

ORDINANCE No. 188802 As Amended

*Amend the Building Demolition Code to implement Senate Bill 871 and add dust and site control requirements for residential demolitions; amend fee schedules (Ordinance; amend Code Chapter 24.55 and Policy ENB 14.01 and 14.10)

The City of Portland ordains:

Section 1. The Council finds:

1. The Bureau of Development Services (BDS) promotes safety, livability, and economic vitality through efficient and collaborative application of building and development codes.
2. BDS administers Portland City Code (PCC) Title 24, Building Regulations. PCC Chapter 24.55, Building Demolition, regulates building demolitions within the City.
3. BDS processes approximately 700 demolition permits for structures with 1-4 dwelling-units and their accessory structures per year. These demolition activities are known to generate dust and debris that contain asbestos and lead-based paint if the demolition site is not properly managed.
4. The Oregon Department of Environmental Quality (DEQ) enforces the federal Clean Air Act within Oregon, which includes asbestos in residential demolitions. Prior to 2015, the regulations exempted demolitions of structures with 1-2 dwelling units from the asbestos survey requirements. The Oregon State Legislature enacted Senate Bill (SB) 705 in 2015 to require asbestos surveys for demolitions of structures with 1-2 dwelling units. However, SB 705 and the DEQ regulations implementing it did not provide an efficient mechanism for local jurisdictions to obtain a copy of the asbestos survey.
5. In addition, there are no state or federal regulations that cover lead-based paint in residential demolitions.
6. To address the regulatory gap for lead-based paint and allow local jurisdictions to easily obtain copies of asbestos surveys, the Oregon Legislature enacted SB 871 in 2017. SB 871 permits local jurisdictions to establish programs for residential demolitions that, among other things, direct the Oregon Health Authority to develop best practices for containing lead dust during demolition and allow local jurisdictions to require a copy of the asbestos survey be provided to them as a requirement for obtaining a demolition permit.
7. Over the course of several months, BDS staff met with the Oregon Health Authority, DEQ, the Oregon Construction Contractor's Board, Multnomah County Lead Program Coordinator, and the Development Review Advisory Committee (DRAC) Demolition Subcommittee to develop best practices for addressing

asbestos, lead-based paint, and other hazards related to demolition of structures with 1-4 dwelling units.

8. Based on the recommendations of the DRAC Demolition Subcommittee, other stakeholders, and public testimony, PCC 24.55 is hereby amended to add a new subsection 24.55.205 that will:
 - a. require a demolition plan outlining the techniques and equipment that will be used on the demolition site to control dust and debris generated during demolition activities of structures with 1-4 dwelling units and their accessory structures;
 - b. require removal of all non-load-bearing painted materials from the exterior prior to mechanical demolition activities;
 - c. require a copy of the asbestos survey be provided to BDS as a condition of permit issuance;
 - d. require that a person with the specified accreditation for asbestos and lead-based paint be on site during demolition activities;
 - e. provide for additional site inspections to ensure compliance with the ordinance;
 - f. prohibit mechanical demolition activities when wind speeds exceed 25 miles per hour;
 - g. require containment of demolition debris on-site;
 - h. require applicants to post door hangers on properties within 300 feet of the demolition site with information relating to the demolition, including contact information and approximate date of demolition;
 - i. require finalizing the demolition permit before obtaining a subsequent building permit on the site; and
 - j. add a citation process and fines for violations of the ordinance.
9. PCC 24.55.150 (Definitions) is also amended to include new definitions for: "Demolition Manager"; "Demolition Plan"; "mechanical demolition activities"; "deconstruction"; "full deconstruction"; "lead-containing"; and "responsible party."
10. BDS has determined that an additional two Site Development Inspector I positions (2.0 FTE) are required to administer the additional workload associated with this ordinance. The increase of 2.0 FTE will be effective immediately.

11. BDS has further determined that an increase to the demolition fees of \$180 per demolition permit will cover the costs of administering the additional workload requirements outlined in this ordinance. The fee change will be incorporated into the "Building and Other Permits Fee Schedule," as outlined in Exhibit B.
12. Hiring and training the two additional site development inspectors, making programing changes to BDS computer programs, conducting staff training, and providing outreach and training to the development community will take approximately five months.

NOW, THEREFORE, the Council directs:

- a. Portland City Code Chapter 24.55 is amended as set forth in Exhibit A.
- b. The Bureau of Development Services will create two Site Development Inspector I positions (2.0 FTE) to implement the ordinance and hire for those positions.
- c. The Bureau of Development Services will monitor the effects of the ordinance and provide a report on the effects to the City Council by January 1, 2020, to determine whether any revisions to the ordinance are necessary.
- d. Amend the Building & Other Permits Fee Schedule to increase the Demolition/Deconstruction fee by \$180 per permit to cover the costs of implementing the ordinance as shown in Exhibit B, effective on the implementation date of this ordinance. (Portland Policy Document ENB 14.01)
- e. Amend the Enforcement Fee and Penalty Schedule as shown in Exhibit C, effective on the implementation date of this ordinance. (Portland Policy Document ENB 14.10)
- f. This ordinance is binding City policy.

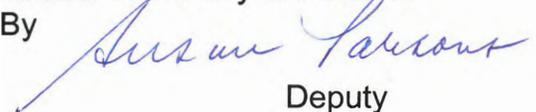
Section 2. The Council declares that an emergency exists because it is in the public interest for these safety precautions to be enacted as soon as possible. Therefore, this ordinance shall be effective immediately upon its passage by Council, and this ordinance shall be implemented no later than July 1, 2018.

Passed by the Council: FEB 01 2018

Commissioner Chloe Eudaly
Prepared by: Nancy Thorington, BDS
Date Prepared: February 1, 2018

Mary Hull Caballero
Auditor of the City of Portland

By


Deputy

Chapter 24.55 – Building Demolition

a. Section 24.55.150, Definitions, is amended to add subsection F. - L. as follows:

24.55.150 - Definitions

- F. Demolition Manager.** Demolition manager means the person designated by the property owner or demolition permit applicant who will be responsible for implementing and overseeing the Demolition Plan and who will be the contact person for BDS and other regulatory agencies regarding the Demolition Plan. The Demolition Manager must complete training and be an accredited inspector, as that term is defined in OAR 340-248-0010(1), unless the Demolition Manager designates another person who has the training and is an accredited inspector and who is on-site during all mechanical demolition and deconstruction activities. The Demolition Manager must have knowledge regarding erosion and sediment control, site control, and proper handling of materials generated from the demolition activities. The Demolition Manager is a “responsible party” as defined in this Section 24.55.150.
- G. Demolition Plan.** Demolition plan means the plan signed by the Demolition Manager that outlines the techniques and equipment that the Demolition Manager will use on the demolition site to control dust and debris generated during the demolition activities. The Demolition Plan must also include the anticipated timeframe for the demolition, a description of the site control measures set forth in Section 24.55.205 C. and monitoring processes that will be followed on the site before, during, and after the demolition activities, details of pedestrian protection where required, and a description of how the site will be secured against accessibility by any unauthorized persons. The Demolition Plan must include erosion and sediment control measures required by this Chapter 24.55, Title 10 and Chapter 17.39 of the Portland City Code, the City of Portland Erosion and Sediment Control Manual, the City of Portland Source Control Manual, and any other City of Portland regulations governing erosion, sediment control, stormwater control, or wastewater generated from the demolition activities covered by this Section 24.55.205. The Plan must also include contact information for the Demolition Manager.
- H. Mechanical demolition activities.** Mechanical demolition activities means pulling down any part of a structure using mechanical tools such as cranes, bulldozers, excavators, rams, or similar heavy machinery.
- I. Deconstruction.** Deconstruction means demolition via the systematic dismantling of a structure or its parts, typically in the opposite order it was constructed, which can include the selective use of heavy machinery.

EXHIBIT A

- J. Full deconstruction.** Full deconstruction means systematically dismantling 100% of the building, including finishes, core, shell, frame, mechanical, electrical, and plumbing fixtures and only using machinery to move and process materials once they are removed.
- K. Lead-containing.** Lead-containing means paint or other surface coatings that contain lead equal to or exceeding 1.0 milligram per square centimeter, 0.5 percent by weight, or 5,000 parts per million (ppm).
- L. Responsible party.** Responsible party means the property owner or person authorized to act on the owner's behalf and any person causing or contributing to a violation of this Title.

b. Section 24.55.200, Demolition Delay – Housing Preservation, is amended as follows:

24.55.200 Residential Demolition Delay - Housing Preservation.

A.-C. [No change]

D. Notification.

1. [No change]

2. Posted notice. ~~Five full days~~ Not more than 2 weeks nor less than 72 hours before demolition activity commences, the applicant must post door hangers provided by the Bureau of Development Services on all properties within 300 feet of the site to be demolished ~~the properties abutting and across the street from the site of the demolition.~~ See Figure 200-1. The notice must contain all of the following information.

a. Name and phone number of the Demolition Manager,

ab. Notice that the site has been proposed for demolition,

bc. The demolition permit number,

ed. The approximate date demolition activity will commence,

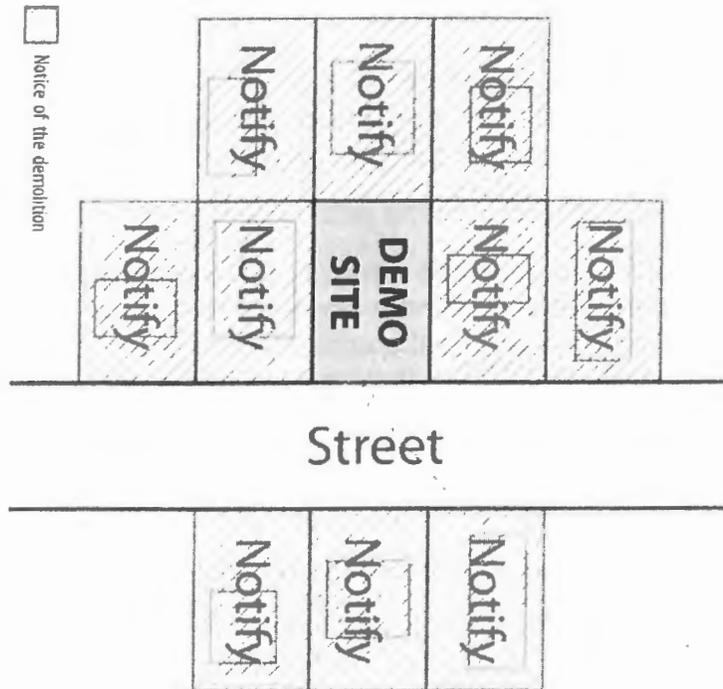
de. Contact information of the agencies that regulate asbestos and lead-based paint,

ef. Contact information for the applicant, ~~and~~

g. Recommended safety information for surrounding properties, such as closing windows and keeping children away from the site, and

fh. The location where more information is available.

FIGURE 200-1
DELETE THE FOLLOWING FIGURE 200-1:



E.-L. [No change]

c. Section 24.55.205, Site Control Measures in Residential Demolitions, is added as follows:

24.55.205 Site Control Measures in Residential Demolitions.

A. Scope. The provisions of this Section 24.55.205 apply to demolitions involving the following, regardless of zoning or Comprehensive Plan Map designation:

1. Structures used for residential purposes with four or fewer dwelling units, including mixed use structures. "Mixed use" for purposes of this Section 24.55.205 means the combination on a site of residential uses with commercial or industrial uses.

EXHIBIT A

2. Any detached accessory structures with a floor area over 200 square feet on a site with a structure covered by Subsection 1. above. "Accessory structure" for purposes of this Section 24.55.205 means a structure not greater than 3,000 square feet in floor area, and not more than two stories in height, the use of which is accessory to and incidental to that of the main structure.

B. Documentation Required. A permit to demolish a structure within the scope of this Section as defined in Subsection A. above will not be issued until the Bureau of Development Services (BDS) has received all of the following:

1. A copy of the asbestos survey required under Oregon Revised Statutes 468A.757 and Oregon Administrative Rules Chapter 340, Division 248, as each of these is amended from time-to-time.
2. If asbestos is identified in the asbestos survey:
 - a. For friable asbestos removal, a copy of the ASN1 (friable notification form) and a close-out letter from the licensed asbestos abatement contractor verifying all of the asbestos identified in the asbestos survey has been abated; and
 - b. For non-friable asbestos removal, a copy of an ANS6 (nonfriable asbestos notification form), and a copy of the ASN4 (asbestos waste shipment form).
3. A Demolition Plan as described in Section 24.55.150.
4. If the structure to be demolished was built before January 1, 1978, it will be presumed to contain lead-based paint, unless a copy of lead-test results conducted by an "inspector" or "risk assessor," as those terms are defined on OAR 333-069 and as that section is amended from time-to-time, that shows the structure does not have lead-containing materials is submitted to the Bureau of Development Services with the application for a demolition permit.
5. Unless the lead-test results outlined in Subsection 4. above show that the structure does not have lead-containing materials, if the structure to be demolished was built before January 1, 1978, and the person performing the demolition is a contractor, as defined in ORS 701.005 (5)(a), the person performing the demolition must submit proof to BDS verifying that the person has one of the certifications specified in OAR 333-068-0070, as that section is amended from time-to-time, or has hired a person with one of the specified certifications to perform the mechanical demolition activities or deconstruction on the site.

C. Requirements for Demolitions

EXHIBIT A

1. Accredited inspector. The Demolition Manager or an accredited inspector, as that term is defined in OAR 340-248-0010(1), must be present during all mechanical demolition activities and deconstruction on the site.
2. Lead hazard reduction. Prior to commencing mechanical demolition activities, all painted exterior non-structural surfaces, including, but not limited to, doors, windows, railings, soffits, trim, exterior porches (except for concrete or masonry materials), and all layers of siding (unless such surfaces have been tested as set forth in Section B.4. above and found not to contain lead-containing paint) must be removed, and all such materials must be placed in 6 mil plastic and deposited in a covered container. During the removal of these exterior painted materials, 6-mil plastic sheeting or equivalent must be placed at the base of the exterior shear wall and extend at least 10 feet beyond the perimeter of the structure or work area, whichever is greater. If a property line prevents 10 feet of ground covering, vertical containment must be erected to protect neighboring properties.
3. Dust suppression. During mechanical demolition activities, including transfer and loading of materials, the structure, equipment parts that come in direct contact with building materials, and debris must be continuously wetted with a water spray sufficient in volume and force to prohibit airborne emission of dust and particulates from leaving the site. In addition, the entire demolition site and all debris piles must be wetted down each day prior to commencing mechanical demolition activities and at the end of each day during which mechanical demolition activities have occurred.
4. Wind speed. Mechanical demolition activities must be suspended when winds exceed 25 MPH, verified regularly during mechanical demolition activities by using a hand-held anemometer prior to commencing mechanical demolition activities each day and any time wind speeds noticeably increase. Only deconstruction or other activities that do not generate dust may be conducted on the site when winds exceed 25 MPH.
5. Containment of demolition debris on-site. Containment measures to prevent suspect asbestos-containing material, lead-based paint, and any other pollutants, as defined in the City of Portland Erosion and Sediment Control Manual, from running off the site must be employed consistent with Portland City Code Title 10 and the Solid Waste and Materials Management provisions of the City of Portland Erosion and Sediment Control Manual. If stormwater or any other water generated on the site pools or is collected onsite, including but not limited to water generated from dust suppression activities,

then written authorization from the City is required to discharge into a City storm, sanitary, or combined sewer system, unless the Demolition Manager arranges to have the water pumped and hauled off-site for proper disposal. The site will be required to employ approved best management practices, such as settling and filtration, prior to discharge per Portland City Code Subsections 17.34.030 B. and 17.39.040 C.10., and City of Portland Sanitary Discharge and Pretreatment Program Administrative Rules, ENB-4.03(3)(B) and (C).

6. Demolition debris. Any non-salvageable materials and debris generated from demolition activities, including deconstruction, that is deposited into any receptacle, drop box, dumpsters shaft, or piping and any debris left on the site, must be covered at the end of each work day with non-permeable plastic.
7. Exceptions for Full Deconstruction. If the structure to be demolished will be fully deconstructed in accordance with the deconstruction requirements outlined in Portland City Code Subsection 17.106.040 B. and the Portland Deconstruction Administrative Rules adopted October 31, 2016, Parts 4.1 and 4.2, as amended from time-to-time, then the lead hazard reduction requirements in Subsection 2., except the requirement for horizontal and vertical plastic protection; the wetting techniques outlined in Subsection 3., except the requirement to wet mechanically transferred and loaded materials; and the wind restrictions in Subsection 4. above do not apply during deconstruction activities.
8. Exemption for Unsafe or Hazardous Structures. An applicant may request an exemption from the lead hazard reduction requirements in Subsection 2. above if the structure is structurally unsafe or otherwise hazardous to human life to the extent that the activities described in Subsection 2. above could not be safely executed. The request must accompany the application for the demolition permit, unless the unsafe or hazardous condition is not discovered until after the permit application has been submitted. Reasons for exemption consideration could include, but are not limited to, extensive fire damage, drug manufacturing, or severe structural issues that cannot be mitigated without complete mechanical demolition. Request for an unsafe or hazardous structure exemption must be submitted to the Bureau of Development Services and include all of the following:
 - a. A letter on company or organization letterhead from one of the following professionals stating that performing the lead hazard reduction requirements would not be safe:

- (1) Structural Engineer licensed in the State of Oregon.
 - (2) Bureau of Development Services.
 - (3) Hazardous material professional with credentials to perform work in the State of Oregon.
- b. A statement by a professional listed in Subsection a.(1) or (3) above who provides a letter indicating that neither the professional, a relative of the professional, nor a business entity with which the professional is associated has a financial or other interest in the property or project. "Relative" means the spouse, parent, stepparent, child, sibling, step-sibling, son-in-law, or daughter-in-law of the professional.
- c. Supporting evidence documenting the condition of the structure and reasons why the lead hazard reduction activities are not recommended due to safety concerns.
9. Notification and Posting. All demolitions that are subject to the provisions of this Section 24.55.205 must comply with the notification requirements in Subsection 24.55.200 D.2. All such sites must also be posted with a sign during demolition activities that meets the requirements of Portland City Code Subsection 10.30.020 B.8.a. and includes the name and telephone number of the Demolition Manager, in addition to the information required in Subsection 10.30.020 B.8.a.

D. Demolition-Related Inspections

1. BDS will conduct an initial pre-demolition site assessment to determine whether the site control measures outlined in the Demolition Plan, erosion control measures, sediment control measures, and site security are adequate based on specific site conditions or other City regulations. The initial site assessment will be used to review the Demolition Plan, including final site grading and any necessary permanent site control measures. In addition, the initial site assessment will ensure that there is a Demolition Manager and that a copy of the Demolition Plan is on site.
2. Except for accessory structures, BDS may conduct an inspection during demolition activities to confirm the Demolition Plan is being properly implemented and maintained during the demolition process, and any dust-suppression and other site control equipment described in the Demolition Plan are on-site.
3. BDS will conduct a post-demolition inspection to verify that site grading has been completed, permanent soil stabilization measures

EXHIBIT A

are in place, and the premises is secure as detailed in the Demolition Plan.

E. Enforcement

1. **Stop Work Orders.** When necessary to obtain compliance with this Section 24.55.205, the Director may issue a stop work order as described in Portland City Code Section 3.30.080 requiring that all work, except work directly related to elimination of the violation, be immediately and completely stopped. Any person subject to a stop work order may seek administrative review of the order and may appeal the Director's administrative determination as provided in Portland City Code Section 3.30.080.
2. **Citation Process and Fines**
 - a. **Citation Process**
 - (1) **Correction Notice.** If BDS finds the demolition project does not comply with any provision of this Section 24.55.205, BDS will issue a correction notice stating the provision(s) violated and the required correction(s) to bring the project into compliance.
 - (2) **Citation for Violations.** If a violation for which a correction notice has been issued is not corrected, or if the same responsible party is found to have violated any provision of this Section 24.55.205 on a different project within the City, BDS may issue a citation to the responsible party for such violation. For the purposes of this Section 24.55.205, the responsible party is defined in Section 24.55.150.
 - (3) **Citation service.** A citation may be personally delivered to the responsible party, or may be served by Registered or Certified Mail to the responsible party. For purposes of this Subsection, service by Registered or Certified mail is complete and effective when a correctly addressed notice is deposited with the postal service after being either certified or registered by the postal service.
 - (4) **Fines and corrections.** The citation will state the section of this Section 24.55.205 violated, the fine imposed, and the corrective action required.
 - (5) **Corrections not made.** If corrections are not made and the violation(s) continue, BDS may impose

additional citations or pursue other enforcement remedies as authorized under Portland City Code Section 3.30.040, including assessment of Administrative Enforcement Fees and revocation of issued demolition or building permits.

(6) Citation appeals. Issuance of a citation may be appealed by requesting an Administrative Review, see Subsection G below.

b. **Fines.** Fines are established for violations of this Section 24.55.205 as set forth in the Enforcement Fee and Penalty Schedule as adopted by the City Council. These fines will be assessed as a result of an issued citation for violations of this Section 24.55.205 and are in addition to any other fines authorized by law.

1st Offense – a first offense is based on a single inspection, even if there are multiple violations. For any subsequent offenses, a separate fine may be assessed for each violation of this Section 24.55.205.

Additional violations after the first offense will be set at the maximum amount per individual violation allowed by the fee scheduled adopted by the City Council, unless the Director finds mitigating factors that justify a lesser fine. Multiple citations can be issued to the responsible party for continued violations of this Section 24.55.205, and each day of non-compliance may be considered a separate violation.

Fines must be received by the Bureau of Development Services within 15 calendar days of the date on the citation, or within 15 calendar days of the final administrative review of the Director or the published decision of a citation appealed to the Code Hearings Officer, unless the Code Hearings Officer specifies a different date.

If the citation fine is not paid within 15 calendar days, the fine(s) indicated on the citation will double and the unpaid citation amount may, at the discretion of the Director, be assessed as a City lien against the property.

F. Demolition Permit Compliance Prerequisite for New Building Permit.

No building permit for a new structure on the site that is subject to the demolition permit (including all lots in a land division or lot confirmation) will be issued until the final inspection for the demolition permit has been completed and approved.

- G. Administrative Review and Appeals.** If a responsible party has received a stop work order or written citation and the responsible party believes the order or citation has been issued in error, the responsible party may request that the order or citation be reviewed by the Director or designee. The responsible party must submit a written request for an Administrative Review within 15 calendar days of the date of the order or citation. An Administrative Review appeal fee, see current BDS Enforcement fee schedule, is due when the written request for an Administrative Review is requested. This fee will only be refunded if it is determined that all of the contested violations were cited in error. A written Administrative Review determination will be served on the responsible party by regular mail. A responsible party may appeal the written Administrative Review determination to the City Code Hearings Office in accordance with Chapter 22.10 of the Portland City Code.

City of Portland

188802

Bureau of Development Services

ENB-14.01

Building and Other Permits Fee Schedule

Demolition/Deconstruction Fee

For plan review/processing fee and inspections. Fees for Sewer Cap, Erosion Control, and Site Review fee will be added separately.

With Basement - Commercial	\$365	<u>\$545</u>
With Basement - Residential	\$345	<u>\$525</u>
Without Basement – Commercial	\$340	<u>\$520</u>
Without Basement - Residential	\$320	<u>\$500</u>

City of Portland

Bureau of Development Services

ENB 14.10

Enforcement Fee and Penalty Schedule

Asbestos and Lead-Based Paint and Site Control Demolitions Citation Fees

<u>First Offense</u>	<u>\$5,000 (Even if there are multiple violations on single inspection)</u>
<u>Second Offense</u>	<u>\$10,000 (Applies to each violation)</u>
<u>Third Offense</u>	<u>\$15,000 (Applies to each violation)</u>
<u>Additional violations (after the third offense)</u>	<u>\$15,000 (Applies to each violation)</u>

Title

Amend the Building Demolition Code to implement Senate Bill 871 and add dust and site control requirements for residential demolitions; amend fee schedules (Ordinance; amend Code Chapter 24.55 and Portland Policy documents ENB 14.01 and 14.10)

<p>INTRODUCED BY Commissioner/Auditor: Commissioner Chloe Eudaly</p>	<p>CLERK USE: DATE FILED <u>JAN 23 2018</u></p>
<p>COMMISSIONER APPROVAL</p> <p>Mayor—Finance & Administration - Wheeler</p> <p>Position 1/Utilities - Fritz</p> <p>Position 2/Works - Fish</p> <p>Position 3/Affairs - Saltzman</p> <p>Position 4/Safety - Eudaly <i>[Signature]</i></p>	<p>Mary Hull Caballero Auditor of the City of Portland</p> <p>By: <u><i>[Signature]</i></u> Deputy</p>
<p>BUREAU APPROVAL</p> <p>Bureau of Development Services Bureau Head: <i>[Signature]</i> Rebecca Esau, Director</p> <p>Prepared by: Leanne Torgerson Date Prepared: 1/17/18</p> <p>Impact Statement Completed <input checked="" type="checkbox"/> Amends Budget <input type="checkbox"/></p> <p>Portland Policy Document If "Yes" requires City Policy paragraph stated in document. Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></p> <p>City Auditor Office Approval: required for Code Ordinances <i>[Signature]</i></p> <p>City Attorney Approval: required for contract, code, easement, franchise, comp plan, charter <i>[Signature]</i></p> <p>Council Meeting Date 2/1/18, 3:00 TC</p>	
<p>ACTION TAKEN:</p>	

AGENDA
<p>TIME CERTAIN <input checked="" type="checkbox"/></p> <p>Start time: <u>3:00 p.m.</u></p> <p>Total amount of time needed: <u>1 hour</u> (for presentation, testimony and discussion)</p>
<p>CONSENT <input type="checkbox"/></p>
<p>REGULAR <input type="checkbox"/></p> <p>Total amount of time needed: _____ (for presentation, testimony and discussion)</p>

FOUR-FIFTHS AGENDA	COMMISSIONERS VOTED AS FOLLOWS:	
	YEAS	NAYS
1. Fritz	✓	
2. Fish	_____	
3. Saltzman	✓	
4. Eudaly	✓	
Wheeler	✓	