



## Memorandum

**Date:** May 23, 2014

**To:** John Kovash, Mayor  
Members, West Linn City Council

**From:** Chris Jordan, City Manager *CJ*

**Subject:** Miscellaneous Items

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### **Oregon City Franchise Fee**

The City Council will recall that we recently agreed to co-sign a letter (with Clackamas County and Gladstone) to Oregon City requesting that the Oregon City franchise fee being charged to the Tri City Service District be greatly reduced or waived. (According to Oregon City, this franchise fee is \$191,000 in 2014.) Today we received the attached in response to this request.

### **Community Development Code Amendments**

Please see the attached memorandum from Planning Manager John Boyd and Community Development Director Chris Kerr regarding staff's plan for processing "routine minor code amendments." Please respond to them as soon as possible if you have any feedback for the next package of amendments.

Attachment



**Doug Neeley, Mayor**

625 Center Street | Oregon City OR 97045  
Ph (503) 657-0891 | Fax (503) 657-7026

May 22, 2014

Clackamas County  
Chair Ludlow and Board of County Commissioners  
2051 Kaen Road – Public Services Building  
Oregon City, OR 97045

City of Gladstone  
Mayor Byers and City Councilors  
525 Portland Avenue  
Gladstone, OR 97027

City of West Linn  
Mayor Kovash and City Councilors  
22500 Salamo Road  
West Linn, OR 97068

Dear Chair Ludlow, and Mayors Byers and Kovash:

Thank you for your letter dated May 15, 2014. Each of you have experience with the exercise of home rule authority, so essential to self-governance, either in your current position or, for Chair Ludlow, when you served as Mayor of Wilsonville. It is home rule that provides our cities with the authority, indeed the obligation, to manage our rights of way (ROW) as public assets for which we are responsible.

As pointed out in your letter, for many years Oregon City did not consistently charge a uniform fee for ROW usage, in a consistent manner and in amounts that were always equivalent for both public and private entities. Instead, Oregon City expended considerable amounts of staff time and legal resources negotiating complex and cumbersome franchise agreements, one at a time, taking months or even years to complete. These agreements

were needlessly expensive for the public, wasted valuable resources of ROW users, and often led to disparate impacts that left some ROW users feeling at a competitive disadvantage.

The problems with that outdated system came to a head three years ago when Clackamas County installed thousands of feet of fiber optic cable in Oregon City without first obtaining a franchise. The unnecessary conflict that resulted, which Chair Ludlow was instrumental in resolving, highlighted a compelling need for change in Oregon City's management of its ROW. That need was even pointed out by a Deputy Clackamas County Administrator who proclaimed at the time, "You have no idea what's out there, who's using your rights of way, or what they're doing." She was absolutely correct. Today, all of that has changed with the adoption of Oregon City's ROW ordinance based on the model ROW ordinance provided by the League of Oregon Cities (LOC). The model ordinance was designed exclusively by cities and for cities as a "best practices" tool to help them manage one of their largest and most valuable public assets and to ensure a level playing field for ROW users, both public and private, with respect to access and usage fees. As discussed in more detail below, Oregon City believes that there are significant benefits to all parties from following that model ordinance. Most importantly, the City now knows what is occurring in its ROW and what it is collecting from all entities that use the ROW in the City, including the City's own utilities, which pay at the same rate as everyone else.

As noted above, you, Chair Ludlow, were instrumental in resolving the fiber optic cable dispute between the County and Oregon City. This came to your attention immediately following your election as Chair of the Clackamas County Board of Commissioners, and you worked hand in hand with Oregon City to convince your fellow Commissioners that the County must recognize Oregon City's home rule authority and obtain a franchise to use Oregon City's ROW for the County's fiber.

In fairness, the foregoing conflict arose before Chair Ludlow took office and before Oregon City adopted the model ROW ordinance, when at least it could have been argued that the City's policies were somewhat ambiguous or less consistent than its current practices. Try as I may, I cannot understand how the County's view of Oregon City's home rule authority could have diminished so quickly and so drastically that the County now contends that Oregon City either cannot, or should not, charge the County or the Tri-City District a reasonable market rate for ROW usage? Certainly, the ROW space occupied by Tri-City's

large sewer mains, which serve the entire District, is far more significant than the impact of a small fiber optic cable. The bottom line is that Oregon City would expect Clackamas County to charge us market rates for use of County owned assets, whether those assets were County land for a new City library or City office space in a County building. Likewise, Oregon City expects others, including public entities, to pay for the use of Oregon City's public assets, including its ROW.

Similarly, West Linn has challenges in the management of its ROW. The City understands that, while West Linn evidently does not charge its own utilities for ROW usage, it indeed charges its neighboring cities. To be clear, Oregon City is not retroactively charging Tri-City for past use of ROW, only for current and future ROW usage since the adoption of our ordinance. While Oregon City fully supports West Linn's authority to manage its ROW as it sees fit, I respectfully suggest that Oregon City's use of the LOC model ordinance appears to provide greater equity, predictability, and payment flexibility than the ROW practices of some cities without such an ordinance.

Likewise, the City of Gladstone, which does not use the LOC model ordinance, may experience similar benefits as Oregon City if Gladstone were to adopt the ordinance? For example, prior to adopting its ROW ordinance, Oregon City was only aware of about a half dozen ROW users. Today, Oregon City is collecting reasonable fees from nearly two dozen, previously unknown, ROW users, many of which used our assets free of charge for years, without any compensation to the City. The circumstances may be similar in Gladstone and other cities. If so, and if requested, Oregon City is prepared to assist any of our neighboring cities in the adoption or implementation of a new ROW.

Finally, in my time as Mayor, I cannot recall any instance where Oregon City has requested that it be exempt from any applicable laws or regulations of Clackamas County or any other unit of government. We respect the authority of other jurisdictions. While compliance with the law is almost always more expensive or inconvenient than an exemption or waiver, it is what distinguishes us from jurisdictions without laws, while at the same time, binding us together for the common good.

Oregon City has endeavored to establish positive, cooperative and respectful relationships with Clackamas County and our neighboring communities. Oregon City is ready to continue that effort in good faith. However, a "good" relationship should not be defined by

Oregon City granting waivers or exemptions from otherwise generally applicable provisions of its municipal code or policies that apply equally to everyone. Our City Manager and staff are eager to work with the County and other cities in any way that they can so long as it is within their lawful discretion and their available resources, and it is consistent with the goals and objectives established by the City Commission.

In closing, the Oregon City Commission has again thoughtfully considered your requests on this issue. Unfortunately, as in previous communications, no argument has been forthcoming that distinguishes the County or its Tri-City Sewer District from the many other ROW users in Oregon City, both private and public (including Oregon City's own utilities), that are paying ROW usage fees. The amount of the fee is clearly in-line with common market rates charged by other cities throughout Oregon and in other parts of the country. The ordinance was thoroughly vetted by LOC and by our attorneys, and its principles have been upheld by the Oregon Court of Appeals. Accordingly, the City Commission has again declined to take any action that would exempt, waive or reduce any fees applicable to your respective jurisdictions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Doug Neeley".

Doug Neeley  
Mayor of Oregon City

## Memorandum

Date: May 22, 2014

To: Chris Jordan, City Manager

From: Chris Kerr Community Development Director, John Boyd Planning Manager

Subject: Upcoming CDC Maintenance Events

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The Community Development Code (CDC) defines the process for proposing and processing amendments to the code. The first step is preparing the docket; which lists the Comprehensive Plan, CDC or Zoning map amendments for a given year. On April 30<sup>th</sup>, the Planning Commission was presented the docket for review. On May 12, 2014, the City Council set the docket for the upcoming year.

CDC Maintenance is the fourth item on the docket. Each year “Routine minor code refinements” will be presented to the Planning Commission and the Council. This package of amendments will contain targeted CDC amendments to improve or clarify instruction on administering or applying the Code.

Following is a tentative schedule of upcoming Planning Commission and City Council study sessions/meetings to complete this process.

### **Code Maintenance Schedule**

**Note: All items subject to change until officially noticed.**

<b>JUNE 18</b>	Planning Commission Meeting – introduction
<b>JULY 16</b>	Planning Commission Meeting – workshop
<b>AUGUST 6</b>	Planning Commission Meeting – hearing

**LATE AUGUST/ EARLY SEPTEMBER** - City Council workshop and hearing

**Action Needed:** Your feedback.

Please send items from the CDC that you find confusing, or unclear, or conflicting with other sections of the Code. The purpose of the code maintenance is to pluck the “low hanging fruit.” These are simple maintenance items. Items found over time, as the code is applied, that require clarification, correction or removal.