

ORDINANCE NO. 596 -O

**ORDINANCE OF THE CITY OF TROUTDALE TO PROHIBIT
EROSION ONTO PUBLIC WAYS AND ESTABLISHING
PENALTIES FOR VIOLATION THEREOF**

WHEREAS, erosion from private property onto the public right-of-way may block storm drainage systems, sidewalks, and even roadways, creating a decrease in service and an increase in maintenance costs, and

WHEREAS, owners of real property have an obligation to prevent erosion from their property into the public right-of-way, and

WHEREAS, the Troutdale Municipal Code currently is silent on this particular issue.

**NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL
OF THE CITY OF TROUTDALE THAT:**

The Troutdale Municipal Code is amended by adding the following:

Chapter 12.22 Erosion Onto Public Ways

Sections:

- 12.22.010 Title
- 12.22.020 Intent and Scope
- 12.22.030 Policy
- 12.22.040 Enforcement
- 12.22.050 Penalties for Violation
- 12.22.060 Effective Date

12.22.010 Title. The title of this Ordinance shall be "Erosion Onto Public Ways".

12.22.020 Intent and Scope. Pursuant to the statutes of the State of Oregon and the powers granted in the Charter of the City, the City finds, declares, and affirms a need to prevent erosion onto public ways so that the health, welfare, and safety of the public may be maintained.

12.22.030 Policy. It is unlawful for the owner of any real property within the City of Troutdale to cause or permit dirt, mud, sand, silt, clay, stone, gravel, bark mulch, or similar material to be moved by the action of water from said property, or to be otherwise placed, into or upon the public right-of-way, which shall include public streets, public sidewalks, and public storm or sanitary drainage systems.

12.22.040 Enforcement.

- A. Enforcement of the policy set forth above shall be the responsibility of the Public Works Department, who shall:
1. Investigate alleged violations.
 2. Issue complaints.
 3. Reach a written settlement, if appropriate, with the violator.
 4. Represent the City of Troutdale before the Municipal Court.
- B. A proceeding may be initiated in Municipal Court by the filing of a complaint with the Police Department which contains the following:
1. The number of this Ordinance or section of the Municipal Code.
 2. The name and address of the respondent.
 3. The location and nature of the violation.
 4. The signature of the complainant.
- C. The Police Department shall cause notice of the hearing to be given to the respondent(s) either personally or by certified or registered United States mail by issuing a "Citation To Appear in Court". The citation shall contain a statement of the time, date, and place of the hearing, and a copy of the complaint shall be attached to the notice. The City shall, by separate document served with the citation, notify the respondent that he/she may be represented by a retained attorney provided that ten working days' written notice of such representation is received by the City.
- D. If the respondent alleged to have committed the violation fails to appear at a hearing as provided herein, the Municipal Court shall order a citation to be issued for failure to appear.
- E. Unless precluded by law, informal disposition of any proceeding may be made between the Public Works Department and respondent, with or without a hearing, by stipulation, consent order, agreed settlement, or default. The Public Works Department shall inform the Municipal Court in writing of any such disposition which occurs after the issuance of a citation.
- F. The City shall not be represented before the Municipal Court Judge by legal counsel except in preparation of the case or as provided below. A respondent charged with an infraction may be represented by a retained attorney provided that ten working days' written notice of such representation is received by the City so that the City may have Counsel represent it. The Municipal Court Judge may for good cause waive this notice requirement in individual cases or reset the hearing for a later date.
- G. The City must prove the violation occurred by a preponderance of the admissible evidence.
- H. The presence on any property of bare earth on a slope in excess of 5%, unprotected by an effective erosion barrier, shall constitute rebuttable evidence that the owner has caused or permitted erosion.

- I. The Municipal Court Judge shall have the authority to administer oaths and take testimony of witnesses. Upon the request of the respondent, or upon his or her own motion, the Municipal Court Judge may issue subpoenas in accordance with the Oregon Rules of Civil Procedure, which shall apply to procedural questions not otherwise addressed by this Ordinance.
1. If the respondent desires that witnesses be ordered to appear by subpoena, respondent shall so request in writing at any time no less than ten days prior to the scheduled hearing.
 2. Subject to the same ten (10) day limitation, the City may also request that certain witnesses be ordered to appear by subpoena.
 3. The Municipal Court Judge may waive the ten (10) day limitation for good cause.
 4. Witnesses ordered to appear by subpoena shall be allowed the same fees and mileage as allowed in civil cases which shall be the responsibility of those requesting the witnesses' appearance.
 5. If a fine is declared in the final order, the order shall also provide that the respondent also pay any witness fees attributable to the hearing.
- J. The respondent shall have the right to cross-examine witnesses who testify and shall have the right to submit evidence on his, her, or its behalf.
- K. After due consideration of the evidence and arguments, the Municipal Court Judge shall determine whether the violation alleged in the complaint has been proven by a preponderance of the evidence.
1. When the determination is that the violation has not been proven, an order dismissing the complaint shall be entered.
 2. When the determination is that the violation has been proven, or if an answer admitting the violation has been received, an appropriate order shall be entered, including penalty and costs.
 3. The final order issued by the Municipal Court Judge shall contain the amount of the fine, costs, and other penalties imposed and instructions regarding payment.
- L. Review.
1. Any motion to reconsider the final order of the Municipal Court Judge must be filed within 10 days of the original order.
 2. A respondent may appeal a final adverse ruling by Writ of Review as provided in ORS 34.010 through 34.100.

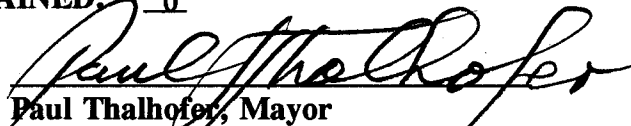
12.22.050 Penalties for Violation.

- A. Any person, firm, or corporation found guilty of violating Section 12.22.030 shall be subject to a fine not to exceed \$1,000 per violation. Each day in which the unlawful erosion is caused or permitted shall be a violation.
- B. Any person, firm, or corporation found guilty of violating Section 12.22.030 shall also reimburse the City of Troutdale for actual costs incurred by the City for administrative costs of investigation, adjudication, and collection, including legal fees, and the costs of cleanup and repair.
- C. Fines and costs are payable as directed by the Municipal Court Judge. Fines and costs under this Ordinance are a debt owing to the City and may be collected in the same manner as any other debt allowed by law.
- D. The City may institute appropriate suit or legal action, in law or equity, in any court of competent jurisdiction to enforce the provisions of any written settlement of the Public Works Department or final order of the Municipal Court Judge, including, but not limited to, its suit or action to obtain judgment for any civil penalty imposed by an order of the Municipal Court Judge pursuant to Section 12.22.050(A) and/or any assessment for costs imposed pursuant to Section 12.22.050(B).
- E. Fines collected pursuant to the provisions of this Ordinance shall be credited to the General Fund. Costs collected pursuant to the provisions of this Ordinance shall be credited to the fund that sustained the cost.

12.22.060 Effective Date. The provisions of this Ordinance shall be effective October 1, 1993.

PASSED BY THE COMMON COUNCIL OF THE CITY OF TROUTDALE THIS 10TH DAY OF AUGUST, 1993.

YEAS: 6
NAYS: 0
ABSTAINED: 0


Paul Thalhofer, Mayor

Dated: Aug. 10, 1993

ATTEST:


George Martinez
Deputy City Recorder

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