

## **RESOLUTION NO. 1828**

### **A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF PORTLAND FOR THE ADMINISTRATION AND ENFORCEMENT OF TROUTDALE'S PAYDAY LENDING ORDINANCE.**

#### **THE TROUTDALE CITY COUNCIL FINDS AS FOLLOWS:**

1. Troutdale adopted Ordinance No. 774 on March 28, 2006 regulating payday lenders in Troutdale.
2. Troutdale's Payday Lending Ordinance is nearly identical to similar ordinances adopted by the City of Portland and the City of Gresham.
3. A consolidated program will allow consistent application of the payday lending laws and administrative rules throughout the three cities. Consistent laws and rules allow payday lending businesses to follow a single set of procedures and definitions and to deal with a single administrator, making compliance with these regulations easier.
4. Portland's Revenue Bureau is willing and able to administer the Payday Lending Ordinance for the City of Troutdale.


#### **NOW THEREFORE BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TROUTDALE:**

Section 1. The Mayor is authorized to sign the attached Intergovernmental Agreement on behalf of the City.

Section 2. The Mayor is authorized to sign any addendums to this Intergovernmental Agreement (IGA) during the period in which this IGA is in force.

Section 3. This resolution shall take effect immediately upon adoption.

YEAS: 7  
NAYS: 0  
ABSTAINED: 0

  
Paul A. Thalhoffer, Mayor  
June 28, 2006  
Date

  
Debbie Stickney, City Recorder

Adopted: June 27, 2006

CITY OF PORTLAND  
CITY OF TROUTDALE

JUL 31 2006

**Intergovernmental Agreement**

THIS AGREEMENT entered into by and between the City of Troutdale, Oregon, hereinafter "Troutdale", and the City of Portland, Oregon, hereinafter "Portland", is pursuant to authority of ORS Chapter 190.

- A. Troutdale adopted a payday lending ordinance, codified in Chapter 5.06 of the Troutdale Municipal Code.
- B. The payday lending ordinance requires payday lending businesses that operate in Troutdale to obtain a permit and comply with provisions that protect borrowers. The payday lending ordinance delegates authority to the City Administrator, or the Administrator's designee to adopt administrative rules, to enforce the provisions of the ordinance and administrative rules and to impose civil penalties in an amount up to \$1,500.
- C. Administering and enforcing the payday lender ordinance requires knowledge of payday lending practices and skills that Troutdale can best acquire from Portland's Revenue Bureau ("the Bureau") under this Agreement. Payday lending businesses will also benefit in having Portland act as Troutdale's agent because there will be more uniformity and consistency in the adoption and enforcement of the rules and ordinance provisions.
- D. The Bureau is willing and able to administer the payday lending ordinance for Troutdale.

NOW THEREFORE, in consideration of the mutual promises contained herein, the parties agree as follows:

1. General Administration.
  - a. Troutdale hereby delegates the authority and responsibilities in chapter 5.06 of the Troutdale Municipal Code to the City of Portland, Revenue Bureau. The Bureau hereby accepts the authority and responsibilities that are being delegated.
  - b. The Bureau agrees to supervise and administer the Troutdale Payday Lender Ordinance as adopted by the Troutdale City Council ("Troutdale Payday Lender Code").
  - c. Subject to Troutdale's enforcement authority as described in section 1.f. and g., the Bureau agrees to administer and enforce the Troutdale Payday Lender Code, including, but not limited to, adopting administrative rules and written policies, collecting fees and civil penalties, code enforcement, complaint handling and preparing documents for appeal hearings, and taking any other action necessary to enforce and administer the Troutdale Payday Lender Code.
  - d. Troutdale is responsible for defending any legal claims against the Troutdale Payday Lender Code regarding the legal validity or constitutionality of the Troutdale Payday Lender Code.

- e. In performing its duties under this Agreement, the Bureau may in its discretion determine what action it shall take to enforce the provisions of the Troutdale Payday Lender Code and collect the fees and civil penalties imposed. In exercising its discretion, the Bureau agrees to provide a level of service comparable to the level of service it provides in the administration of the Portland Payday Lender Law. If the Bureau deems it necessary to vary substantially from this standard, the Bureau shall notify Troutdale of the need and obtain its written consent.
- f. The City of Troutdale retains the right and authority to carry out concurrent code enforcement of the Troutdale Payday Lender Code as applicable to payday lending businesses operating within the city limits of Troutdale. This right includes, but is not limited to, receiving, investigating, and adjudicating complaints concerning payday lending businesses operating within the city limits of Troutdale and determining what penalty to impose. Troutdale shall immediately notify the Bureau by phone and in writing that it is initiating an enforcement action. If Troutdale initiates enforcement action the Bureau shall not pursue enforcement proceedings for the same violation.
- g. The City of Troutdale retains the right and authority to make its own final decisions, or to amend or veto final decisions of the Bureau regarding code enforcement of the Troutdale Payday Lender Code as applicable to payday lending businesses operating within the city limits of Troutdale.

## 2. Appeals.

- a. In enforcement actions initiated by the Bureau, the Bureau shall prepare all documents necessary for City of Troutdale staff to handle appeals of civil penalties and/or complaint resolution under Troutdale's Payday Lender Code.

## 3. Payments to Troutdale.

- a. The Bureau agrees to deposit all fees and penalties collected under this Agreement to a separate revenue account established for Troutdale Payday Lenders.
- b. The Bureau agrees, after deducting its compensation, refunds and other credits, to remit the balance of the fees and penalties collected under this Agreement to Troutdale by the tenth (10<sup>th</sup>) business day following the close of each month. A monthly activity report shall be provided to Troutdale.
- c. The Bureau agrees to make payments via warrant, mailed to the Finance Department, 104 SE Kibling Avenue, Troutdale, OR 97060.

## 4. Payments to Portland.

- a. Compensation for services provide will be as follows:
  - i. \$1,200 per permit issued; and
  - ii. Civil penalty revenue the Bureau collects for the code enforcement actions that are initiated by the Bureau for violations of the Troutdale Payday

Lending Code will be shared between Portland and Troutdale using a 75/25 split.

- b. Portland will deduct the compensation outlined above monthly from the fees and penalties collected under Troutdale's Payday Lender Code.
  - c. The actual cost of administration and enforcement of Troutdale's Payday Lender Code is unknown and the compensation described above is the parties' best estimate of the cost. Following the initial year of administration or following any significant law changes or court decisions, Portland and Troutdale agree to review this agreement and make mutually agreeable amendments as necessary to reflect changes in services, costs or other responsibilities.
5. Notification of Changes.
- a. Law Changes. The parties agree to cooperate in amending their respective Payday Lender Code and adopting administrative rules to ensure consistency in their respective codes and in administration. Both parties to this Agreement agree to notify the other of any intent to make changes, whether in the law or in fee rates, at least thirty (30) days prior to adopting the change. If both parties mutually agree, changes may be adopted with less than the thirty (30) days required.
  - b. Administrative Rules. The Bureau agrees to notify the Troutdale Finance Director at least thirty (30) days prior to scheduling any public hearing on proposed Administrative Rules, unless both parties mutually agree to notice of less than thirty (30) days. Prior to scheduling the public hearing, the Bureau shall incorporate Troutdale's written comments and requests into the proposed administrative rules that will apply in Troutdale, unless incorporating the comment or request would create a significant hardship for the Bureau. The Bureau shall also provide notice of proposed rules and the public hearing within the City of Troutdale as required by Troutdale's Payday Lender Code.
  - c. Written Policies. The Bureau agrees to notify the Troutdale Finance Director within thirty (30) days of the adoption of any written policies relating to administering the Payday Lender Law and Code. The Bureau shall consider incorporating Troutdale's written comments and requests into proposed policies that apply to the implementation or enforcement of the Payday Lender Code in Troutdale, unless incorporating the comment or request would create a significant hardship for the Bureau.
6. Reports.
- a. The Bureau agrees to provide a monthly activity report to Troutdale.
  - b. The Bureau will provide other reports, or may discontinue or combine any of the above reports, as the Bureau and Troutdale may mutually agree. If the reports requested by Troutdale require extensive programming time, Portland and Troutdale may agree upon additional charges to be paid for such additional work under this Agreement.

7. Information.

The parties agree to cooperate in exchanging information to assist with compliance efforts under the Payday Lender Laws and with the business license requirements of both cities. The parties agree to share business names and addresses of business license accounts in Portland and Troutdale to ensure that all payday lenders have complied with both the payday lender laws of both jurisdictions and the business license laws of both jurisdictions.

8. Limitations and Conditions.

- a. To the extent permitted by Oregon law, Portland agrees to indemnify, within the limits of the Oregon Tort Claims, Troutdale from any and all claims, demands, settlements or judgments, including all costs and attorney fees, arising from any of the Bureau's activities under this Agreement, provided, that Portland shall not be required to indemnify Troutdale for any such claims, demands, settlements or judgments arising from the wrongful acts of Troutdale's officers, agents or employees.
- b. To the extent permitted by Oregon law, Troutdale agrees to indemnify, within the limits of the Oregon Tort Claims, Portland from any and all claims, demands, settlements or judgments, including all costs and attorney fees, arising from any of Troutdale's activities under this Agreement, provided, that Troutdale shall not be required to indemnify Portland for any such claims, demands, settlements or judgments arising from the wrongful acts of Portland's officers, agents or employees.
- c. Troutdale may audit the Bureau's administration of Troutdale's Payday Lender Code, applying generally accepted audit standards. Troutdale agrees to provide reasonable prior notice of its intent to audit the Bureau. Prior to beginning the audit, all Troutdale officers, agents or employees participating in the audit agree to execute confidentiality certificates if the audit will be performed on the Bureau's premises.

9. Term.

- a. The term of this Agreement shall be five years, beginning July 1, 2006, unless terminated by operation of law or by either party upon three months prior written notice. Prior to the termination date of this Agreement, Troutdale and the Bureau will determine the disposition of pending matters which will not otherwise be completed within the term of this Agreement, and the Bureau will provide Troutdale with such records as are necessary for Troutdale to commence collecting the fees and penalties under Troutdale's Payday Lender Code.
- b. At its sole option, Troutdale may extend the term of this Agreement by additional five-year increments, beyond the period identified above.

10. Payment on Early Termination

Upon early termination as provided by this Agreement, the Bureau shall pay Troutdale for all collected and unremitted fees and penalties after deducting its compensation for work performed prior to the termination date.

11. Integration.

This Agreement embodies the whole of the agreement between the parties for the administration of Troutdale's Payday Lender Code. Any prior written or oral agreements shall be superseded hereby. The terms of this Agreement shall not be waived, altered, modified, supplemented or amended, in any manner whatsoever, except by written instrument signed by the parties.

12. Severability.

If any provisions of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provisions hereof.

13. Notice.

- a. Program Managers. Portland's Program Manager shall be the Director of the City of Portland's Revenue Bureau, or such other person as shall be designated in writing by the Revenue Bureau Director. Troutdale's Program Manager shall be the City of Troutdale's Finance Director, or such other person as shall be designated in writing by Troutdale's Finance Director.
- b. Any notice provided for under this Agreement shall be sufficient if in writing and delivered personally to the following addressee or deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed as follows, or to such other address as the receiving party specifies in writing:

If to Portland:                   Revenue Bureau Director  
  111 SW Columbia St., Suite #600  
  Portland, Oregon 97201

If to Troutdale:                City of Troutdale Finance Director  
  104 SE Kibling Avenue  
  Troutdale, Oregon 97060

14. Oregon Law and Forum.

- a. This Agreement shall be construed according to the laws of the State of Oregon.
- b. Any litigation between the City of Portland and the City of Troutdale arising under this Agreement or out of work performed under this Agreement shall occur, if in the state courts, in the Multnomah County Court having jurisdiction thereof, and if in the federal courts, in the United States District Court for the District of Oregon.

15. Independent Contractor Status.

- a. Portland is engaged as an independent contractor and shall be responsible for any federal, state and local taxes and fees applicable to payments hereunder.
- b. Portland, its subcontractors and their employees are not employees of Troutdale and are not eligible for any benefits through Troutdale including, without limitation, federal social security, health benefits, workers' compensation, unemployment compensation and retirement benefits.

16. Amendments.

Portland and Troutdale may amend this Agreement at any time only by written amendment executed by Portland and Troutdale. Any amendment to this Agreement must be approved by ordinance of the City Council in each city.

17. Non-Waiver.

The Portland and Troutdale shall not be deemed to have waived any breach of this Agreement by the other party except by an express waiver in writing. An express written waiver as to one breach shall not be deemed a waiver of any other breach not expressly identified, even though the other breach be of the same nature as that waived.

IN WITNESS WHEREOF, the authorized representatives of the City of Portland and the City of Troutdale, as parties hereto, acting pursuant to the authority granted to them, have

HEREBY AGREED:

CITY OF PORTLAND

By Jon Boll  
Mayor  
City of Portland, Oregon

Date signed: 7/25/06

Approved as to Form:

Sharon Abma for  
Linda Meng  
City Attorney for Portland

CITY OF TROUTDALE

By Paul Hoff  
Mayor  
City of Troutdale, Oregon

Date signed: June 28, 2006

Approved as to form:

Marnie Allen  
Marnie Allen  
City Attorney for Troutdale



**ORDINANCE No. 180287**

\*Authorize an Intergovernmental Agreement with the City of Troutdale for the Revenue Bureau to administer the Troutdale Payday Lender Code (Ordinance)

The City of Portland ordains:

Section 1. The Council finds:

1. Both the City of Portland and the City of Troutdale have passed Payday Lender ordinances that regulate certain aspects of these businesses. These ordinances are nearly identical in their requirements since Troutdale modeled its ordinance after Portland's ordinance.
2. Administration of the two regulatory programs by one jurisdiction saves businesses time and money and taxpayer dollars by avoiding duplicative administration costs.
3. The Revenue Bureau License & Tax Division has been designated as the administrator of the City of Portland's Payday Lender regulations. Consistent administration and enforcement by one jurisdiction of businesses located in one or both cities will create a regulatory environment that encourages business compliance.

NOW, THEREFORE, the Council directs:

- a. The Mayor is authorized and directed to execute on behalf of the City an intergovernmental agreement with the City of Troutdale substantially similar to the one attached to this ordinance as Exhibit A.

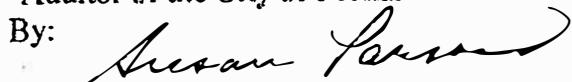
Section 2. The Council declares that an emergency exists because a delay will result in the inability of the City through the Revenue Bureau to provide timely enforcement and administrative services to the City of Troutdale. City of Troutdale Payday Lenders are required to be in compliance with Troutdale's new code as of June 27, 2006. Therefore this ordinance shall be in full force and effect from and after its passage by the Council.

Passed by the Council: JUL 05 2006

Mayor Tom Potter  
Terri Williams  
June 19, 2006

**Gary Blackmer**  
Auditor of the City of Portland

By:

  
Deputy