

**ORDINANCE NO. 776**

**AN ORDINANCE OF THE CITY OF WILSONVILLE AMENDING WILSONVILLE CODE CHAPTER 3, RIGHT-OF-WAY AND PUBLIC EASEMENT MANAGEMENT SECTION, BY AMENDING SECTION 3.410 AND SECTION 3.420**

WHEREAS, the Wilsonville transportation network is extremely complex. At its core is the City-acquired rights-of-way over which are located the City's asphalt and concrete streets and roads, sidewalks, bikeways, pedestrian paths, street lights, street trees, public art, signage, bus shelters, and signalized intersections; and under which are located the majority of public and private utility services, such as electricity, gas, cable, fiber, water, sewer, and storm sewer; and connected to and made a part thereof are the City's bridges, crossings over railroad tracks, and intersections with Interstate 5 (I-5) interchanges; and

WHEREAS, as of 2014, 73 lane miles were a part of this complex transportation network, with an estimated value of over \$300 million dollars. The City is growing at a rapid pace. In 1968, when first incorporated, it had a population of 1,000; today it has a population over 22,000 and an employment base of 18,000. Yet to be annexed are two industrial areas in various stages of planning, as are approximately 500 acres for new housing, all of which will be adding needs to the transportation network; and

WHEREAS, the transportation network provides multimodal transportation and connectivity for pedestrian, bicyclists, vehicles, freight, and transit, and serves a variety of land uses, such as single-family homes, multi-family residences, commercial establishments, and industrial buildings and complexes; and

WHEREAS, governance of the transportation system is likewise complex. The City is subject to the State's Transportation Planning Rule, as well as the State Land Use Planning legislation and rules concerning Comprehensive Plans that provide for adequate infrastructure for development and to maintain a qualified staff adequate to support the various service functions of the City; and

WHEREAS, Comprehensive Plan Policy 3.1.13 provides:

**“Policy 3.1.13 The City of Wilsonville shall coordinate planning activities with the utility companies to ensure orderly and efficient installation of needed service lines and equipment.**

Implementation Measure 3.1.13.1. To enhance aesthetic quality, promote public safety and to protect service lines from damage (e.g., ice/wind storms or vehicle accidents), as new development occurs all utility service lines serving the development property shall be placed underground, in accordance with the City’s Public Works Standards.” \* \* \*; and

WHEREAS, in implementing state laws and its Comprehensive Plan, the City has developed a Transportation System Plan, a Bicycle and Pedestrian Plan, and a Transit Plan. The City Development Code addresses concurrency and level of service standards to ensure timely, adequate, and functional transportation systems to serve current and future development; and

WHEREAS, the City has adopted Public Works Standards to ensure appropriate and functionally integrated construction, operation, and maintenance. Stormwater Standards to meet federal, state, and local environmental concerns for construction, operation, and maintenance of transportation projects also have been adopted and are currently being updated. Construction and repair improvements to the interchanges which merge into City streets and rights-of-way involve coordination with the US DOT and ODOT. Railroad crossing transportation improvements need to be coordinated with several governmental agencies as well as transportation improvements that cross wetlands; and

WHEREAS, rights-of-way to serve these surface and subsurface uses are a relatively limited and scarce asset that have been acquired at a significant cost and carry a high value, need to be well managed with trained personnel from various departments and, in turn, to the extent reasonable, be funded by a combination of sources; and

WHEREAS, the City finds its Code provisions concerning rights-of-way, franchise fees, and alternative procedures for disposition of City property need to be updated to provide the City with flexibility to adequately address changing, new, and unique development occurring on or near the City’s rights-of-way and City property and to provide factors for the City to consider when determining reasonable pricing when right-of-way permit fees and franchise fees are not sufficient or are inappropriate to compensate the City for the value of using a scarce and limited City asset;

NOW, THEREFORE, THE CITY OF WILSONVILLE ORDAINS AS FOLLOWS:

1. Wilsonville Code Section 3.410, Franchise Required, is amended as follows:
  - (a) Delete the words “Section 3.410 Franchise Required” underneath the Section 3.410 Franchise Required heading, as it is a typographical error.
  - (b) In Section 3.410(1), at the end of the first sentence, delete the phrase “as specifically set forth in City Code” and replace it with “as may be determined by the City Council.”
2. Wilsonville Code Section 3.420, Alternative Procedures for Disposition of City Property, is amended to read as follows:

**“3.420 Alternative Procedures for Disposition of City Property**

**(1) Authority and Purpose**

Pursuant to: (a) its home rule authority under Or. Const. Art. 11, § 2, and ORS 271.310, when either not needed for public use or whenever the public interest may be furthered, the City may sell, exchange, convey, or lease, for a period not to exceed 99 years, all or part of its interest in real property; (b) ORS 221.415, the City may regulate the City’s rights-of-way; and (c) ORS 221.727, the City may adopt alternative procedures for sale of industrial properties, a class of real properties.

**(2) Authority of the City Manager to Sell, Exchange, Convey, or Lease**

(a) Provided the fair market value is less than \$100,000, the City Manager or designee may sell, exchange, convey, or lease, in whole or in part, the City’s interest in real property, including, but not limited to, that which is held or granted to the City or the public as a right-of-way or for the limited purpose of allowing installation, construction, and/or maintenance of public utility facilities when:

- (i) The property is no longer needed for public use, or such sale, exchange, conveyance, or lease (provided such lease is for a period not exceeding 99 years) will further the public interest; or
- (ii) The sale, exchange, conveyance, or lease (provided such lease is for a period not exceeding 99 years) of the rights-of-way is a condition of approval of a land use development permit.

**(3) Authority of the City Council to Sell, Exchange, Convey, or Lease**

(a) The City Council may sell, exchange, convey, or lease, in whole or in part, the City’s interest in real property, including, but not limited to, that which is held or granted to the City or the public as a right-of-way or for the limited

purpose of allowing installation, construction, and/or maintenance of public utility facilities when either subsections (2)(a)(i) or (ii) apply and regardless of the assessed value of the sale, exchange, conveyance, or lease.

(b) Nothing in this Section limits or otherwise alters the City's general authority to control, manage, sell, exchange, convey, lease, transfer, or modify the City's interest in real property.

#### (4) **Factors Considered**

The City Manager or the City Council may consider the following factors in determining whether it furthers the public interest to sell, exchange, convey, or lease, in whole or in part, the City's interest in real property, including, but not limited to, that which is held or granted to the City or the public as a right-of-way or for the limited purpose of allowing installation, construction, and/or maintenance of public utility facilities:

(a) Whether the service is being provided to Wilsonville residences and businesses or the use is such that Wilsonville residences and businesses would not receive the benefit of any services from User's equipment and facilities (pass-through without service delivery) but would endure the disturbance of construction, maintenance, and repair and bear the risks associated with equipment and/or facilities failures, as well as the need to manage and coordinate the use with other users and any other applicable persons or agencies.

(b) The amount of right-of-way space occupied:

- (i) *Length of right-of-way occupied.* The longer the equipment and facilities, such as a pipeline, are, generally means the greater the time of construction and the greater the time of related community, traffic, and business disruption, as well as the greater the City oversight, management, and coordination.
- (ii) *Size of equipment and facilities.* Larger equipment and facilities occupy more space and may create the need for wider easements and greater size of any setbacks. The greater the size of equipment and facilities may also impose greater opportunity costs and increased oversight, management, and coordination.
- (iii) *Depth of equipment and facilities.* City oversight, management, accounting for risk, and coordination associated with installing and repairing deeper placed equipment and facilities increases as the depth increases. Also, greater depth can cause greater community, traffic, and business interruption due to lengthier construction and repair times.

(c) The content being transported, its volume, and any pressurized means for its transportation. Natural gas and petroleum products can pose greater risks than potable water. However, large volumes of water being transported under pressure can pose greater risks to City residences and businesses than lower volume gravity feed lines. Planning and management for disasters and incident response increases cost contingences for utilities that impose greater risks.

(d) The risks of equipment and facilities failures associated with the size, content, characteristics, volume, or pressure, either independently or in combination upon the City's municipal services. Examples of such services and potential costs include, but are not limited to: services being diverted to spill response and clean-up; evacuation of residences and businesses; lost business revenues; road closures and diverted traffic, including re-routing transit routes; and managing the replacement of other users' equipment and facilities.

(e) The impacts to land uses along the rights-of-way used for the benefit of User's equipment and facilities.

(f) The length of time the rights-of-way are proposed to be used. All things being equal, the longer the use the greater the chance of a failure of equipment or facilities to occur.

(g) The probability that use of the rights-of-way will shorten the life of any City facility on, in, or over the rights-of-way.

(h) The City's costs, including personnel, materials, and services associated with managing, operating, maintaining, and repairing the rights-of-way used by User and in coordination with other uses and users, both in connection with the particular route used and as an integral part of the City's complex transportation network. The City's rights-of-way are a scarce and limited resource, with multiple service providers vying for space. Even though physical space may exist in a right-of-way, adding new services requires careful planning, mapping, approvals, and other efforts to ensure that a new service does not compromise existing services or cause undue difficulties for other users, including vehicle, freight, bicycle, and pedestrian traffic. Right-of-way congestion imposes costs, and right-of-way fees function as price signals, indicating the value of occupying a scarce and limited asset.

(i) The opportunity costs of foregoing the ability to use the right-of-way in the future. Occupying the space in the right-of-way will preclude the City and others from using the same space now and in the future. The greater the right-of-way space occupied, the greater the opportunity cost, all factors held constant.

(j) Existing franchise fees on comparable utility equipment and facilities as an indicator of the value placed on occupying a scarce and limited asset for the

User's benefit. The weight, if any, such franchise fees shall be given shall be based on the various circumstances that may be applicable to any given situation.

**(5) Documenting Sale, Exchange, Conveyance, or Lease**

If real property is sold, exchanged, conveyed, or leased under this Section, such sale, exchange, conveyance, or lease will be made by such document the form of which shall be approved by the City Attorney or attorney designee."

3. The City Recorder is directed to amend Wilsonville Code Section 3.410, Franchise Required, and Wilsonville Code Section 3.420, Alternative Procedures for Disposition of City Property, as set forth above, and to make such format, style, and conforming changes to match the format and style of the Right of Way and Public Easement Management section of the Wilsonville Code.
4. Except as set forth above, Chapter 3 of the Wilsonville Municipal Code remains in full force and effect, as written.

SUBMITTED to the Wilsonville City Council and read for the first time at a meeting thereof on the 5th day of December, 2016, and scheduled for second reading on December 19, 2016, commencing at the hour of 7 p.m. at the Wilsonville City Hall, 29799 SW Town Center Loop East, Wilsonville, Oregon.

  
Sandra C. King, MMC, City Recorder

ENACTED by the City Council on the 19<sup>th</sup> day of December, 2016, by the following votes:          Yes: -5-                  No: -0-

  
Sandra C. King, MMC, City Recorder

DATED and signed by the Mayor this 20<sup>th</sup> day of December, 2016.

  
TIM KNAPP, MAYOR

SUMMARY OF VOTES:

Mayor Knapp	Yes
Council President Starr	Yes
Councilor Fitzgerald	Yes
Councilor Stevens	Yes
Councilor Lehan	Yes