

ORDINANCE NO. 26

AN ORDINANCE GRANTING TO THE TILLAMOOK PEOPLES UTILITY DISTRICT FOR A PERIOD OF TWENTY YEARS THE RIGHT AND PRIVILEGE TO ERECT, CONSTRUCT, MAINTAIN AND OPERATE AN ELECTRIC LIGHT AND POWER SYSTEM IN THE CITY OF GARIBALDI AND THE RIGHT AND PRIVILEGE TO ERECT, MAINTAIN, USE AND REMOVE POLES, WIRES, CABLES, DUCTS, APPLIANCES AND APPARATUS FOR CONDUCTING AND USING ELECTRICITY IN, UNDER, UPON AND OVER ANY AND ALL OF THE STREETS, ALLEYS, ROADS, WAYS, PUBLIC PARKS AND PUBLIC GROUND WITHIN THE LIMITS OF SAID CITY AS IT NOW IS AND HEREAFTER MAY BE BOUNDED, CONSTITUTED, AND HAVE ITS LIMITS, AND TO ENGAGE IN THE BUSINESS OF FURNISHING ELECTRIC ENERGY TO SAID CITY, ITS INHABITANTS AND THE PUBLIC.

The people of the City of Garibaldi do ordain as follows:

Section 1. The Tillamook Peoples Utility District for and during the term hereafter provided is hereby given and granted the franchise and right to erect, maintain, use, and remove electric light and electric power (and for any and all purposes for which electricity may now or hereafter be used) poles, wires, cables, ducts, appliances, and apparatus for conducting and using electricity for supplying the City of Garibaldi and its inhabitants and the public in, under, upon and over any and all of the streets, alleys, roads, ways, public parks, and public grounds of or in said city within the limits and boundaries of said city as said city now is or hereafter may be bounded, constituted, and have its limits, so far as the same are under the control of said city, and in, under, upon, and over any and all lands now and hereafter owned by or under the control of said city, whether such lands at any time be inside or outside the limits or boundaries of said city as now or then bounded or constituted, to enable or assist said district to carry on and conduct its business in said city or elsewhere, for supplying said city and its inhabitants and the inhabitants of other towns and cities, and individuals residing in the surrounding territory, with electric energy.

Section 2. Said Tillamook Peoples Utility District shall erect, maintain, and use such poles, wires, cables, ducts, appliances, and apparatus for transmitting electric energy so as not to interfere with the free and unobstructed use of said streets, alleys, roads, ways, public parks, and grounds for travel or usual public purposes.

Section 3. In case the limits or boundaries of the City of Garibaldi at any time or times are made less or smaller than they now are, the franchise, rights and privileges granted hereby shall continue and exist as to the part or parts of said city theretofore included in its limits as though the same had not been so made less or smaller.

Section 4. Whenever it shall become necessary in the erection, maintenance, use, or removal of any such poles, wires, cables, ducts, appliances, or apparatus for said Tillamook Peoples Utility District to dig into or in any manner interfere with any street, alley, way, public park or ground of said city, said district shall put, without delay, such street, alley, way, public park or public ground in as good condition as it was before it was broken up, dug up or disturbed, and shall remove all surplus sand, earth, rubbish, or other materials, caused by such erection, maintenance, use or removal of any such poles, wires, cables, ducts, appliances, or apparatus, or caused by the laying, maintenance, use, or removal of any such pipes.

Section 5. The manner of erection and maintenance of all wires, poles, cables, and apparatus erected or maintained by virtue of this ordinance shall be in substantial accord with applicable rules laid down by the United States Bureau of Standards and in accordance with the laws of the State of Oregon.

Section 6. Nothing in this ordinance shall be construed as in any wise preventing the City of Garibaldi from sewerage, grading, paving, planking, altering, or doing any work that may be desirable on any of the streets, alleys, or public highways of the City of Garibaldi, but all work shall be done, if possible, in such a manner as not to obstruct, injure or prevent free use and operation of said electric light, power, and heat system of Tillamook Peoples Utility District.

Section 7. Tillamook Peoples Utility District hereby agrees and covenants to indemnify and save harmless the City of Garibaldi and the officers thereof against all damages, costs, and expenses whatsoever to which it or they may be subject in consequence of the acts or omissions of said district, its agents or servants, in any manner arising from the rights and privileges hereby granted.

Section 8. This franchise and grant shall not be construed as a limitation upon the City of Garibaldi to grant rights, privileges, or authority to other persons or corporations similar or different from those herein set forth, in the same streets, alleys, and highways with due regard to the prior rights of Tillamook Peoples Utility District.

Section 9. The franchise and rights hereby granted shall continue in force and effect for the full term of twenty years from and after the passage and approval of this ordinance and its acceptance by Tillamook Peoples Utility District.

Section 10. Tillamook Peoples Utility District shall within thirty days after this ordinance becomes in force by its being approved by the mayor, file in the office of the recorder of the City of Garibaldi its written acceptance of this ordinance and the franchise granted to and conferred to said district, subject to all of the terms, obligations, restrictions, and provisions in this ordinance contained, and upon expiration of the thirty days allowed for such acceptance, if the same has not then been accepted unconditionally, this ordinance shall become wholly void, inoperative, and of no effect.

Section 11. As compensation for the right, privilege, and franchise hereby granted, the Grantee shall pay to the City, on or before the 20th day of each month during the term hereof, an amount equivalent to two per cent of the Grantee's "Gross Revenues" as defined herein. The term "Gross Revenues" as used herein shall mean and be construed as the amount of money actually collected by the Grantee from its customers for light, heat and power consumed during the preceding month within the corporate limits of the City; provided, however, that there shall not be included in said amount any revenue derived by the Grantee for light, heat or power furnished or provided the City or any other municipal corporation or any public taxing body within the corporate limits of the City.

The Grantee shall keep accurate books of account and the City shall have the right to inspect the same at all times during business hours and from time to time audit the same for the purpose of determining such "Gross Revenues."

The payment of the tax based upon "Gross Revenues," as provided by this section, shall be in lieu of all other taxes levied directly by the City, including, but not exclusively, occupation, license, sales, corporation, excise, gross earnings, privileges, franchise, or any or all other taxes or charges of whatsoever kind or character which may be now or hereafter levied or assessed by the city upon the Grantee, except upon real or personal property.

Section 12. Whereas, the Tillamook Peoples Utility District desires to make immediate plans to construct an electric distribution system in the City of Garibaldi so that the inhabitants thereof may obtain the benefits of low-cost Bonneville power, and

Whereas, it is necessary for the public health and safety of the City of Garibaldi and the inhabitants thereof that this ordinance should go into effect immediately upon its passage, an emergency is hereby declared to exist and this ordinance shall be in full force and effect upon and from its passage and approval by the mayor.

The foregoing ordinance was:

Read for the first time in open council on December 27, 1948 at the hour of 8:55 p.m.

Read for the second time in open council on December 27, 1948 at the hour of 9:10 p.m. December 27, 1948,

Read for the third time in open council ~~January 1, 1948~~ ~~XXXXXXXXXXXXXXXXXXXX~~ at 9:20 p.m. and being then and there before the council upon the question "Shall the ordinance pass", the roll being called resulted as follows:

Fessler: Yea.  
Fellows: Yea.

Graham :Yea.  
Weber; ;Yea.

Spoooner ; Absent.

Passed and adopted by the Common Council the 27th day of ~~January, 1948.~~  
December, 1948

E. S. Fisher  
Mayor

ATTEST:

B. J. Grath  
Recorder

RESOLUTION

BE IT RESOLVED BY the Tillamook County People's Utility District that that certain ordinance duly passed by the Common Council of the City of Garibaldi, Oregon, on December 27, 1948 and granting to the said Tillamook County Peoples' Utility District a franchise to construct, maintain and operate a power system in the City of Garibaldi, be and the same hereby is accepted by the said Tillamook County Peoples' Utility District.

TILLAMOOK PEOPLE'S UTILITY DISTRICT

C. F. Stranahan  
President  
H. D. Batts  
Secretary

STATE OF OREGON )  
County of Tillamook ) ss

On this 14 day of Janu, 1949, before me appeared C. F. Stranahan and H. D. Batts both to me personally known, who being duly sworn, did say that he, the said C. F. Stranahan is the President, and he, the said H. D. Batts is the secretary of Tillamook County People's Utility District, the within named Utility District, and that the seal affixed to said instrument is the corporate seal of said Utility District, and that the said instrument was signed and sealed in behalf of said Utility District by authority of its Board of Directors, and said C. F. Stranahan and H. D. Batts acknowledged said instrument to be the free act and deed of said Utility District.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal, this the day and year first in this, my certificate, written.


John W. Hathaway  
Notary Public for Oregon  
My Commission expires: 8-19-51

BE IT RESOLVED BY the Tillamook County Peoples' Utility District that that certain ordinance duly passed by the Common Council of the City of Garibaldi, Oregon, on December 27, 1948 and granting to the said Tillamook County Peoples' Utility District a franchise to construct, maintain and operate a power system in the City of Garibaldi, be and the same hereby is accepted by the said Tillamook County Peoples' Utility District.

STATE OF OREGON            )  
                                  ) ss.  
County of Tillamook    )

I, H. T. Botts, Secretary of Tillamook Peoples' Utility District, in said County and State, hereby certify that the foregoing is a true, correct and complete transcript and copy of a resolution duly adopted by the Directors of said District at a meeting held on January 8, 1949 and of the whole of said resolution as the same appears on the minutes of said District in my custody as Secretary.

WITNESS my hand and the seal of said District this  
January 14, 1949.

  
Secretary