

11 – FRANCHISES

Compilation Number	Ordinance Number	Subject
11-1	[Expired]	
11-2	[Repealed]	
11-3	1101	Pacific Northwest Bell Telephone Co. (Pay Phones)
11-4	[Expired]	
11-5	[Repealed]	
11-6	[Expired]	
11-7	[Repealed]	
11-8	[Repealed by 2133]	
11-9	[Expired]	
11-10	[Expired]	
11-11	1641 as amended by 1945 2008 and 2072	United Disposal Service
11-12	[Expired]	
11-12A	1885	Cable Television Rate Schedule
11-13	[Repealed]	
11-14	[Repealed]	
11-15	[Expired]	
11-16	[Expired]	
11-17	2028	Gas Tax
11-18	2057 as amended by 2222, 2290, 2419, and 2435	Hotel/Motel Tax
11-19	2109 as amended by 2328	Portland General Electric Company Franchise
11-20	2114	Privilege Tax (PGE)
11-21	2118	Cable Television Basic Service Rates & Charges
11-22	[Repealed by 2376]	
11-23	2145	Privilege Tax (NW Nat Gas)
11-24	[Repealed]	
11-25	2177	U S West Communications Telephone Franchise

Compilation Number	Ordinance Number	Subject
11-26	2211	Transfer of Cable TV Franchise from Northland Cable to North Willamette Telecom
11-27	2291	Telecommunication Franchise - Data Vision
11-28	2299 as amended by Ord. 2306	Transfer of Cable TV Franchise from North Willamette Telecom to Willamette Broadband
11-29	2307	Cable Television Franchise (Willamette Broadband) Effective January 2, 2002
11-30	2310	Cable Television Franchise Ratification to Willamette Broadband
11-31	2324	Woodburn Ambulance Service, Inc. Non-Exclusive Franchise
11-32	2376	Northwest Natural Gas Company

ORDINANCE NO. 1101

AN ORDINANCE GRANTING A REVOCABLE PERMIT TO PACIFIC NORTHWEST BELL TELEPHONE COMPANY TO INSTALL, MAINTAIN, AND OPERATE PUBLIC TELEPHONE BOOTHS AT VARIOUS LOCATIONS ON CITY PROPERTY AND CITY STREETS.

THE PEOPLE OF THE CITY OF WOODBURN DO ORDAIN:

Section 1. A revocable permit is hereby granted to the Pacific Northwest Bell Telephone Company, its successors and assigns, to install, maintain, and operate public telephone booths at various locations on city property and city streets in the city of Woodburn on the following terms:

(A) **Location of booths.** Sites for the location or relocation of telephone booths shall be selected by the permittee, subject to the approval of the common council of the city of Woodburn.

(B) **Installation and maintenance.** The permittee shall bear the entire cost of installation, maintenance, relocation, and removal of every telephone booth installed under this permit.

(C) **Commissions.** The permittee shall pay to the City of Woodburn a commission equal to 15 per cent of the net contents of the coin box of each public telephone installed hereunder, after deduction for applicable excise taxes. After this permit becomes effective, such commissions shall be paid to the city semiannually.

(D) **Electricity.** With approval of the common council of the city of Woodburn and Portland General Electric Company, its successors and assigns, the permittee, where feasible, may interconnect with electric service furnished to the city.

(E) **Removal of booth.** Upon 30 days' notice, the city, for cause, may require the permittee to remove or relocate any telephone booth installed hereunder. The permittee on its own initiative may remove any telephone booth any time, but shall restore the surface to good condition and safe for public use, considering the nature and location of the property.

(F) **Termination of permit.** This permit may be revoked by the council, or operations hereunder may be discontinued voluntarily by the permittee, only after 30 days' notice. In event of such termination, the permittee shall remove all installations hereunder within 90 days and in compliance with provisions of subsection (E) hereof.

Section 2. The permit granted by this ordinance is subject to the condition that permittee, its successors and assign, forever will indemnify and save the city of Woodburn, its officers, agents, and employees harmless from and against any and all liability, loss, cost, damage, and expense, and any and all claims for injury or death to persons and damage to property, directly or indirectly arising from the installation, maintenance, or operation of telephone booths under this permit. The city shall

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promptly notify the permittee upon receipt of any claim or demand against which it is, or may be, held harmless by the permittee under this indemnification. As evidenced by its written acceptance of the terms and conditions and agrees that the within permit is granted only upon, and constitutes consideration for, this indemnification.

Section 3. This ordinance is not operative until permittee has filed with the city recorder a written acceptance of all terms and conditions contained herein, signed by an authorized official of said corporation, and approved as to form by the city attorney.

Passed by the Council and approved by the Mayor July 21, 1964.

ORDINANCE NO. 1641

AN ORDINANCE RELATING TO SOLID WASTE MANAGEMENT IN THE CITY OF WOODBURN, OREGON, INCLUDING, BUT NOT LIMITED TO, GRANTING TO UNITED DISPOSAL SERVICE, INC., AN OREGON CORPORATION, AN EXCLUSIVE FRANCHISE TO COLLECT, TRANSPORT, AND CONVEY SOLID WASTE OVER AND UPON THE STREETS OF THE CITY; TO DISPOSE OF OR RECOVER MATERIALS OR ENERGY FROM SUCH SOLID WASTE; REPEALING ORDINANCES NO. 1198, 1228, 1388, AND 1500; AND DECLARING AN EMERGENCY.

THE PEOPLE OF THE CITY OF WOODBURN DO ORDAIN:

Section 1. Short Title. This ordinance shall be known as the "Solid Waste Management Ordinance" and may be so cited and pleaded and shall be cited herein as "this ordinance."

Section 2. Purpose, Policy and Scope. It is declared to be the public policy of the City of Woodburn to regulate solid waste management to:

- (1) Insure safe, economical and comprehensive solid waste service.
- (2) Insure rates that are just and reasonable and adequate to provide necessary public service.
- (3) Prohibit rate preferences and any other practice that might be discriminatory.
- (4) Provide for technologically and economically feasible resource recovery, by and through the franchisee.

Section 3. Definitions.

- (1) City. The City of Woodburn.
- (2) Compensation. Includes:
 - (a) Any type of consideration paid for service including, but not limited to, rent, the proceeds from resource recovery and any direct or indirect provision for payment of money, goods, services or benefits by tenants, lessees, occupants or similar persons.
 - (b) The exchange of service between persons; and
 - (c) The flow of consideration from the person owning or possessing the solid waste to the person providing service or from the person providing service to the person owning or possessing the solid waste.
- (3) Council. The City Council of the City of Woodburn.

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(4) Franchisee. The person granted the franchise by Section 4 of this ordinance, or a subcontractor of such person. The particular franchisee referred to in this ordinance is United Disposal Service, Inc.

(5) Person. An individual, partnership, association, corporation, trust, firm, estate or other private legal entity.

(6) Service. Collection, transportation or disposal of or resource recovery from solid waste.

(7) Resource recovery. The process of obtaining useful material or energy resources from solid waste, including energy recovery, materials recovery, recycling or reuse of solid waste.

(8) Solid waste. All putrescible and nonputrescible waste, including but not limited to garbage, rubbish, refuse, ashes, swill; waste paper and cardboard; grass clippings; compost; residential, commercial, industrial demolition and construction wastes; discarded residential, commercial and industrial appliances, equipment and furniture; tires; manure, vegetable or animal solid or semisolid waste; dead animals and all other wastes not excepted by this subsection. Solid waste does not include:

(a) Environmentally hazardous waste as defined in ORS 459.410.

(b) Sewer sludge and septic tank and cesspool pumping or chemical toilet waste.

(c) Reusable beverage containers as defined in ORS 459.860.

(9) Solid waste management. Management of service.

(10) Waste. Material that is no longer usable by, or that is not longer wanted by, the source of the material, which material is to be disposed of or be resource recovered by another person.

Section 4. Exclusive Franchise and Exceptions.

(1) Exclusive franchise. There is hereby granted to United Disposal Service, Inc., the exclusive right, privilege and franchise to provide service within the city limits as of the effective date of this ordinance and in any area that may be hereafter annexed to the city. For the purpose of the franchise, the franchisee shall have the exclusive right to use the streets of the City of Woodburn. No other person shall provide service for compensation or offer to provide or advertise for the performance of such service to any owner, tenant, lessee or occupant of any real property in the City of Woodburn.

(2) Exceptions. Nothing in this ordinance shall:

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(a) Prohibit any person from engaging in the collection of source-separated materials for resource recovery for the purpose of raising funds for a charitable, civic or benevolent activity, after notice to the franchisee and permission from the franchisee or the council.

(b) Prohibit any person from transporting solid waste he produces himself to an authorized disposal site or resource recovery facility. The solid waste produced by a tenant, licensee, occupant or person other than the owner of the premises is produced by such person and not by the landlord or property owner.

(c) Prohibit any person from contracting with the state or federal agency to provide service to such agency under a written contract with such agency.

Section 5. Franchise Term. The rights, privilege and franchise herein granted shall be considered as a continuing six-year franchise, subject to termination as follows:

Unless grounds exist for suspension, modification or revocation of the franchise under Section 9 of this ordinance, this ordinance shall be considered as a continuing six-year term. That is, beginning on January 1 of each year, the franchise shall be considered renewed for an additional six-year term unless at least 30 days prior to January 1 of any year the city shall notify the franchisee of intent to terminate the franchise. Upon the giving of such notice of termination, the franchisee shall have a franchise which will terminate six years from the date of termination.

In the event the franchisee shall desire to terminate service given under the terms of this franchise, then it shall give not less than two years' notice of the intent to terminate service and obligations under the franchise. In the event of a voluntary termination of service by the franchisee, the city shall have a right and option to purchase all or any part of the equipment of the franchisee at a price which will be agreed upon between the parties. If the parties cannot agree to a purchase price, then the same shall be submitted to arbitration. Each party shall select one arbitrator and the two arbitrators selected shall select a third party, and the three arbitrators shall determine a fair and equitable price to be paid by the city to the franchisee for all equipment to be purchased. The costs of arbitration shall be borne equally.

Section 6. Franchise Fee. In consideration of the franchise granted by this ordinance, the franchisee shall pay to the City of Woodburn, Oregon, 3 percent of the gross receipts collected each year by the franchisee for service within the corporate limits of the City of Woodburn, for solid waste service or sale of recycled materials, for the rights, privilege and franchise granted by this ordinance. The first payment shall be for the period of April 1, 1978, to March 31, 1979. The first payment shall be paid by June 30, 1979. For subsequent years under the franchise, the payment for each twelve-month period ending March 31 shall likewise be paid by June 30 of each year. Each annual payment shall be accompanied by a complete statement setting forth the gross receipts collected for the twelve months. [Section 6 as amended by Ordinance 2072, passed December 18, 1991.]

Section 7. Franchise Responsibility.

(1) The franchisee shall:

(a) Dispose of solid wastes collected at a site approved by the local government unit having jurisdiction of or recover resources from the solid wastes in compliance with Chapter 459 of Oregon Revised Statutes and any regulations adopted under said legislation.

(b) Provide and keep in force public liability insurance in the amount of not less than \$100,000.00 for injury to a single person, \$300,000.00 to a group of persons, and \$50,000.00 property damage all relating to a single occurrence, which shall be evidenced by a certificate of insurance filed with the city recorder within 30 days after the adoption of this ordinance and renewed and filed annually thereafter.

(c) Provide sufficient collection vehicles, containers, facilities, personnel and finances to provide all types of necessary service; but where necessary, the franchisee may subcontract with others to provide certain types of specialized service, in accordance with the provisions of this ordinance.

(d) Trucks shall be equipped with a leakproof metal body of the compactor type. If the franchisee uses a specially designed, motorized local collection vehicle for transporting solid waste short distances from residential or commercial stops to waiting trucks, the container portion of such vehicle shall be equipped with a cover adequate to prevent scattering of the load. If any pickup truck or open bed truck is used by the franchisee, the load shall be covered with an adequate cover to prevent scattering of the load. All vehicles shall be operated in conformity with all ordinances of the city.

(e) The franchisee shall allow a pro-rata credit on the regular monthly charge for service where the service is cancelled for three weeks or more; but no such (proration) shall be allowed for service which is cancelled for less than three weeks.

(f) The franchisee is not obligated to provide service to nonowners of property, where the landlord does not request and pay the bill, unless payment for said service has been guaranteed in advance by the property owner or a satisfactory cash deposit or advance payment has been made by such nonowner requesting service.

(g) The franchisee may terminate service to a customer for nonpayment by the customer within 45 days of the mailing of the bill. In the event of such termination for nonpayment, the franchisee may require advance payment in the future from said customer before beginning service.

(h) The franchisee shall furnish a bond to the city that is acceptable to the city to insure the faithful performance by the franchisee of the service the franchisee is required to provide under this ordinance. Said bond shall provide that in the event of default the city shall be entitled to \$3,000.00 as liquidated damages for failure of the franchisee to perform as required.

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(i) The franchisee shall respond to any written complaint on service.

(j) The franchisee must provide all customers within the City of Woodburn with the opportunity to recycle and must comply with the requirements of Senate Bill 405(1983) as now incorporated in Oregon Revised Statutes 459.165 - 200 and 250, and all rules and regulations promulgated thereunder. [Paragraph (j) of subsection (1) added by Ordinance No. 1945, passed April 14, 1986.]

(2) The franchisee shall not:

(a) Give any rate preference to any person, locality or type of solid waste stored, collected, transported, disposed of or resource recovered. This paragraph shall not prohibit uniform classes of rates based upon length of haul, time of haul, type or quantity of solid waste handled, and location of customers, so long as such rates are reasonably based upon costs of the particular service and are approved by the City Council in the same manner as other rates.

(b) This franchise and anything pertaining thereto may be assigned or transferred to a third party only after approval by the City of Woodburn expressed by a resolution passed by the City Council. The City Council shall approve the assignment or transfer if the franchisee meets all applicable requirements met by the original franchisee. A pledge of this franchise as financial security shall not be considered a transfer or assignment for the purpose of this subsection.

Section 8. Supervision. Service provided under this franchise shall be subject to the supervision of the city administrator or such other person or persons designated by the City Council. The franchisee shall, at reasonable times, permit inspection of his facilities, equipment, personnel and records in relation to the service under this franchise. The franchisee shall file an annual report of gross receipts.

Section 9. Suspension, Modification or Revocation of Franchise.

(1) Failure to comply with written notice from the council to provide necessary service or otherwise comply with the provisions of this ordinance after written notice and reasonable opportunity to comply shall be grounds for modification, revocation or suspension of this franchise.

(2) After receipt of the aforementioned written notice from the City Council, the franchisee shall have 30 days from the date of mailing of the notice in which to comply or to request a public hearing before the City Council. In the event of a public hearing, the franchisee and other interested persons shall have an opportunity to present information and testimony in oral or written form.

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(3) If the franchisee fails to comply within the specified time or fails to comply with the order of the City Council entered upon the basis of findings at the public hearing, the City Council may suspend, modify or revoke the franchise or make such action contingent upon continued noncompliance with this ordinance. The franchisee shall have the right to appeal any such action by the City Council to the circuit court.

Section 10. Preventing Interruption of Service. In the event the City Council finds an immediate and serious danger to the public creating a health hazard or serious public nuisance, the City Council may, after a minimum of 24 hours actual notice to the franchisee and a public hearing if franchisee requests it, authorize another person to temporarily provide service under this ordinance, or the city may provide such service. In either event, the franchisee agrees as a condition to his franchise that any real property, facilities or equipment may be used to provide such emergency service. The City Council shall return any such property of the franchisee upon abatement of the health or nuisance hazards created by the general interruption of service. In the event the power under this section is exercised, the usual charges for service shall prevail and the franchisee shall be entitled to collect [for] such usual services, but shall reimburse the city for its actual cost, as determined by the city.

Section 11. Service to Be Provided; When Such Service May Be Interrupted or Terminated.

(1) The franchisee shall collect the solid waste at the various residences, business establishments and other places within the corporate limits of the city, where such service is requested and required, promptly and with dispatch and haul such solid waste from the city upon the payment of not more than the maximum rates authorized by the most recent rate schedule approved by the City Council.

(2) The franchisee shall not terminate service to any or all of his customers served under this franchise except in accordance with provisions of this ordinance. Service may be interrupted or terminated when:

(a) The street or road access is unavoidably blocked through no fault of the franchisee, and if there is no reasonable alternate route or routes to serve all or a portion of his customers; but in either event, the City of Woodburn shall not be liable for any such blocking of access; or

(b) Adverse weather conditions render providing service unduly hazardous to persons or equipment, providing such service or if such interruption or termination is caused by an act of God or a public enemy.

Section 12. Subcontracts. The franchisee may subcontract with others to provide specialized service or temporary service under this ordinance. Such subcontracts shall not relieve the franchisee of total responsibility for compliance with this ordinance.

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Section 13. Rates. Rates for service under this ordinance shall be those currently approved for the franchisee, the rates approved under Ordinance No. 1584 effective December 31, 1977. Said rates shall be in effect until any change in rates shall be approved by the City Council by resolution. On the approval of any change in rates, Ordinance No. 1584 shall be repealed. In determining the appropriate rate to be charged by the franchisee, the council shall consider:

- (1) The cost of performing the service provided by the franchisee.
- (2) The anticipated increases in the cost of providing the service.
- (3) The need for equipment replacement and the need for additional equipment to meet service needs; compliance with federal, state and local law, ordinances and regulations; or technological change.
- (4) The investment of the franchisee and the value of its business and the necessity that the franchisee have a reasonable rate of return.
- (5) The rates in other cities for similar service.
- (6) The public interest by assuring reasonable rates to enable the franchisee to provide efficient and beneficial service to the residents and other users of the service.

Section 14. Public Responsibility.

(1) Both the franchisee and the public shall comply with ORS Chapter 459, the regulations promulgated pursuant thereto including those regulations issued by the Department of Environmental Quality, Workers Compensation Board, and the State Accident Insurance Fund. The following requirements shall pertain to service under this ordinance:

- (a) No garbage can shall exceed 32 gallons in size and shall not weigh more than 60 pounds gross loaded weight.
- (b) Only round garbage cans shall be used, and cans shall be tapered so that they are larger at the top, and cans shall have handles at the top and a place for a handhold at the bottom.
- (c) Sunken refuse cans or containers shall not be installed.
- (d) To protect against injury to employees of the franchisee, and to protect against rodent and fire dangers, cans shall be rigid and of materials that will not split or crack in cold weather.
- (e) The use shall provide safe access to the pickup point so as not to jeopardize the persons or equipment supplying service or the motoring public.

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(2) To protect the privacy, safety, pets and security of customers and to prevent unnecessary physical and legal risk to the collectors, a residential customer shall place the container to be emptied outside any locked or latched gate and outside any garage or other building.

(3) Stationary compactors for handling solid waste shall comply with applicable federal and state safety regulations. No such compactor shall be loaded so as to exceed the safe loading design limit or operation limit of the collection vehicles used by the franchisee. A person who wishes services for a compactor approved by the franchisee as compatible with the equipment of the franchisee or the equipment the franchisee is willing to acquire.

(4) Any person who receives service shall be responsible for payment for said service.

Section 15. City Collections. Nothing herein contained shall be construed as in any way preventing the City of Woodburn from conducting an annual clean-up campaign for the collection of brush, cleaning out of garages or basements, or any other facility or location in the city so as to prevent public nuisances and so as to provide for the beauty of the city and the safety of its citizens.

Section 16. Indemnity and Hold Harmless. The franchisee shall indemnify the City of Woodburn, the City Council, any employees or agents of the city and hold them harmless from all loss, damage, claim, expense or liability arising out of the operation by the franchisee under its franchise. In the event that any suit or action is brought for injury or damage to persons or to property against any of the foregoing, based upon or alleged to be based upon any loss, damage, claim, expense or liability arising out of the operation of the franchisee under his franchise, the franchisee shall defend the same at its own cost and expense; provided, however, that the council and the city administrator reserve the right to retain counsel of their own choosing and join in the defense of any such suit or action, with the reasonable cost of such additional counsel to be borne by the franchisee.

Section 17. Franchisee's Service Requirements. The franchisee may, subject to review and revision by the City Council, establish rules concerning the size, weight and location of containers or compactors and on other matters directly affecting the safety of the franchisee's employees and his ability to perform the service with available technology and equipment. Such reasonable rules may also be established so the franchisee can comply with weight limits, disposal site requirements, and general requirements of the Department of Environmental Quality of the State of Oregon. Where economically feasible, the council may require the franchisee to provide special types of service or to subcontract the providing of such special service, if the franchisee shall not find it economically feasible to provide such special service with his equipment and personnel.

Section 18. Construction. Any finding by any court of competent jurisdiction that any portion of this ordinance is unconstitutional or invalid shall not invalidate any other provision of this ordinance.

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Section 19. City Enforcement. The city, through its appropriate officers, shall take all appropriate steps, within the power of the city to take, to protect the exclusive right and franchise hereby given to the franchisee, and shall cooperate in all particulars with the franchisee in protecting such exclusive right and shall, if deemed necessary, pass such additional ordinances as may be required to maintain the exclusiveness of the franchise.

Section 20. Annexations Immediately upon the annexation to the city of additional territory, the city shall take such steps as may be necessary to give the franchisee the exclusive right to collect solid waste within such area that has been annexed, and the city shall notify any other solid waste collector to cease such collection on or before 90 days from the date of such notice. Provided, however, the franchisee shall endeavor to arrive at a mutually satisfactory agreement with any other solid waste collector who has been serving any such newly annexed area, concerning the collection of solid waste in said annexed area. In the event the franchisee and such other solid waste collector cannot reach an agreement concerning the collection right in the newly annexed area, the matter may be submitted to arbitrators. The arbitration board shall consist of one arbitrator selected by the solid waste collector in the newly annexed area. The decision of the board of arbitrators shall be binding upon all parties to the arbitration, and the award of the arbitrators shall be final. In the event of arbitration, it is contemplated that the award will include the payment of money by the franchisee to the solid waste collector in the newly annexed area.

Section 21. Civil Infraction Assessment. Violation by any provision of this ordinance constitutes a class 2 civil infraction and shall be dealt with according to the procedures established by Ordinance 1998. [Section 21 as amended by Ordinance 2008, passed October 24, 1988.]

Section 22. Repealing Clause. Ordinance Nos. 1198, 1228, 1388 and 1500 are hereby repealed. Ordinance No. 1584 shall be repealed at such time as the City Council adopts a resolution making a change in the authorized maximum rates for the franchisee under this ordinance.

Section 23. [Emergency clause.]

Passed by the Council August 14, 1978, and approved by the Mayor August 16, 1978.

ORDINANCE NO. 1885

AN ORDINANCE ESTABLISHING A CABLE TELEVISION RATE SCHEDULE PURSUANT TO ORDINANCES NO. 1766 AND 1784, AND DECLARING AN EMERGENCY.

[Whereas clause.]

THE CITY OF WOODBURN ORDAINS AS FOLLOWS:

Section 1. That after the conclusion of a public hearing, having duly considered the information and testimony presented, the Woodburn City Council hereby adopts the rate proposed by the franchisee, Northland Communications Corporation, Inc., as set out in its petition dated June 4, 1984, which is attached hereto as Exhibit "A" and by this reference incorporated herein.*

Section 2. That pursuant to the applicable ordinances this rate change is effective 90 days from the date of said petition.

Section 3. [Amends Section 15 of Ord. No. 1784, Comp. 11-12.]

Section 4. [Emergency clause.]

Passed by the Council and approved by the Mayor August 17, 1984.

* Exhibit "A" is on file with the original ordinance and is available for inspection at City Hall.

ORDINANCE NO. 2028

AN ORDINANCE IMPOSING A MOTOR VEHICLE FUEL TAX ON MOTOR VEHICLE FUEL DEALERS, PROVIDING FOR ADMINISTRATION, ENFORCEMENT AND COLLECTION OF THE TAX, AND IMMEDIATELY REFERRING SAID ORDINANCE TO THE ELECTORS OF THE CITY OF WOODBURN.

THE CITY OF WOODBURN ORDAINS AS FOLLOWS:

Section 1. Title: This ordinance shall be known as the "City of Woodburn Motor Vehicle Fuel Tax Ordinance.

Section 2. Definitions. As used in this ordinance, unless the context requires otherwise:

(A) "Aircraft Fuel" means any gasoline and other inflammable or combustible gas or liquid by whatever name such as gasoline, gas or liquid is known or sold, usable as fuel for the operation of aircraft, except gas or liquid, the chief use of which, as determined by the City is for purposed other than the propulsion of aircraft.

(B) "Authorized Agent" any person or agency that has been given authority to implement a portion of this ordinance.

(C) "City" means City of Woodburn, a municipal corporation of the State of Oregon.

(D) "Dealer" means any person who:

(1) Supplies or imports motor vehicle fuel for sale, use or distribution in, and after the same reaches the City, but "dealer" does not include any person who imports into the City motor vehicle fuel in quantities of 500 gallons or less purchased from a supplier who is permitted as a dealer hereunder and who assumes liability for the payment of the applicable motor vehicle fuel tax to the City; or

(2) Produces, refines, manufactures or compounds motor vehicle fuels in the City for use, distribution or sale in the City; or

(3) Acquires in the City for sale, use or distribution in the City motor vehicle fuels with respect to which there has been no motor vehicle fuel tax previously incurred.

(E) "Motor Vehicle Fuel-Handler" means any person who acquires or handles motor vehicle fuel within the City through a storage tank facility with storage tank capacity that exceeds 500 gallons of motor vehicle fuel.

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(F) "Distributor" means, in addition to its ordinary meaning, the deliverer of motor vehicle fuel by a dealer to any service station or into any tank, storage facility or series of tanks or storage facilities connected by pipelines, from which motor vehicle fuel is withdrawn directly for sale or for delivery into the fuel tanks or motor vehicles whether or not the service station, tank or storage facility is owned, operated or controlled by the dealer.

(G) "Highway" means every way, thoroughfare and place of whatever nature, open for use of the public for the purpose of vehicular travel.

(H) "Motor Vehicle" means all vehicles, engines or machines, moveable or immovable, operated or propelled by the use of motor vehicle fuel.

(I) "Motor Vehicle Fuel" means and includes gasoline, diesel, mogas, methanol, and any other flammable or combustible gas or liquid, by whatever name such gasoline, diesel, mogas, methanol, gas or liquid is known or sold, usable as fuel for the operation of motor vehicles, except gas, diesel, mogas, methanol, or liquid, the chief use of which, as determined by the City, is for purposes other than the propulsion of motor vehicles upon the highways. Propane fuel and motor vehicle fuel used exclusively as a structural heating source are excluded as a taxable motor vehicle fuel.

(J) "Person" includes every natural person, association, firm, partnership, or corporation.

(K) "Service Station" means and includes any place operated for the purpose of retailing and delivering motor vehicle fuel into the fuel tanks of motor vehicles.

(L) "State" means State of Oregon.

Section 3. Tax Imposed. A motor vehicle fuel tax is hereby imposed on every dealer operating within the corporate limits of Woodburn. The City of Woodburn motor vehicle fuel tax imposed shall be paid monthly to the City or to its authorized agent.

(A) A person who is not a permitted dealer or permitted motor vehicle fuel-handler shall not accept or receive motor vehicle fuel in this City from a person who supplies or imports motor vehicle fuel who does not hold a valid motor vehicle fuel dealers permit in this City. If a person is not a permitted dealer or permitted motor vehicle fuel-handler in this City and accepts or receives motor vehicle fuel, the purchaser or receiver shall be responsible for all taxes, interests and penalties prescribed herein.

(B) A permitted dealer or fuel-handler who accepts or receives motor vehicle fuel from a person who does not hold a valid dealer or fuel-handler permit in this City, shall pay the tax imposed by this Ordinance to the City or its authorized agent, upon the sale, use or distribution of the motor vehicle fuel.

Section 4. Amount and Payment.

(A) Subject to subsections (B) and (C) of this section, by law, every dealer engaging in his own name, or in the name of others, or in the name of his representatives or agents in the City, in the sale, use or distribution of motor vehicle fuel, shall:

(1) Not later than the 25th day of each calendar month, render a statement to the City or to its authorized agent, of all motor vehicle fuel sold, used or distributed by him in the City as well as all such fuel sold, used or distributed in the City by a purchaser thereof upon which sale, use or distribution the dealer has assumed liability for the applicable motor vehicle fuel tax during the preceding calendar month.

(2) Pay a motor vehicle fuel tax computed on the basis of one (1.0) cent per gallon of such motor vehicle fuel so sold, used or distributed as shown by such statement in the manner and within the time provided in this ordinance.

(B) In lieu of claiming refund of the tax as provided in Section 20, or of any prior erroneous payment of motor vehicle fuel tax made to the City by the dealer, the dealer may show such motor vehicle fuel as a credit or deduction on the monthly statement and payment of tax.

(C) The motor vehicle fuel tax shall not be imposed wherever it is prohibited by the Constitution or laws of the United States or of the State of Oregon.

Section 5. Permit Requirements. No dealer or fuel handler, shall sell, use or distribute any motor vehicle fuel until he has secured a dealer or fuel-handler permit as required herein.

Section 6. Permit Applications and Issuance.

(A) Every person, before becoming a dealer or fuel handler in motor vehicle fuel in this City shall make an application to the City or its duly authorized agent, for a permit authorizing such person to engage in business as a dealer or fuel-handler.

(B) Applications for the permit must be made on forms prescribed, prepared and furnished by the City or its duly authorized agent.

(C) The applications shall be accompanied by a duly acknowledged certificate containing:

(1) The business name under which the dealer or fuel-handler is transacting business.

(2) The place of business and location of distributing stations in the City and in areas adjacent to the City limits in the State of Oregon.

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(3) The name and address of the managing agent, the names and addresses of the several persons constituting the firm or partnership and, if a corporation, the corporate name under which it is authorized to transact business and the names and addresses of its principal officers and registered agent, as well as primary transport carrier.

(D) The application for a motor vehicle fuel dealer or fuel-handler permit having been accepted for filing, the City or its authorized agent, shall issue to the dealer or fuel-handler a permit in such form as the City or its duly authorized agent may prescribe to transact business in the City. The permit so issued is not assignable, and is valid only for the dealer or fuel handler in whose name issued.

(E) The City Recorder's Office shall keep on file a copy of all applications and/or permits.

(F) No fee(s) shall be charged by the City for securing said permit as described herein.

Section 7. Failure to Secure Permit.

(A) If any dealer sells, distributes or uses any motor vehicle fuel without first filing the certificate and securing the permit required by Section 6, the motor vehicle fuel tax shall immediately be due and payable on account of all motor vehicle fuel so sold, distributed or used.

(B) The City shall proceed forthwith to determine, from the best available sources, the amount of such tax, and it shall assess the tax in the amount found due, together with a penalty of 200 percent of the tax, and shall make its certificate of such assessment and penalty, determined by City Administrator or the City's duly authorized agent. In any suit or proceeding to collect such tax or penalty or both, the certificate is prima facie evidence that the dealer therein named is indebted to the City in the amount of the tax and penalty therein stated.

(C) Any fuel-handler who sells, handles, stores, distributes, or uses any motor vehicle fuel without first filing the certificate and securing the permit required by Section 6, shall be assessed a penalty of \$250.00 unless modified by Section 27, Subsection "a", determined by the City Administrator or the City's duly authorized agent. In any suit or proceeding to collect such penalty, the certificate is prima facie evidence that the fuel-handler therein named is indebted to the City in the amount of the penalty therein stated.

(D) Any tax or penalty so assessed may be collected in the manner prescribed in Section 11 with reference to delinquency in payment of the tax or by Court action.

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Section 8. Revocation of Permit. The City or its authorized agent shall revoke the permit of any dealer or fuel-handler refusing or neglecting to comply with any provision of this Ordinance. The City or its authorized agent shall mail by certified mail addressed to such dealer or fuel-handler at his last known address appearing on the files, a notice of intention to cancel. The notice shall give the reason for the cancellation. The cancellation shall become effective without further notice if within 10 days from the mailing of the notice the dealer or fuel-handler has not made good its default or delinquency.

Section 9. Cancellation of Permit.

(A) The City or its authorized agent may, upon written request of a dealer or fuel-handler cancel any permit issued to such dealer or fuel-handler, the cancellation to become effective 30 days from the date of receipt of the written request.

(B) If the City or its authorized agent ascertains and finds that the person to whom a permit has been issued is no longer engaged in the business of a dealer or fuel-handler, the City or its authorized agent may cancel the permit of such dealer or fuel-handler upon investigation after 30 days' notice has been mailed to the last known address of the dealer or fuel handler.

Section 10. Remedies Cumulative. Except as otherwise provided in Sections 11 and 13, the remedies provided in Sections 7, 8, and 9 are cumulative. No action taken pursuant to those sections shall relieve any person from the penalty provisions of this Ordinance.

Section 11. Payment of Tax and Delinquency.

(A) The motor vehicle fuel tax imposed by Sections 3 and 4 shall be paid on or before the 25th day of each month to the City or its authorized agent which, upon request, shall receipt the dealer or fuel-handler therefor.

(B) Except as provided in subsection (D) of this Section, to any motor vehicle fuel tax not paid as required by subsection (A) of this Section, there shall be added a penalty of one percent (1.0%) of such motor vehicle fuel tax.

(C) Except as provided in subsection (D) of this Section, if the tax and penalty required by subsection (B) of this section are not received on or before the close of business on the last day of the month in which the payment is due, a further penalty of ten percent (10.0%) shall be paid in addition to the penalty provided for in subsection (B) of this Section.

(D) If the City or its authorized agent, determines that the delinquency was due to reasonable cause and without any intent to avoid payment, the penalties provided by subsections (B) and (C) of this Section may be waived. Penalties imposed by this Section shall not apply when the penalty provided in Section 7 has been assessed and paid.

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(E) If any person fails to pay the motor vehicle fuel tax or any penalty provided for by this Ordinance, the amount thereof shall be collected from such person for the use of the City. The City shall commence and prosecute to final determination in any court of competent jurisdiction an action to collect the same.

(F) In the event any suit or action is instituted to collect the motor vehicle fuel tax or any penalty provided for by this ordinance, the City shall be entitled to recover from the person sued reasonable attorney's fees at trial or upon appeal of such suit or action, in addition to all other sums provided by law.

(G) No dealer who collects from any person the tax provided for herein, shall knowingly and willfully fail to report and pay the same to the City or its authorized agent, as required herein.

Section 12. Monthly Statement of Dealer and Fuel-Handler. Unless modified by Section 27 Subsection "b" every dealer and fuel-handler in motor vehicle fuel shall render to the City or its authorized agent, on or before the 25th day of each month, on forms prescribed, prepared and furnished by the City or its authorized agent, a signed statement of the number of gallons of motor vehicle fuel sold, distributed, used or stored by him during the preceding calendar month. The statement shall be signed by the permit holder. All statements as required in this section are public records.

Section 13. Failure to File Monthly Statement. If any dealer or fuel-handler fails to file the report required by Section 12, the City or its authorized agent, shall proceed forthwith to determine from the best available sources the amount of motor vehicle fuel sold, distributed, used or stored by such dealer or fuel-handler for the period unreported, and such determination shall be prima facie evidence of the amount of such fuel sold, distributed, used or stored. The City or its authorized agent, immediately shall assess the motor vehicle fuel tax in the amount so determined, as pertaining to the reportable dealer, adding thereto a penalty of 10 percent for failure to report. Fuel-handlers failing to file a monthly statement of motor vehicle fuel shall be assessed a penalty of \$50.00. The penalty shall be cumulative to other penalties provided in this Ordinance. In any suit brought to enforce the rights of the City under this section, the above determination showing the amount of tax, penalties and costs unpaid by any dealer or fuel-handler and that the same are due and unpaid to the City or its authorized agent is prima facie evidence of the facts as shown.

Section 14. Billing Purchasers. Bills shall be rendered to all purchasers of motor vehicle fuel by dealers in motor vehicle fuel. The bills shall separately state and describe to the satisfaction of the City or its authorized agent the different products shipped thereunder and shall be serially numbered except where other sales invoice controls acceptable to the City or its authorized agent are maintained. The bills required hereunder may be the same as those required under ORS 319.210.

Section 15. Failure to Provide Invoice or Delivery Tag. No person shall receive and accept any shipment of motor vehicle fuel from any dealer, or pay for the same, or sell or offer the shipment for sale, unless the shipment is accompanied by an invoice or delivery tag showing the date upon which shipment was delivered and the name of the dealer in motor vehicle fuel.

Section 16. Transporting Motor Vehicle Fuel in Bulk. Every person operating any conveyance for the purpose of hauling, transporting or delivering motor vehicle fuel in bulk shall, before entering upon the public highways of the City with such conveyance, have and possess during the entire time of his hauling or transporting such motor vehicle fuel an invoice, bill of sale or other written statement showing the number of gallons, the true name and address of the seller or consignor, and the true name and address of the buyer or consignee, if any, of the same. The person hauling such motor vehicle fuel shall at the request of any officer authorized by the City to inquire into or investigate such matters, produce and offer for inspection the invoice, bill of sale or other statement.

Section 17. Exemption of Export Fuel.

(A) The license tax imposed by Sections 3 and 4 shall not be imposed on motor vehicle fuel:

(1) Exported from the City by a dealer; or

(2) Sold by a dealer in individual quantities of 500 gallons or less for export by the purchaser to an area or areas outside the City in containers other than the fuel tank of a motor vehicle, but every dealer shall be required to report such exports and sales to the City or its authorized agent in such detail as may be required.

(B) In support of any exemption from motor vehicle fuel taxes claimed under this section other than in the case of stock transfers or deliveries in his own equipment, every dealer must execute and file with the City or its authorized agent an export certificate in such form as shall be prescribed, prepared and furnished by the City or its authorized agent, containing a statement, made by some person having actual knowledge of the fact of such exportation, that the motor vehicle fuel has been exported from the City, and giving such details with reference to such shipment as may be required. The City or its authorized agent may demand of any dealer such additional data as is deemed necessary in support of any such certificate, and failure to supply such data will constitute a waiver of all right to exemption claimed by virtue of such certificate. The City or its authorized agent may, in a case where it believes no useful purpose would be served by filing of an export certificate, waive the certificate.

(C) Any motor vehicle fuel carried from the City in the fuel tank of a motor vehicle shall not be considered as exported from the City.

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(D) No person shall, through false statement, trick or device, or otherwise, obtain motor vehicle fuel for export as to which the City motor vehicle fuel tax has not been paid and fail to export the same, or any portion thereof, or cause the motor vehicle fuel or any portion thereof not to be exported, or divert or cause to be diverted the motor vehicle fuel or any portion thereof to be used, distributed or sold in the City and fail to notify the City or its authorized agent and the dealer from whom the motor vehicle fuel was originally purchased of his act.

(E) No dealer or other person shall conspire with any person to withhold from export, or divert from export or to return motor vehicle fuel to the City for sale or use so as to avoid any of the fees imposed herein.

(F) In support of any exemption from taxes on account of sales of motor vehicle fuel in individual quantities of 500 gallons or less for export by the purchaser, the dealer shall retain in his files for at least three years an export certificate executed by the purchaser in such form and containing such information as is prescribed by the City or its authorized agent. This certificate shall be prima facie evidence of the exportation of the motor vehicle fuel to which it applies only if accepted by the dealer in good faith.

Section 18. Sales to Armed Forces Exempted. The motor vehicle fuel tax imposed by Sections 3 and 4 shall not be imposed on any motor vehicle fuel sold to the Armed Forces of the United States for use in ships, aircraft or for export from the City; but every dealer shall be required to report such sales to the City or its authorized agent, in such detail as may be required. A certificate by an authorized officer of such Armed Forces shall be accepted by the dealer as sufficient proof that the sale is for the purpose specified in the certificate.

Section 19. Fuel in Vehicles Coming Into City Not Taxed. Any person coming into the City in a motor vehicle may transport in the fuel tank of such vehicle motor vehicle fuel for his own use only and for the purpose of operating such motor vehicle without securing a license or paying the tax provided in Sections 3 and 4, or complying with any of the provisions imposed upon dealers herein, but if the motor vehicle fuel so brought into the City is removed from the fuel tank of the vehicle or used for any purpose other than the propulsion of the vehicle, the person so importing the fuel into the City shall be subject to all provisions herein applying to dealers.

Section 20. Refunds. Refunds will be made pursuant to ORS. 319.280 to 319.320.

Section 21. Examination and Investigations. The City, or its duly authorized agent, may make any examination of accounts, records, stocks, facilities and equipment of dealers, fuel-handlers, service stations and other persons engaged in storing, selling or distributing motor vehicle fuel or other petroleum products within this City, and such other investigations as it considers necessary in carrying out the provisions of this ordinance. If the examinations or investigations disclose that any reports of dealers or other persons theretofore filed with the City or its authorized agent pursuant to the requirements herein, have shown incorrectly the amount of gallons of motor vehicle fuel distributed or the tax accruing thereon, the City or its authorized

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agent may make such changes in subsequent reports and payments of such dealers or other persons, or may make such refunds, as may be necessary to correct the errors by its examinations or investigations.

Section 22. Limitation on Credit for or Refund of Overpayment and on Assessment of Additional Tax.

(A) Except as otherwise provided in this ordinance, any credit for erroneous overpayment of tax made by a dealer taken on a subsequent return or any claim for refund of tax erroneously overpaid filed by a dealer must be so taken or filed within three years after the date on which the overpayment was made to the City or to its authorized agent.

(B) Except in the case of a fraudulent report or neglect to make a report, every notice of additional tax proposed to be assessed under this ordinance shall be served on dealers within three years from the date upon which such additional taxes become due.

Section 23. Examining Books and Accounts of Carrier Motor Vehicle Fuel. The City or its duly authorized agent may at any time during normal business hours examine the books and accounts of any carrier of motor vehicle fuel operating within the City for the purpose of checking shipments or use of motor vehicle fuel, detecting diversions thereof or evasion of taxes in enforcing the provisions of this ordinance.

Section 24. Records to be Kept by Dealers and Fuel Handler. Every dealer and fuel-handler in motor vehicle fuel shall keep a record in such form as may be prescribed by the City or its authorized agent of all purchases, receipts, sales and distribution of motor vehicle fuel. The records shall include copies of all invoices or bills of all such sales and purchases, and shall at all times during the business hours of the day be subject to inspection by the City or its authorized officers or agents.

Section 25. Records to be Kept Three Years. Every dealer and fuel-handler shall maintain and keep, for a period of three years, all records of motor vehicle fuel used, sold and distributed within the City by such dealer or fuel handler, together with stock records, invoices, bills of lading and other pertinent papers as may be required by the City or its authorized agent. In the event such records are not kept within the State of Oregon, the dealer shall reimburse the City or its duly authorized agents for all travel, lodging, and related expenses incurred in examining such records. The amount of such expenses shall be an additional tax imposed hereunder.

Section 26. Use of Tax Revenues.

(A) The City Administrator shall be responsible for the disposition of the revenue from the tax imposed by this ordinance in the manner provided by this section.

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(B) For the purposes of this section, net revenue shall mean the revenue from the tax imposed by this ordinance remaining after providing for the cost of administering the motor vehicle fuel tax to motor vehicle fuel dealers and any refunds and credits authorized herein. The program administration costs of revenue collection and accounting activities shall not exceed 10.5% for the first year, and 10% thereafter, of annual tax revenues.

(C) The net revenue shall be used only for the activities related to the construction, reconstruction, improvement, repair, maintenance of public highways, roads and streets within the City of Woodburn.

Section 27. Administration. The City Administrator or his designate is responsible for administering this ordinance. In addition, the City Administrator may enter into an agreement with the Motor Vehicle Division of the Department of Transportation as an authorized agent for the implementation of certain sections of this ordinance. If the Motor Vehicles Division is chosen as an authorized agent of the City, then the modifications outlined below shall apply:

(a) The fuel handler's penalty of Section 7 Subsection "c" shall be reduced to \$100.00. And if the Division determines that the failure to obtain the permit was due to reasonable cause and without any intent to avoid obtaining a permit, then the penalty provided in Section 7 and this Subsection may be waived.

(b) The fuel handler's monthly reporting requirements of Section 12 and 13 shall be waived.

Section 28. Separability. If any portion of this ordinance is for any reason held invalid or unconstitutional by a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions of this ordinance.

Section 29. Voter Referral. This ordinance shall be referred to the electors of the City of Woodburn at the September 19, 1989, special election. A copy of the ballot measure for this referral is attached hereto and by this reference incorporated herein.

Section 30. Emergency Clause for Voter Referral. An emergency is declared to exist in regard to the referral of this matter to the voters and Section 29 of this ordinance shall take effect immediately upon passage by the Council and approval by the Mayor.

Section 31. Effective Date for Remainder of Ordinance. Excepting Section 29 regarding voter referral, the taxation imposed by this ordinance shall commence November 1, 1989, upon approval of a majority of the electors of the City of Woodburn at the special election of September 19, 1989.

Passed by the Council and approved by the Mayor August 14, 1989.

ORDINANCE NO. 2057

AN ORDINANCE PROVIDING FOR A TRANSIENT OCCUPANCY TAX AND PROVIDING ADMINISTRATIVE PROCEDURES FOR COLLECTING SAID TAX.

[Whereas clauses.]

THE CITY OF WOODBURN ORDAINS AS FOLLOWS:

Section 1. Definitions. For purposes of this ordinance, the following mean:

(1) Accrual Accounting. A system of accounting in which the operator enters the rent due from a transient into the record when the rent is earned, whether or not it is paid.

(2) Cash Accounting. A system of accounting in which the operator does not enter the rent due from a transient into the record until the rent is paid.

(3) Hotel. A structure, any portion of a structure, or any space that is occupied or intended or designed for transient occupancy for thirty (30) days or less for dwelling, lodging or sleeping purposes; and including, but not limited to, any hotel, inn, tourist home or house, motel, studio hotel, bachelor hotel, lodging house, public or private dormitory, fraternity, sorority, rooming house, public or private club, space in a mobile home or trailer park, space in a recreational vehicle park, or other similar structure if the occupancy is for less than a 30-day period.

(4) Occupancy. The use or possession or right to the use or possession of a room or space in a "hotel" for lodging or sleeping purposes.

(5) Operator. A person who is a proprietor of a hotel in any capacity. When the operator performs his functions through a managing agent of a type or character other than an employee, the managing agent shall also be considered an operator and shall have the same duties and liabilities as his principal. Compliance with the provisions of this ordinance be either the principal or the managing agent shall be considered compliance by both.

(6) Person. "Person" means any individual, firm, partnership, joint venture, association, social club, fraternal organization, fraternity, sorority, public or private dormitory, joint stock company, corporation, estate, trust, business trust, receiver, trustee, syndicate, or any other group or combination acting as a unity.

(7) Rent. The consideration charged for the occupancy of space in a hotel as that term is defined by this Ordinance. (Section 1(7) as amended by Ordinance 2419 dated May 14, 2007.)

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(8) Rent Package Plan. The consideration charged for both food and rent when a single rate is made for the total of both. The amount applicable to rent for determination of the transient occupancy tax shall be the same charge made for rent when it is not a part of a package plan.

(9) Tax. The tax payable by the transient or the aggregate amount of taxes due from an operator during the period for which he is required to report his collections.

(10) Tax Administrator. The Finance Director or designee.

(11) Transient. An individual who exercises occupancy for a period of 30 consecutive calendar days or less, counting portions of calendar days as full days. The day a transient checks out of the hotel shall not be included in determining the 30-day period if the transient is not charged rent for that day by the operator. An individual occupying space in a hotel shall be transient until the period of 30 days has expired unless there is an agreement in writing between the operator and the occupant providing for a longer period of occupancy. A person who pays for lodging on a monthly basis, irrespective of the number of days in such month, shall not be deemed a transient.

Section 2. Imposition of Tax. For the privilege of occupancy in a hotel, a transient shall pay a tax in the amount of nine percent (9%) of the rent charged by the operator. The tax constitutes a debt owned by the transient to the City, and the debt is extinguished only when the tax is remitted by the operator to the City. The transient shall pay the tax to the operator of the hotel at the time the rent is paid. The operator shall enter the tax into the records when rent is collected if the operator keeps his records on the accrual accounting basis. If rent is paid in installments, a proportionate share of the tax shall be paid by the transient to the operator with each installment. If for any reason the tax due is not paid to the operator of the hotel, the tax administrator may require that the tax be paid directly to the City. In all cases, the rent paid or charged for occupancy shall exclude the sale of any goods, services and commodities other than the furnishing of rooms, accommodations, and parking space in mobile home parks, trailer parks or recreation vehicle parks. (Section 2 as amended by Ordinance 2290 dated June 11, 2001.)

Section 3. Rules for Collection of Tax by Operator.

(1) Every operator renting space for lodging or sleeping, the occupancy of which is not exempted under terms of this ordinance, shall collect a tax from the occupant. The tax collected or accrued constitutes a debt owned by the operator to the City.

(2) In cases of credit or deferred payment of rent, the payment of tax to the operator may be deferred until the rent is paid, and the operator shall not be liable for the tax until credits are paid or deferred payments are made. Adjustments may be made for uncollectible accounts.

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(3) The tax administrator shall enforce this ordinance and may adopt rules and regulations necessary for enforcement.

(4) For rent collected on portions of a dollar, fractions of a penny of tax shall not be remitted.

Section 4. Operator's Duties. An operator shall collect the tax when the rent is collected from the transient. The amount of tax shall be stated separately in the operator's records and on the receipt given by the operator. An operator shall not advertise that the tax will not be added to the rent, that portion of it will be assumed or absorbed by the operator, or that a portion will be refunded, except in the manner provided by this ordinance. The operator shall pay the tax to this city as imposed by this ordinance as provided for in Section 8 of this ordinance.

Section 5. Exemptions. The tax shall not be imposed on:

(1) An occupant staying for more than 30 consecutive days.

(2) A person who rents a private home, vacation cabin or similar facility from an owner who personally rents the facility incidentally to the owner's personal use.

(3) Any occupant whose rent is paid for a hospital room or stay in a medical clinic, convalescent home or home for aged people.

(4) Any occupant whose rent is of a value less than \$2.00 per day.

(5) Employees, officials or agents of the U.S. Government occupying a hotel in the course of official business. (Section 5(5) as amended by Ordinance 2419 dated May 14, 2007.)

Section 6. Operator's Registration.

(1) An operator of a hotel shall possess a valid business registration in accordance with the requirements of Ordinance 2399.

(2) Failure to register does not relieve the operator from collecting the tax imposed by this ordinance, or a person from paying said tax.

Section 7. Certificate of Authority.

(1) The tax administrator shall, within 10 days after registration, issue without charge a certificate of authority to each registrant to collect the tax from the occupant, together with a duplicate for each additional place of business of each registrant. Certificates are nonassignable and nontransferable and shall be surrendered immediately to the tax administrator on the cessation of business at the location named or on the sale or transfer of the business. Each certificate and duplicate shall state the place of business to which it is applicable and shall be

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prominently displayed so as to be seen by all occupants and persons seeking occupancy.

- (2) The certificate shall state:
 - (a) The name of the operator.
 - (b) The address of the hotel.
 - (c) The date on which the certificate was issued.

(d) This Transient Occupancy Registration Certificate signifies that the person named has fulfilled the requirements of the Transient Occupancy Tax Ordinance of the City of Woodburn by registering with the tax administrator for the purpose of collecting from transients the occupancy tax imposed by the City and remitting the tax to the tax administrator. This certificate does not authorize any person to operate a hotel without strictly complying with all local applicable laws including, but not limited to, those requiring a permit from any board, commission, department or office of the City of Woodburn. This certificate does not constitute a permit. This certificate does not authorize any person to conduct any unlawful business or to conduct any lawful business in an unlawful manner.

Section 8. Collections, Returns and Payments.

(1) The tax shall be paid by the transient to the operator at the time that rent is paid. The taxes collected by the operator are due and payable to the tax administrator on a calendar basis on the 15th day of the month for the preceding month and are delinquent on the last day of the month in which they are due.

(2) On or before the 15th day of the month following each month of collection, a return for the preceding month's tax collections shall be filed with the tax administrator. The return shall be filed on a form prescribed by the tax administrator.

(3) Returns shall show the amount of tax collected or otherwise due for the related period. The tax administrator may require returns to show the total rentals on which tax was collected or is due, gross receipts of the operator for the period, an explanation in detail of any discrepancy between the amounts, and the amounts of rents exempt.

(4) The operator is entitled to withhold ten percent (10.0%) of the tax due to cover the administrative expense of collecting and remitting the tax. This deduction shall be so noted in the appropriate place on the return form.

(5) The operator shall deliver the return and the tax due the City to the tax administrator's office either by personal delivery or by mail. If the return is by mail, the postmark shall be considered the date of delivery for determining delinquencies.

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(6) For good cause, the tax administrator may extend the time for filing a return or paying the tax for not more than one month. No further extensions shall be granted except by the Council. An operator to whom an extension is granted shall pay interest at the rate of one percent (1%) per month on the amount of tax due, without proration for a fraction of a month. If a return is not filed, the tax and interest due are not paid by the end of the extension, the interest shall become part of the tax computation of penalties described in Section 9.

(7) The tax administrator may require returns and payment of the amount of taxes for other than monthly period in individual cases to ensure payment or to facilitate collection by the City.

Section 9. Delinquency Penalty.

(1) An operator who has not been granted an extension of time for remittance of tax due and who fails to remit the tax prior to delinquency shall pay a penalty of ten percent (10%) of the tax due in addition to the tax.

(2) An operator who has not been granted an extension of time for remittance of tax due and who fails to pay a delinquent remittance before the expiration of 31 days following the date on which the remittance became delinquent shall pay a second delinquency penalty of fifteen percent (15%) of the tax due, the amount of the tax, and the ten percent (10%) penalty first imposed.

(3) If the tax administrator determines that non payment of a remittance is due to fraud or intent to evade the tax, a penalty of twenty-five percent (25%) of the tax shall be added to the penalties state in subsections (1) and (2).

(4) In addition to the penalties imposed by this section, an operator who fails to remit the required tax shall pay interest at the rate of one percent (1.0%) per month, without proration for portions of a month, on the tax due, exclusive of penalties, from the date on which the tax first became delinquent until paid.

(5) Each penalty imposed and the interest accrued under provisions of this section shall be merged with and become part of the tax required to be paid.

(6) An operator who fails to remit the tax within the required time may petition the tax administrator for waiver and refund of the penalty or a portion of it. The tax administrator may, if good cause is shown, direct a refund of the penalty or a portion of it.

Section 10. Deficiency Determinations.

(1) In making a determination that the returns are incorrect, the tax administrator may determine the amount required to be paid on the basis of the facts contained in the return or on the basis of any other information.

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(2) Deficiency determination may be made on the amount due for one or more than one period. The determined amount shall be payable immediately on service of notice, after which the determined amount is delinquent. Penalties on deficiencies shall be applied as provided in Section 9.

(3) In making a determination, the tax administrator may offset overpayments that have been made against a deficiency for a subsequent period or against penalties and interest on the deficiency. The interest on the deficiency shall be computed as provided in Section 9.

Section 11. Redemption Petition. A determination becomes payable immediately on receipt of notice and becomes final within 10 days after the tax administrator has given notice. However, the operator may petition for redemption and refund by filing a petition before the determination becomes final.

Section 12. Fraud, Refusal to Collect, Evasion.

(1) If an operator fails or refuses to collect the tax, make the report, or remit the tax, or makes a fraudulent return or otherwise willfully attempts to evade the tax payment, the tax administrator shall obtain facts and information on which to base an estimate of the tax due. After determining the tax due and the interest and penalties, the tax administrator shall give notice of the total amount due.

(2) Determination and notice shall be made and mailed within three years after discovery of fraud, intent to evade, failure or refusal to collect the taxes, or failure to file a return. The determination becomes payable immediately on receipt of notice and becomes final 10 days after the tax administrator has given notice.

(3) The operator may petition for redemption and refund if the petition is filed before the determination becomes final.

Section 13. Notice of Determination.

(1) The tax administrator shall give the operator a written notice of the determination. If notice is mailed it shall be addressed to the operator at the address that appears on the records of the tax administrator, and service is complete when the notice is deposited in the post office.

(2) Except in the case of fraud or intent to evade the tax, a deficiency determination shall be made and notice mailed within three years after the last day of the month following the close of the monthly period for which the determination has been made or within three years after the return is filed, whichever is later.

Section 14. Operator Delay If the tax administrator believes that collection of the tax will be jeopardized by delay, the tax administrator shall determine the tax to be collected and note facts concerning the delay on the determination. The determined amount is payable immediately after service of notice. After payment has been made,

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the operator may petition for redemption and refund of the determination if the petition is filed within 10 days from the date of service of notice by the tax administrator.

Section 15. Redetermination.

(1) An operator against whom a determination is made under Section 10, or a person directly interested, may petition for a redetermination, redemption and refund within the time required in Section 14. If a petition for redetermination refund is not filed within the time required, the determination is final on expiration of the allowable time.

(2) If a petition for redetermination and refund is filed within the allowable period, the tax administrator shall reconsider the determination and, if the operator requested a hearing in the petition, shall grant the hearing and give the operator 10 days notice of the time and place of the hearing. The tax administrator may continue the hearing if necessary.

(3) The tax administrator may change the amount of the determination as a result of the hearing. If an increase is determined, the increase is payable immediately after the hearing.

(4) The decision of the tax administrator on a petition for redetermination becomes final 10 days after service of notice on the petitioner unless appeal of the decision is filed with the City Council within 10 days after notice is served.

(5) A petition for redetermination or an appeal is not effective unless the operator has complied with the payment provisions.

Section 16. Security for Collection of Tax.

(1) The tax administrator may require an operator to deposit security in the form of cash, bond or other security. The amount of security shall be fixed by the tax administrator, but shall not be greater than twice the operator's estimated average monthly liability for the period for which the operator files returns or \$5,000, whichever amount is less. The amount of the security may be increased or decreased by the tax administrator, subject to the limitations of this subsection.

(2) Within three years after any amount of the tax becomes due and payable or within three years after any determination becomes final, the tax administrator may bring an action in the courts of this state, or any other state, or of the United States in the name of the city to collect the amount delinquent, together with penalties and interest.

Section 17. Liens

(1) The tax, interest, penalty, and filing fees paid to the tax administrator any advertising costs incurred when the tax becomes delinquent shall be a lien from the date of its recording with the County Clerk of Marion County, Oregon until the tax is

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paid. The lien shall be superior to all subsequently recorded liens on all tangible personal property in the operator's hotel. The lien may be foreclosed and the necessary property may be sold to discharge the lien.

(2) Notice of the lien shall be issued by the tax administrator when the operator has defaulted in payment of the tax, interest and penalty. A copy of the notice shall be sent by certified mail to the operator.

(3) Personal property subject to the lien may be sold at public auction after 10 days notice in a newspaper of general circulation in the city.

(4) A lien for the tax, interest and penalty shall be released by the tax administrator when the full amount has been paid to the city. The operator or person making the payment shall receive a receipt stating that the full amount of the tax, interest and penalty has been paid, that the lien is released and that the record of the lien is satisfied.

Section 18. Refunds by City to Operator. When the tax, penalty or interest has been paid more than once or has been erroneously or illegally collected or received by the tax administrator, it may be refunded if a written verified claim stating the specific reason for the claim is filed within three years from the date of payment. The claim shall be submitted on forms provided by the tax administrator. If the claim is approved, the excess amount may be refunded to the operator or it may be credited to an amount payable by the operator and any balance refunded.

Section 19. Refunds by City to Transient. If the tax has been collected by the operator and deposited with the tax administrator and it is later determined that the tax was erroneously or illegally collected or received by the tax administrator, it may be refunded to the transient if a written verified claim stating the specific reason for the claim is filed with the tax administrator within three years from the date of payment.

Section 20. Records Required from Operators. Every operator shall keep guest records, accounting books, and records of room rentals for a period of three years and six months.

Section 21. Examination of Records. During normal business hours and after notifying the operator, the tax administrator may examine books, papers, and accounting records related to room rentals to verify the accuracy of a return or, if no return is made, to determine the amount to be paid. To assist in this process, the tax administrator may request certified copies of the annual income tax return covering the hotel operator.

Section 22. Confidentiality. The tax administrator or a person having an administrative or clerical duty under the provisions of this ordinance shall not make known in any manner the business affairs, operations, or information obtained by an investigation of records and equipment of a person required to file a return or pay a transient occupancy tax or a person visited or examined in the discharge of official

duty; or the amount or source of income, profits, losses or expenditures contained in a statement or application; or permit a statement or application, or a copy of either, or a book containing an abstract or particulars to be seen or examined by any person. However, nothing in this section shall be construed to prevent:

(1) Disclosure to or examination of records and equipment by a city official, employee or agent for collecting taxes for the purpose of administering or enforcing the provisions or collecting the taxes imposed by this ordinance.

(2) Disclosure, after filing a written request, to the taxpayer, receivers, trustees, executors, administrators, assignees, and guarantors, if directly interested, of information concerning tax paid, unpaid tax, amount of tax required to be collected, or interest and penalties. However, the City Attorney shall approve each disclosure, and the tax administrator may refuse to make a disclosure referred to in this subsection when, in the tax administrator's opinion, the public interest would suffer.

(3) Disclosure of names and address of persons making the returns.

(4) Disclosure of general statistics regarding taxes collected or business done in the City.

Section 23. Disposition of Tax Funds. All revenue received from the transient occupancy tax shall be accounted for by a separate revenue line item contained in the General Fund. Sixty six and two thirds percent (66 2/3%) of all revenues received from the transient occupancy tax shall be used at the Council's discretion. Thirty three and one-third percent (33 1/3%) of all revenues received from the transient occupancy tax shall be dedicated to uses that promote and support tourism and economic development activities. Of the monies set aside for tourism and economic development the Council may, at its discretion, expend some or all of those monies on activities conducted by the City or other agencies that advance the Council's tourism and economic development goals. Monies distributed to agencies and organizations other than the City shall be on a fee for service basis, pursuant to a tourism and economic development grant program. Policies and procedures governing that program shall be established by City Council resolution. (Section 23 as amended by Ordinance 2435 passed March 24, 2008.)

Section 24. Appeals to Council. A person aggrieved by a decision of the tax administrator may appeal to the City Council by filing a notice of appeal with the tax administrator within ten days of notice of the decision. The tax administrator shall transmit the notice, together with the file of the appealed matter, to the Council. The Council shall fix a time and place for hearing the appeal and shall give the appellant not less than ten days written notice of the time and place of hearing.

Section 25. Severability. The provisions of this ordinance are severable. If a portion of this ordinance is for any reason held by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance.

11-18.26**11-18.28****Section 26. Violations.**

(1) It is unlawful for any operator or other person so required to fail or refuse to register as required herein, or to furnish any return required to be made, or to fail to pay the tax collected, or fail or refuse to furnish a supplemental return or other data required by the tax administrator, or to render a false or fraudulent return. No person required to make, render, sign, or verify any report shall make any false or fraudulent report, with intent to defeat or evade the determination of any amount due required by this ordinance.

(2) Notwithstanding paragraph (1) of this section, the City Attorney, in addition to other remedies permitted by law, may commence and prosecute to final determination in any court of competent jurisdiction an action at law to collect the tax imposed.

Section 27. Civil Infraction. A violation of any provision of this ordinance shall constitute a Class 2 civil infraction and shall be dealt with according to the procedures established by Ordinance No. 1998. Each day of noncompliance with this ordinance shall constitute a separate violation.

Section 28. Effective Date. This ordinance shall be in full force and effect effective June 1, 1991.

Passed by the Council April 8, 1991 and approved by the Mayor April 9, 1991.

ORDINANCE NO. 2109

AN ORDINANCE GRANTING PORTLAND GENERAL ELECTRIC COMPANY, AN OREGON CORPORATION, A NON-EXCLUSIVE FRANCHISE TO OPERATE AN ELECTRIC LIGHT AND POWER SYSTEM WITHIN THE CORPORATE LIMITS OF THE CITY, FIXING THE TERMS AND CONDITIONS THEREOF, AND DECLARING AN EMERGENCY.

THE CITY OF WOODBURN ORDAINS AS FOLLOWS:

Section 1. Franchise Granted. Portland General Electric Company, an Oregon Corporation ("Company"), is hereby granted a non-exclusive franchise to operate an electric light and power system within the corporate limits of the City of Woodburn ("City"), subject to the terms and conditions of this ordinance,

A. Definitions. As used in this ordinance:

"City" means the City of Woodburn, a municipal corporation of the State of Oregon, and its duly authorized officers, employees, agents or assigns.

"City Engineer" means the duly appointed City Engineer of Woodburn, Oregon.

"City Recorder" means the duly appointed City Recorder of Woodburn, Oregon.

"Company" means Portland General Electric Company, an Oregon Corporation.

"Company facilities" means all poles, wires, fixtures, equipment, underground circuits and other property owned or in possession of the Company, directly used in connection with the transmission and distribution of electricity and located within the corporate limits of the City.

"Corporate limits of the City of Woodburn" means the city boundary as it now exists or may be amended during the term of this Franchise.

"Franchise to Operate an Electric Light and Power System" includes the right and privilege to erect, construct, repair, maintain and operate poles, wires, fixtures, equipment, underground circuits and other property necessary or convenient to supply the City, its inhabitants and other persons and territory with electric energy for light, power and other purposes, upon, over, along, under and across any public right-of-way, property or place.

"Gross revenue" includes any revenue earned by the Company within the City from the sale of electric energy after adjustment for the net write-off of uncollectible accounts computed on the average annual rate for the entire Company, excluding existing sales of electric energy sold by the Company to any public utility

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when the public utility purchasing such electric energy is not the ultimate consumer. Gross revenue shall include revenues from the use, rental or lease of operating facilities of the utility other than residential-type space and water heating equipment. Gross revenue shall not include proceeds from the sale of bonds, mortgages or other evidence of indebtedness, securities or stocks, revenue from joint pole use, or revenue paid directly by the United States of America or any of its agencies. The meaning of "gross revenue" as used in this ordinance shall be amended and interpreted consistently with regulations prescribed by PUC for determining the amount of franchise fees allowed as operating expenses of a utility for rate-making purposes.

"Person" includes any individual, group of individuals, or legal entity.

"PUC" means the State of Oregon, Public Utility Commission, and any successor or additional agency empowered by the State of Oregon to regulate public utilities.

"Public right-of-way" includes the public streets, alleys, roads, dedicated rights-of-way, easements, and other public property, way or place within the corporate limits of the City, and further includes private property upon which a preliminary subdivision or partition plat has been approved by the City for provision of public utilities within the corporate limits of the City.

"Public utility" means any individual, partnership, cooperative, corporation or government agency buying electric energy and distributing such electric energy to other customers or users.

B. Facilities Subject to Ordinance. All Company facilities shall be deemed to be covered by the terms of this ordinance.

C. Unless otherwise specified in this ordinance, any action authorized or required to be taken by the City may be taken by the Woodburn City Council or its designee.

Section 2. Terms of Franchise. This ordinance shall become effective pursuant to the Woodburn Charter, is retroactive to January 1, 1993, and shall terminate on December 31, 2002, except:

A. If the Company fails, neglects or refuses to perform any or all of its obligations or requirements pursuant to this Franchise for thirty (30) days following written notice by the City demanding such performance, then this Franchise may be terminated by the City Council and the Company shall forfeit all rights and privileges hereby granted.

B. If the State of Oregon or the PUC amends or adopts a state statute or administrative rule that would affect a material term, condition, right or obligation under this Franchise, either party may reopen Franchise negotiations with regard to such term, condition, right or obligation in order to address the change required or allowed by the new or amended state statute or administrative rule.

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C. If the Company is found guilty of providing fraudulent financial information to the City or fails to obtain or maintain any permit required by federal or state law.

D. The City reserves the right to cancel this Franchise at any time upon one year's written notice to the Company in the event that the City decides to engage in public ownership of light and power facilities and the public distribution of electric energy.

Section 3. Construction to be Approved by City.

A. Before the Company may conduct underground work involving excavation, new construction or major relocation work in any public right-of-way, the Company shall first notify the City, furnish appropriate maps and drawings, and provide not less than forty-eight (48) business day hours notice, except in the case of an emergency.

B. In the case of an emergency the Company shall file maps and drawings with the City Engineer showing any construction work done by the Company within the corporate limits of the City, within thirty (30) days after completion of the work.

C. Such construction work shall be done in a reasonably safe manner in accordance with requirements of applicable ordinances, State laws, and rules. In all circumstances pertinent to this Franchise, any actions by the Company's contractors shall be the responsibility of the Company. Any contractor of the company shall be bound by all terms and conditions of this Franchise.

Section 4. Location and Relocation of Company Facilities.

A. City Approval Required for Company Installations, Excavations and Restorations. Subject to City approval, the Company may make all necessary excavations in any public right-of-way for the purpose of erecting, locating, installing, constructing, repairing, maintaining, removing and relocating Company facilities. The location of Company facilities in the public right-of-way shall be at places approved by the City. All poles of the Company shall be erected at the outside edge of the sidewalk unless otherwise directed by the City. Except in emergencies, the City may require the Company to obtain a permit prior to commencing any work pursuant to this section pursuant to the City's ordinances or regulations. In emergencies the Company shall take reasonable measures to notify the City Engineer prior to commencing work if the emergency occurs during working hours. If the emergency occurs after working hours or on the weekend, the Company shall notify the City by calling NORCOM Dispatch Center (982-5340) prior to commencing work.

B. Notice Required. Except in an emergency, the Company shall provide not less than forty-eight (48) business day hours notice to the City Engineer prior to any work by the Company which involves excavation in the public right-of-way or relocation of Company facilities. The Company shall exercise all reasonable efforts to

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provide advance notice of such work so as not to disrupt City services or any other person using the right-of-way and to enable the City to inspect the work.

C. Company to Minimize Disruptions. Whenever work is performed in any public right-of-way, the Company shall take all reasonable precautions to minimize interruption to traffic flow, damage to property or creation of a hazardous condition.

D. Restoration Required. When the Company makes any excavation or installation pursuant to this ordinance, the Company or its contractors shall restore the affected public right-of-way to the same condition which it was in prior to the excavation. All work done shall be subject to the reasonable rejection or correction requirements of the City Engineer and subject to the City Engineer's approval. If the Company fails to promptly restore the affected portion of the public right-of-way, the City may restore the right-of-way and charge all costs to the Company. If the Company inadequately restores the right-of-way, the City may repair the restored area to correct the defect and charge the cost to the Company, provided that the City gives the Company notice of the defect and ten (10) days opportunity to correct the defect. All excavation and restoration work shall be done in strict compliance with applicable rules, permits issued, regulations, ordinances or orders of the City and other applicable laws and regulations which may be adopted from time to time during the continuance of this Franchise by the City Council or as may otherwise be provided by law.

Section 5. Company Required to Relocate Facilities Upon Notice.

A. Whenever the City finds it necessary to relocate any Company facility, the Company shall, upon ten (10) days written notice from the City, relocate such equipment at the Company's expense. If the Company fails to do so, the City may relocate such equipment at the expense of the Company. Prior to any such relocation the City agrees to provide for suitable location for such relocated facilities sufficient to maintain services.

B. Subject to Oregon law, the City shall have the right to require the removal of overhead electric facilities and require the replacement of those facilities with underground electric facilities at the same or different locations. The expense of such a conversion shall be paid by the Company subject to OAR 860-22-046. The conversion shall be accomplished in the manner described by the rules of the PUC, or in another manner which is mutually agreeable to both the Company and the City.

Section 6. Temporary Rearrangement of Facilities. On seven (7) days written notice from a person desiring to move a building, machinery or other object, the Company shall temporarily rearrange or remove aerial cables, wires or other apparatus of the Company to permit the passage of such object.

The notice shall: (1) bear the approval of the City Engineer, (2) detail the route of movement of the building, machinery or other object; (3) provide that the costs incurred by the Company in making such rearrangements of its aerial plant will be

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borne by the person giving the notice; and (4) provide that the person giving such notice will indemnify and hold the Company and the City harmless of and from any and all damages or claims of whatsoever kind or nature caused directly or indirectly from such temporary rearrangement of the aerial plant of the Company. The Company may require that the notice be accompanied by a cash deposit or a good and sufficient bond to pay any and all such costs as estimated by the Company.

Section 7. Public Facilities and Improvements.

A. All Company facilities shall be placed so that they do not interfere with the use by the City or the public of any public right-of-way and in accordance with any requirements adopted by the City Council. Nothing in this ordinance shall be construed to prevent the City from sewerage, grading, paving, planking, repairing, widening, altering or doing any work that may be desirable on or in any public right-of-way. If possible, all such work shall be done so as not to obstruct, injure or prevent free use and operation of the electric light and power system of the Company.

B. Whenever the City performs or contracts for work in the right-of-way that may disturb but does not require the relocation of Company facilities, the City shall take reasonable measures to notify the Company in advance to enable Company to take measures to protect its facilities from damage or injury to the public. In such case, the Company shall furnish field marking to the City or contractor showing the approximate location of all of its facilities in the area involved in the construction.

C. The Company shall permit the City to string wires on poles of the Company for any municipal purpose and to attach to the top of any pole city alarms and police signals, subject to the following conditions:

(1) Such wires and signals shall be strung so as not to interfere with the wires of the Company and to conform to the provisions of the National Electrical Safety Code and any other applicable building code; and

(2) To the degree permitted by Oregon Law, the City shall defend, indemnify and hold the Company harmless from loss or damage resulting from damage to property or injury or death to City employees, Company employees, or the public arising from the use of said poles by the City.

D. The Company shall permit the City to attach banners or other civic beautification or information items to poles of the Company subject to the following:

(1) The attachments shall not interfere with the wires of the Company and shall conform to the provisions of the National Electric Safety Code and any other applicable Federal, State or PUC regulation. The Company may regulate the location of such attachment or may deny requests for such attachments on a case-by-case basis if the attachment would violate the requirement of this subsection.

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(2) To the degree permitted by Oregon Law, the City shall defend, indemnify and hold the Company harmless from loss or damage resulting from damage to persons or property or injury or death to City employees, Company employees, or the public arising from the use of said poles by the City. The City shall maintain general liability insurance in the amount of at least \$1,000,000, which shall name the Company as an additional insured, during use of the poles by the City pursuant to Section 7(D).

Section 8. Continuous Service; Safety Standards.

A. The Company shall furnish adequate and safe service for the distribution of electrical energy in the City. The Company shall use due diligence to maintain continuous 24-hour a day service which shall at all times conform at least to the standards common in the business and to the standards adopted by the State. Under no circumstances shall the Company be liable for an interruption or failure of service caused by an act of God, unavoidable accident, or other circumstances beyond the control of the Company.

B. The Company shall comply with all the rules and regulations of the Oregon Public Utility Commission.

Section 9. Acceptance of Franchise Fees. The rights and privileges granted by this Franchise are granted upon the conditions herein contained and also upon the following conditions:

A. Portland General Electric Company shall, within thirty (30) days from the effective date of this ordinance, file with the City Recorder its written acceptance of this Franchise (Exhibit "A". Acceptance of Franchise), subject to all the terms and conditions of this Franchise. If Company has not unconditionally accepted this ordinance within the above noted acceptance period, this ordinance shall become void.

B. In consideration of the rights and privileges granted by this Franchise, the Company shall pay to the City a franchise fee each calendar year during the life of this Franchise of three and one-half (3½) percent of the gross revenue as defined herein for the immediately preceding calendar year. In the event that the Company shall agree to pay a franchise fee of more than three and one-half (3½) percent to any city or municipal corporation served by the Company or in the event that the PUC permits the Company to pay any municipality a percentage rate of compensation exceeding that provided for herein as an operating expense of the Company, however, the Company shall immediately so inform the City of Woodburn. The City shall have the right to immediately require and receive the same percentage fee or compensation as that agreed to for the other municipality or provided for by the PUC.

C. In consideration of the agreement of the Company to make such payments, the City agrees that no license, tax or charge on the business or occupation of the Company shall be imposed upon the Company by the City during the term of this ordinance, except:

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(1) This provision shall not exempt the property of the Company from lawful ad valorem taxes, local improvement district assessments, or conditions, exactions, fees and charges which are generally applicable to the Company's real property, use or development as required by the City's ordinances and regulations.

(2) The City shall retain the power to impose a privilege tax on the Company as permitted by Oregon law, so long as the combined franchise fee and privilege tax assessed against the Company does not exceed five (5) percent of the Company's gross revenue from within the City as defined in this ordinance. If the City decides to enact a privilege tax, the City shall provide the Company with sixty (60) days notice prior to the effective date of the ordinance enacting the tax.

D. On or before the first day of March of each year during the term of this Franchise, beginning in 1993, the Company shall file with the City Recorder a statement under oath showing the amount of gross revenue of the Company within the City on the basis outlined in paragraph (B) for the calendar year immediately preceding the year in which the statement is filed. The annual franchise fee (and any privilege tax that may be assessed) for the year in which the statement is filed shall be computed on the gross revenue so reported. Such franchise fee (and any privilege tax that may be assessed) shall be payable annually on or before the first day of April, beginning in 1993. Any privilege tax enacted by the City shall be paid by the Company to the City beginning with the annual payment following enactment of the tax. The City Recorder shall issue a receipt for such annual payment, which shall be the full acquaintance of the Company for the payment. Any dispute as to the amount of the Company's gross revenue within the meaning of this ordinance shall be resolved by the Public Utility Commission of Oregon after examination of the Company's records. Any difference of payment due the City through error or otherwise shall be payable within fifteen (15) days of written notice of discovery of such error. If the Company fails to pay any part of the annual payment for thirty (30) days after such payment is due pursuant to this ordinance, and after thirty (30) days written notice from the City, the City may either continue this Franchise in force and/or proceed by suit or action to collect said payment or declare a forfeiture of this Franchise because of the failure to make such payment but without waiving the right to collect earned franchise payments. Any overpayment to the City through error or otherwise shall be offset against the next payment to the City.

E. The City reserves the right to cancel this Franchise at any time upon one year's written notice to the Company in the event that the City decides to engage in public ownership of light and power facilities and the public distribution of electric energy.

F. The Company shall not sell, assign, transfer or convey this Franchise without the consent of the City Council.

G. The Company shall not unjustly discriminate or grant undue preference to any users of the services provided by the Company pursuant to this Franchise.

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Section 10. Books of Account and Reports. The Company shall maintain accurate books of account at an office in Oregon for the purpose of determining the amounts due to the City under Section 9 of this ordinance. The City may inspect the books of account, including computer retrieval information, at any time during the Company's business hours and may audit the books from time to time.

Section 11. Utility Rates Set by PUC. The rates charged by the Company for electric energy shall be as fixed or approved by the PUC.

Section 12. Indemnification. The Company shall indemnify, defend and save harmless the City and its officers, agents and employees from any and all loss, cost and expense, including reasonable attorneys fees, arising from damage to property and/or injury or death of persons or any other damage resulting in whole or in part from any wrongful or negligent act or omission of the Company, its agents or employees in exercising the rights, privileges and franchise hereby granted.

Section 13. Insurance. Company shall be self-insured for any tort liability for the first \$1 million of coverage or maintain an equivalent insurance policy. Beyond the \$1 million retention, Company shall maintain liability coverage in excess of \$1 million for bodily injury and property damage, including liability assumed under contract. Company shall defend or negotiate any claims against the City, its officers, agents and employees, arising out of Company's exercise of its rights and privileges granted by this Franchise.

Section 14. Franchise Nonexclusive. This Franchise shall not be exclusive and shall not be construed as any limitation on the City to grant rights, privileges and authority to other persons or corporations similar to or different from those herein set forth.

Section 15. Rights not to be Construed as Enhancement to Company Property. The City and the Company understand and agree that the privileges granted to the Company by this Franchise in the streets, alleys, roads and other public places of the City are not to operate so as to be an enhancement of the Company's properties or values or to be an asset or item of ownership in any appraisal thereof.

Section 16. Remedies and Penalties not Exclusive. All remedies and penalties under this ordinance, including termination of the Franchise, are cumulative and not exclusive. Failure to enforce shall not be construed as a waiver of a breach of this Franchise. A specific waiver shall not be construed to be a waiver of a future breach or of any other term or condition of this Franchise.

Section 17. Severability Clause. If any portion of this ordinance is deemed unlawful or void by a Court or regulatory body of competent jurisdiction, such decision shall not effect the validity of the remaining portions of this ordinance.

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Section 18. Prior Ordinance Repealed. Ordinance No. 1333, as amended by Ordinance 2096, is hereby repealed, and upon acceptance by the Company of this Franchise, all rights and obligations arising under Ordinance No. 1333, as amended, shall terminate.

Section 19. [Emergency clause.]

***Passed by the Council January 27, 2003 and approved by the Mayor
January 28, 2003.***

ORDINANCE NO. 2114

AN ORDINANCE IMPOSING A PRIVILEGE TAX ON PORTLAND GENERAL ELECTRIC COMPANY, AN OREGON CORPORATION, IN THE AMOUNT OF 1.5 PERCENT OF DEFINED GROSS REVENUES, REGULATING USE OF THE REVENUES THEREBY DERIVED, DECLARING AN EMERGENCY AND SETTING AN EFFECTIVE DATE.

[Whereas clauses.]

THE CITY OF WOODBURN ORDAINS AS FOLLOWS:

Section 1. Privilege Tax Imposed. There is hereby imposed a privilege tax on the gross revenues of Portland General Electric Company, an Oregon corporation, in the amount of 1½% (one and one-half percent) of those revenues. As used herein, "gross revenues" means revenues received by Company from the sale of electric energy within the city, less net uncollectibles. Gross revenue shall include revenues from the use, rental or lease of operating facilities of the Company other than residential-type space and water heating equipment. Gross revenues shall not include proceeds from the sale of bonds, mortgage or other evidence of indebtedness, securities or stocks, sales at wholesale prices by one public utility to another when the utility purchasing the service is not the ultimate consumer, or revenue from joint pole use.

The privilege tax provided in this ordinance is in addition to the franchise fee being paid by the Company pursuant to Ordinance No. 2109, which grants to PGE a non-exclusive franchise within the city. That ordinance remains in full force and effect.

Section 2. Payment Dates. The tax provided in this ordinance shall be paid annually and shall be due for each calendar year or fraction thereof, on or before the first day of April following the end of the calendar year for which the tax is due; with the first payment, for gross revenues collected during 1994, due on or before April 1, 1995.

Section 3. Interest on Late Payments. In the event PGE fails to pay the tax on or before the due date, interest shall be owed on the tax from the due date to the date on which payment is received by the city, compounded daily.

Section 4. Use of Proceeds. The proceeds derived from this ordinance shall be dedicated toward funding of transportation improvement projects identified in the city's Capital Improvement Program.

Section 5. Emergency Clause and Effective Date. This ordinance being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist and this ordinance shall take effect on January 1, 1994, and shall remain in effect until modified or rescinded by ordinance of the City Council.

Passed by the Council December 13, 1993 and approved by the Mayor December 16, 1993.

ORDINANCE NO. 2118

AN ORDINANCE PROVIDING FOR THE REGULATION OF BASIC SERVICE TIER RATES AND RELATED EQUIPMENT, INSTALLATION AND SERVICE CHARGES OF ANY CABLE TELEVISION SYSTEM OPERATING IN THE CITY OF WOODBURN AND DECLARING AN EMERGENCY.

[Whereas clauses.]

THE CITY OF WOODBURN ORDAINS AS FOLLOWS:

Section 1. The City shall follow the FCC Rate Regulations in its regulation of the Basic Service Rates and Charges of the Company and any other cable television system operating in the City, notwithstanding any different or inconsistent provisions in the Franchise; and

Section 2. In connection with such regulation, the City shall ensure a reasonable opportunity for consideration of the views of interested parties; and

Section 3. The City Administrator is authorized to execute on behalf of the City and file with the FCC such certification forms or other instruments as are now or may hereafter be required by the FCC Rate Regulations in order to enable the City to regulate Basic Service Rates and Charges.

Section 4. This ordinance being necessary for the immediate preservation of the public peace, health and safety, and emergency is declared to exist and this ordinance shall take effect immediately upon passage by the Council and approval by the Mayor.

Passed by the Council February 28, 1994 and approved by the Mayor March 1, 1994.

ORDINANCE NO. 2145

AN ORDINANCE IMPOSING A PRIVILEGE TAX ON NORTHWEST NATURAL GAS COMPANY, AN OREGON CORPORATION, IN THE AMOUNT OF 2.0 PERCENT OF DEFINED GROSS REVENUES, REGULATING USE OF THE REVENUES THEREBY DERIVED, DECLARING AN EMERGENCY AND SETTING AN EFFECTIVE DATE.

[Whereas clauses.]

THE CITY OF WOODBURN ORDAINS AS FOLLOWS:

Section 1. Privilege Tax Imposed. There is hereby imposed a privilege tax on the gross revenues of Northwest Natural Gas Company, an Oregon corporation, in the amount of 2% (two percent) of those revenues. "Gross revenue" as used in this ordinance shall be deemed to include any revenue earned within the City from the sale of natural gas after deducting from the total billings of the Grantee the total net writeoff of uncollectible accounts. Gross revenues shall include revenues from the use, rental or lease of operating facilities of the utility other than residential-type space and water heating equipment. Gross revenues shall not include proceeds from the sale of bonds, mortgage or other evidence of indebtedness, securities or stocks, revenues derived from the sale or transportation of gas supplied under an interruptible tariff schedule, sales at wholesale to a public utility when the utility purchasing the service is not the ultimate consumer, or revenue paid directly by the United States of America or any of its agencies.

The privilege tax provided in this ordinance is in addition to the franchise fee being paid by the Company pursuant to Ordinance No. 2133, which grants to Company a non-exclusive franchise within the city. That ordinance remains in full force and effect.

Section 2. Payment Dates. The tax provided in this ordinance shall be paid quarterly and shall be due for each calendar quarter or fraction thereof, on or before thirty (30) days following the end of the calendar quarter, or fraction thereof, for which the tax is due; with the first payment, for gross revenues collected during that portion of the 3rd quarter of 1995 in which this ordinance is in effect, due on or before October 1, 1995.

Section 3. Interest on Late Payments. In the event Company fails to pay the tax on or before the due date, interest shall be owed on the tax from the due date to the date on which payment is received by the city, compounded daily.

Section 4. Use of Proceeds. The proceeds derived from this ordinance shall be dedicated toward funding of transportation improvement projects identified in the city's Capital Improvement Program.

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Section 5. Emergency Clause and Effective Date. This ordinance being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist and this ordinance shall take effect on June 18, 1995, and shall remain in effect until modified or rescinded by ordinance of the City Council.

Passed by the Council May 22, 1995 and approved by the Mayor May 23, 1995.

ORDINANCE NO. 2177

AN ORDINANCE GRANTING TO U S WEST COMMUNICATIONS, INCORPORATED, ITS SUCCESSORS AND ASSIGNS, THE RIGHT AND PRIVILEGE TO DO A GENERAL COMMUNICATION BUSINESS AND TO OPERATE WITHIN THE CITY OF WOODBURN, REPEALING ORDINANCE NOS. 1934, 2041 AND 2163 AND DECLARING AN EMERGENCY.

THE CITY OF WOODBURN ORDAINS AS FOLLOWS:

Section 1. There is hereby granted by the City of Woodburn to U S West Communications, Incorporated, its successors and assigns, the right and privilege to do a general communication business within said City of Woodburn and to place, erect, lay, maintain and operate in, upon, over and under the streets, alleys, avenues, thoroughfares, and public highways, places and grounds within the said City, poles, wires and other appliances and conductors for all telephone and other communications purposes. Such wires and other appliances and conductors may be strung upon poles or other fixtures above ground, or at the option of the Grantee, its successors and assigns, may be laid underground, and such other apparatus may be used as may be necessary or proper to operate and maintain the same.

Section 2. It shall be lawful for said Grantee, its successors and assigns, to make all needful excavations in any of the streets, alleys, avenues, thoroughfares and public highways, places and grounds in said City for the purpose of placing, erecting, laying and maintaining poles or other supports or conduits for such wires and appliances and auxiliary apparatus or repairing, renewing or replacing the same. The work shall be done in compliance with the necessary rules, regulations, ordinances or orders, which may during the continuance of this franchise be adopted from time to time by the City of Woodburn.

Except in an emergency, Grantee shall not excavate in the rights-of-way without first obtaining a City "Right-of-Way Improvement" permit. Grantee will ensure that all requirements are met as the contractor for the work. In emergency situations, Grantee may make initial contact by telephone, but a permit must be obtained as soon as possible.

Section 3. Whenever Grantee, its successors and assigns, shall disturb any of the streets for the purpose aforesaid, it or they shall restore the same to good order and condition as soon as practicable without unnecessary delay, and failing to do so the City of Woodburn shall have the right to fix a reasonable time within which such repairs and restoration of streets shall be completed, and upon failure of such repairs and restoration being made by the Grantee, its successors and assigns, the said City shall cause the repairs to be made at the expense of the Grantee, its successors and assigns.

Section 4. Nothing in this Ordinance shall be construed in any way to prevent the proper authorities of the City of Woodburn from sewerage, grading, planking, rocking, paving, repairing, altering, or improving any of the streets, alleys, avenues, thoroughfares and public highways, places and grounds within the City of Woodburn in

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or upon which the poles, wires or conductors of the Grantee shall be placed, but all such work or improvements shall be done if possible so as not to obstruct or prevent the free use of said poles, wires, conductors, conduits, pipes or other apparatus. Grantee shall relocate or remove such facilities when in conflict with City work at no cost to the City. However, the costs of relocating or removing Grantee's facilities for the convenience of or at the request of a private developer or development shall be borne by such private developer or development. The City shall not require Grantee to remove or relocate its facilities or vacate any street, alley or other public way incidental to any public housing or renewal project under ORS Chapters 456 or 457 without reserving Grantee's right to access available grant funding. In the event of major improvement projects the City may direct that all aerial transmission and distribution facilities be placed jointly underground. Payment for such work shall be in accordance with applicable Oregon Revised Statutes and Administrative Rules.

Section 5. Whenever it becomes necessary to temporarily rearrange, remove, lower or raise the aerial cables or wires or other apparatus of the Grantee to permit the passage of any building, machinery or other object moved over the roads, streets, alleys, avenues, thoroughfares and public highways within the City, the Grantee will perform such a rearrangement within a reasonable period after written notice from the owner or contractor-mover desiring to move said building, machinery or other objects. Said notice shall bear the approval of the City, shall detail the route of movement of the building, machinery, or other object, shall provide that the costs incurred by the Grantee in making such a rearrangement of its aerial facilities will be borne by the contractor-mover and shall further provide that the contractor-mover will indemnify and save the Company harmless of and from any and all damages of claims whatsoever kind or nature, caused directly or indirectly from such temporary rearrangement of the facilities of the Grantee, and if required by the Grantee, shall be accompanied by a cash deposit or a good and sufficient bond to pay any and all such costs as estimated by the Grantee.

Section 6. In consideration of the rights, privileges, and franchise hereby granted, said Grantee, U S WEST Communications, Incorporated, its successors and assigns, shall pay to the City of Woodburn from and after the date of the acceptance of this franchise, and until its expiration, quarterly, seven percent (7%) per annum of its gross revenues derived from exchange access services as defined in ORS 401.710 within the corporate limits of the City of Woodburn less net uncollectibles. Payment shall be made quarterly, on or before April 30, July 31, October 31 and January 31 for the preceding calendar quarter. Such payment made by the Grantee will be accepted by the City of Woodburn from the Grantee, also in payment of any license, privilege or occupation tax or fee for revenue or regulation, or any permit or inspection fees or similar charges for street openings, installations, construction or for any other purpose now or hereafter to be imposed by the City of Woodburn upon the Grantee during the term of this franchise.

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Section 7. The rights, privileges and franchise herein granted shall continue and be in force for the period of ten (10) years from and after the date this Ordinance becomes effective, except that it is understood and agreed that either party may terminate this Agreement after 180 days notice in writing. This Ordinance shall be subject to any and all State and Federal legislative enactments.

Section 8. The right to use and occupy said streets, alleys, avenues, thoroughfares and public highways, places and grounds within the said City for the purposes set forth herein shall not be exclusive, and the City reserves the right to grant a similar use of said streets, alleys, avenues, thoroughfares and public highways, places and grounds to any person at any time during the period of this franchise.

Section 9. Grantee shall indemnify, defend and hold harmless the City and its officers, agents and employees from damages, costs and expense arising from any injury to persons or property by reason of the negligent act or omission of Grantee, its agents or employees in exercising the rights and privileges herein granted. Grantee shall at all times comply with any lawful present or future charter provisions, ordinances, rules or regulations of the City relating to the manner of occupation or use, or to the repair or improvement of City streets and sidewalks.

Section 10. This Ordinance being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist and this ordinance shall take effect immediately upon passage by the Council and approval by the Mayor. Grantee shall, within thirty (30) days of the passage and approval of this Ordinance, file with the Recorder of the City of Woodburn its written acceptance of all the terms and conditions of the Ordinance. If such written acceptance is not performed within said thirty (30) days, this ordinance shall become null and void.

Section 11. Ordinance Nos. 1934, 2041 and 2163 are hereby repealed.

***Passed by the Council September 9, 1996 and approved by the Mayor
September 10, 1996.***

ORDINANCE NO. 2211

AN ORDINANCE APPROVING AND CONSENTING TO THE TRANSFER AND ASSIGNMENT OF A CABLE TV FRANCHISE FROM NORTHLAND CABLE TELEVISION, INC. TO NORTH WILLAMETTE TELECOM, INC. AND DECLARING AN EMERGENCY.

THE CITY OF WOODBURN ORDAINS AS FOLLOWS:

Section 1. The City hereby approves and consents to the transfer and assignment of the Franchise from Seller to North Willamette.

Section 2. The City hereby approves the encumbrance of the Franchise and the assets of the cable television system, and the assignment of same for security purposes, in connection with the acquisition and operation of the system and the financing and refinancing, from time to time, of the business operations of North Willamette.

Section 3. The assignment and transfer of the Franchise shall not alter the terms and conditions of the Franchise granted in Ordinance 2093; and North Willamette shall file with the City Recorder a written unconditional assumption and acceptance of the Franchise.

Section 4. In addition to the document required by Section 3, North Willamette shall file with the City Recorder a written assurance that:

(A) It shall maintain a system headend in the incorporated City limits of Woodburn during the term of the Franchise.

(B) It shall maintain an office and studio located in the incorporated City limits during the term of the Franchise.

Section 5. In connection with the assignment and transfer of the Franchise to North Willamette, the City certifies to Seller and North Willamette that:

(A) The Franchise was duly and validly issued by the City.

(B) The Franchise is in full force and effect as of the date hereof, is valid and enforceable in accordance with its terms and will not expire until October 19, 2002.

(C) No event of default under the Franchise, and no event which could become an event of default with the passage of time or the giving of notice, or both, has occurred and is continuing as of the date of this Ordinance.

(D) All fees owing to the City pursuant to the Franchise have been paid through December 31, 1997.

(E) The City acknowledges receipt of a completed FCC Form 394 from Seller and North Willamette.

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Section 6. Ordinance Nos. 1766, 2093 and this Ordinance were and are adopted in accordance with the notice and procedure requirements of the laws of the State of Oregon governing cities, and with the notice and procedure requirements prescribed by the City. Ordinance Nos. 1766, 2093 and this ordinance were and are adopted in accordance with and do not conflict with the laws, ordinance, resolutions and other regulations of the City, as presently in effect or as the same were in effect at the time the particular action was taken.

Section 7. This ordinance being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist and this ordinance shall take effect immediately upon passage by the Council and approval by the Mayor.

Passed by the Council April 13, 1998 and approved by the Mayor April 15, 1998.

ORDINANCE NO. 2291

AN ORDINANCE GRANTING A TELECOMMUNICATIONS FRANCHISE TO DATA VISION COMMUNICATIONS, A DIVISION OF GERVAIS TELEPHONE TO OCCUPY CERTAIN RIGHTS-OF-WAY WITHIN THE CITY OF WOODBURN.

[Whereas clauses.]

Section 1. Franchise Grant.

A. Subject to the terms and conditions contained herein, the City of Woodburn does hereby grant to Data Vision Communications, a division of Gervais Telephone (hereinafter "Grantee") a telecommunications franchise to locate its facilities within the rights-of-way of the City, as shown on Exhibit "A" and described in Grantee's application for a franchise.

B. Such grant is subject to all of the laws and ordinances of the City of Woodburn and the State of Oregon.

C. The scope of this grant allows the installation of facilities by Grantee in the City's rights-of-way as depicted in Exhibit "A". Such facilities shall be used by Grantee to provide telecommunications services consistent with the authority granted by the FCC. In the event either the location of Grantee's facilities or the nature of the services provided is proposed for modification, Grantee shall be required to obtain an additional or revised franchise from the City.

Section 2. Construction Standards.

A. The construction standards of the City of Woodburn, as well as any other applicable construction standards in existence at the time of this franchise grant or hereafter enacted, shall apply to all work performed by the Grantee in City rights-of-way.

B. The Grantee's facilities shall not interfere in any way with any of the City's communications or other public and city-permitted facilities, including other franchised facilities, either as installed or during operation. The Grantee will compensate the provider of power directly for the cost of power consumed in support of Grantee's facilities, and shall hold the City completely harmless from any power cost.

C. The Grantee shall locate below the surface of the ground all wiring and physical improvements within City rights-of-way, unless it is physically impossible to do so. Placement of any improvements above ground, or on poles shall only be with the prior review and approval of the City.

D. Where permission is granted by the City to locate Grantee's facilities upon poles, Grantee shall independently obtain prior written approval from the owner and/or operator of the poles on which its facilities shall be placed. Upon request, Grantee shall provide copies of such written approvals for City review.

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E. Where permission is granted by the City to locate Grantee's facilities upon poles, Grantee shall undertake all wiring and physical improvements required by the owner of each pole to which its facilities are to be attached. In the case of City-owned poles or fixtures, such work shall be performed subject to the approval of the City Engineer or his designee.

Section 3. Franchise Fee. The franchise fee payable to the City shall be 7% (seven percent) of the Grantee's gross revenues earned within the corporate limits of the City. In the event no revenues are earned, but Grantee is actually occupying City rights-of-way, Grantee shall pay a minimum annual franchise fee of \$1,000. Franchise fees shall be payable quarterly, on or before April 30, July 31, October 31 and January 31, for the preceding calendar quarter. Such payment made by the Grantee will be accepted by the City of Woodburn from the Grantee, as also in payment of any license, privilege or occupation tax or fee for revenue or regulation, or any permit or inspection fees or similar charges for street openings, installations, construction or for any other purpose now or hereafter to be imposed by the City of Woodburn upon the Grantee during the term of this franchise. Payments made more than ten calendar days beyond the due date shall bear interest at the rate of 9% per annum.

Section 4. Term. The term of this franchise shall be five (5) years. This franchise shall be subject to one automatic renewal on the same terms and conditions for an additional period of five (5) years unless notice is given by either party 180 days in advance of the expiration of the franchise of its intention to terminate or renegotiate the franchise. This franchise shall be effective upon the date of Grantee's written acceptance of this grant.

Section 5. Acceptance. The grant of franchise herein is conditioned upon Grantee's acceptance of all terms and conditions hereof in writing in a form acceptable to the City.

Adopted by the Council and Mayor June 11, 2001.

ORDINANCE NO. 2299

AN ORDINANCE APPROVING AND CONSENTING TO THE TRANSFER AND ASSIGNMENT OF A CABLE TELEVISION FRANCHISE FROM NORTH WILLAMETTE TELECOM, INC. (DIRECT LINK) TO WILLAMETTE BROADBAND LLC, AND DECLARING AN EMERGENCY,

[Whereas clauses.]

THE CITY OF WOODBURN ORDAINS AS FOLLOWS:

Section 1. The City hereby approves and consents to the transfer and assignment of the Franchise from North Willamette Telecom, Inc. to Willamette Broadband, LLC contingent upon Willamette's satisfactory completion of the following conditions no later January 2, 2002.

(A) Complete the franchise renewal negotiations, represented in a mutually agreeable new franchise designed to meet current Woodburn regulatory requirements and community needs;

(B) Post a performance bond, to cover all franchise performance by Willamette, in an amount of \$300,000. Said bond shall be in a form acceptable to the City Attorney;

(C) Establish a security fund or letter of credit running to the City in the amount of \$25,000. Such security fund or letter of credit shall be in a form acceptable to the City Attorney, and shall be retained by the City for a period of five years, or until such time as the City Council deems, based upon Willamette's performance under a franchise, that such security is no longer necessary; and

(D) Agree in writing to remedy any historical violation or default under the Franchise, regardless of whether the Seller or Willamette is responsible for the violation or default.

If Willamette fails to complete any of the conditions (A) to (D) above by January 2, 2002, consent to the sale and transfer of the Franchise is denied. (Section 1 as amended by Ordinance No. 2306 dated November 26, 2001)

Section 2. Subject to condition (A) to (D) above being met by January 2, 2002, and from and after the closing of the sale of the Franchise and related assets to Willamette, Willamette shall become the operator of the Franchise and shall be bound by the lawful obligations and duties that arise on and after the closing with respect thereto and the Seller shall be released of such obligations and duties. (Section 2 as amended by Ordinance No. 2306 dated November 26, 2001)

Section 3. The assignment and transfer of the Franchise shall not alter the terms and conditions of the Franchise granted in Ordinance 2093; and Willamette shall file with the City Recorder a written unconditional assumption and acceptance of the Franchise.

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Section 4. In addition to the document required by Section 3, Willamette shall file with the City Recorder a written assurance that, for the remainder of the effective period of Ordinance 2093:

(A) It shall maintain a system head end in the incorporated City Limits of Woodburn; and

(B) It shall maintain an office and studio located in the incorporated City limits during the term of the Franchise; and

(C) The City acknowledges receipt of a completed FCC Form 394 from Seller and Willamette.

Section 6. [Emergency clause.]

Passed by the Council and approved by the Mayor August 30, 2001. Amended by Ordinance 2306 dated November 26, 2001.

ORDINANCE NO. 2307

AN ORDINANCE GRANTING A CABLE TELEVISION FRANCHISE TO DIRECTLINK OF OREGON, INC. AND DECLARING AN EMERGENCY.

[Whereas clauses.]

THE CITY OF WOODBURN ORDAINS AS FOLLOWS:

Section 1. The City of Woodburn hereby grants to DirectLink of Oregon, Inc. a cable television franchise (the AFranchise®) under the authority of and in accordance with the Woodburn City Charter, applicable city ordinances, Oregon state law, the Cable Communications Policy Act of 1984, as amended by the Cable Communications Policy Act of 1992 and the Telecommunications Act of 1996.

Section 2. The terms and conditions of the Franchise are memorialized in the Cable Television Franchise Agreement between the City of Woodburn, Oregon and DirectLink of Oregon, Inc. which is affixed to this Ordinance as Attachment AA® and is by this reference incorporated herein.

Section 3. The duration of the Franchise shall be ten (10) years, commencing on January 2, 2002 and ending on December 31, 2011.

Section 4. [Emergency clause.]

**Passed by the Council December 10, 2001 and approved by the Mayor
December 11, 2001.**

ORDINANCE NO. 2310

AN ORDINANCE RATIFYING THE GRANTING OF A CABLE TELEVISION FRANCHISE TO WILLAMETTE BROADBAND, LLC AND DECLARING AN EMERGENCY.

[Whereas clauses.]

THE CITY OF WOODBURN ORDAINS AS FOLLOWS:

Section 1. The City acknowledges the Acceptance of Franchise filed by Willamette Broadband, LLC (which is affixed hereto as Attachment "A"), the \$300,000 performance bond, \$25,000 payment bond and the letter agreeing to remedy any historical violation or default and hereby ratifies the granting of a cable television franchise to Willamette Broadband, LLC.

Section 2. This ordinance being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist and this ordinance shall take effect immediately upon passage by the Council and approval by the Mayor.

Passed by the Council February 11, 2002 and approved by the Mayor February 12, 2002.

ORDINANCE NO. 2324

AN ORDINANCE GRANTING WOODBURN AMBULANCE SERVICE, INC., A NON-EXCLUSIVE FRANCHISE TO OPERATE AN AMBULANCE SERVICE IN THE CITY OF WOODBURN; DEFINING TERMS AND CONDITIONS OF SAID FRANCHISE; REPEALING ORDINANCE 2158; DECLARING AN EMERGENCY AND SETTING AN EFFECTIVE DATE.

[Whereas clauses.]

THE CITY OF WOODBURN ORDAINS AS FOLLOWS:

Section 1. Title. This ordinance shall be known as the "Ambulance Service Franchise Ordinance".

Section 2. Policy and Purpose. The Council declares it to be in the public's interest of health, safety and welfare to provide for and regulate ambulance services within the City of Woodburn to:

- (1) Ensure effective and efficient emergency ambulance service to the citizens of Woodburn; and
- (2) Comply with the provisions of the Marion County Ambulance Service Area (ASA) Plan.

Pursuant to ORS 682.275, this ordinance shall not be interpreted to require less than is required of Grantee by the applicable Oregon Revised Statutes and administrative rules. Any inconsistency between the provisions of this ordinance and Oregon state law shall be governed by Oregon state law.

Section 3. Definitions. The words and phrases used in this ordinance shall have the meaning provided in ORS Chapter 682 unless specifically defined herein to have a different meaning. Other specific definitions include:

- (1) "ASA Plan" - The Marion County Ambulance Service Area Plan.
- (2) "City" - The City of Woodburn
- (3) "Franchise" - A privilege granted by the City pursuant to this ordinance.
- (4) "Grantee" - The person granted a franchise pursuant to this ordinance.

Section 4. Franchise Granted. The City hereby grants unto Woodburn Ambulance Service, Inc. the franchise, right and privilege, subject to such modifications as are hereinafter set forth, to operate an ambulance service within the corporate limits of the City of Woodburn, as such limits now exist or may hereafter be expanded.

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For the purpose of the franchise, Grantee shall have the right to use the public streets, alleys, public ways and places of the City to provide emergency transportation of persons suffering from illness, injury or disability. This Franchise is not exclusive, and the City reserves the right to grant a similar use of public streets, alleys, public ways and places to any other person at any time during the period of this Franchise, provided said person complies with the regulations of the ASA Plan and with Oregon state law.

Section 5. Franchise Term. The rights, privilege and Franchise herein granted shall be valid for a period of ten (10) years following the effective date, or until expiration of any franchise or designation of service area granted pursuant to the ASA Plan, whichever occurs first. If the ten year period described herein occurs first, the term of this franchise may be extended, by ordinance, to a subsequent date coinciding with the expiration of any franchise granted pursuant to the ASA Plan, provided that a finding is made by the City that Grantee has fully complied with the terms and provisions of this Franchise and remains in good standing in respect to any such franchise granted pursuant to the ASA Plan.

Section 6. Rates and Charges. Grantee shall furnish ambulance service within the corporate limits of the City of Woodburn as requested and required in a prompt, efficient and effective manner; and in accordance with rates and charges made to persons receiving ambulance service as approved by the City Council by separate resolution following public notice and hearing. In determining the appropriate rates to be charged by Grantee, the City Council shall consider, but not be limited to:

- (1) The current and projected cost of providing such service ;
- (2) The impacts of operating and capital needs, regulatory compliance, and technological change;
- (3) The investment and rate of return required of, or earned by, the Grantee;
- (4) The rates charged in other cities for similar service;
- (5) The public interest in assuring reasonable rates to enable the Grantee to provide effective and efficient services.

Section 7. Compliance with Laws, Rules and Regulations. Grantee shall at all times comply with all applicable laws, rules and regulations of the United States of America, the State of Oregon, including all agencies and subdivisions thereof, and the City of Woodburn, having jurisdiction over the operation of ambulance services.

Section 8. Performance Bond

- (1) Upon the effective date of this Franchise, Grantee shall furnish proof of the posting of a performance bond running to City, with good and sufficient surety approved by City, in the penal sum of \$50,000, conditioned that Grantee shall well and truly observe, fulfill, and perform each term and condition of this Franchise. Grantee

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shall pay all premiums charged for the bond, and shall keep the bond in full force and effect at all times throughout the term of this Franchise. The bond shall contain a provision that it shall not be terminated or otherwise allowed to expire without 30 days prior written notice first being given to City. The bond shall be reviewed and approved as to form by the City Attorney.

(2) During the term of this Franchise, Grantee shall file with City a duplicate copy of the bond along with written evidence of payment of the required premiums. However, in no event shall City exercise its rights against the performance bond if a bona fide, good faith dispute exists between City and Grantee.

Section 9. Revision of Rates and Fees. The rates provided in Section 6 hereof, and the administrative fee hereinafter provided in Section 10, may each be changed and revised, either upward or downward, after public notice and hearing before the City Council. Grantee is permitted to request a rate review and possible increases in rates annually, but the decision to grant or deny any changes in rates shall be made by the City Council only after all other provisions of this ordinance pertaining to rates and charges have been met.

Section 10. Administrative Fee. For the privilege of the Franchise herein granted, and as compensation for the City's ongoing costs of monitoring the Franchisee's activities, processing rate changes and investigating citizen complaints or inquiries, the Grantee shall pay to the City, through its Finance Director, a quarterly fee of \$3,146, due and payable no later than thirty (30) days following the end of each calendar quarter. The first such payment, for the fourth calendar quarter of 2002, shall be due and payable no later than January 30, 2003, with subsequent payments under this section due and payable no later than thirty (30) days following the end of each succeeding calendar quarter.

This rate will be in effect until July 1, 2003. The rate for each succeeding fiscal year (July 1 through June 30) will be based on the Franchisee's gross revenue derived from calls for service within the City of Woodburn's city limits for the calendar year ended the previous December 31. The quarterly fee will be calculated as one percent (1.0%) of the Franchisee's gross revenue earned in Woodburn divided by four (4).

To facilitate the City's ability to properly monitor this Franchise, Grantee shall furnish to the City's Finance Director, no later than May 31st of each year, a detailed annual statement, signed by a Certified Public Accountant, outlining the nature of Grantee's revenues and expenditures during the preceding calendar year. If requested in writing by the City, the Grantee shall, upon provision of reasonable advance notice, permit the City's Finance Director, or designee, to examine the books of the Grantee.

Section 11. Ambulance and Equipment Required. All patient transporting vehicles in the City of Woodburn shall conform to the State of Oregon requirements of ORS Chapter 682 and be licensed for an Advanced Life Support (ALS) unit as defined by The Oregon Administrative Rules. All ALS and BLS vehicles shall maintain the minimum equipment prescribed by state law, and as may be further required under the

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ASA Plan. Grantee shall provide a minimum of two (2) operable and properly equipped ALS Units at all times.

Section 12. Emergency Radio Communications. Grantee shall equip all vehicles and comply with all emergency radio communications requirements of the ASA Plan or of the Intergovernmental Agreement creating the NORCOM emergency communications agency.

Section 13. Levels of Care. All ambulances answering 9-1-1 emergency calls originating in the City of Woodburn shall be ALS Level, with minimum staffing of one EMT-Paramedic and one EMT-Basic. Staffing shall further conform to the requirements of state law.

Section 14. Insurance. Grantee shall maintain in full force and effect at its own cost and expense, during the term of the Franchise, Comprehensive General Liability Insurance in the amount of \$1,000,000 combined with a single limit for bodily injury, and property damage. Grantee shall provide to the Finance Director a Certificate of Insurance designating the City of Woodburn as an additional insured. Such insurance shall be noncancellable except upon thirty (30) days prior written notice to the City.

Section 15. Business Hours. Grantee shall make available said ambulance services within the City 24 hours per day, seven days per week; and shall maintain a business office with reasonable office hours, open to the public at least five days per week, excluding holidays, within the corporate limits of the City of Woodburn.

Section 16. Record of Transport Calls. Grantee shall keep for five years a written record of all transport calls received or made, setting forth the date, time, destination, nature of call, name and address of the patient so far as can be ascertained, the hospital or place to which the patient was taken, the name of the ambulance driver, and the names of all ambulance attendants for that particular call, along with the amounts of charges billed or collected from any such transport or service.

Section 17. Alternative Ambulance Service. The Woodburn Fire District, NORCOM, or any other public safety officer may call an ambulance service other than the Grantee if Grantee's ambulances are otherwise in use and unavailable.

Section 18. Transfer of Franchise. Grantee shall not sell, assign, dispose of or transfer in any manner whatsoever any interest in this Franchise, nor the controlling company of Grantee, without prior approval by the City expressed by resolution of its City Council.

Section 19. Indemnity and Hold Harmless. Grantee shall defend, indemnify, and hold the City of Woodburn, its officers, agents and employees, harmless against all liability, loss or expenses, including attorney's fees, and against all claims, actions or judgments based upon or arising out of damage or injury (including death) to persons or property caused by any act or omission or an act sustained in connection with the performance of Grantee under its Franchise.

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Section 20. Interruption of Service. Notwithstanding any requirements contained in the ASA Plan, in the event the City finds that failure or threatened failure of ambulance service would adversely impact the health, safety or welfare of the residents of this city, the City Council may, after a minimum of 24 hours notice to the Grantee, hold a public hearing and authorize another Franchisee or other person to provide ambulance service, whether it be on an interim emergency or longer term basis. As a condition to this Franchise, the Grantee agrees that any real property, facilities or equipment, which is the property of Grantee, may be used by the City to provide ambulance services during said situation, as determined by the findings of the City Council at the above-mentioned public hearing. The City shall return any such property of the Grantee upon abatement of the situation which prompted City use of such property.

In the event the City's power and authority under this section is exercised, the usual charges for service shall prevail and Grantee shall be entitled to collect for such usual services, but shall reimburse the provider of such ambulance services for its actual costs, as determined by the City. In no event shall the City collect more in reimbursement than could have been charged by Grantee for the provision of such services. In the event that the City and Grantee are unable to agree to reasonable and proper compensation for reimbursement for such services to the City in such situation, then each party shall name an arbitrator within ten (10) days of notice thereof, and such arbitrators shall, within five (5) days thereafter, name a third arbitrator, and the award or decision of such arbitrators as to the aforesaid matters shall be deemed conclusive upon the parties hereto as to any such matters in dispute. In the event that either party hereto, or the arbitrators chosen, shall fail or neglect to comply with the terms of this arbitration agreement, then the same shall be carried into effect in the manner and as provided by ORS 36.300 through 36.365.

Section 21. Termination of Franchise. This Franchise may be canceled or revoked by the City in the event that Grantee shall fail to abide by the terms, conditions, and obligations set forth and imposed upon it herein, but such cancellation or revocation shall not be made until after thirty (30) days' written notice is given to Grantee, and Grantee shall be afforded a hearing, if such it desires, before the City Council before revocation is made, provided such hearing is requested before the expiration of the 30 days. Grantee shall also have the privilege of terminating this Franchise in case the City of Woodburn shall not abide by its terms, on the same terms and conditions described above, upon satisfactory demonstration to the City Council that the City has not so abided.

Section 22. Remedies Not Exclusive. All remedies under this ordinance, including termination of the Franchise, are cumulative, and recovery or enforcement of one is not a bar to the recovery or enforcement of any other remedy. Remedies contained in this ordinance, including termination of the Franchise, are not exclusive and the City reserves the right to enforce penal provision of any ordinance and also use any remedy available at law or in equity. Failure to enforce any provision of this ordinance shall not be construed as a waiver or a breach of any other term, condition or obligation of this ordinance.

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Section 23. Evaluation of Service. Grantee shall meet with the City Administrator and other City officials and staff annually or semi-annually, as requested by the City Administrator, to evaluate the service rendered under this Franchise or review any concern as may be existing with the ambulance service.

Section 24. Severability. The provisions of this ordinance are severable. If a portion of this ordinance is for any reason held by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remaining portions of the ordinance.

Section 25. Repeal of Existing Ordinances. Ordinance 2158 is hereby repealed on the effective date of this ordinance.

Section 26. Acceptance. Grantee shall, within thirty (30) days from the date this ordinance takes effect, file with the City its written unconditional acceptance of this franchise in the form attached hereto as Exhibit "A", and if Grantee fails to do so, this ordinance shall be void.

Section 27. [Emergency clause and effective date.]

***Passed by the Council September 23, 2002 and approved by the Mayor
September 24, 2002.***

ORDINANCE NO: 2376

AN ORDINANCE GRANTING A NON-EXCLUSIVE GAS UTILITY FRANCHISE TO NORTHWEST NATURAL GAS COMPANY, AND FIXING TERMS, CONDITIONS AND COMPENSATION OF SUCH FRANCHISE.

THE CITY OF WOODBURN ORDAINS AS FOLLOWS:

Section 1: Definitions and Explanations.

(1) As used in this ordinance.

(a) “City” means the City of Woodburn and the areas within its boundaries, including its boundaries as extended in the future.

(b) “Council” means the legislative body of the City.

(c) “Grantee” means the corporation referred to in Section 2 of this ordinance.

(d) “Gas” means natural methane-based gas.

(e) “Gas facilities” means Grantee’s gas transmission and distribution facilities, including pipes, pipe lines, mains, laterals, conduits, feeders, regulators, reducing and regulating stations, meters, fixtures, connections and all attachments, appurtenances, and all accessories necessary and incidental thereto located within the City Limits, whether the facilities are located above or below ground.

(f) “Person” includes an individual, corporation, association, firm, partnership and joint stock company.

(g) “Public place” means any City-owned property within the City that is open to the public that is not a right-of-way, including public squares and parks.

(h) “Right-of-way” means the space in, upon, above, or under the public streets, roads, highways, lanes, courts, ways, alleys, boulevards, sidewalks, bicycle lanes, bridges, and places used or intended to be used by the general public for travel as the same now or may hereafter exist, that the City has the right to allow Grantee to use.

(2) As used in this ordinance, the singular number may include the plural and the plural number may include the singular.

Section 2: Rights Granted.

(1) Subject to the conditions and reservations contained in this ordinance, the City hereby grants to NORTHWEST NATURAL GAS COMPANY, a corporation, the right, privilege and franchise to:

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- (a) Construct, maintain and operate a natural gas utility system within the City;
- (b) Install, maintain and operate gas facilities on, in and under the rights-of-way of the City, residents, agencies and businesses in the City and to territory beyond the limits of the City; and
- (c) Transmit, distribute and sell gas within the City and to territory beyond the limits of the City.

(2) The rights granted herein shall not confer on Grantee any right, title or interest in any public way beyond that expressly conferred by the provisions of this Section 2, nor shall it confer any right or privilege to use or occupy any other property of the City or any other entity.

Section 3: Use of Rights-of-Way by Grantee.

(1) Before the Grantee may use or occupy any right-of-way, the Grantee shall first obtain permission from the City to do so and shall comply with any special conditions the City may impose on such use or occupation.

(2) The compensation paid by Grantee for this franchise includes all compensation for the use of rights-of-way located within the City as authorized. The City may charge additional compensation for the use of any public place.

Section 4. Duration. This franchise is granted for a period of 10 years from and after the effective date of this ordinance.

Section 5. Franchise Not Exclusive. This franchise is not exclusive, and shall not be construed as a limitation on the City in:

- (1) Granting rights, privileges and authority to other persons similar to or different from those granted by this ordinance.
- (2) Constructing, installing, maintaining or operating any City-owned public utility.

Section 6. Public Works and Improvements Not Affected by Franchise. The City reserves the right to:

- (1) Construct, install, maintain and operate any public improvement, work or facility in, on or over the rights-of-way.
- (2) Do any work that the City may find desirable on, over or under any right-of-way.

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(3) Vacate, alter or close any street. Whenever the City shall vacate any Right-of-way or public place for the convenience or benefit of any person or governmental agency or instrumentality, Grantee's rights under this Franchise shall be preserved as to any of its Gas facilities then existing in the Right-of-way or public place if reasonably practicable. To the extent Grantee's rights in the Right-of-way cannot be preserved in any street vacation, City shall where reasonably practicable provide an alternative Right-of-way for the location of Grantee's Gas facilities. If Grantee's Gas facilities must be relocated from a vacated Right-of-way, the petitioners of such vacation shall bear the costs of relocating the Gas facilities. Upon receipt of a notice of a petition for vacation, Grantee shall as soon as practicable investigate and advise the City and petitioners in writing whether the Gas facilities must be relocated, the estimated costs of relocation and the time needed for this relocation.

(4) Whenever the City shall perform, cause or permit any work in any present or future right-of-way of the City on its behalf, where such work may disturb Grantee's gas facilities, the City shall, or require its permittee to, notify Grantee in writing, sufficiently in advance of such contemplated work to enable Grantee to take such measures, as Grantee may deem necessary to protect such facilities, at its own expense.

Section 7: Continuous Service. Grantee shall maintain and operate an adequate system for the distribution of gas in the City. Grantee shall use due diligence to maintain continuous and uninterrupted 24-hour a day service which shall at all times conform at least to the standards common in the business and to the standards adopted by state authorities and to standards of the City which are not in conflict with those adopted by the state authorities. Under no circumstances shall Grantee be liable for an interruption or failure of service caused by an act of God, unavoidable accident or other circumstances beyond the control of Grantee through no fault of its own.

Section 8: Safety Standards and Work Specifications.

(1) The facilities of Grantee shall at all times be maintained in a safe, substantial and workmanlike manner.

(2) For the purpose of carrying out the provisions of this section, the City may provide such specifications relating thereto as may be necessary or convenient for public safety or the orderly development of the City. The City may amend and add to such specifications from time to time.

Section 9: Control of Construction.

(1) Before commencing any construction, extension or relocation of facilities in a City right-of-way, Grantee shall file with the City drawings, in such form as may be acceptable to the City Engineer, showing the location of existing facilities and facilities to be constructed, maintained, or relocated and shall obtain from the City approval of the location and plans prior to commencement of the work.

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(2) All work done within a City right-of-way shall be done in the location approved by the City Engineer and in accordance with plans and specifications approved by the City Engineer. The City Engineer's approval of the plans and specifications may include conditions and the conditions shall be binding on Grantee. Such construction work shall be done in a safe manner subject to the approval of the City Engineer and in accordance with requirements of applicable Federal and State laws and City ordinances. All work done shall be subject to the rejection or correction requirements of the City Engineer and subject to the City Engineer's approval.

Section 10: Street Excavations and Restorations.

(1) Subject to the provisions of this ordinance, the Grantee or its subcontractor may make necessary excavations for the purpose of constructing, installing, maintaining and operating its gas facilities. In all circumstances pertinent to this agreement, any action by Grantee's subcontractors shall be the responsibility of Grantee. Any subcontractor of Grantee shall be bound to the requirements of this agreement.

(2) Except in emergencies, and in the performance of routine service connections and ordinary maintenance, on private property, prior to making an excavation in the traveled portion of any right-of-way, and, when required by the City, in any untraveled portion of any right-of-way, Grantee shall obtain from the City approval of the proposed excavation and of its location.

(3) Grantee shall give notice to the City by telephone, electronic data transmittal or other appropriate means prior to the commencement of service or maintenance work and as soon as is practicable after the commencement of work performed under emergency conditions.

(4) When Grantee does any work in the unimproved portion of a right-of-way, Grantee or its subcontractor, shall promptly restore the affected portion of right-of-way to the same condition in which it was prior to the excavation. When Grantee does any work in an improved portion of a right-of-way, Grantee or its subcontractor shall promptly restore the affected portion of the right-of-way in compliance with the conditions in any permit issued by the City or any specifications, requirements and regulations of the City in effect at the time of the work. All work done shall be subject to the rejection and correction requirements of the City Engineer's approval. If Grantee or its subcontractor fails to restore promptly the affected portion of a right-of-way in accordance with City Standard Construction specifications in effect at the time of the work, the City may make the restoration, and the cost thereof shall be paid by Grantee.

Section 11: Location and Relocation of Facilities.

(1) All gas facilities of Grantee shall be placed so that they do not interfere unreasonably with the use of the right-of way by the City and the public and in accordance with any specifications adopted by the City governing the location of facilities.

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(2) The City may require the removal or relocation, temporarily or permanently, of facilities maintained by Grantee in the streets of the City. Grantee shall remove and relocate such facilities within 120 days after receiving notice so to do from the City. The cost of such removal or relocation shall be paid by Grantee. In the event that the removal, relocation, change or alteration is needed to accommodate private development or other private use of the right-of-way, the developer or other private party requiring the action shall be responsible for the cost of removal, relocation, change or alteration. Construction of public improvements by a private party within the right-of-way as a condition of City approval shall be considered installation of public improvements of the City if the improvement is not needed to provide service to the private party. In the event of a dispute as to whether the removal, relocation, change or alteration is a public improvement or accommodates private development, the dispute shall be referred to the City Administrator, whose decision shall be final and binding.

Section 12: Compensation.

(1) As compensation for the franchise granted by this ordinance, the grantee shall pay to the City an amount equal to three percent (3%) of the gross revenue collected by the Grantee from its customers for gas consumed within the City. "Gross revenue" as used in this ordinance shall be deemed to include any revenue earned within the City from the sale of natural gas after deducting from the total billings of the Grantee the total net writeoff of uncollectible accounts. Gross revenues shall include revenues from the use, rental or lease of operating facilities of the utility other than residential-type space and water heating equipment. Gross revenues shall not include proceeds from the sale of bonds, mortgage or other evidence of indebtedness, securities or stocks, revenues derived from the sale or transportation of gas supplied under an interruptible tariff schedule, sales at wholesale to a public utility when the utility purchasing the service is not the ultimate consumer, or revenue paid directly by the United States of America or any of its agencies.

(2) The City shall retain the right, as permitted by Oregon Law, to charge a privilege tax in addition to the franchise fee set forth herein based on the gross revenues of the company, payable on the same terms and conditions as the franchise fee itself.

(3) The compensation required by this section shall be due for each calendar year, or fraction thereof, within thirty (30) days after the close of such calendar year, or fraction thereof. Within thirty (30) days after the termination of this franchise, compensation shall be paid for the period elapsing since the close of the last calendar year for which compensation has been paid.

(4) Grantee shall furnish to the City Finance Director with each payment of compensation required by this section a written statement, showing the amount of gross revenue of the Grantee within the City for the period covered by the payment computed on the basis set out in subsection (1) of this section. If Grantee fails to pay the entire amount of compensation due the City through error or otherwise, the

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difference due to City shall be paid by the Grantee within fifteen (15) days from discovery of the error or determination of the correct amount. Any overpayment to the City through error or otherwise, shall be offset against the next payment due from Grantee.

(5) Acceptance by the City of any payment due under this section shall not be deemed to be a waiver by the City of any breach of this franchise occurring prior to the acceptance, nor shall the acceptance by the City of any such payments preclude the City from later establishing that a larger amount was actually due, or from collecting any balance due to the City.

Section 13: Books of Account and Reports. On an annual basis, upon thirty (30) days prior written notice, the City or its agent shall have the right to conduct an audit or review of Grantee's records reasonably related to the administration or enforcement of this ordinance. If an audit or review of the records determines that franchise fees have been underpaid, Grantee shall reimburse the City for the total cost of the audit or review within thirty (30) days of City's written demand for same. All amounts underpaid shall accrue interest at the statutory rate from the effective date of the underpayment.

Section 14. Classification of Fees. The City Council determines that any fees imposed by this franchise are not taxes subject to the property tax limitations of Article XI, Section 11(b) of the Oregon Constitution.

Section 15: As-Built Drawings. Subject to the confidentiality limitations of this section, Grantee shall provide City with available maps of the location of its facilities and operational data requested by the City. The Grantee shall also provide as-built plans for those portions of the system that are added to or modified during the year. These records are submitted in confidence, and the City will keep those records in confidence and not allow others to view or copy them. The City agrees to keep the documents confidential and to take the position that they are exempt from public disclosure. The City shall limit access to the as-built drawings to City employees or City contractors with a need to know where the Grantee's facilities are located and shall review the as-built drawings only as necessary to plan City projects, coordinate the use of the rights of way, and to protect the public health and safety.

Section 16. Indemnification. Grantee shall indemnify and save harmless the City and its officers, agents and employees from any and all loss, cost and expense arising from damage to property and/or injury to, or death of, persons due to any wrongful or negligent act or omission of Grantee, its agents or employees in exercising the rights, privileges and franchise hereby granted.

Section 17: Sale or Assignment of Franchise. Grantee shall not during the term of this Franchise sell, assign, transfer or convey this franchise without first obtaining the consent of the City Council, by ordinance, which consent shall not be unreasonably withheld. All of the provisions of this ordinance shall inure to and bind the successors and assigns of the Grantee. Whenever Northwest Natural shall be mentioned in this ordinance, it shall be understood to include such successors or assigns in interest of Northwest Natural as shall have been so consented to by the City Council.

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Section 18: Termination of Franchise for Cause. The City may terminate this franchise as provided in this Section, subject to Grantee's right to a court review of the reasonableness of such action, upon the willful failure of the Grantee to perform promptly and completely each and every material term, condition or obligation imposed upon it under or pursuant to this ordinance. The City shall provide the Grantee written notice of any such failure and the Grantee shall have sixty (60) days from receipt of notice to cure such failure, or if such failure cannot reasonably be cured within sixty (60) days, to commence and diligently pursue curing such failure.

Section 19: Renegotiation of the Franchise. If the State of Oregon or the PUC amends or adopts a state statute or administrative rule that would affect a term, condition, right or obligation under this agreement, either party may reopen the franchise agreement at any time with regard to such term, conditions, right or obligation in order to address the change required or allowed by the new or amended state statute or administrative rule.

Section 20: Remedies Not Exclusive, When Requirement Waived. All remedies and penalties under this ordinance, including termination of the franchise, are cumulative, and the recovery or enforcement of one is not a bar to the recovery or enforcement of any other such remedy or penalty. The remedies and penalties contained in this ordinance, including termination of the franchise, are not exclusive and the City reserves the right to enforce the penal provisions of any ordinance or resolution and to avail itself of any and all remedies available at law or in equity. Failure to enforce shall not be construed as a waiver of a breach of any term, condition or obligation imposed upon the Grantee by or pursuant to this ordinance. A specific waiver of a particular breach of any term, condition or obligation imposed upon Grantee by or pursuant to this ordinance shall not be a waiver of any other or subsequent or future breach of the same or of any other term, condition or obligation, or a waiver of the term, condition or obligation itself.

Section 21: Acceptance. The Grantee shall, within thirty (30) days from the date this ordinance takes effect, file with the City its written unconditional acceptance of this franchise, and if the Grantee fails so to do, this ordinance shall be void.

Section 22: Prior Ordinance Repealed. Ordinance no. 2133 is hereby repealed.

Section 23. [Emergency clause and effective date.]

***Passed by the Council November 8, 2004 and approved by the Mayor
November 10, 2004.***