormwater facilities, and the methods to be used excavating, placing of the pipe or other facilities, jointing, testing and backfilling the trench, shall all conform to the requirements of ~~the Uniform Building Code and~~ the State of Oregon Plumbing Specialty Code and other applicable rules and regulations of the City, including the City's Public Works Standards.
- (4) The connection of the stormwater facilities to the public stormwater system shall conform to the requirements of ~~the Uniform Building Code in effect at the time and~~ the State of Oregon Specialty Plumbing Code in effect at the time, and other applicable rules and regulations of the City, including the City's Public Works Standards. Any deviation from prescribed procedures and materials must be approved by the City's authorized stormwater representative before installation.



## **EXHIBIT A**

### **WILSONVILLE CODE**

- (5) The applicant shall notify the City's authorized stormwater representative when the stormwater facilities are ready for inspection. The connection shall be made under the supervision of the City's authorized stormwater representative. Streets, sidewalks, parkways, and other public property disturbed in the course of the work shall be restored at the applicant's or owner's expense in a manner satisfactory to the City, in accordance with the City's requirements.
- (6) All excavations for stormwater facility installation shall be adequately guarded with barricades and lights so as to protect the public from hazard.

#### **8.504 Use of Public Stormwater System**

- (1) No unauthorized person shall uncover, make any connections with or openings into, use, alter, or disturb, any public stormwater system or appurtenance thereof without first obtaining written permission from the City.
- (2) Stormwater shall be discharged to storm sewers and natural outlets under the authority and regulations of the NPDES Municipal ~~Separate~~ Stormwater Permit Program, administered by the Oregon Department of Environmental Quality.
- (3) No person shall maliciously, willfully or negligently break, damage, destroy, uncover, deface, tamper with or prevent access to any structure, appurtenance or equipment, or other part of the public stormwater system. ~~Any person found in violation of this requirement shall be subject to the sanctions set out in Section 8.604~~
- (4) It shall be unlawful to discharge in or into any natural outlet or stormwater sewer inlet (catch basin, grate, roof downspout, etc.) within the City of Wilsonville, or in any area under the jurisdiction of said City, any sewage or other polluted water.
- (5) Stormwater shall be protected from soap, wax, or other pollution runoff from vehicle wash facility entrance and exits.

#### **8.506 Public Stormwater System – Property Damage Prohibited**

- (1) No unauthorized person shall with intent to cause substantial inconvenience or with intent to cause damage, break, destroy, uncover, deface, or tamper with any structure, appurtenance, or equipment which is a part of the public stormwater system. Any person violating this provision and as a result thereof damages any part of the public stormwater system, shall be subject to arrest and prosecution under the laws of the State of Oregon as set forth in ORS 164.345 through 164.365.

#### **8.508 ~~Powers and Authorities of Inspectors~~ Right of Entry**



## EXHIBIT A **WILSONVILLE CODE**

- (1) ~~The City's authorized stormwater representative shall be permitted to enter all properties for the purposes of inspection, observation, measurement, sampling and testing, in connection with the provisions and regulations of City stormwater operation and management as provided for in this Chapter. Where it is necessary to perform inspections, measurements, sampling and/or testing, to enforce the provisions of this code, or where the City's authorized stormwater representative has reasonable cause to believe that there exists upon the premises a condition which is contrary to or in violation of this code which makes the premises unsafe, dangerous or hazardous, the City's authorized stormwater representative is authorized to enter the premises at reasonable times to inspect or to perform the duties imposed by this code. Provided, however, that if such premises is occupied that credentials be presented to the occupant and entry requested. If such premises are unoccupied, the City's authorized stormwater representative shall first make a reasonable effort to locate the owner or other person having charge or control of the premises and request entry. If entry is refused, the City's authorized stormwater representative shall have recourse to the remedies provided by law to secure entry.~~
- (2) ~~While performing the necessary work on private properties referred to in this Section, the owner of the premises or representative shall notify the City's authorized stormwater representative to observe all safety rules applicable to the premises established by the owner. The premises shall be maintained in a safe condition by and the owner or a person having charge or control of the premises and or representative upon contact by the City's authorized stormwater representative the owner or a person having charge or control of the premises shall have a duty to notify City's authorized stormwater representative of any safety rules or unsafe conditions applicable to the premises.~~
- (3) ~~Not with standing, Section 8.508(1) above, the City's authorized stormwater representative shall be permitted to enter all private properties through which the City holds an easement, according to the terms of the easement. for the purposes of, but not limited to, inspection, observation, measurement, sampling, repair and maintenance of any portion of the public system which is connected to or lying within an easement. All Any entry and subsequent storm water facility work within , if any, on said easement, on the public stormwater system shall be done according to the those regulations provided as stipulated in the this Code and/or the Public Works Standards. of the City of Wilsonville.~~

### **8.510 Discharge of Pollutants**

- (1) ~~The commencement, conduct, or continuance of any non-stormwater discharge to the public stormwater system is prohibited and is a violation of this ordinance, except as described below.~~
- (2) ~~The prohibition shall not apply to any non-stormwater discharge permitted or approved under an Industrial or Municipal NPDES Stormwater permit, waiver, or~~



## **EXHIBIT A**

### **WILSONVILLE CODE**

discharge order issued to the discharger and administered by the DEQ, provided that the discharger is in full compliance with all requirements of the permit, waiver, or discharge order and other applicable laws or regulations and provided that written approval has been granted by the City for any discharge to the municipal separate storm wastewater system (MS4).

- (a) Except as provided in subsection (3), the prohibition shall not apply to the following non-stormwater discharges to the public -stormwater system: water line flushing, landscape irrigation, diverted stream flows, rising groundwater, uncontaminated groundwater infiltration (as defined in 40 CFR 35.2005(20)) to the ~~municipal separate storm sewer system (MS4)~~, uncontaminated pumped groundwater, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, street wash water, and flows from fire fighting.
  - (b) “Street wash water” is defined for purposes of this section to be water that originates from publicly-financed street cleaning activities consistent with the City’s NPDES municipal stormwater permit.
  - (c) Discharge of flows to the public or private stormwater system from private washing of sidewalks, streets and parking lots are discouraged to the maximum extent practicable.
- (3) The City may require best management practices to reduce pollutants, or may prohibit a specific discharger from engaging in a specific activity identified in subsection (2) if at any time the City determines that the discharge is, was, or will be a significant source of pollution.

#### **8.512 Discharge in Violation of Permit**

Any discharge that would result in or contribute to a violation of an existing or future Municipal NPDES Stormwater pPermit and any amendments, revisions, or reissuance thereof, either separately considered or when combined with other discharges, is a violation of this chapter and is prohibited. Liability for any such discharge shall be the responsibility of the person(s) causing or responsible for the discharge, and such persons shall defend, indemnify, and hold harmless the City in any administrative or judicial enforcement action against the permit holder relating to such discharge.

#### **8.514 Waste Disposal Prohibitions**

- (1) No person may cause or contribute to pollution, including but not limited to any refuse, rubbish, garbage, litter, yard debris, landscape materials, compost, topsoil, bark, gravel, sand, dirt, sod, sediment or sediment-laden runoff from construction



## **EXHIBIT A**

### **WILSONVILLE CODE**

or landscaping activities, hazardous materials, or other discarded or abandoned objects, articles, and accumulations in or to the public stormwater system.

- (2) Runoff from commercial or industrial operations or businesses that wash or detail vehicles, engines, transmissions, equipment, interior floors, or parking lots, shall not discharge directly to a private or public stormwater system except as allowed under Section 8.510 of this code; this includes but is not limited to outdoor commercial, industrial or business activities that create airborne particulate matter, process by-products or wastes, hazardous materials or fluids from stored vehicles, where runoff from these activities discharges directly or indirectly to a private or public stormwater system.

#### **8.516 General Discharge Prohibitions**

- (1) It is unlawful to discharge or cause to be discharged directly or indirectly into the public stormwater system any of the following:
- (a) Any discharge having a visible sheen, or containing floating solids or discoloration (including but not limited to dyes and inks);
  - (b) Any discharge having a pH of less than 6.5 or greater than 8.5 or that contains toxic chemicals in toxic concentrations;
  - (c) Any discharge which causes or may cause damage, interference, nuisance or hazard to the public stormwater system or the City personnel; and
  - (d) Any discharge containing human sanitary waste or animal feces.

#### **8.518 Compliance with Industrial NPDES Stormwater Permits**

Any industrial discharger, discharger associated with construction activity, or other discharger subject to any NPDES Stormwater -permit issued by the Oregon DEQ, from which pollutants may enter the public or private stormwater system, shall comply with all provisions of such permits, including notification to and cooperation with local entities as required by State and Federal regulations. Proof of compliance with said permits may be required in a form acceptable to the City prior to issuance of any grading, building, occupancy permits or business license.

#### **8.520 Compliance with Local, State, and Federal Regulations**

All users of the public stormwater system and any person or entity whose actions may affect the system shall comply with all applicable local, state and federal laws. Compliance with the requirements of this chapter shall in no way substitute for or eliminate the necessity for compliance with applicable local, state and federal, state laws.



## **EXHIBIT A**

### **WILSONVILLE CODE**

#### **8.522 Conflicts with Existing and Future Regulatory Requirements of Other Agencies**

Any provisions or limitation of this chapter and any rules adopted pursuant hereto are superseded and supplemented by any applicable local, state and federal requirements existing or adopted subsequent hereto, which are more stringent than the provisions and limitations contained herein.

#### **8.524 Accidental Spill Prevention and Control**

Accidental spills and releases by dischargers ~~Dischargers~~ who are not required to obtain a NPDES Stormwater permit but who handle, store or use hazardous or toxic substances or discharges prohibited under Section 8.512 and there is a reportable quantity as defined in OAR 340-142-0050, on their sites shall prepare and submit to the City an Accidental Spill Prevention and Control Plan within 60 days of notification by the City. If other laws or regulations require an Accidental Spill Prevention and Control Plan, a plan that meets the requirement of those other laws and regulations will satisfy the requirement of this Section.

#### **8.526 Notification of Spills**

- (1) As soon as any person in charge of a facility or responsible for emergency response for a facility becomes aware of any suspected, confirmed, or unconfirmed release of material, pollutants, or waste creating a risk of discharge to the public stormwater system, such persons shall:
  - (a) Begin containment procedures;
  - (b) Notify proper emergency personnel in case of an emergency;
  - (c) Notify appropriate city and/or state officials regarding the nature of the spill; and
  - (d) Follow-up with the city regarding compliance and modified practices to minimize future spills, as appropriate.
- (2) The notification requirements of this section are in addition to any other notification requirements set forth in local state, or Federal regulations and laws. The notification requirements do not relieve the person of necessary remediation.

#### **8.528 Requirement to Eliminate Illicit Connections**

- (1) The City's authorized stormwater representative may require by written notice that a person responsible for an illicit connection to the public stormwater system comply with the requirements of this chapter to eliminate the illicit connection or secure approval for the connection by a specified date.



## **EXHIBIT A**

### **WILSONVILLE CODE**

- (2) If, subsequent to eliminating a connection found to be in violation of this chapter, the responsible person can demonstrate that an illicit discharge will no longer occur, that person may request approval to reconnect. -The reconnection or reinstallation of the connection shall be at the responsible person's expense.

#### **8.530 Requirement to Remediate**

Whenever the City finds that a discharge of pollutants is taking place or has taken place which will result in or has resulted in pollution of stormwater or the public stormwater system, the City's authorized stormwater representative may require by written notice to the responsible person that the pollution be remediated and the affected property restored, to the requirements of this Chapter.

#### **8.532 Requirement to Monitor and Analyze**

Whenever the City's authorized stormwater representative determines that any person engaged in any activity and/or owning or operating any facility which may cause or contribute to stormwater pollution or illicit discharges to the public stormwater system, the City's authorized stormwater representative may, by written notice, order that such person undertake such monitoring activities and/or analyses and furnish such reports as the City's authorized stormwater representative may deem necessary to demonstrate compliance with this chapter. The written notice shall be served either in person or by certified or registered mail, return receipt requested, and shall set forth the basis for such order and shall particularly describe the monitoring activities and/or analyses and reports required including but not limited to, that which may be undertaken by a third party independent monitor, sampler and/or tester. The recipient of such order shall undertake and provide the monitoring, analyses and reports within the time frames set forth in the order.

#### **8.534 Erosion Prevention and Sediment Control**

- (1) Any person performing construction work in the city shall comply with the provisions of this chapter and shall provide and maintain erosion and sediment controls that prevent discharges of pollutants to the public stormwater system. Any person performing construction work in the city shall comply with the City's Public Works Standards which establishes standards and guidelines for implementing Best Management Practices designed to provide erosion prevention and sediment control from construction sites.
- (2) The City's authorized stormwater representative may make periodic inspections to ensure compliance with the requirements of the Public Works Standards.

#### **8.536 Stormwater – Violation**

Any person violating any of the terms of this Section shall upon a first conviction thereof, be subject to the violation fine provisions pursuant to City Code Chapter 1.012 of the



**EXHIBIT A**  
**WILSONVILLE CODE**

Wilsonville Code and upon a subsequent conviction thereof, shall be-subject to the Class C Misdemeanor fine provisions pursuant to City Code Chapter 1.011-. In addition, upon a conviction, a person shall be liable for the costs of prosecution.



**EXHIBIT A**  
**WILSONVILLE CODE**

**ENFORCEMENT**

**8.602 Administrative Enforcement Remedies**

(1) Enforcement. In addition to the imposition of civil penalties, the City shall have the right to enforce this Chapter by injunction, or other relief, and seek fines, penalties and damages in Federal or State courts. Any discharge that fails to comply with the requirements of these rules and regulations or provisions of its industrial wastewater discharge permit may be subject to enforcement actions as prescribed in Section 8.602(2) through Section 8.602(9) below.

(a) The City is hereby authorized to adopt, by ordinance or resolution, an Enforcement Response Plan, with procedures and schedules of fines, to implement the provisions of this Section.

(b) The type of enforcement action shall be based, but not limited by the duration and the severity of the violation; impacts on water quality, sludge disposal, interference, work health and safety; violation of the City's NPDES discharge permit. Enforcement shall, generally, be escalated in nature.

(2) Notification of Violation. Whenever the City finds that any User has violated or is violating this Chapter, a wastewater permit or order issued hereunder, or any other pretreatment requirement, the Director or his agent may serve upon said user a written Notice of Violation. Within ten (10) days of receipt of this notice, an explanation of the violation and a plan for the satisfactory correction and prevention thereof, to include specific required actions, shall be submitted to the Director. Submission of this plan in no way relieves the user of liability for any violations occurring before or after receipt of this Notice of Violation. Nothing in this section shall limit the authority of the City to take emergency action without first issuing a Notice of Violation.

(3) Consent Orders. The City may enter into Consent Orders, Assurance of Compliance, or other similar documents establishing an agreement with the any User responsible for the noncompliance. Such documents shall include specific action to be taken by the User to correct the noncompliance within a time period also specified by the document. Such documents shall have the same force and effect as administrative orders issued pursuant to Section 8.602(4) or 8.602(5) below and shall be judicially enforceable.

(4) Show Cause Hearing. The City may order any industrial user which causes or contributes to violation(s) of this Chapter, wastewater permits or orders issued hereunder, or any other pretreatment requirement to appear before the City and show cause why a proposed enforcement action should not be taken. Notice shall be served on the User specifying the time and place for the meeting, the proposed enforcement action, the reasons for such action, and a request that the user show cause why this proposed enforcement action should not be taken. The notice of the meeting shall be served personally or by registered or certified mail (return receipt requested) at least ten (10) days prior to the hearing. Such notice may be served on any authorized representative of the User. Whether or not the User appears as notified, immediate



## EXHIBIT A

### WILSONVILLE CODE

enforcement action may be pursued following the hearing date. This action shall not be a bar against, or establish a prerequisite for, taking any other action against the User.

(5) Compliance Orders. When the City finds that a User has violated, or continues to violate, any provision of this ordinance, a wastewater discharge permit, or order issued hereunder, or any other Pretreatment Standard or Requirement, the City may issue an order to the User responsible for the discharge directing that the User come into compliance within a specified time. If the User does not come into compliance within the time provided, sewer service may be discontinued unless adequate treatment facilities, devices, or other related appurtenances are installed and properly operated. Compliance orders also may contain other requirements to address the noncompliance, including additional self-monitoring and management practices designed to minimize the amount of pollutants discharged to the sewer. A compliance order may not extend the deadline for compliance established for a Pretreatment Standard or Requirement, nor does a compliance order relieve the User of liability for any violation, including any continuing violation. Issuance of a compliance order shall not be a bar against, or a prerequisite for, taking any other action against the User.

(6) Cease and Desist Orders. When the City finds that a User has violated, or continues to violate, any provision of this ordinance, a wastewater discharge permit, or order issued hereunder, or any other Pretreatment Standard or Requirement, or that the User's past violations are likely to recur, the City may issue an order to the User directing it to cease and desist all such violations and directing the User to:

(a) Immediately comply with all requirements:

(b) Take such appropriate remedial or preventive action as may be needed to properly address a continuing or threatening violation, including halting operations and/or terminating the discharge. This action shall not be a bar against, or establish a prerequisite for, taking any other action against the User.

(7) Administrative Fines.

(a) When the City finds that a User has violated, or continues to violate, any provision of this ordinance, a wastewater discharge permit, or order issued hereunder, or any other Pretreatment Standard or Requirement, the City may fine such User in an amount not to exceed five thousand dollars (\$5,000)~~2,500~~. Such fines shall be assessed on a per-violation, per-day basis. In the case of monthly or other long-term average discharge limits, fines may be assessed for each day during the period of violation.

(b) Assessments may be added to the user's next scheduled sewer service charge and the City shall have such other collection remedies as may be available for other service charges and fees. Unpaid charges, fines, and penalties shall, after thirty (30) calendar days, be assessed an additional penalty of twenty percent (20%) of the unpaid balance, and interest shall accrue thereafter at a rate of seven percent (7%) per month. A lien against the User's property shall be sought for unpaid charges, fines, and penalties.



## EXHIBIT A **WILSONVILLE CODE**

(c) Users desiring to dispute such fines must file a written request for the City to reconsider the fine along with full payment of the fine amount within ten (10) days of being notified of the fine. Where a request has merit, the City may convene a hearing on the matter. In the event the User's appeal is successful, the payment, together with any interest accruing thereto, shall be returned to the User. the City may add the costs of preparing administrative enforcement actions, such as notices and orders, to the fine.

(d) Issuance of an administrative fine shall not be a bar against, or a prerequisite for, taking any other action against the User.

(8) Emergency Suspensions. The City may immediately suspend an user's discharge and the industrial user's wastewater discharge permit, after informal notice to the industrial user, whenever such suspension is necessary in order to stop an actual or threatened discharge which reasonably appears to present or cause an imminent endangerment to the health and welfare of persons. The City may also immediately suspend an user's discharge and the industrial user's wastewater discharge permit, after notice and opportunity to respond, that threatens to interfere with the operation of the POTW, or which presents, or may present, an endangerment to the environment.

(a) Any User notified of a suspension of its discharge activity or wastewater permit shall immediately stop or eliminate its contribution. In the event of an industrial user's failure to immediately comply voluntarily with the suspension order, the City shall take such steps as deemed necessary, including immediate severance of the sewer connection to prevent or minimize damage to the POTW, its receiving stream, or endangerment to any individuals. The City may allow the User to recommence its discharge when the user has demonstrated to the satisfaction of the City that the period of endangerment has passed, unless the termination proceedings set forth in Section 8.602(9) are initiated against the user. Nothing in this section shall be interpreted as requiring a hearing prior to any emergency suspension under this Section.

(b) An user which is responsible, in whole or in part, for any discharge presenting imminent endangerment shall submit a written statement describing the causes of the harmful contribution and the measures taken to prevent any future occurrence to the Director prior to the date of any show cause or termination hearing under Section 8.602(4) or 8.602(9).

(9) Termination of Permit. Any User who violates the following conditions is subject to discharge termination:

(a) Violation of discharge permit conditions;

(b) Failure to accurately report the wastewater constituents and characteristics of its discharge;

(c) Failure to report significant changes in operations or wastewater volume, constituents and characteristics prior to discharge;



**EXHIBIT A**  
**WILSONVILLE CODE**

(d) Refusal of reasonable access to the user's premises for the purpose of inspection, monitoring or sampling;

(e) Violation of the pretreatment standards in Section 8.302 of this Chapter.

Such Users will be notified of proposed termination of its discharge and be offered an opportunity to show cause under Section 8.602(4) above why the proposed action should not be taken.

Exercise of this option by the City shall not be a bar to, or establish a prerequisite for, taking any other action against the User.

(10) Appeals. Any enforcement action by the City may be appealed to the City Council by filing a petition for reconsideration. The petition must show cause why an enforcement action should not be taken.

(a) Enforcement action appeals must be filed with the City Recorder within ten (10) working days of receipt of the enforcement action.

(b) The petition for appeal shall indicate the nature of the interpretation that is being appealed. The matter at issue will be a determination of the appropriateness of the interpretation of the enforcement response and the requirements of the pretreatment program.

(c) Upon appeal, the City Council shall first determine whether the appeal shall be heard on the record only, or upon an evidentiary hearing *de novo*. Where an appellant has been afforded an opportunity of an evidentiary hearing by the City, then appeal shall be limited to a review of the record and a hearing for receipt of arguments regarding the record. Where an appellant has not been afforded an evidentiary hearing, or upon finding that under prejudice should otherwise result, the City Council shall conduct an evidentiary hearing *de novo*.

(d) Unless otherwise provided by the City Council, an evidentiary hearing *de novo* on appeal shall require a record be kept of the following:

- 1) The record, if any, of the matter before the City.
- 2) A factual report prepared and presented by the City.
- 3) All exhibits, materials and memoranda submitted by any party and received or considered in reaching the decision under review.
- 4) A record of testimonial evidence, if any.



## EXHIBIT A

### WILSONVILLE CODE

(e) Upon review, the City Council may by order affirm, reverse or modify in whole or part a determination or requirement of the decision that is under review. When the Council modifies or renders a decision that reverses a decision regarding and enforcement action, the Council, in its order, shall set forth its finding and state its reasons for taking the action.

#### **8.604 Judicial Enforcement Remedies**

(1) Injunctive Relief. Whenever the City finds that a user has violated or continues to violate the provisions of this Chapter, permits or orders issued hereunder, or any other pretreatment requirements, the City through the City's attorney, may petition the Circuit Court of Clackamas County for issuance of a temporary or permanent injunction, as may be appropriate, which restrains or compels the specific performance of the wastewater discharge permit, order, or other requirement imposed by this Chapter on activities of the user. The City may also seek such other action as is appropriate for legal and/or equitable relief, including a requirement for the user to conduct environmental remediation. A petition for injunctive relief shall not be a bar against, or a prerequisite for taking any other action against the User.

(2) Civil Penalties. A User which has violated or continues to violate the provisions of this Chapter, a wastewater permit, or any order issued hereunder, or any other Pretreatment Standard or Requirement may be liable to the City for a maximum civil penalty of ~~five thousand dollars, five hundred dollars~~ (\$5,000~~2,500~~) per violation per day. In the case of a monthly or other long term average discharge limit, penalties shall accrue for each business day during the period of this violation.

(a) The City may recover reasonable attorney's fees, court costs, and other expenses associated with the enforcement activities, including sampling and monitoring expenses, and the cost of any actual damages incurred by the City.

(b) In determining the amount of civil liability, the Court shall take into account all relevant circumstances, including, but not limited to, the extent of harm, caused by the violation, the magnitude and duration, any economic benefit gained through the industrial user's violation, corrective actions by the industrial user, the compliance history of the user, and any other factors as the justice requires.

(c) Filing a suit for civil penalties shall not be a bar to, or a prerequisite for, taking any other action against the user.

(3) Criminal Prosecution.

(a) Any User who willfully or negligently violates any provisions of this Chapter, any orders or permits issue hereunder, or any other pretreatment standard or requirement shall, upon conviction, be guilty of a misdemeanor, punishable by a fine of not more than \$5,000~~2,500~~ per violation per day or imprisonment for not more than one year or both.



## EXHIBIT A

### WILSONVILLE CODE

(b) Any User who knowingly makes any false statement, representations, or certifications in any application, record, report, plan or other documentation filed or required to be maintained pursuant to this Chapter, or wastewater discharge permit, or who falsifies, tampers with or knowingly renders inaccurate any monitoring device or method required under this Chapter shall, upon conviction, be punished by a fine of not more than ~~\$5,000~~2,500 per violation per day or imprisonment for not more than one year or both.

(c) Any User who willfully or negligently introduces any substance into the POTW which causes personal injury or property damage shall, upon conviction, be guilty of a misdemeanor and be subject to a penalty of at least ~~\$5,000~~2,500 per violation, per day, or be subject to imprisonment for not more than one year, or both. This penalty shall be in addition to any other cause of action for personal injury or property damage available under State law.

(d) In the event of a second conviction, the user shall be punished by a fine not to exceed ~~\$3,000~~6,000 per violation per day or imprisonment for not more than three (3) years or both.

(4) Remedies Nonexclusive

The remedies provided for in this ordinance are not exclusive. The City may take any, all, or any combination of these actions against a noncompliant User. Enforcement of pretreatment violations will generally be in accordance with the City's enforcement response plan. However, the City may take other action against any User when the circumstances warrant. Further, the City is empowered to take more than one enforcement action against any noncompliant User.

#### **8.606 Supplemental Enforcement Action**

(1) Performance Bonds. The City may decline to reissue a permit to any User who has failed to comply with the provisions of this Chapter, a previous wastewater discharge permit, or orders issued hereunder, or any other Pretreatment Standard or Requirement, unless such user first files a satisfactory bond, payable to the City, in a sum not to exceed a value determined by the City to be necessary to achieve a consistent compliance.

(2) Liability Insurance. The City may decline to reissue a permit to any industrial user which has failed to comply with the provisions of this Chapter, a previous wastewater discharge permit, or orders issued hereunder, or any other Pretreatment Standard or Requirement, unless the User first submits proof that it has obtained financial assurance sufficient to restore or repair damage to the POTW caused by its discharge.

(4) Payment of Outstanding Fees and Penalties. The City may decline to issue or reissue a wastewater discharge permit to any User who has failed to pay any outstanding fees,



## EXHIBIT A

### WILSONVILLE CODE

finer or penalties incurred as a result of any provision of this ordinance, a previous wastewater discharge permit, or order issued hereunder.

(5) Water Supply Severance. Whenever a User has violated or continues to violate provisions of this Chapter, orders, or permits issued hereunder, water services to the industrial user may be severed and service will only recommence, at the user's expense, after it has satisfactorily demonstrated its ability to comply.

(6) Public Nuisance. Any violation of the prohibitions of effluent limitations of this Chapter, permits, or orders issued hereunder is hereby declared by a public nuisance and shall be corrected or abated as directed by the City. Any person(s) creating a public nuisance shall be subject to the provisions of Chapter 7 of the Wilsonville City Codes governing such nuisance, including reimbursing the City for any costs incurred in removing, abating or remedying said nuisance.

(7) Informant Rewards. The City may pay up to five hundred dollars (\$500) for information leading to the discovery of noncompliance by a User. In the event that the information provided results in an administrative fine or civil penalty levied against the industrial user, the Director is authorized to disperse up to ten percent (10%) of the collected fine or penalty to the informant. However, a single reward payment may not exceed ten thousand dollars (\$10,000).

(8) Contractor Listing. Users which have not achieved consistent compliance with applicable pretreatment standards and requirements are not eligible to receive a contract for the sale of goods or services to the City. Existing contracts for the sale of goods or services to the City held by an industrial user found to be in significant violation with pretreatment standards may be terminated at the discretion of the City.



**EXHIBIT A**  
**WILSONVILLE CODE**

**BUSINESS RECYCLING REQUIREMENTS**

**8.700. Definitions.**

For the purposes of this Chapter, the following terms shall mean:

(1). Business. Any person or persons, or any entity, corporate or otherwise, engaged in commercial, professional, charitable, political, industrial, educational or other activity that is non-residential in nature, including public bodies. The terms shall not apply to businesses whose primary office is located in a residence, conducted as a home occupation. A residence is the place where a person lives.

(2). Source separate. To separate recyclable material from other solid waste.

**8.710. Purpose.**

The purpose of sections 8.700 through 8.750 is to comply with Business Recycling Requirements set forth in Metro Code chapter 5.10. A significant increase in business recycling will assist the Metro region in achieving waste reduction goals, conserving natural resources and reducing greenhouse gas emissions.

**8.720. Business Recycling Requirements.**

1. Businesses shall source separate from other solid waste all recyclable paper, cardboard, glass and plastic bottles and jars, and aluminum and tin cans for reuse or recycling.
2. Businesses shall ensure the provision of recycling containers for internal maintenance or work areas where recyclable materials may be collected, stored, or both.
3. Businesses shall post accurate signs where recyclable materials are collected, stored or both that identify the materials that the business must source separate for reuse or recycling and that provide recycling instructions.
4. Persons and entities that own, manage or operate premises with Business tenants, and that provide garbage collection service to those Business tenants, shall provide recycling collection systems adequate to enable the Business tenants to comply with the requirement of this section.

**8.730. Exemption from Business Recycling Requirements.**

A business may seek exemption from the business recycling requirement by providing access to a recycling specialist for a site visit and establishing that it cannot comply with the business recycling requirement for reasons that include, without limitation, space constraints and extenuating circumstances.

**8.740. Compliance with Business Recycling Requirements.**

A business or business recycling service customer that does not, in the determination of the City or the City's agent, comply with the business recycling requirement may receive a written notice of noncompliance. The notice of noncompliance shall describe the



**EXHIBIT A**  
**WILSONVILLE CODE**

violation, provide the business or business recycling service customer an opportunity to cure the violation within the time specified in the notice and offer assistance with compliance.

A business or business recycling service customer that does not, in the determination of the City or the City's agent, cure a violation within the time specified in the notice of noncompliance may receive a written citation. The citation shall provide an additional opportunity to cure the violation within the time specified in the citation and shall notify the business or business recycling service customer that it may be subject to a fine.

**8.750 Violations.**

A business or business recycling service customer that does not cure a violation within the time specified in the citation may be subject to a fine provision -pursuant to City Code Chapter ~~W.C.~~ 1.012, of up to \$250.00 for the first violation and up to \$500.00 for subsequent violations in a calendar year.



**EXHIBIT A**  
**WILSONVILLE CODE**  
**CITY OF WILSONVILLE, OREGON**

Industrial Pretreatment Program  
Enforcement Response Plan

**Table of Contents**

Section I	Introduction
Section II	Enforcement Remedies
Section III	Assessment of Administrative Fines
Section IV	Noncompliance Defined
Section V	Range of Enforcement Responses
Section VI	Enforcement Procedures
Section VII	Time Frames for Enforcement Action and Follow Up
Section VIII	Responsibilities of Personnel
Section IX	Enforcement Response Matrix



## **EXHIBIT A** **WILSONVILLE CODE**

### **SECTION I INTRODUCTION**

The General pretreatment Regulations, 40 CFR 403.8(f)(1)(vi)(A) require POTW's with approved pretreatment programs to obtain remedies for noncompliance by any Industrial User. Specifically, 40 CFR 403.8(f)(5) requires the POTW to develop and implement an enforcement response plan.

EPA states that a violation occurs when any of the following conditions apply:

- Any requirement of the City's rules and regulations has not been met.
- A written request is not met within the specified time.
- A condition of a permit issued under the authority of rules and regulations is not met within the specified time.
- Effluent limitations are exceeded, regardless of intent or accident.
- False information has been provided by the discharge.

Each day a violation occurs is considered a separate violation. Each parameter that is in violation is considered to be a separate violation.

Actions that can be taken by the City, in response to violations, are described in this Enforcement Response Plan. .

This Enforcement Response Plan is intended to provide guidance to the City Staff for the uniform and consistent enforcement of the City Sewer Use Ordinance to all Users of the system. The Enforcement Response Plan should be considered a guide for making decisions on the appropriate actions to be taken to return the User to full compliance in the shortest possible time while not being excessive. For additional information see the City of Wilsonville Code, Chapter 8.

### **SECTION II. ENFORCEMENT REMEDIES**

#### **A. Preliminary Enforcement Contacts**

It is of mutual interest to the City and the IU to resolve compliance problems with a minimum of formal coercion. As an aid to the communication process surrounding a formal enforcement action, the City will use the following informal responses:

##### **1. Phone Calls**

A phone call maybe the initial informal action taken by the City for missed deadlines and other minor incidents of noncompliance as detected by sampling, inspection and/or as



## **EXHIBIT A**

### **WILSONVILLE CODE**

soon as a compliance deadline is missed or noncompliance is detected. The City is not required to take this action prior to taking other enforcement options.

A written record of the phone conversation is kept and will contain the following information:

- name of company (IU);
- wastewater discharge permit number;
- name and title of person contacted;
- date and time; nature of violation;
- items discussed;
- results of conversation;
- initials or signature of City personnel initiating the phone call.

#### **2. Informal Compliance Meeting**

An informal compliance meeting may be held to discuss violations which have recurred, violations which remain uncorrected, or violations of a magnitude which warrant more communication between the City and the Industry. The compliance meeting is held specifically to include an authorized representative of the IU (e.g., vice president, general partner, or their duly authorized representative to ensure that he/she is aware that the industry is in noncompliance.

If possible, the compliance meeting should be held before significant noncompliance (SNC) is reached by the industrial user. The industrial user should already be aware of the criteria for SNC, and the compliance meeting will reinforce that the result of SNC includes enforcement measures mandated by federal regulations. The industry may in turn communicate any progress or measures it has taken to regain compliance.

### **B. Administrative Enforcement Remedies**

Administrative Enforcement Remedies are actions that may be initiated at the City Staff level and are intended to be used as an escalation of enforcement. These enforcement actions are considered “formal” and are to be in a written format.

#### **1. Notice of Violation**

The Notice of Violation (NOV) is an appropriate initial response to any violations and may often be the first response. An informal enforcement action is not required prior to issuing a Notice of Violation. . The purpose of a NOV is to notify the industrial user of the detected violation. It may be the only response necessary in cases of infrequent and generally minor violations. As a general rule, the NOV will be issued not later than 5 business days after discovery of the violation. .

The NOV may be issued by the Pretreatment Coordinator.



## EXHIBIT A

### WILSONVILLE CODE

The NOV will require the IU to submit a written explanation of the violation and a plan for its satisfactory correction within 10 days of receipt of the NOV. If the user does not return to compliance or submit a plan of correction, the City will escalate to more stringent enforcement responses.

#### 2. Administrative Order

An Administrative Orders (AO) are enforcement actions requiring the IU to take a specific action within a specific time period, and may require the IU to seek outside assistance or to modify their production process to eliminate continued non-compliance. An Administrative Order is considered an escalation of the enforcement beyond an informal enforcement action and a Notice of Violation. The City is not required to take informal or less severe enforcement actions prior to issuing an Administrative Order. It is recommended that in most cases a Notice of Violation be issued prior to issuing an Administrative Order to assure the IU management are aware of the problem before ordering an action that may impact the productivity of the IU. The terms of an AO may or may not be negotiated with IUs.

##### a. Cease and Desist Order

A Cease and Desist Order directs a user in significant noncompliance (SNC) to cease illegal or unauthorized discharges immediately or to terminate its discharge altogether. A Cease and Desist Order should be used in situations where the discharge could cause interference of a pass through, or otherwise create an emergency situation. The Order may be issued immediately upon discovery of the problem or following a hearing. In an emergency, the Cease and Desist Order may be given initially by telephone, with follow-up (within 5 days) by formal written notice.

##### b. Consent Order

The Consent Order combines the force of an AO with the flexibility of a negotiated settlement. The Consent Order is an agreement between the City and the IU normally containing three elements:

- compliance schedules;
- stipulated fines or remedial actions; and
- signatures of the City and industry representatives.

Consent Orders are intended to provide a scheduled plan of action to be taken by the IU (sometimes actions to be taken by the City) to return to compliance. The compliance schedule should identify all significant actions in a step wise order and when each step should be completed. Routine written reports should be required of the IU providing written documentation of the status of the Consent Order at the time of the report. Typically Consent Orders should not exceed six months in overall time, and not specific step to exceed a 90 day period. In some cases the completion of one consent order leads to the issuance of a second or third



## EXHIBIT A

### WILSONVILLE CODE

consent order dependent on the out come of the previous consent order. Consent orders are effective providing the IU discharge is not contributing to pass through or interference of the POTW. The City may establish interim permit limits or special discharge requirements while a Consent Order runs its course.

No informal or less severe enforcement action is required to be taken prior to issue of a Consent Order. Before issuing a Consent Order the City should consider the impact the IU's discharge is having on the POTW (pass through or interference) and the evidence that is used to determine the need for the order. The milestone dates established for completion of steps within the Consent Order become enforceable at the same level of a discharge limit of the permit or a requirement of the City ordinance.

#### 3. Show Cause Order

An order to show cause directs the user to appear before the City, and explain it noncompliance, and who cause why more severe enforcement actions against the user should not go forward. The order to show cause is typically issued after information contacts, NOVs, Consent Orders or Compliance Orders have failed to resolve the noncompliance. However, the Show Case Order/hearing can also be used to investigate violations or previous orders.

The Show Cause Order will either be hand-delivered or mailed with return receipt required. The Order will indicate the nature of the violations and the proposed enforcement response. At the Show Cause meeting, the Public Works Director will present a factual report prepared as the basis for the proposed enforcement action. The IU will present exhibits, material and memoranda. A record of testimonial evidence will be kept by the City.

Within thirty (30) days following the Show Cause meeting, the PW Director will render a decision regarding an enforcement action to be taken, setting forth findings and stating reasons for taking the action. Affirmative defenses to discharge violations (WC, Section 8.318) will be taken into consideration of the Director's decision.

Within ten (10) working days of receiving notice of the enforcement action to be taken, the IU may appeal the Director's decision to the City Council, pursuant to WC, Section 8.602 (10).

#### 4. Compliance Order

Compliance Orders are similar to Consent Orders, in that, specific actions are mandated and milestone dates are established for the completion of each mandatory action. The primary difference is that a Compliance Order is not negotiated with the IU. The City establishes the mandatory actions and milestone



## EXHIBIT A

### WILSONVILLE CODE

dates without consideration of the IU with the primary focus on protection of the POTW. Compliance Orders may include the acquisition of professional assistance, engineering design, additional or replacement pretreatment equipment, development of best management practices, action plans, increased or special testing and/or self-monitoring requirements, and other activities that the City may deem necessary to returning the IU to full compliance. Compliance Orders may establish interim limits and requirements while the IU is operating under the compliance order. The compliance order should require routine reporting during the course of the compliance order.

No previous enforcement action is required prior to issuance of a compliance order

#### 5. Administrative Fines

Administrative Fine are a monetary penalties assessed by the City's Public Works Director for violations of pretreatment standards and requirements, violations of the terms and conditions of the discharge permit and/or violations of compliance schedules. Administrative fines are punitive in nature and not related to a specific cost borne by the City. Instead, such fines are intended to recapture the full or partial economic benefit of noncompliance, and to deter future violations. The maximum amount of the fine is ~~\$5,000~~2,500 for each day that each violation continues.

Administrative Fines are recommended as an escalated enforcement response, particularly when NOV's or administrative orders have not prompted a return to compliance. Whether administrative fines are an appropriate responses to noncompliance also depend greatly on the circumstances surrounding the violation. The City will consider the factors as set forth in Section III of this plan when determining the amount of the fine.

#### 6. Emergency Suspension Order

The Public Works Director may suspend an industrial user's discharge and the industrial user's discharge permit, without informal notice or previous enforcement action, in order to stop an actual or threatened discharge which reasonably appears to present or cause an imminent endangerment to the health or welfare of persons, or an endangerment to the environment. Any industrial user notified of an emergency suspension must immediately stop or eliminate its discharge to the POTW. In the event of the industrial user's failure to immediately comply voluntarily with the suspension order, the City may sever sewer connection prior to the date of any show cause or termination hearing. The industrial user must submit a detailed written statement describing the causes of the harmful contribution and the measures taken to prevent any future occurrences before discharge to the POTW can be restored.

#### 7. Termination of Permit

Termination of service is the revocation of an industrial user's privilege to discharge industrial wastewater into the City's sewer system. Termination may be accomplished by physical



## **EXHIBIT A**

### **WILSONVILLE CODE**

severance of the industry's connection to the collection system, by issuance of a suspension order which compels the user to terminate its discharge, or by court ruling. Termination of service is an appropriate response to industries which have not responded adequately to previous enforcement responses. Unlike civil and criminal proceedings, termination of service is an administrative response which can be implemented directly by the City. However, the decision to terminate service requires careful consideration of legal and procedural consequences.

Any industrial user who violates the Wilsonville Code of Ordinances, discharge permit or compliance orders is subject to discharge permit termination as an enforcement remedy. Non-compliant industrial users will be notified in writing of the proposed termination of their discharge permit and will be offered an opportunity to show cause why the action should not be taken. The Public Works Director is authorized to terminate an IU's discharge if it presents or may present an endangerment to the environment or if it threatens to interfere with the operation of the POTW

In contrast to the Emergency Suspension Order, the Notice of Termination of the Discharge Permit is to be used when significant changes in the industrial user's operations have occurred without authorization resulting in new pollutant contributions or volume of wastewater discharged. Furthermore, through the course of administering, monitoring and compliance activity, the City may acquire new information which was not available at the time the discharge permit was issued. Until corrections have been made, and continuing discharge compliance can be assured, the City may terminate the IU's permitted right to discharge into the City's POTW.

#### **C. Judicial Enforcement Remedies**

There are four judicial enforcement remedies which are available to the City, as outlined in Wilsonville Codes – Injunctive Relief, Civil Penalties, Criminal Penalties, and Remedies Non-Exclusive.

##### **1. Injunctive Relief**

Injunctive relief is the formal process of petitioning the Circuit Court of Clackamas County for the issuance of either a temporary or permanent injunction which restrains or compels the specific performance of the discharge permit, order or other required imposed on the activities of the industrial user. Injunctive relief is carried out by the City Attorney in conjunction with the City manager, Public Works Director and the Mayor.

##### **2. Civil Penalties**

Civil litigation is the formal process of filing lawsuits against industrial users to secure court ordered action to correct violations and to secure penalties for violations including the recovery of costs to the POTW of the noncompliance. It is normally pursued when the corrective action required is costly and complex, the penalty to be assessed exceeds that which the City can assess administratively, or when the industrial user is considered to be recalcitrant and unwilling to cooperate. Civil litigation also includes enforcement measures which require involvement or



## EXHIBIT A

### WILSONVILLE CODE

approval by the courts, such as injunctive relief and settlement agreements. Civil litigation is pursued by the City Attorney and only initiated as authorized by the City Council.

#### 3. Criminal Prosecution

Criminal prosecution is the formal process of charging individuals and/or organizations with violations of ordinance provisions that are punishable, upon conviction, by fines and/or imprisonment. The purposes of criminal prosecution are to punish noncompliance established through court proceedings, and to deter future noncompliance. Criminal prosecutions are up to the discretion of the City Attorney and may be filed in municipal court.

#### 4. Remedies Nonexclusive (§8.312)

The remedies provided for in the ordinance are not exclusive. The Public Works Director may take any, all, or any combination of these actions against a noncompliant User. Enforcement of pretreatment violations will generally be in accordance with the City's Enforcement Response Plan. However, the Director may take other action against any User when the circumstances warrant. Further, the Director is empowered to take more than one enforcement action against any noncompliant User.

#### **D. Supplemental Enforcement Remedies**

Supplemental or innovative enforcement remedies are used to complement the more traditional enforcement responses already described. Normally, supplemental responses are used in conjunction with more traditional approaches. The following are provided for in the City Code:

- Performance Bonds
- Liability Insurance
- Payment of Outstanding Fees and Penalties
- Water Supply Severance
- Public Nuisance
- Informant Rewards
- Contractor Listing

### **SECTION III – ASSESSMENT OF ADMINISTRATIVE FINES**

#### **A. Base-Penalty Matrix**

The following matrix provides a sample of suggested base-penalty (BP) for administrative fines based on the magnitude of the violations. The City should keep in mind that the following suggested fines are not mandatory and should be applied based on the various factors discussed in this section.

<b>Class of Violation</b>	<b>Major</b>	<b>Moderate</b>	<b>Minor</b>
Class I	<del>\$5,000</del> <del>2,500</del>	<del>\$2,500</del> <del>1,000</del>	<del>\$1,000</del> <del>200</del>
Class II	<del>\$2,000</del> <del>750</del>	<del>\$1,000</del> <del>500</del>	<del>\$500</del> <del>200</del>
Class III	<del>\$500</del> <del>250</del>	<del>\$250</del> <del>100</del>	<del>\$100</del> <del>50</del>



## EXHIBIT A

### WILSONVILLE CODE

#### B. Class of Violations

##### Class I:

- \* Un-permitted discharge or failure to halt discharge which cause harm to the POTW and/or the environment.
- \* Failure to comply with notification requirements of a spill or slug load or upset condition.
- \* Violation of an Administrative Order or compliance schedule.
- \* Failure to provide access to premises or records.
- \* Any violation related to water quality which causes a major harm or poses a major risk of harm to public health or the environment.
- \* Significant Noncompliance (40 CFR 403.8(f)(2)(vii)(A-H).
- \* Process waste stream dilution as a substitute for pretreatment.

##### Class II:

- \*\* Operation of a pretreatment facility without first obtaining a Discharge Permit. (No harm to POTW or the environment).
- \*\* Any violation related to water quality which is not otherwise classified.
- \*\* Recurring violations of local discharge permit limits or Federal Standard.

##### Class III

- \*\*\* Un-permitted discharge which causes no harm to POTW.
- \*\*\* Failure to operate and maintain a pretreatment facility.
- \*\*\* Monitoring, record keeping, and reporting violations.
- \*\*\* First-time violation of a local permit limit or Federal Standard regulating the discharge of pollutants.

#### C. Magnitude of Violations

##### Major:

- pH value less than 5.0 or more than 11.0,.
- More than 2.0 times the maximum allowable limit established for regulated pollutants, other than pH.
- Anything directly attributable to an upset condition or damage of the POTW.
- Recurring failure to meet the terms of a compliance order or recurring failure to correct a known violation.
- Missed compliance milestone or report submittal deadline by more than 30 days without good cause.
- Any other violation meeting the definition of significant noncompliance (See Sections II and III, as well as the Enforcement Response Matrix).

##### Moderate:

- From 1.2 to 2.0 times the maximum allowable limit established for regulated pollutants, other than pH.
- Third Notice of Violations of a Discharge Permit condition or compliance order in a 12 month period.



## EXHIBIT A WILSONVILLE CODE

Minor:

- pH value of 5.0 to 5.5 and 10.0 to 11.0 to 1.2 times the maximum allowable limit for regulated pollutants, other than pH.
- Second Notice of Violation for the same Discharge Permit condition or compliance order in a 12 month period.
- Missed compliance milestone or report submittal deadline without good cause by up to 30 days.
- Violations detected during site visits which do not results in harm to the POTW or the environment.

### D. Maximum/Minimum Fines

No administrative fine, civil or criminal penalty pursuant to this matrix shall be less than \$~~100~~50. The maximum fine/penalty may not exceed \$~~5,000~~2,500 per each day per violation.

### E. Assessment of Fines/Penalties

#### 1. Assessment Protocol

When determining the amount of an administrative fine or civil penalty to be assessed for any violation, the Public Works Director shall apply the following procedures:

- Determine the class and the magnitude of each violation.
- Choose the appropriate base penalty (BP) from the BP Matrix in paragraph A of this section.
- Starting with the base-penalty (BP), determine the total amount of penalty through application of the formula:

$$\text{BP} + [(0.1 \times \text{BP}) (\text{P}+\text{H}+\text{O}+\text{R}+\text{C})] + \text{EB}$$

Where:

BP = Base-Penalty

P = prior significant action taken against the IU. (Significant actions refers to any violation established either with or without admission by payment of a penalty.)

H = compliance history

O = violation repetitive or continuous

R = whether the violation resulted from an unavoidable accident, or a negligent, intentional or flagrant act

C = Cooperation and effort put forth to correct the violation

EB = Approximated dollar sum of the economic benefit that the IU gained through noncompliance.

2. Values for (P) shall be as follows:



**EXHIBIT A**  
**WILSONVILLE CODE**

- (i) 0 if no prior significant actions or there is insufficient information on which to base a finding.
- (ii) 1 if the prior significant action is one Class Two or two Class Threes;
- (iii) 2 if the prior significant action(s) is one Class One or equivalent;
- (iv) 3 if the prior significant actions are two Class One or equivalents;
- (v) 4 if the prior significant actions are three Class Ones or equivalents;
- (vi) 5 if the prior significant actions are four Class Ones or equivalents;
- (vii) 6 if the prior significant actions are five Class Ones or equivalents;
- (viii) 7 if the prior significant actions are six Class Ones or equivalents;
- (ix) 8 if the prior significant actions are seven Class Ones or equivalents;
- (x) 9 if the prior significant actions are eight Class Ones or equivalents;
- (xi) 10 if the prior significant actions are nine Class Ones or equivalents, of it any of the prior significant actions were issued for any violation of WC, Chapter 8.
- (xii) In determining the appropriate value for prior significant actions as listed above, the Director shall reduce the appropriate factor by:
  - (1) A value of two (2) if all prior significant actions are greater than three years but less than five years old;
  - (2) A value of four (4) if all the prior significant actions are greater than five years old;
  - (3) In making the above restrictions, no finding shall be less than 0.
- (xiii) Any prior significant action which is greater than ten years old shall not be included in the above determination.

3. Values for (H) shall be as follows:

(H) = Past history of the IU to take steps to correct violations cited in prior significant actions. In no case shall the combination of (P) and (H) be a value of less than zero.

- (i) -2 if IU took all feasible steps to correct each violation contained in any prior significant action;



**EXHIBIT A**  
**WILSONVILLE CODE**

- (ii) 0 if there is not prior history or if there is insufficient information on which to base a finding;

4. Values for (O) shall be as follows:

**Where (O) = whether the violation was repeated or continuous**

- (i) 0 if the violation existed for one day or less and did not recur on the same day;
- (ii) 2 if the violation existed for more than one day or if the violation recurred on the same day.

5. Values for (R) shall be as follows:

Where: (R) = whether the violation resulted from an unavoidable accident, or a negligent, intentional or flagrant act.

- (i) 0 if an unavoidable accident, or if there is insufficient information or make a finding.
- (ii) 2 if negligent
- (iii) 6 if intentional; or
- (iv) 10 if flagrant

6. Values for (C) shall be as follows:

Where: (C) is the Cooperation and effort put forth by the IU to correct the violation.

- (i) 2 if IU was cooperative and took reasonable efforts to correct the violation or minimize the effects of the violation;
- (ii) 0 if there is insufficient information to make a finding, or if the violation of the effects of the violation could not be corrected.
- (iii) 2 if IU was uncooperative and did not take reasonable efforts to correct the violation or minimize the effects of the violation.

7. Values for (EB) shall be as follows:

Where: (EB) = Approximated dollar sum of the economic benefit that the IU gained through noncompliance. The penalty may be increased by the value assigned to (EB), provided that the sum penalty does not exceed the maximum allowed. In order to ensure that no IU may be able to pollute as a cost of doing business, the PW Director is empowered to take more than one enforcement action against any noncompliance IU (WC, Section 8.140(2)).



**EXHIBIT A**  
**WILSONVILLE CODE**

- (i) Add to the formula the approximate dollar sum of the economic benefit gained through noncompliance, as calculated by determining both avoided costs and the benefits obtained through any delayed costs, where applicable;
- (ii) The PW Director need not calculate nor address the economic benefit component of the civil penalty when the benefit obtained is de minimis;

**SECTION IV. NON COMPLIANCE DEFINED**

**A. Noncompliance**

Noncompliance is any violation of one or more of the, Wilsonville Code, Chapter 8, any of the conditions or limits specified in the IU's Wastewater Discharge Permit or any compliance order issued by the City. Enforcement action must be initiated for the following instances of noncompliance:

- 1. Industry failure to submit a permit application form;
- 2. Industry failure to properly conduct self-monitoring;
- 3. Industry failure to submit appropriate reports;
- 4. Industry failure to comply with appropriate pretreatment standards by the compliance deadline date;
- 5. Industry failure to comply with pretreatment limits as determined from review of self-monitoring reports or City sampling;
- 6. Industry falsification of information;
- 7. Sewer use violation of the municipal code

**B. Significant Noncompliance:**

Significant Noncompliance shall be applicable to all Significant users or any other Industrial User that violates paragraphs (3), (4) or (8) of this Section and shall mean:

- 1. Chronic violations of wastewater discharge limits, defined here as those in which sixty-six percent (66%) or more of all the measurements taken for the same pollutant parameters during a six month period exceeded (by any magnitude) a numeric Pretreatment Standard or Requirement, including Instantaneous Limits. .
- 2. Technical Review Criteria (TRC) violations, defined as those in which thirty-three percent (33%) of more of wastewater measurements taken for each pollutant parameter taken during a six-month period equal or exceeded by the product of a numeric Pretreatment Standard or Requirement, including Instantaneous Limits multiplied by the applicable criteria (1.4 for BOD, TSS, fats, oil and grease, and 1.2 for all other pollutants except pH);
- 3. Any other violation of a Pretreatment Standard or Requirement (daily maximum or longer- term average, Instantaneous Limits or narrative standard) that the City determines has caused, alone or in combination with other discharges, interference or pass through (including endangering the health of City personnel of the general public);



## **EXHIBIT A** **WILSONVILLE CODE**

4. Any discharge of pollutant that has caused imminent endangerment to the public or to the environment or has resulted in the City's exercise of its emergency authority to halt or prevent such a discharge.
5. Failure to meet, within ninety (90) days after the schedule date, a compliance schedule milestone contained in an individual wastewater discharge permit or enforcement order for starting construction, completing construction, or attaining final compliance.
6. Failure to provide within forty five (45) days after the due date, required reports, including baseline monitoring reports, reports on compliance with categorical Pretreatment Standard deadlines, , periodic self monitoring reports, and reports on compliance with compliance schedules.
7. Failure to accurately report noncompliance; or
8. Any other violation(s), which may include a violation of Best Management Practices, which the City determines will adversely affect the operation or implementation of the pretreatment program.

### **SECTION V. RANGE OF ENFORCEMENT REPONSES**

When the City is presented with the need for enforcement response, it will select the most appropriate response to the violation. The City will consider the following criteria when determining a proper response:

- Magnitude of violation;
- Duration of the violation;
- Effect of the violation on the receiving water;
- Effect of the violation on the POTW;
- Compliance history of the industrial user; and
- Good faith of the industrial user.

These six criteria are discussed in detail below:

1. Magnitude of the Violation  
Generally, an isolated instance on noncompliance can be met with an informal response and a Notice of Violation or Consent Order. However, certain violations or patterns of violations are significant and must be identified as such. Significant Noncompliance (SNC) may be on an individual or long-term basis of occurrence. Categorization of an IU as being in SNC provides the City with priorities for enforcement action and provides a means for reporting on the IU performance history. SNC is a violation which meets one or more of the criteria set forth in Section IV B.

2. Duration of Violation



## **EXHIBIT A**

### **WILSONVILLE CODE**

Violations, regardless of severity, which continue over long periods of time will subject the industrial user to escalated enforcement actions. For example, an effluent violation which occurs in two out of three samples over a six-month period or a report which is more than 45 days overdue is considered SNC, while a report which is two days late would not be deemed significant.

The City's response to these situations must prevent extended periods of noncompliance from recurring. The City may issue an administrative order for chronic violations. If the industrial user fails to comply with the administrative order, the City will assess administrative penalties or initiate judicial action. If the prolonged violation results in serious harm to the POTW, the City will also consider terminating services or obtaining a court order to halt further violations as well as to recover the costs of repairing the damage.

#### 3. Effect on the Receiving Water

One of the primary objectives of the national pretreatment program is to prevent pollutants from "passing through" the POTW and entering the receiving stream. Consequently any violation which results in environmental harm will be met with a SNC categorization and corresponding enforcement action. Environmental harm will be presumed whenever an industry discharges a pollutant into the sewerage system which:

- a. Passes through the POTW and causes a violation of the POTW's NPDES permit (including water quality standards); or
- b. Has a toxic effect on the receiving waters (i.e. fish kill).

The enforcement response should ensure the recovery from the noncompliance user of any NPDES fines and penalties paid by the City to any party whether governmental or otherwise. If a user's discharge causes repeated harmful effects, the City will seriously consider terminating service to the user.

#### 4. Effect on the POTW

Some of the violations may have negative impacts on the POTW itself. For example, they may result in significant increases in treatment costs, interfere or harm POTW personnel, equipment, process, operations, or cause sludge contamination resulting in increased disposal costs. These violations will be categorized as SNC. For example, when the industrial user's discharge upsets the treatment plant, damages the collection system through pipe corrosion, causes an obstruction or explosion, or causes additional expenses (e.g. to trace a spill back to its source), the POTW's response will include cost recovery, civil penalties, and a requirement to correct the condition causing the violation.

#### 5. Compliance History of the User

A pattern of recurring violations (even if different program requirements) may indicate whether that the user's treatment system is inadequate or that the user has taken a casual approach to operating and maintaining its treatment system. Accordingly, users exhibiting recurring compliance problems will be categorized as SNC. Compliance history is an important factor for deciding which of the two or three designated appropriate remedies to apply to a



## **EXHIBIT A** **WILSONVILLE CODE**

particular violator. For example, if the violator has a good compliance history, the City may decide to use the less severe option.

### **6. Good Faith of the User**

The user's "good faith" in correcting its noncompliance is a factor in determining which enforcement response to invoke. Good faith is defined as the user's honest intention to remedy its noncompliance coupled with actions which give support to this intention. Generally, a user's demonstrated willingness to comply will predispose the City to select less stringent enforcement responses. However, good faith does not eliminate the necessity of an enforcement action. For example, if the City's POTW experiences a treatment upset, the City will recover its costs regardless of prior good faith. Good faith is typically demonstrated by cooperation and completion of corrective measures in a timely manner (although compliance with previous enforcement orders is not necessarily good faith).

## **SECTION VI. ENFORCEMENT PROCEDURES**

The City must document procedures to evaluate industry self-monitoring data, reports and notices to accurately determine the compliance status of each significant user. These procedures must identify all violations, including non-discharge or reporting violations.

This Enforcement Response Plan designates responsibilities for this evaluation task. The task is assigned to the Pretreatment Coordinator since he/ she is familiar with the IU's and the City's pretreatment program rules and regulations. The Pretreatment Coordinator is responsible to identify the noncompliance and alert the Public Works Director (PWD) of the possible need for enforcement action.

The City will examine all monitoring data and reports within five (5) days of receipt. In order to review reports, the Pretreatment Coordinator will apply the following procedures:

- The Pretreatment Coordinator has established schedules in the Industrial Wastewater Discharge Permits to designate when self-monitoring reports are due. Each self-monitoring report will be checked to see that it is submitted by its due date, and is appropriately signed and certified. Likewise, the Pretreatment Coordinator will check notifications and report requirements.
- All analytical data will be screened by comparing it to categorical or local limits or to any additional discharge standards which may apply.
- All violations will be identified and a record made of the response. At a minimum, this will be accomplished by circling the violation, using a red ink marker.
- The Pretreatment Coordinator, Responsible for screening data, must alert the PWD to the noncompliance. This allows the City to determine its enforcement response in a timely manner.

Industrial waste discharges violations are usually detected by the following six ways:



**EXHIBIT A**  
**WILSONVILLE CODE**

- (1) An industrial user reports a violation.
- (2) The City's collection system monitoring and field surveillance detects a possible violation.
- (3) The treatment plant process is upset.
- (4) An unauthorized waste disposal procedure is identified during a facility inspection.
- (5) Investigation of a Citizen Concern Action Report.
- (6) Emergency crews (i.e. police, fire, rescue) report a hazardous material incident.

Industrial source investigations will be initiated for each of the examples presented above, and ensuing enforcement actions will be of an escalating nature (see Enforcement Response Matrix). Enforcement will begin with administration remedies (e.g. Notice of Violation, Consent Orders, Compliance Orders). If necessary, civil/criminal penalties will be sought and/or emergency suspension of sewer service will be ordered. Appropriate fines and penalties (civil/criminal) will be sought, as provided in WC Chapter 8.

The enforcement plan uses a three-level approach to enforcement action toward any noncompliance event.

**LEVEL I:** Responses represent the enforcement efforts utilized by the City to bring the IIU into compliance before a state of significant noncompliance (SNC) is reached. The following enforcement actions are utilized at this level of response.

**Response**

**City Personnel**

- |                                               |                          |
|-----------------------------------------------|--------------------------|
| 1. (Informal) Phone Call                      | Pretreatment Coordinator |
| 2. (Informal) Compliance Meeting              | Pretreatment Coordinator |
| 3. Notice of Violation (WC, Section 8.602(2)) | Pretreatment Coordinator |
| 4. Consent Order (WC, Section 8.602(3))       | Pretreatment Coordinator |

**LEVEL II:** Responses are taken when an IU has reached significant noncompliance. Level II enforcement action must include the issuance of an Administrative Order, as described below:

**Response**

**City Personnel**

- |                                                      |                                        |
|------------------------------------------------------|----------------------------------------|
| 1. Compliance Order<br>(WC, Section 8.602(5))        | Public Works Director                  |
| 2. Cease and Desist Order<br>(WC, Section 8.602 (6)) | Public Works Director<br>City Attorney |



**EXHIBIT A**  
**WILSONVILLE CODE**

- |                                                    |                                        |
|----------------------------------------------------|----------------------------------------|
| 3. Emergency Suspension<br>(WC, Section 8.602 (8)) | Public Works Director<br>City Attorney |
| 4. Termination of Permit<br>(WC, Section 8.602(9)) | Public Works Director<br>City Attorney |

When an IU is in SNC, the Pretreatment Coordinator will do the following:

1. Report such information to DEQ as a component of the City's annual pretreatment program report.
2. Include the IU in the annual published list of industries which were significantly violating applicable pretreatment standards and requirements during the previous 12 months. The procedures the ESM will follow for compiling the list of IU's, includes:
  - a. Prepare a compliance history from the City's pretreatment records for each SIU.
  - b. Review the history of each SIU for either a pattern of noncompliance, or if the SIU has been or continues to be in SNC.
  - c. To the extent that an SIU meets the criteria in (b), above, the SIU will be placed on the list for publication in the largest daily newspaper within the City of Wilsonville.
  - d. The published list of IU's in SNC will include the following information:
    - I. Duration of violation.
    - ii. Parameters and/or reporting requirements violated.
    - iii. Compliance actions taken by the City.
    - iv. Whether or not the IU is currently in compliance or on a compliance schedule.

**LEVEL III:** This level of enforcement is reserved for the extreme occasion when the IU is in SNC and does not respond to an Administrative Order, does not adhere to compliance schedules, and where fines have not been effective in bringing the IU into compliance with pretreatment regulations. Level III enforcement may also be used for willful discharge of wastewater in amounts which cause pass through or interference, and cases of falsification. The timeframe for initiating Level III enforcement actions will range from immediate (e.g. reasonable potential to cause harm to the public, the POTW, or the environment, or a court ordered injunction for gaining access to an IU's facility) to not more than sixty (60) days. This level of enforcement requires the consultation of the City Attorney to determine the appropriateness and legal basis for the action to be implemented.

**Response**

**City Personnel**

- |                                                |                               |
|------------------------------------------------|-------------------------------|
| 1. Injunctive Relief<br>(WC, Section 8.604(1)) | City Attorney<br>City Council |
| 2. Civil Penalties                             | City Attorney                 |



**EXHIBIT A**  
**WILSONVILLE CODE**

- |                             |                                       |
|-----------------------------|---------------------------------------|
| (WC, Section 8.604(2))      | City Council                          |
| 3. Criminal Prosecution     | City Attorney                         |
| (WC, Section 8.604(3))      | City Council                          |
| 4. Supplemental Enforcement | Public Works Director, City Attorney, |
| (WC, Section 8.606)         | City Council                          |

**SECTION VII. TIME FRAMES FOR ENFORCEMENT ACTION AND FOLLOW-UP**

The City will provide timely response to violations. In Section I and Section IV it has been established that the Pretreatment Coordinator will review industrial user reports within five (5) days of receipt. Similarly, violations observed in the field or upon receipt of compliance information will be responded to within five (5) days. Complex or larger violations may require a longer response time, and communications will be made with the industrial user (IU) regarding the time of the City's response. All formal enforcement notices will either be hand-delivered or mailed with return receipt required.

After its initial enforcement response, the City will closely track IU's progress toward compliance. This may be done by inspection, as well as timely receipt of required progress reports. The frequency of user self-monitoring may be increased. When follow-up activities indicate that the violation persists or that satisfactory progress is not being made, the City will escalate its enforcement response, using the steps of the enforcement matrix as a guide.

The Pretreatment Coordinator will establish a manual log to record the receipt of required reports. This log will contain 12 sections. Each section will be titled with the name of the month, January through December. The pages in each monthly section will list all of the industrial users who are required to report. Under each listed industry will be listed the type of report due and its due date. Following the due date will be a place to write the date the report is actually received. Next to each listed industry, also on the same line which identifies required reports and due dates, will be an area to note a summary of compliance status, including enforcement actions, calculations of administrative fines and/or SNC, and enforcement action timelines.

At the end of the month, the material in the report log will be transferred to a computer file created for each industrial user for ongoing storage and retrieval. The written records will be placed in a loose-leaf notebook developed to hold all pretreatment information pertinent to the particular industry.

In summary, the tracking of noncompliance, including SNC will be accomplished as follows:

1. Monitoring reports, inspection reports and compliance reports will be reviewed by the Pretreatment Coordinator within 5 days of receipt. Likewise, all pretreatment program violations will be identified and documented and the initial (Level 1) enforcement response (e.g. phone call



## **EXHIBIT A** **WILSONVILLE CODE**

or compliance meeting **and** an NOV or Consent Order) will occur within 5 days of receipt of reports.

2. Violations classified by the Pretreatment Coordinator as SMC will be followed with an enforceable Level II order to be issued by the Public Works Director within 3 days of receipt or detection of noncompliance.

3. Assisted by the City Attorney, the Pretreatment Coordinator will respond to persistent or recurring violations with an escalated enforcement response (Level III) within 60 days after the initial enforcement action. Violations which threaten health, property or the environment will be treated as an emergency and an immediate enforcement response (e.g. Termination of Permit, Suspension Order, Injunctive Relief) will be initiated.

### **SECTION VIII. RESPONSIBILITIES OF PERSONNEL**

#### **A. POTW Supervisor**

The wastewater treatment plant Supervisor is responsible for the overall operation and maintenance of the POTW, including employee safety, and protection of the treatment plant. The Supervisor **He** is also responsible for compliance with the NPDES permit for wastewater discharge. The Supervisor **He** has the authority to recommend to discontinue sewer service in emergency situations where there reasonably appears to present an imminent endangerment or substantial endangerment to the health or welfare of persons. The Supervisor **He** will work under the direction of the Public Works Director.

#### **B. Pretreatment Coordinator (PC)**

The City will have a Pretreatment Coordinator who will be an individual thoroughly familiar with the program requirements and responsible for ensuring implementation of the City's pre-treatment program requirements. The Pretreatment Coordinator is also responsible for the administration and implementation of the pretreatment program. The Pretreatment Coordinator will screen monitoring data, do inspections, and detect noncompliance. The Pretreatment Coordinator will be the person typically working with industrial users. The Pretreatment Coordinator is responsible for recommending to the Public Works Director any enforcement action and publishing the annual list of significant noncompliance violators. The Pretreatment Coordinator will also review industrial user reports and make reports of violations. The Pretreatment Coordinator is also responsible to track all actions of enforcement, by establishing time lines and all necessary follow-up and make recommendations to the Public Works Director, City Attorney and City Council for enforcement action. The PC **He** will work under direction of the Public Works Director.

#### **C. Public Works Director (PWD)**

As provided by WC, Section 8.006(58), the Public Works Director is the person designated to supervise and assume responsibility for the overall operations of the City's public works infrastructure, including the POTW, NPDES, permit compliance and the industrial



## EXHIBIT A

### WILSONVILLE CODE

pretreatment program. The PWD is primarily involved in the escalation of enforcement responses and determining administrative fines. The Public Works Director works under the direction of the City Manager and supervises the Pretreatment Coordinator.

#### **D. City Attorney**

The City Attorney will be responsible for advising staff and City Council on pretreatment enforcement matters. The Attorney ~~He~~ works under the direction of the City Council. The City Attorney will also be responsible for preparation and implementation of judicial proceedings.

#### **E. City Council**

The City Council for the City of Wilsonville will be responsible for authorizing any Level III enforcement action taken, except in an emergency. As defined by City Charter, the City Council will be ultimately responsible for effluent quality, sludge use and disposal, NPDES compliance, the issuance of administrative orders, fines and assessments, and any judicial action followed by the sewer use ordinance.

### **SECTION IX. ENFORCEMENT RESPONSE MATRIX**

#### **A. Definitions**

AF	Administrative Fee
CA	City Attorney
CC	City Council of the City of Wilsonville
CDO	Cease and Desist Order. Unilateral order to require immediate IU compliance
CM	Compliance Meeting
CO-1	Consent Order. Voluntary compliance agreement, including specified timeframe
CO-2	Compliance Order. Unilateral order to require IU compliance within specified timeframe
ES	Emergency suspension of IU discharge and discharge permit
ESM	Environmental Services Manager
IU	Industrial User
Level III	When IU does not comply with CO-1 and CO-2, and AF has not been effective in bringing the IU into compliance, this level of enforcement requires the consultation of the CA to determine appropriate legal action which may include; injunctive relief, civil penalties, criminal prosecution
NOV	Notice of Violation
PC	Pretreatment Coordinator
PWD	Public Works Director
SNC	Significant Noncompliance
SCO	Show Cause Order requiring IU to appear and demonstrate why the City should not take a proposed enforcement action against it. The meeting may also serve as a forum to discuss corrective actions and compliance schedules.
TP	Termination of Permit



## EXHIBIT A WILSONVILLE CODE

### **B. Applying the Enforcement Matrix**

The matrix specifies enforcement actions for each type (or pattern) of noncompliance. The Pretreatment Coordinator will select an appropriate response from the list of enforcement actions indicated by the matrix. There are a number of factors to consider when selecting a response from among these actions. Several of the factors are identical to those used in originally establishing the guide:

1. Good faith of the user.
2. Compliance history of the user.
3. Previous success of enforcement actions taken against the particular user.
4. Violation's effect on the receiving waters.
5. Violation's effect on the POTW.

Since the remedies designed in the matrix are all considered appropriate, the city staff and city council must weigh each of the factors outlined above before deciding whether to use a more or less stringent response. City personnel shall consistently follow the enforcement response matrix. To do otherwise sends a signal to industrial users and the public that the City is not acting in a predictable manner and may subject the City to charges of arbitrary enforcement decision making, thereby jeopardizing future enforcement. The enforcement response matrix is to be used as follows.

1. Locate the type of noncompliance in the first column and identify the most accurate description of the violation in column 2.
2. Assess the appropriateness of the recommended response(s) in column 3. First offenders or users demonstrating good faith efforts may merit a more lenient response. Similarly, repeat offenders or those demonstrating negligence may require a more stringent response.
3. From column 3, apply the enforcement response to the industrial user. Specify correction action or other responses required of the industrial user, if any. Column 4 indicates personnel responsible for initiating each response.
4. Follow-up with escalated enforcement action if the industrial user's response is not received or the violation continues.



**EXHIBIT A**  
**WILSONVILLE CODE**

**SECTION IX. ENFORCEMENT RESPONSE MATRIX**

**ENFORCEMENT RESPONSE MATRIX**

Noncompliance	Nature Of Violation	Violation Level	Enforcement Responses	Staff
I. Unauthorized Discharge (No Discharge Permit)				
A. Discharge without a Permit	IU unaware of requirement, no harm to POTW or Environment	I	Phone Call & NOV with Permit Application Form	PC
	IU unaware of requirement, Harm to POTW or Environment	II	CO-2 with AF	PWD
	Recurring Un-permitted Discharge	III	SCO	CA, CC
B. Discharge without a Permit Failure to Renew Existing Permit	IU did not submit permit renewal application within 90 days of permit expiration date	I	Phone Call & NOV with Permit Application Form	PC
	IU did not submit permit renewal application follow NOV and permit application, exceeded 45 days beyond submittal due date.	II	CO-2 with AF	PWD
	IU did not submit permit renewal application follow NOV and permit application, exceeded 60 days beyond submittal due date.	III	Confer with CA to determine appropriated Level III enforcement action	PWD, CA. CC



## EXHIBIT A WILSONVILLE CODE

### ENFORCEMENT RESPONSE MATRIX (Continued)

Noncompliance	Nature Of Violation	Violation Level	Enforcement Responses	Staff
II. Discharge Limit Violation				
A. Reported Limit Violation	Sample results exceed numerical permit limit but does not exceed Technical Review Criteria for severity.	I	Phone Call &/or NOV	PC
	Four (4) violations for same pollutant with three (3) consecutive months	II	CM and CO-1	PWD
	Sample results exceed numerical permit limit (chronic violation) and exceeds the Technical Review Criteria (TRC)	II	CO-2 and AF pending severity of violation with adverse impact to POTW	PC, PWD,
	Recurring Violations resulting in SNC (Significant Noncompliance)	II	CDO with AF	PWD CA,
	Discharge limit violation which causes POTW interference, pass-through or health hazard.	II	CDO with AF	PWD, CA,
	Any discharge causing endangerment to the public or the environment	III	ES and SCO	PWD, CA, CC
B. pH Limit Violations – Grab Sampling	Any excursion detected during a 24-hour period.	I	Phone call & NOV,	PC
	Four (4) violations within 3 consecutive months	I	CM & CO-1	PC
	pH violations resulting in Significant Noncompliance	II	CO with possible AF	PWD, CA,CM
C. pH Limit Violation – continuous	Excursion exceeding 60 min. in 24 hour period (level 1) except that per 40 CFR 403.5(b)(2) any discharge below 5.0 is a violation. Excursions above 11.0 is also a violation.	I	Phone & NOV. ** 4 excursions in one quarter: CM & C)-1	PC
	Excursions exceeding 7 hours and 26 min. during a calendar	I	Phone call & NOV. **4 excursions in one quarter: CM &	PC



## EXHIBIT A

### WILSONVILLE CODE

	month> (Level I)		CO-1	
	Daily or monthly violations occurring during 66% or more of a 6 month period. (Level II)	II	CO-2 with AF	PWD
D. pH Limit Violation – resulting in harm to POTW or environment	pH violations resulting harm to POTW or environment are considered significant non compliance	II	If reported IU, CO-2 with possible AF.  If not reported by IU, CDO with AF	PWD, CA

#### ENFORCEMENT RESPONSE MATRIX (Continued)

Noncompliance	Nature Of Violation	Violation Level	Enforcement Responses	Staff
II. Discharge Limit Violation (continued)				
E. Spill or Slug Discharge resulting in mass loading violations	Reported by IU: No damage to POTW, Isolated Occurrence.	I	Phone call & NOV.	PC
	Second occurrence within 6 month period.	I	CO-1	PC
	Reported by IU. Resulting in pass-through interference, or damage to POTW. Isolated occurrence.	II	CO-2 with possible AF	PWD
	Second occurrence within 6 month period.	III	Confer with CA to determine appropriated Level III enforcement action	PWD, CA. CC
	Not Reported by IU. No damage to POTW	I	CM and CO-1	PC
	Second occurrence within 6 month period.	II	CO-1 with possible AF	PWD, CA, CM
	Not Reported by IU. Resulting in interference, pass-through or damage	II	CDO with AF	PWD, CA
	Second occurrence within 6 month period.	III	Confer with CA to determine appropriated Level III enforcement action	PWD, CA. CC
III Monitoring and Reporting Violations				
A. Reporting Violations	Report is improperly signed or certified.	I	Phone call & NOV	PC
	Second occurrence within 6 month period	II	CM and CO-1	PC
	Scheduled reports late, 45 days or less, isolated incident	I	Phone call & NOV	PC
	Scheduled reports late	II	CO-2 with AF	PWD



**EXHIBIT A**  
**WILSONVILLE CODE**

	more than 45 days.			
	Failure to Submit Reports; or reports are always late.	II	CDO with possible AF	PWD, CA, PC
	Incomplete Reports	I	Phone Call &/or NOV second incident CM and CO-1	
	Failure to Accurately Report noncompliance	II	CO-2 with AF	PWD, CA
	Scheduled reports late more than 60 days	III	SCO	PWD, CA, CC

**ENFORCEMENT RESPONSE MATRIX (Continued)**

Noncompliance	Nature Of Violation	Violation Level	Enforcement Responses	Staff
III Monitoring and Reporting Violations (continued)				
A. Reporting Violations (continued)	Report Falsification	III	Confer with CA to determine appropriated Level III enforcement action; Possible criminal actions	PWD, CA, CC
B. Monitoring Violations	Failure to monitor all pollutants as specified by discharge permit	I	Phone Call &/or NOV	PC
	Second occurrence within 6 month period	II	CO-1with a possible AF	PWD, PC
	Improper sampling with evidence of intent	III	SCO and Confer with CA to determine appropriated Level III enforcement action; Possible criminal actions	PWD, CA, CC
	Failure to install monitoring equipment. Delay of 30 days or less, with good cause	I	Phone Call &/or CO-1	PC
	Failure to install monitoring equipment. Delay of more than 30 days.	II	CM andCO-1 with possible AF	PWD
	Pretreatment Equipment and Monitoring Equipment no maintained or out of service, evidence of neglect.	II	CO-2 with possible AF	PWD



## EXHIBIT A

### WILSONVILLE CODE

#### ENFORCEMENT RESPONSE MATRIX (Continued)

Noncompliance	Nature Of Violation	Violation Level	Enforcement Responses	Staff
III Monitoring and Reporting Violations (continued)				
C. Compliance Schedule in Discharge Permit	Milestone Date missed by 30 days or less	I	Phone Call &/or NOV	PC
	Milestone date missed by more than 30 days or delay will affect other compliance dates (good cause of delay)	I	CM & CO-1	PC
	Milestone date missed by more than 30 days or delay will affect other compliance dates (without good cause for delay).	II	CO-2 with possible AF	PWD
	Violation of Compliance Schedules issued to enforcement discharge permit compliance schedule.	III	SCO and Confer with CA to determine appropriated Level III enforcement action; Possible criminal actions	PWD, CA, CC
IV. Other Violations				
A. Waste Streams are Diluted in lieu of Pretreatment	Initial Violation	II	CDO with possible AF	PWD, CA
	Recurring Violations	III	SCO and Confer with CA to determine appropriated Level III enforcement action; Possible criminal actions	PWD, CA, CC
B. Failure to meet compliance date for starting construction or attaining final compliance.	No Harm to POTW or environment. Delay, with good cause, less than 90 days.	I	CM and CO-1	PC
	Delay exceeds 90 days	II	CO-2 with possible AF	PWD
C. Failure to Properly Operate and Maintain a Pretreatment Facility	Evidence of neglect of intent	II	CO-2 with possible AF	PWD



## EXHIBIT A WILSONVILLE CODE

### ENFORCEMENT RESPONSE MATRIX (Continued)

Noncompliance	Nature Of Violation	Violation Level	Enforcement Responses	Staff
V. Violations Detected During Site Visit				
A. Entry Denied by the IU	Entry consent or copies of records denied.	II	Obtain warrant and return to IU for site visit. Follow-up with SCO for TP	PC PWD, CA, CC
B. Illegal Discharge	No Harm to POTW or environment	I	CM and CO-1	PC,
	Discharge causes harm or there is evidence of willful intent or neglect.	II	CDO with possible AF	PWD
	Recurring with evidence of willful intent or neglect.	III	SCO and Confer with CA to determine appropriated Level III enforcement action; Possible criminal actions	PWD, CA, CC
C. Improper Sampling	Unintentional sampling at incorrect location	I	Phone Call &/or NOV	PC
	ReOccurring unintentional sampling and incorrect location	II	Phone call &/or NOV	PC
	Reoccurring unintentional using incorrect techniques	II	Phone Call &/or NOV	PC
	Unintentionally using incorrect sample collection techniques	I	Phone Call &/or NOV	PC
D. Inadequate Record Keeping	Inspection finds records incomplete or missing	I	NOV possible CO-1	PC
	Recurrence of records incomplete or missing.	II	CO-2 with possible AF	PWD
E. Failure to report additional monitoring	Inspection finds additional monitoring data	I	NOV with possible CO-1	PC
	Recurrence of failure to report additional monitoring data.	II	CO-2 with possible AF	PWD



**EXHIBIT A**  
**WILSONVILLE CODE**

**SUMMARY OF  
TIME FRAMES FOR RESPONSES**

1. Compliance Reports – reviewed within 5 days of receipt.
2. All violations will be identified and documented within 5 days of receiving compliance information.
3. **Level I** Enforcement Response (NOV, CO-1) – within 5 days of violation detection.
4. **Level II** Enforcement Response (CO-2, CDO, EX, TP, SCO) – within 30 days of violation detection.
5. **Level III** Enforcement Response (judicial and supplemental enforcement actions) time frame is subject to case-by-case legal review by the City Attorney, but in no case will the initiation of a Level III action exceed 60 days.
6. Recurring Violations – follow-up enforcement within 60 days.
7. Violations which threaten health, property or environmental quality are considered emergencies and will receive immediate responses such as halting the discharge or terminating service.

Entire Chapter 8 of the Code repealed and replaced by Ordinance No. 654 adopted on August 18, 2008.

Section 8.700-8.750 Added by Ordinance No. 664, adopted 6/1/09

Amended by Ordinance No. 689, adopted January 20, 2011 (correct scrivener errors)

Amended by Ordinance No. 753, adopted November 3, 2014



### Oregon State Spill Rules

State rules regarding spills or releases of oil and/or hazardous substances is found in OAR 340, Division 142 or go to the website at <http://www.deq.state.or.us/regulations/rules.htm>. The rules state: In the event of a spill or release or threatened spill or release of oil or hazardous material, the person owning or having control over the oil or hazardous material shall take the following actions, as appropriate.

- Immediately implement the site's Spill Prevention Control and Countermeasure (SPCC) or contingency plan.
- If no plan exists, immediately take the following actions:
  - a. Activate alarms or warn persons in the immediate area.
  - b. Undertake every reasonable method to contain the oil or hazardous material.
- In the case of a medical emergency or public safety hazard, notify local emergency responders (fire department, ambulance, etc.) using 911 where available.
- If the amount of oil or hazardous material exceeds the reportable quantity in any 24-hour period, report the spill or release to the **Oregon Emergency Response System (1-800-452-0311 in-state, and (503) 378-4124 out-of-state)**.

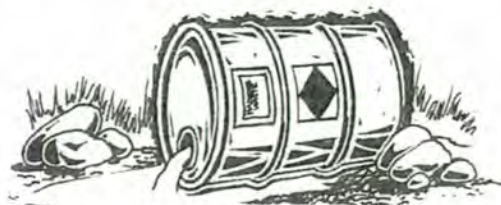
If the quantity of oil or hazardous material exceeds the quantity referenced in "d" below, report the spill or release to the **National Response Center, 1-800-424-8802**.

**Remember:** All hazardous wastes are hazardous substances, but all hazardous substances are NOT hazardous waste.

### Reportable Quantity

Reportable quantity as defined in OAR 340-142-0050:

- (1) Spills and releases, or threatened spills or releases of oil or hazardous materials as defined by OAR 340-142-0005(9) in quantities equal to or greater than the following amounts must be reported
  - a. Any quantity of radioactive material or radioactive waste;
  - b. If spilled or discharged into waters of the state or in a location from which it is likely to escape into waters of the state any quantity of oil that would produce a visible film, sheen, oily slick, oily solids, or coat aquatic life, habitat or property with oil, but excluding normal discharges from properly operating marine engines;
  - c. If spilled on the surface of the land, and not likely to escape into waters of the state, any quantity of oil over one barrel (42 gallons);
  - d. An amount equal to or greater than the quantity listed in 40 CFR Part 302—Table 302.4 (List of Hazardous Substances and Reportable Quantities) and amendments adopted prior to July 1, 2002;
  - e. Ten pounds or more of a hazardous material not otherwise listed as having a different reportable quantity by the Department or the United States Environmental Protection Agency on the list of hazardous substances in 40 CFR 302.4;
  - f. Any quantity of chemical agent (such as nerve agents GB or VX, blister agent HD, etc);
  - g. Two hundred pounds (25 gallons) of pesticide residue;
  - h. Any quantity of a material regulated as a Chemical Agent under ORS 465.550;
  - i. Any quantity of a material used as a weapon of mass destruction, or biological weapon;
  - j. One pound (1 cup) or more of dry cleaning solvent, including perchloroethylene, spilled or released outside the designed containment by a dry cleaning facility regulated under ORS 465.505(4).





## CITY COUNCIL MEETING STAFF REPORT

<b>Meeting Date:</b>  November 3, 2014	<b>Subject:</b> Board and Commission Terms of Office  <b>Staff Member:</b> Sandra King, City Recorder <b>Department:</b> Administration	
<b>Action Required</b>	<b>Advisory Board/Commission Recommendation</b>	
<input type="checkbox"/> Motion <input type="checkbox"/> Public Hearing Date: <input type="checkbox"/> Ordinance 1 <sup>st</sup> Reading Date: <input type="checkbox"/> Ordinance 2 <sup>nd</sup> Reading Date: <input type="checkbox"/> Resolution <input checked="" type="checkbox"/> Information or Direction <input type="checkbox"/> Information Only <input type="checkbox"/> Council Direction <input type="checkbox"/> Consent Agenda	<input type="checkbox"/> Approval <input type="checkbox"/> Denial <input type="checkbox"/> None Forwarded <input type="checkbox"/> Not Applicable  <b>Comments:</b>	
<b>Staff Recommendation:</b> N/A		
<b>Recommended Language for Motion:</b> N/A		
<b>PROJECT / ISSUE RELATES TO:</b> <i>[Identify which goal(s), master plans(s) issue relates to.]</i>		
<input type="checkbox"/> Council Goals/Priorities	<input type="checkbox"/> Adopted Master Plan(s)	<input checked="" type="checkbox"/> Not Applicable

### ISSUE BEFORE COUNCIL:

Fill the expiring terms on the City's standing Board and Commissions under the guidelines of Resolution No. 2321.

### EXECUTIVE SUMMARY:

In 2011 Council adopted Resolution No. 2321 which sets out the process for the receipt of applications and provides an appointment process for the City's boards, commissions.

The majority of the City boards and commissions terms end at the end of the calendar year, or December 31<sup>st</sup>. At the end of the year a number of terms will end for members serving on the City's appointed boards or commissions. Some of these board members are eligible for



reappointment, and some are not having served the total number of consecutive terms allowed under City Code.

I've included a chart showing whose term is ending, whether they are eligible for reappointment, and whether they want to be reappointed to another term.

<b>BOARD OR COMMISSION</b>	<b>ELIGIBLE FOR APPOINTMENT</b>	<b>WANTS TO BE REAPPOINTED</b>
<b>BUDGET COMMITTEE 3-year terms 10 members</b>		
Alan Steiger	YES	YES
Lonnie Gieber	YES	YES
<b>DRB Panel A 2 year terms 5 members</b>		
Mary Bower	NO	N/A
Kenneth Ruud	YES	NO
Simon Springall	YES	YES Interested in Planning Commission
Kristin Akervall	YES	YES
<b>DRB Panel B 2 year terms 5 members</b>		
Andrew Karr	NO	N/A Interested in Budget Committee
Jhuma Chaudhuri	YES	NO
Aaron Woods	YES	
<b>PARKS &amp; RECREATION BOARD 4 year terms, 5 members</b>		
Ken Rice	YES	YES
Parker Johnstone	NO	N/A
<b>PLANNING COMMISSION 4 year terms 7 members</b>		
Ben Altman	YES	NO

#### **EXPECTED RESULTS:**

All boards and commissions will have the correct number of members set out by Code.

#### **TIMELINE:**

Resolution No. 2321 set out an application period of 30 days, after that the Council will review the applications, and make a recommendation to the Mayor within two weeks of receiving the applications and supporting documentation.

The deadline to submit applications is November 21, 2014. Once the deadline has expired, all applications and letters of interest will be forwarded to the Council for consideration.

The appointment and/or reappointment of board members has been scheduled for the first



Council work session in December 2014 with the hope of having all appointments in place beginning January 1, 2015.

**CURRENT YEAR BUDGET IMPACTS: N/A**

**FINANCIAL REVIEW / COMMENTS: N/A**

Reviewed by: \_\_\_\_\_ Date: \_\_\_\_\_

**LEGAL REVIEW / COMMENT: N/A**

Reviewed by: \_\_\_\_\_ Date: \_\_\_\_\_

**COMMUNITY INVOLVEMENT PROCESS:**

Information about the ending terms and application process was posted on the City's website, in the *Boones Ferry Messenger*, provided to the *Spokesman*, press releases issued, and flyers posted on the public bulletin boards located in city buildings, as well as being announced at Council meetings.

**POTENTIAL IMPACTS or BENEFIT TO THE COMMUNITY** (businesses, neighborhoods, protected and other groups):

Appointments to fill the expiring terms beginning January 1, 2015 will ensure the Boards and Commissions have the requisite number of members to contribute to the decision making process and move the city's business forward.

**ALTERNATIVES:**

It is at Council's discretion whether or not to interview the Board and Commission applicants prior to making a recommendation on the appointments and/or reappointments. If Council does not feel there are adequate applications to appoint from, they may direct the City Recorder to re-advertise the positions.

**CITY MANAGER COMMENT:**

**ATTACHMENTS: None.**



# The Boones Ferry Messenger

Monthly newsletter of the City of Wilsonville

November 2014

## Volunteers Needed for City Boards and Commissions

The City of Wilsonville has a total of 12 openings on various boards and commissions that become available starting January 2015. Volunteers who serve on the City's committees make a valuable contribution towards improving the community and local government's ability to serve residents, businesses and visitors. The deadline to apply for an open position is Friday, November 21, at 4:30 p.m.

"We are looking for community members who desire taking on leadership roles and who are passionate about retaining the high quality of life we currently enjoy in Wilsonville," urged Mayor Tim Knapp.

Of the 12 open positions, nine are currently filled by board and commission members who have terms that expire at the end of the year but are eligible for reappointment. Open positions include:

- Two positions for three-year terms on the Budget Committee
- Seven positions for two-year terms on the Development Review Board
- Two positions for four-year terms on the Parks and Recreation Advisory Board
- One position for a four-year term on the Planning Commission

For more information on volunteer service on City boards, please contact Sandra King, City Recorder, at City Hall, 29799 SW Town Center Loop East, Wilsonville, OR 97070; 503-570-1506; [king@ci.wilsonville.or.us](mailto:king@ci.wilsonville.or.us). Applications are also available on the City's website at [www.ci.wilsonville.or.us/Apply](http://www.ci.wilsonville.or.us/Apply).



Parks and Recreation Advisory Board Member Elaine Marie Swyt and City Councilor Julie Fitzgerald at the recent opening of the new Parks and Recreation building.

## Roads Open, Detours End and Circulation Improves as Transportation Projects are Completed

Throughout October and into November, a number of major transportation projects are being finished that provide community members new transportation

The opening of Villebois Drive replaces SW 110th Avenue, which was closed earlier this year. The former Grahams Ferry Road detour route to Boeckman has

### Mayor's Message

#### Wilsonville is a Great Place to Live and Work—And We Know It!

A recently completed, statistically valid National Citizen Survey demonstrates that Wilsonville residents give exceptionally high marks to the quality of our community and caliber of City services. We are very pleased to learn that ratings of the overall community and City-provided services have increased since the last survey in 2012, and also that our residents' satisfaction is among the highest ever measured nationwide by this survey.



*Our residents' satisfaction is among the highest ever measured nationwide by this survey.*

The first key finding of the survey is that residents continue to enjoy an exceptional quality of life. Nine out of 10

residents rated as "excellent" or "good" Wilsonville's overall quality of life, our town as a place to raise kids and to live, and the quality of neighborhoods.

Residents' satisfaction with our parks is among the top in the nation, along with the quality of our water, public library, bus/transit service, sidewalk maintenance, and street repairs and cleaning.

The second major conclusion is that residents feel safe, with at least nine in 10 reporting a sense of personal safety overall, in both neighborhoods and our commercial areas. Four out of five residents rated



## **Leaders Needed to Serve on City Boards and Commissions**

The City of Wilsonville is looking for volunteer leaders to serve on a variety of the City's boards and commissions. The openings, which are the result of expiring terms for the current board and commission members, are on the Planning Commission, Budget Committee, Development Review Boards and Parks and Recreation Advisory Board.

**The deadline to apply is Friday, November 21 at 4:30**

**p.m.** Applications are available directly from Sandra King, City Recorder, at 29799 SW Town Center Loop, Wilsonville, OR, 97070, 503-570-1506, [king@ci.wilsonville.or.us](mailto:king@ci.wilsonville.or.us) and are also available online at [www.ci.wilsonville.or.us/application](http://www.ci.wilsonville.or.us/application) by selecting City Hall, Boards and Commissions and Applications. Applications may be submitted in-person, by e-mail or fax.

The Planning Commission, which has one opening, is an appointed seven-member panel that is responsible for making recommendations to the City Council on all legislative land-use and planning matters. This could include plans for the regulation of future growth and development in Wilsonville, plans for the promotion of the industrial, commercial and economic needs of the community and the study of measures that promote the public health, safety and welfare of the citizens of the city.

There are two openings on the Parks and Recreation Advisory Board. The Board is responsible for addressing the community's current and future parks and recreational needs and also serving as a communication link between the public and City leaders. The



Board also advises City Council on any referred policy matters that pertain to parks and recreation.

The Development Review Board has seven openings and consists of two five-member panels, each of which is empowered to review and take quasi-judicial action on land-use applications. When the City receives a land-use application, it is assigned to one of the two panels, which then conducts hearings and renders decisions on all aspects of that application.

The Budget Committee has two openings and consists of the five City Council members and five residents at large. The citizens are appointed by the governing body and serve three year terms. The Committee meets as necessary during the year and at a minimum must meet each spring to review the budget proposed by the City Manager. The meetings are open to the public and input from the public is received at the meetings. At a typical spring-time meeting, City staff presents financial overviews, highlights changes in programs and costs, and provides information on the City's long term fiscal outlook.

For more information, contact Sandra King, City Recorder, at 503-570-1506; [king@ci.wilsonville.or.us](mailto:king@ci.wilsonville.or.us).





**Government Finance Officers Association**

203 North LaSalle Street, Suite 2700  
Chicago, Illinois 60601-1210  
312.977.9700 fax: 312.977.4806

September 30, 2014

The Honorable Tim Knapp  
Mayor  
City of Wilsonville  
29799 SW Town Center Lp E  
Wilsonville, OR 97070

Dear Mayor Knapp:

I am pleased to notify you that City of Wilsonville, Oregon has received the Distinguished Budget Presentation Award for the current budget from the Government Finance Officers Association (GFOA). This award is the highest form of recognition in governmental budgeting and represents a significant achievement by your organization.

When a Distinguished Budget Presentation Award is granted to an entity, a Certificate of Recognition for Budget Presentation is also presented to the individual or department designated as being primarily responsible for its having achieved the award. This has been presented to:

**Cathy Rodocker, Assistant Finance Director**

We hope you will arrange for a formal public presentation of the award, and that appropriate publicity will be given to this notable achievement. A press release is enclosed for your use.

We appreciate your participation in GFOA's Budget Awards Program. Through your example, we hope that other entities will be encouraged to achieve excellence in budgeting.

Sincerely,

Stephen J. Gauthier, Director  
Technical Services Center

Enclosure



# **City of Wilsonville**

## **August 2014**



**Clackamas County Sheriff's Office**  
**2223 Kaen Rd**  
**Oregon City, OR 97045**

[www.co.clackamas.or.us/sheriff](http://www.co.clackamas.or.us/sheriff)



## Monthly Summary

During August 2014, the Clackamas County Sheriff's Office provided law enforcement service to the City of Wilsonville on a 24 hour a day basis. During this time period the Sheriff's Office answered 622 calls for service, which was an average of 20.1 calls per day.

The monthly average for calls for service during the past three years has been 485.5. The 622 calls in the City during the month of August reflect a 28.1% increase over the average during the last three years.

Below is a chart showing the number of calls for service in the City during the last 5 years.

<u>Year</u>	<u>Number of Calls</u>	<u>Monthly Average</u>	<u>Daily Average</u>
2009	6,273	522.8	17.2
2010	5,803	483.6	15.9
2011	5,539	461.6	15.2
2012	5,709	475.8	15.6
2013	6,230	519.2	17.1

An overall look at the shift activity reflects the following percentages of calls taken, traffic stops made and reports written for August.

	<u>Percentage of Calls Taken</u>	<u>Percentage of Traffic Stops</u>
<b>Graveyard:</b>	<b>25.6%</b>	<b>25.1%</b>
<b>Day Shift:</b>	<b>40.5%</b>	<b>35.1%</b>
<b>Swing Shift:</b>	<b>33.9%</b>	<b>39.8%</b>

During August 2014, 251 traffic stops were made in the City with the following breakdown for each shift.

	<u>Total</u>		<u>Graveyard</u>		<u>Days</u>		<u>Swing Shift</u>	
Stops Made:	251	=	63	25.1%	88	35.1%	100	39.8%
Citations Issued:	142	=	24	16.9%	66	46.5%	52	36.6%

Included in the above totals are 66 traffic stops (26.3%) and 59 citations (41.5%) issued by the Traffic Unit.



### Calls for Service

Number of Calls Per Shift	August 2014		Monthly Average 2013	
	622		519.2	
Graveyard (2100-0700)	159	25.6%	103.3	19.9%
Day Shift (0700-1700)	252	40.5%	228.4	44.0%
Swing Shift (1100-0300)	211	33.9%	187.4	36.1%
Average Number of Calls Per Day	20.1		17.1	

### Other Officer Activity

Type of Activity	August 2014	2013 Monthly Average
Bike Patrol		N/A
Follow-Up Contact	67	73.4
Foot Patrol	7	4.2
Premise Check	107	97.0
Subject Stop	52	31.6
Suspect Contact	3	4.3
Suspicious Vehicle Stop	63	38.5
Warrant Service	11	15.1
Total:	310	264.0

The chart on the following page shows the types of calls for service received during the month. These calls do not reflect actual criminal activity. In some cases the call was dispatched as a particular type of incident, but it was later determined to be of a different nature. For actual criminal activity during the month see the "Reports Written" chart.



### Types of Calls

Type of Calls	August 2014	2013 Monthly Average
Abandoned Vehicle	7	0.8
Accidents (All)	25	25.2
Alarms	70	49.8
Animal Complaint	22	8.8
Assault	5	4.1
Assist Outside Agency	6	11.6
Assist Public	41	36.7
Burglary	4	6.2
Criminal Mischief	32	14.3
Death Investigation	1	2.2
Disturbance	36	26.7
Extra Patrol Request	10	19.5
Fire Services	1	7.1
Fraud	8	11.5
Hazard	13	12.6
Juvenile Problem	16	14.4
Kidnap		.0
Mental	2	5.6
Minor In Possession	2	0.8
Missing Person	2	2.0
Noise Complaints	14	8.6
Open Door / Window	5	2.5
Promiscuous Shooting	1	1.3
Property Found / Lost / Recovered	12	13.9
Provide Information	27	27.2
Prowler		0.8
Recovered Stolen Vehicle		2.3
Robbery		0.9
Runaway Juvenile	2	5.3
Sexual Crime (All)	4	3.1
Shooting		0.2
Stolen Vehicle / UUMV	4	4.9
Suicide Attempt / Threat	7	6.7
Suspicious Circumstances	14	12.4
Suspicious Person	33	25.3
Suspicious Vehicle	15	11.3
Theft / Shoplift	41	37.9
Threat / Harassment / Menacing	21	14.8
Traffic Complaint	48	26.9
Unknown / Incomplete Call	14	13.3
Unwanted / Trespassing	13	10.9
Vice Complaints (Drugs)	5	6.3
Violation of Restraining Order	1	1.5
Welfare Check	20	13.5
Other Not Listed Above	8	7.7
<b>Total:</b>	<b>622</b>	<b>519.2</b>



### Median Response Times to Dispatched Calls

All Dispatched Calls	All Calls	Priority 1 & 2 Calls
<b>Input to dispatch:</b> (Time call was on hold)	2:49 Minutes	2:09 Minutes
<b>Dispatch to Arrival:</b> (Time it took deputy to arrive after being dispatched)	5:15 Minutes	4:39 Minutes

### Reports Written

Type of Report	August 2014	2013 Monthly Average
Accident	Not available at this time	15.4
Theft		30.1
Criminal Mischief		11.0
Burglary		4.5
Stolen Vehicle		3.8
Identity Theft		1.9
Assault		2.1
Drug Crimes		4.8
Miscellaneous Reports		127.9
<b>Report Totals:</b>		<b>201.5</b>

Shift Totals	August 2014	2013 Monthly Average
Graveyard Shift:		38.7 19.2%
Day Shift:		103.4 51.3%
Swing Shift:		59.4 29.5%





[WilsonvilleParksandRec.com](http://WilsonvilleParksandRec.com)

DISCLOSURE: Messages to and from this E-Mail address may be subject to Oregon Public Records Law.

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**From:** Ian Holzworth [<mailto:iholzworth@WalkerMacy.com>]

**Sent:** Wednesday, October 22, 2014 2:49 PM

**To:** Sherer, Stan; Stevenson, Brian

**Subject:** Open House 1 press release

The Memorial Park Master Plan Update is being undertaken by the Wilsonville Parks and Recreation Department to better understand how the park is currently functioning and to set the course for the next decade of use. Currently, the park is heavily utilized by the community for both active and passive recreation. The Master Plan update will guide the future of the park to best meet current and future needs. The consultant team, led by Walker Macy, is undertaking an interactive multi-stepped process to develop the master plan. Phase One includes analysis of the park's physical characteristics and recreational uses. This work will be followed by the development of a series of alternative concept plans for possible park improvements during phase two. The third phase will refine the alternatives into a preferred Master Plan for the park with the fourth phase documenting the plan and steps toward implementation. Throughout this process the public is encouraged to participate through a series of open houses.

The **November 5<sup>th</sup> Open House** will be the first of three open houses the public will have to provide input into the master Plan process. On **Thursday, November 5<sup>th</sup>, from 7:00pm to 9:00pm** the city will present initial data gathering and analysis of the Memorial Park Master Plan update project. At 7:00pm initial findings will be presented followed by an open house where participants can discuss their thoughts about the park and ideas for its future with the consultant team and Parks and Recreation department representatives.

The 2<sup>nd</sup> and 3<sup>rd</sup> open houses are TBD, but tentatively scheduled for December and February respectively.

IAN HOLZWORTH  
ASSOCIATE | LANDSCAPE DESIGNER

**WALKER | MACY**  
503.228.3122



BY ROBERT ATKINSON

# ECONOMIC DEVELOPMENT IN A GLOBAL, INNOVATION-BASED ECONOMY

What local governments need to know

## TAKEAWAYS

› Today's economic environment is dramatically different. Find out what this means for the practice of economic development.

› There are new drivers—like innovation and speed to market—to local economic development success.

**I**t's always risky to think that things were better in the past, but for city and county officials involved in economic development it might seem like that.

The world of economic development has changed dramatically in the past decade or so, and in many ways for the worse.

Not only is there more demand, with more jurisdictions both in America and outside its borders engaged in economic development, but there also is less supply that includes fewer company relocations, less corporate investment, and fewer business startups. As a colleague from North Carolina long ago quipped about his state's economic development strategy,

"We shoot anything that flies and claim anything that falls."

Today, there are more "shooters" and fewer "ducks." This article first explains why this is the case, considers the implications for economic development practice, and offers some insights on how cities and counties can respond.

## The New Economic Development Environment

After World War II, when Northeast and Midwest states and local governments realized their factories could relocate anywhere in the country, they began to compete fiercely to retain and attract those "smokestacks." By the 1970s, virtually every state had established an economic development agency whose mission was to go out and compete with an arsenal of tools ranging from tax breaks, to free land, to workforce training programs.

During this era, higher income areas, mostly in the Northeast, the Midwest, and California, served as "seedbeds" for the development of new innovations, companies, and industries. But once new product and process innovations matured, they no longer needed to be near corporate headquarters and R&D labs.

They could be produced in lower-cost rural or metro regions, often in the South and West. New products might be developed in Boston or Chicago, but once their technology and production systems matured, that production would be moved to a place like North Carolina where costs were lower.

## Changes of the 1970s

By the late 1970s, the process began to change, slowly at first, and then much more rapidly in the past decade as globalization took hold. As technology enabled more globally integrated trade and production systems, standardized



production could now locate in low-cost nations, not just in low-cost areas of the United States.

Indeed, low-cost U.S. areas were not all that low cost anymore. Offshore locations, particularly in emerging developing economies, were made all the more attractive by the lack of unions, generous investment incentives provided by governments desperate to attract foreign investment, and a relatively strong U.S. dollar that made offshore production cost less.

At the same time, the challenge to the U.S. economy from developed economies grew. For most of the post-war era, the United States led the world economy and produced a vast array of new companies, many of which grew to become global leaders, bestowing the country with new factories, offices, and job growth.

Competition from other countries like Germany and Japan was either relatively slight or nonexistent. Most other nations were too small to attain the economies of scale firms needed to succeed. Still others were effectively isolated from the global economy, located behind the Iron Curtain or constrained by similar policy barriers.

Others mistakenly put in place a host of antigrowth policies that kept them on the global economic sidelines. Metaphorically, the United States was fielding a “dream team” while others were playing in the minor leagues.

### Upheaval Starting in the 1980s

U.S. manufacturing jobs peaked in 1979, and declined gradually through the end of the 1990s. But production jobs hemorrhaged in the 2000s when one-third of U.S. manufacturing jobs were lost.<sup>1</sup> Moreover, rural U.S. manufacturing was hit as hard as urban, and the South as hard as the North.

During the 1970s, rural factory jobs increased three times faster than urban factory job growth as high-cost urban manufacturing migrated to low-cost rural areas.<sup>2</sup> But in the 2000s, rural and urban areas lost factory jobs at the same rate since they were now both

part of the higher-cost core region (the United States).

And of the top 10 states in terms of the share of manufacturing job loss in the 2000s, four (Mississippi, North Carolina, South Carolina, and Tennessee) were in the South, a region that lost more than 37 percent of its manufacturing jobs.<sup>3</sup> Low costs no longer provided immunity to disruption.

We also see this decline in manufacturing investment in the dramatic fall in the number of major relocations or new facilities in the United States. These are the major facilities—new factories, corporate and regional headquarters, and more—for which states and cities intensely compete.

From 1995 to 2000, the average number of new or expansion facilities per year was 5,139. At this rate, the typical state could expect to see 102 new or expanded facilities per year. From 2000 to 2005 these fell to 3,896 per year on average, and from 2005 to 2011, they fell even further to an average of just 2,824 per year.<sup>4</sup>

As a result, the average state can now expect to see an average of just 56 new or expanded facilities a year. Also, similarly striking declines have occurred in fixed capital investment as well: Between 2000 and 2009, the domestic capital investment of American multinational firms declined by 48.5 percent as a share of gross national product (GNP), while the overseas capital investment by these same American companies increased by 9.1 percent.<sup>5</sup>

And as the Brookings Institution has found, we have seen a decline in the rate of new company formations over the past 30 years.<sup>6</sup>

### The Race for Innovative Advantage

A major reason the “supply of economic development” has fallen is that the U.S. economy faces much more competition now. Indeed, it is this intense race for global innovation advantage that most clearly distinguishes today’s global economy from the collection of regional and national economies that competed to attract “smokestacks” a generation ago.<sup>7</sup>

As a February 2012 *Washington Post* article noted, “Europe, as well as Asia and Latin America, is offering ever stronger competition to the United States, even in its strongest sectors, such as Internet technology, aerospace, and pharmaceuticals.”<sup>8</sup> And it’s not a competition for the faint of heart.

In fact, it makes the World Cup look like a kids’ playground game, for the struggle for innovation advantage is being fought with all the tools at nations’ disposal. Nations around the world are establishing national innovation strategies, restructuring their tax and regulatory systems to become more competitive, expanding support for science and technology, improving their education systems, spurring investments in broadband and other IT areas, and taking myriad other pro-innovation steps.

So while the competition has ratcheted up for economic development, the competitive advantage of the U.S. economy—and, by extension, the focus of economic development—has also changed.

Emblematic of efforts of the old economy, a 1954 issue of *Fortune* magazine included a full-page ad from Indiana that touted its benefits as a location of corporate investment, including such attractors as “no government debt,” a labor force that was “97 percent native” (with the implication that native-born workers were less likely to strike than immigrants), low taxes, and ample supplies of raw materials, calling itself “the clay capital of the world.” In other words, the key to success was low costs and proximity to markets and raw materials.

Today, in contrast to states competing by “smokestack chasing,” most states now compete by “innovation chasing,” trying to grow and attract the highest-value-added economic activity they can: the high-wage, knowledge-intensive manufacturing, research, software, information technology (IT), and services jobs that power today’s global, innovation-based economy.

Indiana is a case in point as it no longer touts its abundant clay. *Fortune*



To be sure, in today's tough economic times with high unemployment, job creation is important; however, fundamentally, communities need to be strategic about where they invest and what kinds of jobs they want to support.

ads now tout the state as a place “where innovation, discovery, and success are nurtured,” and “that provides a pipeline of bright minds and new thinking.”

without them, companies seeking knowledge workers will have a difficult time attracting them.

income, and so do the resident-serving firms where they spent their money, like the barber shops.

### A Shift in What Matters

Related to this is that cost has become a less important driver for economic development. In the old economy, low-cost regions and communities touted their advantages for attracting cost-based manufacturing and services. Now, even the lowest-cost regions in the United States are high cost compared to nations like China, India, and Vietnam.

U.S. costs overall also are actually significantly lower than many of our competitors. Total hourly manufacturing costs in Germany, for example, are 60 percent higher than U.S. costs in dollar terms. In fact, U.S. manufacturing costs are now less than 20 percent higher than South Korean costs.

Now what matters are not just costs but factors like innovation, productivity, speed to market, and entrepreneurship. Given the importance of knowledge workers—workers with at least some college education—to regional economic growth, quality of life now matters more than ever.

In the past, when cost reduction was king, places might be able to afford not investing in good schools, a good physical environment, and an appealing quality of life. But these are things that mobile knowledge workers value;

### Implications for Economic Development

So what are the implications of these tectonic changes in the economic development environment? One implication is that economic development officials—now more than ever—will need to get the fundamentals of innovation-based economic development right. These four principles are a place to start.

**Businesses that export goods or services out of the region are the ones that matter most.** If such a local-serving firm as a barber goes out of business, another one will generally emerge or existing ones will expand because local residents' economic consumption will create the demand.

In contrast, demand for cars and computers or even banking and insurance services by a state's residents doesn't create more supply in that state. That demand can be met just as easily by supply located outside the state's borders that either ships its products by truck or provides services over the Internet.

If a large exporting establishment—say an automobile assembly plant or a regional insurance processing facility—closes, the workers at that plant lose

**It's not just the number of jobs in the export sector, it's the innovation, value added, and wage level of the jobs.** To be sure, in today's tough economic times with high unemployment, job creation is important; however, fundamentally, communities need to be strategic about where they invest and what kinds of jobs they want to support.

The days of strategies being based on “shoot anything that flies and claim anything that falls” should be banished to the 20th century. Communities should target their scarce economic development resources on programs and policies that help companies paying above the median wage.

But it's not uncommon for states to provide incentives to firms paying wages below the median wage. Unless the jobs are created in a region with high unemployment, however, such incentives will not raise living standards.

**The economic future of communities depends on innovation and entrepreneurship.** In a global economy where low value-added, commodity production of goods or services can and does locate in nations with low wages, communities are fighting a losing battle by competing on the low end.



This does not mean that there are industries that should be abandoned. In every industry, regardless of the overall value-added average, there are segments and firms competing on the basis of innovation, value added, and high productivity.

It does mean that a state's or local government's future is dependent on companies that see their future as tied to innovation, value added, and high productivity. In many instances, this will mean supporting new firms. In all cases, it means supporting new ideas and innovations, regardless of the age of the firm from which they come.

States should do everything they can to create the kind of environment that enables these kinds of companies to emerge, grow, and prosper. In particular, states can target their efforts even more to the small number of firms that are high growth. These "high-impact" companies are especially important to state economic development because most small businesses are not growth businesses, and most jobs are created by a relatively small number of high-impact firms.<sup>9</sup>

**You can't do it alone: Washington needs to do its job.** In the old economy, communities competed for economic development success as a rising tide of national economic success helped lift all boats.

Today, that tide is no longer rising, at least not quickly. This means that unless the federal government also acts and develops an effective national innovation and competitiveness strategy, all the state, regional, county, and city actions in the world will not be enough.

This is true for two reasons. First, tax and investment policies at the federal level dwarf those at the state and local levels. At 35 percent, the federal corporate tax rate is the highest in the world and almost 10 times higher than the average state corporate tax rate. And while states might invest several billion dollars in research and development, the federal government invests significantly more.

Second, addressing the competitiveness challenge will also require action to

reduce unfair and protectionist foreign trade practices. Only the U.S. federal government can champion a more proactive trade policy that fights foreign mercantilist actions, including currency manipulation, closed markets, intellectual property theft, and other unfair practices.

As the Information Technology and Innovation Foundation has detailed in its report "Fifty Ways to Leave Your Competitiveness Woes Behind: A National Traded Sector Competitiveness Strategy," Washington can and should enact an array of policies so that the national economic development "tide" rises.<sup>10</sup>

The problem, of course, is that Washington is trapped in ideological gridlock, with one side rejecting government and the other suspicious of anything that might help business, especially big business. State and local economic developers and other public officials need to explain to their local congressional delegation that you can't

do your job—growing good jobs in your region—unless Washington does its job of enacting policies to enable America to start to win again.

And that while issues like health care, abortion, and immigration divide us along partisan lines, if we let federal economic development and competitiveness policy divide us, we will truly fall as a nation.

In summary, today's environment for economic development is not for the faint of heart. But with the right policies at the national, regional, and local levels, the U.S. economy can once again thrive—with robust, good job growth—but it will require everyone doing their part. **PM**



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#### ENDNOTES AND RESOURCES

1 Robert D. Atkinson, Luke A. Stewart, Scott M. Andes, and Stephen J. Ezell, "Worse than the Great Depression: What Experts Are Missing About American Manufacturing Decline," (ITIF, March 2012), <http://www2.itif.org/2012-american-manufacturing-decline.pdf>.

2 Jason Henderson, "Rebuilding Rural Manufacturing," Federal Reserve Bank of Kansas, no. 2 (2012), Chart 1, "Rural Manufacturing Employment and Earnings," [www.kansascityfed.org/publicat/mse/mse\\_0212.pdf](http://www.kansascityfed.org/publicat/mse/mse_0212.pdf).

3 Atkinson, et. al., "Worse Than the Great Depression: What Experts Are Missing About American Manufacturing Decline," Figure 18.

4 "Editorial Archive," Site Selection, March issues, accessed September 26, 2012, <http://www.siteselection.com/pastissu.cfm>; Robert D. Atkinson and Daniel K. Correa, The 2007 State New Economy Index (Washington, DC: Information Technology and Innovation Foundation, 2007), [http://www.itif.org/files/2007\\_State\\_New\\_Economy\\_Index.pdf](http://www.itif.org/files/2007_State_New_Economy_Index.pdf).

5 Bureau of Economic Analysis, Direct Investment and Multinational Companies (U.S. direct investment abroad, majority-owned nonbank foreign affiliates, capital expenditure; U.S. direct investment abroad, majority-owned foreign affiliates, capital expenditure; U.S. direct investment abroad, nonbank U.S. parent companies, capital expenditure; U.S. direct investment abroad, all U.S. parent companies, capital expenditure; accessed February 14, 2012), <http://www.bea.gov/>

[iTable/index\\_MNC.cfm](http://www.bea.gov/iTable/index_MNC.cfm); Bureau of Economic Analysis, National Income and Product Accounts (table 1.7.5, relation of gross domestic product, gross national product, net national product, and personal income; accessed February 14, 2012), [http://www.bea.gov/iTable/index\\_nipa.cfm](http://www.bea.gov/iTable/index_nipa.cfm). Author's analysis.

6 <http://www.brookings.edu/research/papers/2014/05/22-decline-business-dynamism-is-for-real-litan-hathaway>.

7 Robert D. Atkinson and Stephen Ezell, "Innovation Economics: The Race for Global Advantage" (New Haven, Yale University Press, 2012).

8 Paul Glader, "To Europeans, U.S. is a Puzzling Economic Giant," Washington Post, February 23, 2012, [http://www.washingtonpost.com/conversations/to-europeans-america-is-a-puzzling-economic-giant/2012/02/19/gIQA1hRXWR\\_story.html](http://www.washingtonpost.com/conversations/to-europeans-america-is-a-puzzling-economic-giant/2012/02/19/gIQA1hRXWR_story.html).

9 One study estimates that such gazelles (termed "high expectations entrepreneurs") are responsible for 80 percent of the jobs created by entrepreneurs. Erko Autio, 2005, op. cit. See also Zoltan J. Acs, William Parsons, and Spencer Tracy, High-Impact Firms: Gazelles Revisited (Washington, D.C.: U.S. Small Business Administration, June 2008) <[www.sba.gov/advo/research/rs328tot.pdf](http://www.sba.gov/advo/research/rs328tot.pdf)>.

10 <http://www.itif.org/publications/fifty-ways-leave-your-competitiveness-woes-behind-national-traded-sector-competitiveness>.



**CITY OF WILSONVILLE  
CITY COUNCIL  
NOTICE OF PUBLIC HEARING**

**PUBLIC NOTICE IS HEREBY GIVEN** that the Wilsonville City Council will conduct a series of public hearings on **November 3, 2014**, 7 p.m. at City Hall, 29799 SW Town Center Loop, Wilsonville, Oregon.

The purpose of these public hearings is to consider public testimony on the following proposed ordinances and resolutions entitled:

- A. **Ordinance No. 750g**  
An Ordinance Of The City Of Wilsonville Amending Wilsonville Code Chapter 5, Vehicles And Traffic, Section 5.210, Prohibited Parking Or Standing
- B. **Ordinance No. 751**  
An Ordinance Of The City Of Wilsonville Adding Section "10.550 Civil Exclusion" To Chapter 10 Of The Wilsonville City Code
- C. **Ordinance No. 752**  
An Ordinance Of The City Of Wilsonville Adding Section 3.022 Water Safety Regulations To The Wilsonville City Code
- D. **Resolution No. 2491**  
An Ordinance Of The City Of Wilsonville Declaring And Authorizing The Vacation Of A Portion Of Vlahos Drive Right Of Way As Part Of The Canyon Creek Road South To Town Center Loop East Project (CIP #4184). Vlahos Drive Right Of Way Vacation
- E. **Resolution No. 2492**  
A Resolution Of The City Of Wilsonville Declaring City-Owned Real Property Described As 3S-1W-15BD Tax Lot #01503 As Surplus Property And Authorizing Staff To Dispose Of The Property Through Sale.

Copies of these documents may be obtained at a cost of 25 cents per page, at City Hall or by calling the City Recorder at 503-570-1506 and requesting a copy to be mailed to you.

Specific suggestions or questions concerning the proposed ordinances may be directed to the Legal Department at 503-570-1507. Questions regarding the resolutions may be directed to Kristin Retherford at 503-570-1539. Public testimony, both oral and written will be accepted at the public hearing. Written statements are encouraged and may be submitted to Sandra C. King, MMC, City Recorder, 29799 SW Town Center Loop E, Wilsonville, OR 97070.

Assistive listening devices are available for persons with impaired hearing and can be scheduled for this meeting. The City will endeavor to provide qualified sign language interpreters without



cost if requested at least 48 hours prior to the meeting. To obtain such services call the office of the City Recorder at 682-1011.

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City of Wilsonville  
November 3, 2014 City Council Meeting

SPEAKER CARD

Advocates  
for Locks  
Reopening.

NAME: DAVE BERNERT

ADDRESS: P.O. Box 37, Wilsonville, OR. 97070

TELEPHONE: 503-682-2525 E-MAIL DAVE.BERNERT@TRP.COM

AGENDA ITEM YOU WANT TO ADDRESS: CITIZEN INPUT - Willamette Falls

Please limit your comments to 3 minutes. Thank you.



City of Wilsonville  
November 3, 2014 City Council Meeting

*Advocate  
for Sports Complex*

SPEAKER CARD

NAME: JEFF Brown

ADDRESS: 25425 SW 95th Ave.

TELEPHONE: 503 682 5597 E-MAIL

AGENDA ITEM YOU WANT TO ADDRESS: Tourism / Sport's Complex.  
CITIZEN INPUT

Please limit your comments to 3 minutes. Thank you.



City of Wilsonville  
November 3, 2014 City Council Meeting

**SPEAKER CARD**

NAME: Jeff Brown, GM at Holiday Inn  
ADDRESS: 25425 SW 95th Ave, Wilsonville OR  
TELEPHONE: 503-692-2211 E-MAIL: jbrown@hportlandsouth.com  
AGENDA ITEM YOU WANT TO ADDRESS: \_\_\_\_\_  
\_\_\_\_\_

Please limit your comments to 3 minutes. Thank you.



City of Wilsonville  
November 3, 2014 City Council Meeting

Advocates feasibility  
study for sports  
complex (esp. Lacross)

**SPEAKER CARD**

**NAME:** Heather Ward

**ADDRESS:** 29033 SW San Remo Avenue

**TELEPHONE:** (503) 750-4509 **E-MAIL** hward4@gmail.com

**AGENDA ITEM YOU WANT TO ADDRESS:** community comments

sports complex

Please limit your comments to 3 minutes. Thank you.



City of Wilsonville  
November 3, 2014 City Council Meeting

SPEAKER CARD

Advocates for  
more sports  
fields -

NAME: Jim Brazeau

ADDRESS: 22050 Rosemont Ridge Ct

TELEPHONE: 503-704-9292 E-MAIL jimbrazEAU@comcast.net

AGENDA ITEM YOU WANT TO ADDRESS: Sports Complex

Please limit your comments to 3 minutes. Thank you.



City of Wilsonville  
November 3, 2014 City Council Meeting

SPEAKER CARD

NAME: Tim KNAPP

ADDRESS: 11615 SW Tamarac

TELEPHONE: \_\_\_\_\_ E-MAIL \_\_\_\_\_

AGENDA ITEM YOU WANT TO ADDRESS: \_\_\_\_\_

\_\_\_\_\_

Please limit your comments to 3 minutes. Thank you.