

5660 26911
ORDINANCE NO.

An Ordinance granting to United Railways Company, its successors and assigns, the right and privilege of laying down, constructing and maintaining a commercial railway, with poles, wires and underground conduits in the City of Portland.
 The City of Portland does ordain as follows:

Granting Clause.

Section 1. That there be and is hereby granted, subject to the terms, restrictions and provisions in this ordinance contained, to the United Railways Company, a corporation organized and existing under the laws of the state of Oregon, its successors and assigns, the franchise, right and privilege of maintaining a certain line of single track, standard gauge commercial railway heretofore constructed and now existing on Macadam street within the limits hereinafter described, and to lay down, relay, construct, reconstruct, purchase, acquire, lease, repair, maintain, equip, operate, have, hold, use and enjoy a line of single track, standard gauge commercial railway with convenient switches, turnouts, cross-overs, connections, spur tracks, and side tracks for general commercial railway use, but for use as a street railway, in, over, along and upon Macadam street from where the north line of section fifteen (15), township one (1) south, range one (1) east of the Willamette meridian crosses the said street, thence southerly on the said Macadam street to where the center line of section twenty-two (22), township one (1) south, range one (1) east crosses the said street.

Track Construction.

Section 2. The said track between the north line of said section fifteen (15) and the north line of Dakota street shall be maintained and from time to time repaired and rebuilt on the easterly twenty (20) feet of the said street substantially as now located thereon. Southerly from the north line of Dakota street, the said track shall for the time being be maintained on the easterly twenty (20) feet of the said street substantially as now located, but in case any part of Macadam street south of the north line of Dakota street is hereafter improved by the City of Portland with a hard surface pavement, the location of the track shall then be changed by the grantee, if then required by the Council, from the easterly side of the street to the center of the street wherever the street is so improved. But it is expressly provided that the Council may at any time cause the track now existing on the easterly side of Macadam street to be shifted so that the same will not occupy any portion of the space ordinarily devoted to sidewalk, it being intended that the Council may require the same to be placed between the curb and sidewalk space.

Where the track by the terms hereof is required to be in the center of the street, it shall be constructed, maintained and operated as near the center of the street as is practicable, connecting by suitable curves and connections with the other portions of the line of railway so as to form a continuous line and conforming substantially to the established grade of the street, where the grade has been established, so as to interfere as little as possible with the public use of the street. Where the track is required or permitted to be on the easterly twenty (20) feet of the street, it shall be laid as nearly flush with the sidewalk grade as is practicable.

The rails laid in or across the parts of the street that are paved shall not be less than six (6) inches in depth and shall weigh not less than seventy (70) pounds to the yard. The rails in other than the paved part of the street shall not be less than four and one-quarter (4 1/4) inches in depth and shall weigh not less than sixty (60) pounds to the yard. In laying down, repairing or reconstructing the said track, the grantee shall not obstruct the street for a greater continuous distance nor for a longer time than is reasonably necessary, subject to the control of the Council or other lawfully constituted authority of the City of Portland.

The grantee may extend its tracks to, over, upon and across property used for depot grounds or other railway purposes, or to reach private property outside of the lines of the street.

Street Improvements.

Section 3. Nothing in this ordinance, nor any right or privilege granted by this ordinance, shall be construed to prevent the municipal authority of the City of Portland from sewerage, grading, paving, planing, macadamizing, improving, altering or repairing the street over which the track authorized by this ordinance is constructed, maintained or operated, but all such work shall be done so as to cause as little obstruction or hindrance as is practicable to the cars and the operation of the said railway, and the grantee shall have the privilege of raising and shifting the tracks so as to avoid as much as possible obstruction to the operation of cars during the progress of street improvements, sewerage, grading, planing, macadamizing, improving, altering or repairing. The grantee shall fill in and grade to the established grade and plank, pave, repave, reconstruct or otherwise improve or repair and keep in good condition from time to time, whenever directed by the Council, and in such manner as the municipal authorities may direct, those portions of the street or streets or other public places along and over which the said track is or shall hereafter be constructed, the whole width of said track between the rails, and also for the width of one foot on the outside of the rails.

By the acceptance of this franchise the grantee hereby agrees that if, at any time after this ordinance becomes effective, the Council shall order or shall have heretofore ordered the street or any portion thereof included in the franchise hereby granted, improved or repaired, the grantee, its successors or assigns, will improve or repair the portion of such street which it is required by this section to improve or repair, notwithstanding the fact that no tracks may be constructed thereon at the time such street is ordered improved or repaired, unless the same is abandoned with the consent of the Council. This provision applies to so much of said street as is now under improvement. Any failure so to do shall subject this franchise to forfeiture by the City of Portland. It is understood, however, that at the time any such improvement or repair is being made the grantee may construct the railway track herein authorized, if not already constructed at the place where such improvement or repair is being made in said street.

Obstruction of Tracks Unlawful. Penalty.

Section 4. It shall be unlawful for any person or persons to obstruct the laying down, construction, maintenance or operation of the track or the line of railway provided for in this ordinance, and any person or persons who shall violate the provisions of this section shall upon conviction thereof before the Municipal Court of the City of Portland be punished by a fine of not less than five dollars or more than twenty-five dollars for each and every offense.

Other Offenses. Penalty.

Section 5. Any conductor, motorman, or other employee of or upon the railway herein mentioned, or any passenger thereon, or other person on or about the same or the cars belonging thereto or operated thereon, who shall be indecent, profane, offensive, abusive, or use of, or obscene language, or insult, abuse or maltreat any passenger on said cars, or any motorman, conductor or employee of said railway line thereon or about the same, shall, upon conviction thereof before the Municipal Court of the City of Portland, be punished by a fine of not less than five dollars and not more than twenty-five dollars for each and every offense.

Motive Power.

Section 6. The grantee may operate and propel cars over and upon the railway mentioned in this ordinance by means of overhead or underground electrical power, storage batteries, compressed air, or other mechanical power (excepting only steam or gasoline motors or locomotives); and for the purpose of operating said railway and conveying power and electric current for the grantee's own use may put up, erect, maintain and use poles and overhead trolley wires and supports therefor, and lay down, construct, maintain and use underground slots and conduits. The grantee may at any time change its motive power or mode of operating and propelling cars for any more improved, economical or desirable method, excepting steam or gasoline motors or locomotives. The poles and wires already erected and in use by the grantee may be maintained except as otherwise herein provided.

Operation.

Section 7. Nothing contained in this ordinance shall require the grantee to operate any cars other than freight cars and construction cars and electric motors.

The rate of speed shall not exceed twelve (12) miles per hour upon said street, but such rate of speed shall be subject to changes and regulation by the Council.

Cars shall not be allowed to stand on the track in the center of the street nor at any place on the said railway line in front of any residence against the objection of the owner or occupant thereof, nor shall any such car be allowed to stand for an unreasonable length of time.

Abandonment and Forfeiture.

Section 8. No abandonment, non-user or failure to comply with the terms of this franchise shall release the holder from any of the obligations thereof without the consent of the city expressed by ordinance, which shall be subject to the referendum. Notwithstanding such abandonment, the provisions of this franchise may be enforced, but upon abandonment, non-user or failure to comply with any of the terms of this franchise, the city may by ordinance declare a forfeiture, whereupon all rights of the holder of this franchise shall immediately be divested without further action upon the part of the city, and the holder thereof shall be required, notwithstanding such forfeiture, to remove its structures and property from the said street and to restore the street to such condition as the Council may require; and upon failure to do so, the city may perform the work and collect the cost thereof from the holder of the franchise. The cost thereof shall be a lien upon all the plant and property of the holder of the franchise prior to any other lien except that of city assessments, or general tax, and the city may collect the same as a city assessment or in any other lawful manner.

In case of the failure, neglect or refusal of the grantee after thirty (30) days' notice given by the Council to repair, improve or maintain as herein set out the portion of the street as herein required, the city may, at its option, do such work, and the cost of the same as ascertained and declared by

the Council shall be entered in the docket of city liens and be enforced in like manner and with like effect as a general tax upon the real and personal property of the grantee. But it is hereby expressly provided that the City when awarding a contract for a street improvement may include in such contract all work required to be done or paid for by said grantee, its successors or assigns, and the cost of that portion above specified in Section 3 to be done or paid for by said grantee, its successors or assigns, shall be charged against said grantee, its successors or assigns, and the same shall be entered in the Lien Docket as other assessments, and upon such entry, shall constitute a lien against the real property and franchise of said grantee, its successors or assigns, located in the City of Portland, and the payment of the same, together with interest thereon, may be enforced as other charges against said grantee, or the same may be collected by an action as for debt, for mandamus or suit to foreclose, it being intended that any or all of such remedies may be used.

Common User.

Section 9. This ordinance and franchise hereby granted is upon the condition that the grantee shall allow any other railroad company to use in common with it the same track throughout the entire length thereof between the extreme limits for which this franchise is granted, upon obtaining the consent of the Council, expressed by ordinance, prescribing the regulations for such use and the compensation therefor, each paying an equitable and proper proportion of the construction, maintenance, and repair of the track and appurtenances, such proportion to be fixed by the Council or other competent authority.

This franchise and all things constructed thereunder or used in connection herewith with other than rolling stock and power, shall be subject to common use by any person or corporation, including the city, operating a similar public utility whenever it shall be advantageous to the public, upon payment or tender of fair compensation for such use. The compensation for the franchise itself shall be payable only to the city and not to the holder of the original franchise.

The Council shall have power to determine what is a fair compensation and to regulate the manner of such use, subject to judicial review, but no judicial proceeding shall suspend or postpone such use if the person or corporation desiring such common use shall deposit in the court such sum as the court on preliminary hearing may determine. Such compensation shall not include any remuneration for the franchise or rights conferred by the city, except that the new user may be required to pay a ratable part of any tax or public charge imposed upon the original grantee by reason of said franchise in addition to such other payment to the city as the Council may deem equitable.

Duration of Franchise.

Section 10. The rights, franchises and privileges granted to or conferred upon the grantee by this ordinance shall continue and remain in force until the expiration of twenty-five (25) years from and after the date when this ordinance shall become effective.

Acceptance. Grantee to File.

Section 11. The grantee shall within thirty (30) days after this ordinance shall be in force file in the office of the Auditor a written acceptance of the same, and the failure on the part of the grantee to file such written acceptance within the time specified shall be deemed an abandonment and rejection of the rights and privileges conferred, and this ordinance shall thereupon be null and void. Such acceptance shall be unqualified and shall be construed to be an acceptance of all of the terms and conditions and restrictions contained in this ordinance.

In accepting this franchise, the grantee shall be conclusively presumed to have waived all rights or privileges, if any such rights or privileges exist, for building, maintaining or operating a railway line upon the said Macadam street under any order or franchise heretofore made or granted by the County Court of the State of Oregon for Multnomah County.

Compensation.

Section 12. The grantee shall pay to the Treasurer of the City of Portland on or before the 15th day of January, 1914, and annually thereafter during the life of this franchise, the sum of One Hundred (\$100.00) Dollars. Should the grantee fail or neglect for thirty (30) days after the same comes due and payable to pay any installment provided for in this section, the city shall have the right to collect such overdue payment from the grantee or the person or company at that time controlling and operating the said railway, and shall have a lien upon the railway, its track and franchises for the same, or the Council may, at its option, revoke this franchise.

Cost of Construction and Maintenance.

Section 13. Any construction work required for the rebuilding of the track to conform to the requirements of this ordinance shall begin as soon as the improvement of the street is undertaken by the city. The estimated total cost of constructing the tracks already in the said street and authorized to be constructed under this ordinance is the sum of seventy-five thousand dollars (\$75,000.00), and the yearly sum to be expended thereon is the sum of five hundred dollars (\$500.00) for the maintenance of the said tracks. Any reconstruction work required under this ordinance shall be completed by the time the street improvement is completed on the portion of the street on which such reconstruction is required to be done.

Rates, Fares and Charges.

Section 14. The maximum rate that the grantee may charge for freight service upon the said railway line is two dollars and fifty cents (\$2.50) for each car movement of each freight car loaded or empty delivered to or removed from destination on said track, each change of location of a car on the track being counted as a car movement. In granting this franchise, the City of Portland expressly reserves the right under the charter to reasonably regulate the rate of fare to be charged on the said railway line. Rates, however, shall always be uniform to all persons of like classes under similar circumstances and conditions.

Electrical Contract.

Section 15. The grantee, whenever or wherever electric currents are used or employed in or about the use of the franchise by this ordinance granted or the plant connected therewith, shall provide and put in use such means and appliances as will control and effectually contain such currents in their proper channels, and on its own wires, tracks and other structures, so as to prevent injury to the property, pipes and other structures belonging to the City of Portland, or to any person, firm or corporation within the said city, and to repair and shall repair and renew said means and appliances, and from time to time change and improve the same as may be necessary to accomplish said purpose, at its charge and expense, and at its own risk, selecting and adopting such means and appliances as shall prevent injury to the property, pipes and other structures belonging to the City of Portland, or to any person, firm or corporation.

Map of Definite Location.

Section 16. Grantee shall file in the office of the Auditor of the City of Portland a plat showing the definite location of the tracks to be constructed in the provisions of this ordinance, and it shall be unlawful for the grantee to change the route thus established, except as in this ordinance otherwise provided, without the permission of the Council of the City of Portland and without the filing of plans showing such changes; provided, however, that work of immediate necessity may be done without filing such plans.

Franchise Not to Be Sublet or Leased.

Section 17. This franchise shall not be sublet or assigned, nor shall any of the rights or privileges thereby granted or authorized be leased, assigned, sold or transferred without the consent of the city. Expressed by ordinance, which shall be subject, as other ordinances, to the referendum.

Franchise Subject to Charter.

Section 18. This franchise shall be subject to the terms, conditions and requirements of all the sections of the Charter of the City of Portland relating to franchises for commercial railroads, and all other sections applicable as fully and completely as though stated herein.

Control by Council.

Section 19. The Council of the City of Portland, or other properly constituted authority thereof, shall have the power and authority to reasonably regulate in the public interest the exercise of the franchise or rights hereby granted, and to regulate the manner of constructing and maintaining the track and carrying but the provisions of this ordinance relating thereto.

Grantee Defined.

Section 20. Wherever the word "grantee" is used in this ordinance, the same shall be considered to include the grantee, its successors and assigns, and on sale, transfer, mortgage or lease of this franchise, whether voluntary or involuntary, or any of the rights and privileges hereby granted, the requirements of the Charter of the City of Portland shall be complied with.

Passed by the Council, February 4, 1914.

H. R. AIBEE,
Mayor of the City of Portland.

ATTEST:

A. L. BARBUR,
Auditor of the City of Portland.