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ORDINANCE NO. 3887

TITLE: An Ordinance amending Ordinance No. 3871, granting to the Oregon Electric Railway Company, a corporation, its successors and assigns, the right and privilege to lay down, construct, maintain, operate and use a railroad track and to operate cars and locomotives thereover in and through the City of Albany and authorizing erecting and construction of all equipment and appliances necessary for the operation and maintenance thereof.

THE PEOPLE OF THE CITY OF ALBANY DO ORDAIN AS FOLLOWS:

Section 1:

That Ordinance No. 3871, City of Albany Ordinances is hereby amended to read as follows:

"Section 1: There be and hereby is granted to Oregon Electric Railway Company, a corporation, its successors and assigns, the franchise, right and privilege to erect, maintain, equip and operate a single railroad or railway track with sidings, switches, turnouts, crossovers, curves and connections, and to run and operate locomotives, passenger, freight, mail, baggage and express cars along and upon the following named streets and places in the City of Albany, Oregon to wit:

Beginning at the Northeasterly boundary line of the City of Albany, said boundary line being the center line of Cox Creek; thence running Southwesterly to Water Street; thence Westerly along said Water Street to the West end thereof; thence in a Southwesterly direction to the West boundary of the City of Albany, said West boundary being the East line of Umatilla Street extended Northerly.

ALSO, beginning at the Northeasterly boundary line of the City of Albany, said boundary line being the centerline of Cox Creek; thence running Southwesterly parallel to and Northerly to the right-of-way of the Southern Pacific Company to Main Street.

All track or tracks to be constructed under the provisions of this Ordinance shall be laid flush with the grade of the streets, where said streets have an established grade, when track is laid upon a street where no grade has been established, the track shall be brought to grade whenever such grade shall be established by the City, and when any established grade shall be changed by the City, the track

shall be changed so as to conform with the grade as so established.

"Section 2: Said Oregon Electric Railway Company, its successors and assigns, may construct, operate, equip and maintain telegraph, telephone, power lines and underground communications systems over, along and under said streets for the purpose of transmitting messages or power over said lines and systems. For said purposes and for the practical enjoyment of said franchise, said Oregon Electric Railway Company, its successors and assigns, is hereby authorized to erect poles and string wires or conductors upon poles or other fixtures above the ground or said wires and communications systems may be laid underground in pipes, conduits, or otherwise protected.

"Section 3: It shall be lawful for said Oregon Electric Railway Company, its successors and assigns, to make all needful and convenient excavations in any of said streets under the conditions hereinafter named for the purpose of establishing and maintaining said railway, telegraph, telephone, power lines; and underground communication systems; provided that if said excavation shall disturb any of said streets, the same shall be restored to good order and condition as soon as practicable and without unnecessary delay. Oregon Electric Railway Company, its successors, lessees, and assigns, shall, during the term of this franchise, keep the track portion of each street in as good condition and repair as the remainder of the street. In case such street shall be improved by the City, the cost of improving the track portion of such street shall be borne by the Oregon Electric Railway Company. For the purposes of this section, the term 'track portion of the street' means the space between the rails and spaces eighteen (18) inches in width running parallel with and adjacent to the outside flange of each rail.

"Section 4: That there be and is hereby granted to said Oregon Electric Railway Company, its successors and assigns, the right to maintain and operate cars over all private tracks and private property now occupied by it. Oregon Electric Railway Company, its successors and assigns, does hereby agree that no car or locomotive shall be parked or stationed at the intersection of Lafayette Street on trackage owned by the Oregon Electric Railway Company so that railway cars or locomotives will in any way block passage over Water Avenue or impede use of Water Avenue for the use of automotive transportation.

"Section 5: Said Electric Railway Company, its successors and assigns, do further agree that in consideration of the grant of the franchise herein given, that should it be-

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come necessary at any time in the future to construct or install protective devices in any grade crossing within the area defined in Section 1 hereinabove, then and in that event the said Oregon Electric Railway Company agrees to bear any cost of said protective device that might be assigned by the Public Utility Commissioner or any other agency to the City. Protective device means a sign, signal, gate or other device to warn or protect the public, installed at a railroad-highway grade crossing. Provided, however, that the City shall cooperate with the said Oregon Electric Railway Company to obtain and utilize all state and federal funds available for such projects. Also, in the event of the passage of a law by the State of Oregon providing for the apportionment of the cost of maintenance of protective devices, the said Oregon Electric Railway Company shall have the advantage and benefit of such law. The City shall maintain any required advance warning signs and pavement markings.

"Section 6: Said Oregon Electric Railway Company, its successors and assigns, shall have the right to do all necessary excavating or grading for the repair and maintenance of said streets and all portions of said streets so excavated or graded must be replaced in as near the original condition as practicable, and said company, its successors and assigns, shall, during the term of this franchise, keep the portions of said streets upon which tracks are maintained, in as good condition and repair as the remainder of said street is maintained, for the whole width of said right-of-way between the rails of each track, and for the width of eighteen (18) inches on the outside of the rails of each track; and in case such street shall be improved by the said City, the cost of improving the portions of said streets last above described shall be borne by the said Oregon Electric Railway Company.

"Section 7: The motive power employed for operating cars and locomotives upon such tracks shall be of diesel or diesel electric.

"Section 8: The rate of speed of all cars shall not exceed 20 miles per hour between grade crossings within the limits of the City of Albany.

"Section 9: In the event the City of Albany is required by public necessity to lay any sewer pipe, water pipe, or other public utility service along or across any street or part thereof on which the Oregon Electric Railway Company is hereby granted the privilege to maintain the railroad tracks and appurtenances thereto, the said Oregon Electric Railway Company, its successors, lessees, and assigns will pay to the City of Albany the additional cost which the

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City may incur by reason of said railroad tracks being located in and upon said streets. Any expense incurred by Oregon Electric Railway Company in the maintenance of its railroad tracks and appurtenances thereto, which may be incurred during the time that the City of Albany is laying any public utility hereinbefore mentioned, shall be at the expense of the Oregon Electric Railway Company.

"Section 10: All the rights herein granted shall continue and be in force and effect five (5) years from and after the date of the final approval of this Ordinance.

"Section 11: All the rights, privileges and franchise herein set forth are granted upon the condition that the said Oregon Electric Railway Company, its successors or assigns, shall, within sixty (60) days from and after the date of the passage of this Ordinance and its approval by the Mayor, file with the City Recorder its written acceptance of its provisions."

Section 2:

Inasmuch as this Ordinance is necessary for the immediate preservation of the peace, health and safety of the City of Albany, Oregon, an emergency is hereby declared to exist and this Ordinance shall be in full force and effect immediately upon passage by the Council and approval by the Mayor.

Passed by the Council: December 10, 1975

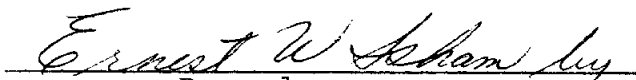
Approved by the Mayor: December 10, 1975

Effective Date: December 10, 1975



Mayor

ATTEST:



Recorder



BURLINGTON NORTHERN

INDUSTRIAL DEVELOPMENT AND
PROPERTY MANAGEMENT DEPARTMENT

Lobby 2
Central Building
Seattle, Washington 98104
Telephone (206) 624-1900

Mr. Hugh C. Hull
Albany City Manager
P. O. Box 490
Albany, Oregon 97321

November 7, 1975

File: RE-1010
Albany, Or.

Dear Mr. Hull:

We have reviewed City Ordinance No. 3871 covering franchise rights from the City of Albany, Oregon, in favor of the Oregon Electric Railway Company.

We agree in substance with your proposal for a more modern type of franchise and consequently agree in principle with Ordinance No. 3871. However, we feel certain refinements should be made before the franchise is acceptable to the Oregon Electric Railway Company.

All of the Sections in the Ordinance are generally acceptable to the railway company except Sections 5 and 8 which we are requesting be amended as follows:

Section 5 - We propose a restatement of this section in order to provide that the City would cooperate with the Oregon Electric in obtaining the benefit of any available state or federal funds for a grade crossing project and that the Oregon Electric would have the benefit of any future change in the law as to maintenance responsibility. The restatement is set forth as follows:

Said Oregon Electric Railway Company, its successors and assigns, do further agree that in consideration of the grant of the franchise herein given, that should it become necessary at any time in the future to construct or install protective devices in any grade crossing within the area defined in Section 1 hereinabove, then and in that event the said Oregon Electric Railway Company agrees to bear any cost of said protective device that might be assigned by the Public Utility Commissioner or any other agency to the City. Protective device means a sign, signal, gate or other device to warn or protect the public, installed at a railroad-highway grade crossing. Provided, however, that the

Handwritten note: Copy of letter to Albany City Manager, 11/10/75

Mr. Hugh C. Hull
November 7, 1975
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City shall cooperate with the said Oregon Electric Railway Company to obtain and utilize all state and federal funds available for such projects. Also, in the event of the passage of a law by the State of Oregon providing for the apportionment of the cost of maintenance of protective devices, the said Oregon Electric Railway Company shall have the advantage and benefit of such law. The City shall maintain any required advance warning signs and pavement markings.

Section 8 - The railway company's mileposts begin at Portland and increase in the direction of Eugene, therefore it is evident the speed of trains in Ordinance No. 3871 is in reverse of your intentions. In keeping with your thoughts to modernize the franchise, we checked back to the original franchise of 1910 and found the speed has never been changed from 12 mph. As you know, the Oregon Electric was originally an interurban electric street car line and it was not until the late 30's that it became a freight line with steam and currently diesel power. In order to bring Section 8 into focus with our current power and actual operating conditions, we propose the rate of speed through the city not exceed 20 mph. Section 8 would then read as follows:

The rate of speed of all cars shall not exceed 20 mph between grade crossings within the limits of the city.

We suggest Ordinance No. 3871 be amended or a new Ordinance be passed by the City Council in accordance with the above proposals, and we will file acceptance accordingly.

Sincerely yours,

J. J. Gordon
Manager, Property Management



By: H. E. Hudson
Sr. Real Estate Representative



BURLINGTON NORTHERN

ENGINEERING DEPARTMENT
Portland Region

CITY OF ALBANY
RECEIVED

1101 N.W. Hoyt Street
P. O. Box 571
Portland, Oregon 97207
Telephone (503) 228-9111

OCT 30 1975

Mr. Michael J. Corso
Office Engineer
City of Albany
Post Office Box 490
Albany, Oregon 97321

By _____

October 29, 1975

Dear Mr. Corso:

I make reference to your letter to this office of September 19 and my reply to you of September 23 in regard to improvements on Water Avenue between Hill and Montgomery Streets. I also refer you to Mr. J. W. Ferguson's letter of the Southern Pacific Transportation Company to you of September 26, 1975.

I have now received from the Southern Pacific Transportation Company a detailed estimate of cost along with the prints covering the Southern Pacific's work in moving the bents, increasing the vertical and horizontal clearances on their trestle over our track on Water Avenue. Their new estimate of costs for raising the structure and relocating the bents is some \$16,515 more than we had approval for in handling this work, and as such it will now be necessary for me to go back to our people in St. Paul in an attempt to get further approval for the additional expenditure. This may take quite some time, and I wanted to advise you accordingly so you knew what the situation was.

I would be pleased to meet with you in the next several weeks to go over the proposed plans that the Southern Pacific furnished me which indicate what we expect to do on Water Street at this location.

Yours very truly,

H. F. MOY *H. F. Moy*
Director and Regional Engineer

HFM/fc

File: ALBANY-W



BURLINGTON NORTHERN



INDUSTRIAL DEVELOPMENT AND
PROPERTY MANAGEMENT DEPARTMENT

Lobby 2
Central Building
Seattle, Washington 98104
Telephone (206) 624-1900

City Manager
City of Albany
P. O. Box 490
Albany, Oregon 97321

August 6, 1975

File: RE-1010

Dear Sir:

City of Albany Ordinance No. 3209 dated July 21, 1965, covering franchise in favor of Oregon Electric Railway Company will expire by its own terms August 20, 1975.

Enclosed is proposed new franchise and except for some minor changes is drawn in similar form to the one that is expiring. We would appreciate your handling this franchise request with the City Council.

When the instrument has been fully signed by the City, please furnish us with a certified copy and we will file an acceptance as provided under Section 9.

Sincerely yours,

J. J. Gordon
Manager, Property Management

By: H. E. Hudson
Sr. Real Estate Representative

Encl.