

## People's Water Trust

A Charter Amendment to Protect the Health, Safety, and Welfare of Residents, the Natural Communities, and Ecosystems of Portland, Oregon By Establishing a Bill of Water Rights; and by Establishing a City-Wide Public Trust Over Water to Ensure the Proper Management and Protection of this Essential Resource For Present Generations and Posterity

**WHEREAS**, We, the residents of the City of Portland, recognize clean water as a source of all life on Earth and declare its equitable and affordable availability to be a human right; and

**WHEREAS**, rising water rates are putting unnecessary financial burdens on many fixed-income and low-income residents of the City of Portland; and

**WHEREAS**, the City of Portland has a duty to provide for the equitable and affordable availability of water to all local residents; and

**WHEREAS**, the reservoir system currently in use in Portland has continuously, flawlessly, and sustainably supplied highly pure, minimally treated, healthy, and safe water throughout its existence; and

**WHEREAS**, globally, clean water is becoming scarce and the threat of private takeover of regional public water supplies is a growing concern; and

**WHEREAS**, the public trust doctrine is an ancient and enduring legal principle dating back to Roman law, which rests on a civil and judicial understanding that some natural resources remain so vital to public welfare and human survival that they should not fall exclusively to private property ownership and control; and

**WHEREAS**, water has long been recognized as an essential public trust resource because of its importance to all life; and

**WHEREAS**, We the residents of the City of Portland, declare that we have the duty to safeguard water both on and beneath the Earth's surface, and in the process the rights of people living within the jurisdiction of the City of Portland, as well as the rights of natural communities and ecosystems, of which the City of Portland is a part; and

**WHEREAS**, our bioregion, popularly referred to as Cascadia, is a network of interdependent ecosystems that rely on clean and healthy watersheds to function; and

**WHEREAS**, an active citizenry comprised of present beneficiaries of the water trust must possess the ability to oversee the actions of public officials empowered and charged as trustees of our natural ecosystems to protect and enforce our rights held in trust; and

**WHEREAS**, trust beneficiaries have the right to receive a full accounting of the value and health of their assets; and

**WHEREAS**, this Title prohibits any unnecessary action that violates the people's right and our posterity's right to a sustainable future; and

**WHEREAS**, this Title protects, and prevents degradation of, water resources in our community. All specific mandates and procedures shall be interpreted toward fulfilling that purpose; and

**NOW, THEREFORE, BE IT RECOGNIZED and RESOLVED**, that the City of Portland holds all water within its jurisdiction, in public trust, as a common resource to be sustainably used and protected for the benefit of the residents of the City of Portland, natural communities, and the ecosystems to which they belong.

A new Title shall be added to the Portland City Charter,

### **Section 1 - Name and Purpose**

This Title establishes the People's Water Trust.

The chief purpose of this Title is to recognize the public trust doctrine as a governing principle in the City of Portland's water policymaking activities by establishing public water rights, benefiting residents and local ecology, to be protected by a legal trust over all water resources within the City of Portland with strong City duties of transparency and accountability.

The major effect of this Title is to establish two public water rights: the human right to water and the right of local ecology to exist and flourish. In order to protect these rights, the City of Portland shall hold all water within its jurisdiction or control in public trust as a common resource to be used for the benefit of present and future residents and local ecology. The City of Portland will serve as trustee while present and future human residents of the City will be the trust beneficiaries.

This Title establishes significant new duties of transparency and accountability for the City of Portland, including, but not limited to:

- independent accounting of water resources;
- the duty to use the best available science and the precautionary principle in policymaking;
- strict regulation of conflicts of interest;
- the prohibition of the privatization of water;
- open and transparent process at all times;
- public access to all documents and communications surrounding water policy;
- competitive bidding for City contracts;
- the duty to protect Bull Run Watershed from harmful actions;
- the duty to take action against parties that harm or have harmed water resources;

The City of Portland and its residents are jointly responsible for enforcing the provisions of the People's Water Trust. The City of Portland shall update administrative rules and enact whistleblower protections. In addition, residents may bring public interest actions to enforce the trust when necessary.

The codification of specific relationships, rights, and duties under this Title does not otherwise restrict or invalidate any other relationships, rights, and duties that would be recognized or

established by the public trust doctrine. Though it informs and inspires this Title, it is understood that the public trust doctrine stands separate from, and pre-dates, this ordinance.

## **Section 2 - Authority**

This Title is enacted by the residents of the City of Portland under their authority granted in Article XI § 2 of the Oregon Constitution.

## **Section 3 - Definitions**

As used in this title:

- (1) “best available independent science” means the best available, publicly accessible, and falsifiable scientific data, analysis, and/or information that adheres to the precautionary principle and accounts for any actual or potential conflicts of interest regarding the source of such data, analysis, and information.
- (2) “Bull Run Watershed” means the definition set forth in Portland City Code 21.36.010 in effect on August 1, 2013.
- (3) “City of Portland” means the jurisdictional reach and control of the City of Portland municipal corporation, as well as its officials, bureaus, commissions, districts, policymakers, employees, contractors, subcontractors and any other agents acting on its behalf or otherwise exercising public authority or executing public functions.
- (4) “ecosystems” includes, but is not limited to, wetlands, streams, rivers, ponds, lakes, aquifers, shorelines, and other water systems, as well as all naturally occurring habitats that sustain wildlife, people, flora, fauna, microorganisms, and soil-dwelling or aquatic organisms.
- (5) “natural communities” means communities of wildlife, flora, fauna, soil-dwelling, aerial, and aquatic organisms, as well as their component human communities that have established sustainable interdependence through a proliferating and diverse matrix of organisms, within an ecosystem.
- (6) “local ecology” is acceptable shorthand for “natural communities and ecosystems” of the City of Portland and their complex interrelationships.
- (6) “People’s Water Trust” means the public water trust held and managed for the benefit of the residents, natural communities, and ecosystems of the City of Portland, and administered by the City of Portland, as trustee, as described in this Title.
- (7) “residents” means human beings who reside in the City of Portland, but does not include public or private corporations, non-profit organizations, unincorporated associations, partnerships, unions, or other legal entities.
- (8) “unreasonable cost” regarding information and record requests includes charging for any of the following: (i) labor time or materials to query or provide existing data in electronic form; (ii) labor time or materials to create new data reports wholly derived from existing data; (iii) the conversion to standard open formats from proprietary data formats; (iv) any costs related to the acceptable redaction or separation of private information.

- (9) “unreasonable delay” regarding information and record requests is any delay longer than: (i) ten working days for existing data in non-electronic form; (ii) five working days for existing data in electronic form; (iii) the delays allowed for existing data plus the time it takes for one full time worker to generate the report up to a total maximum allowed time of one month, for newly generated data.
- (10) “campaign contribution” means any political campaign contribution including but not limited to: (i) both officially reported and unreported campaign contributions; (ii) both cash and in-kind contributions as defined by the Secretary of State; (iii) both candidate-directed and so-called “independent” spending on behalf of a candidate
- (11) “commonly recognized conflicts of interest” means any relationship that would create an appearance of impropriety to a reasonable person or a set of circumstances that creates a risk that professional judgment or actions regarding a primary interest (abiding by the trust duties) will be unduly influenced by a secondary interest.
- (12) “duty to avoid” means a strict prohibition against performing the action that is to be avoided.

#### **Section 4 - Formalizing the People’s Water Trust**

The City of Portland shall designate all water within its jurisdiction and control as held in public trust as a common resource to be used for the benefit of the residents, natural communities, and ecosystems of the City of Portland. This relationship shall be called The People’s Water Trust. The People’s Water Trust is established as follows:

- (1) Trustee. The City of Portland shall serve as trustee of the People’s Water Trust. The duties and responsibilities of the trustee are further established in Sections 5, 6, and 7 of this Title.
- (2) Trust beneficiaries. The present and future residents and local ecology of the City of Portland are the beneficiaries of the People’s Water Trust. In all matters involving the People’s Water Trust, the residents of the City of Portland shall represent the interests of the natural communities and ecosystems of the City of Portland, in addition to their own interests and the interests of future residents. Beneficiary interests are public interests and actions to protect these interests shall be known as public interest actions. The rights of the trust beneficiaries are further established in Sections 5, 6, and 7 of this Title.
- (3) Trust res. The subject matter or res of the People’s Water Trust shall include, but is not limited to:
  - (a) all watersheds, wetlands, streams, creeks, rivers, aquifers, sloughs, floodplains, ponds, and other waterways, water resources, and systems under the full or partial jurisdiction of the City of Portland;
  - (b) all current and future water, sewer, and stormwater infrastructure under the full or partial jurisdiction of the City of Portland;
  - (c) all current and future reservoir infrastructure, artificial water delivery systems, and all water treatment facilities under the full or partial jurisdiction of the City of Portland;

- (d) the Bull Run Watershed;
- (e) all portions of the Willamette River under the full or partial jurisdiction of the City of Portland;
- (f) all portions of the Columbia River under the full or partial jurisdiction of the City of Portland;
- (g) all additional waterways or water resources that exist with the jurisdiction of the City of Portland; and
- (h) any projects, developments, restorations, or infrastructure alterations that will impact any of the water bodies, water resources, facilities, or infrastructures identified in subsections (a)-(g) above.

### **Section 5 - Rights of Trust Beneficiaries**

The present and future residents and local ecology of the City of Portland, as beneficiaries of the People's Water Trust, shall possess the following fundamental and inalienable rights:

- (1) Right to Water. All residents of the City of Portland possess the right to access and use clean and affordable water drawn from natural and human-altered cycles within the city limits and surrounding watersheds. Water is an essential common resource that shall be sustainably managed in public trust and stewarded for present generations and posterity.
- (2) Right to Exist and Flourish. Natural communities and ecosystems possess the right to exist and flourish. The City of Portland and its residents shall collectively ensure that these rights are respected and protected by law.

### **Section 6 - Trustee Duties**

The City of Portland, as trustee of the People's Water Trust, shall be bound by the trust duties that follow. These duties are intended to ensure the loyalty of the City of Portland and its agents to trust beneficiaries and their interests, transparency in public process, accountability of the City of Portland and its agents, and that the aforementioned Right to Water and Right to Exist and Flourish are respected and protected by law.

- (1) The City of Portland is bound by a strict duty of undivided loyalty to the residents, natural communities, and ecosystems within the jurisdiction and control of the institutions and agents that comprise the City of Portland.
- (2) The City of Portland is bound by the affirmative duty
  - (a) of due care to supply the highest quality, minimally treated, healthy, and safe water to the residents of the City of Portland at equitable and affordable cost.
  - (b) of due care to properly manage, protect, restore, and where practicable, enhance the trust res. This includes, but is not limited to, preventing waste and maximizing the beneficial value of the trust res, preventing damage to the trust res, and reasonably seeking compensation from entities that damage, or have in the past damaged, the trust res.

- (c) to demonstrate that it is administering the People's Water Trust according to the duties enumerated in this Title by describing in a detailed, understandable, written statement how policies, projects, developments, permits sought and granted, or any other significant activity fulfill trust duties.
- (d) to take action, up to and including legal action, against any parties who threaten the health, integrity, or value of the trust.
- (e) to cooperate with adjacent jurisdictions and engage in informal partnerships that would enhance and restore bioregional watersheds, natural communities, and ecosystems.
- (f) to provide an independent accounting of finances, debt, and performance to citizens on an annual basis that includes an audit of:
  - (i) water and watershed quality from the standpoint of the best available independent science;
  - (ii) regular scientific monitoring of emerging pollution risks to public health such as pharmaceuticals, plastics, and waste byproducts.
- (g) to use the best available independent science for and apply the precautionary principle to all proposed developments, alterations of water infrastructure, and policymaking.
- (h) to avoid water privatization agreements, regional water plan agreements, intergovernmental agreements, and any other agreements that would transfer legal and practical control of the trust res outside of the control and jurisdiction of the City of Portland.
- (i) to seek and issue permits only in accordance with the provisions of this Title.
- (j) to demonstrate the necessity of new developments and projects.
  - (i) A development or project is not considered necessary if:
    - (A) existing waste in the system can be eliminated to maximize the value of the trust resource; or
    - (B) less expensive and/or less harmful methods exist for achieving the desired goal; or
    - (C) the development or project damages the trust res, either as a whole or as the portion identified as the location for the project or development. Information useful for evaluating whether or not a project damages the trust res includes, but is not limited to: an inventory the affected portions of the res; a quantification of their present and historical availability, existing uses, and impairment; projections of future demands on the res; a comprehensive plan for balancing competing demands.
- (k) to avoid, with specific regard to individual officials, bureaus, policymakers, employees, contractors, subcontractors, and any other agents of the City of Portland, any and all

conflicts of interest that would interfere with the duty of loyalty to residents, natural communities, and ecosystems of the City of Portland.

- (i) For purposes of this section, in addition to commonly recognized conflicts of interest, a campaign contribution valued at more than \$50 shall be considered to create an affirmative conflict of interest between the donor and agent-recipient of the City of Portland;
    - (A) Conflicts of interest do not arise from generalized interests such as the shared interests of ratepayers in a well-managed water and sewer system or shared beneficiary interests.
  - (ii) If a conflict of interest exists between a human person or legal entity and an agent of the City of Portland, the agent must both disclose it and fully recuse themselves from any deliberations, decisions, or votes, directly or indirectly relating to the human person's or legal entity's interests, either by industry category, trade category, or other special interest;
  - (iii) Upon discovery of the failure by an agent of the City of Portland to properly recuse, the discovering party shall immediately notify the relevant voting or decision making body to which the agent belongs. The relevant body shall either (1) change the agent's past vote or decision to an abstention, or (2) require a new vote or decision-making process to occur within 30 days of the discovery if the improper participation by the agent could have changed the outcome of the prior vote or decision.
- (l) to ensure open and transparent public process at all levels of activity including, but not limited to:
- (i) publishing public notices and agenda summaries with specific enough terms for the public to easily identify individual projects under consideration;
  - (ii) publishing any documents or communications that residents may request without unreasonable delay or unreasonable cost;
  - (iii) holding public meetings at every major decision point in a project or development process;
  - (iv) providing prudent answers to questions about the financing of proposed projects;
  - (v) providing the right to appeal any denial of information in response to a request as a non-exclusive remedy to Multnomah County Circuit Court or other court of competent jurisdiction and reviewed by a special master appointed by a judge;
  - (vi) requiring that any denial of information be accompanied by a clear explanation and reason for such a denial;
  - (vii) requiring that all contracts with private entities, subcontractors, or other parties provide for a level of access to documents, records, and processes equal to that of a public entity bound by the trust duties; and

- (viii) paying a beneficiary group a reasonable stipend to review the City's water policies every two years to ensure independent oversight.
- (m) to hold open and competitive bidding processes for all private-public partnerships and contracted or subcontracted relationships.
- (n) to avoid the use of emergency ordinances and measures to fund projects or hide information from the public where public health is not in immediate danger.
- (o) to avoid actions or projects in the Bull Run Watershed that result in logging, dam building, or other watershed degrading actions or the introduction of technology with the potential result of toxic or unhealthy additions to the trust res.
- (p) to use all of the City of Portland's authority and available resources to defend the trust res from any federal, state, or private actions outside of its jurisdiction that would damage the trust res. This shall include taking legal action to prevent damage to a trust resource.
- (q) to test for radon in all water sources used in the City's water supply and publicly disclose the test results in a City of Portland annual Drinking Water Quality report.
- (r) to make all available efforts, in good faith, to keep Portland's reservoir system operational including seeking exemptions, deferrals, and waivers on all possible grounds from the Environmental Protection Agency, the Oregon Health Authority, and the Oregon Congressional Delegation, and any other actions in the best interests of the residents of the City of Portland and the integrity of the City of Portland's drinking water.
- (s) to use the most scientifically accurate testing methods, that are reasonably available, when testing water, including but not limited to utilizing testing methods that can distinguish between infectious and non-infectious species of cryptosporidium.
- (t) to avoid adding any chemicals to the water supply that are not specifically for treating the water to make it safe to drink. Any new proposed chemical addition, different from those used to treat the water as of August 1, 2013 shall be referred to voters for approval, unless a demonstrable emergency exists.
- (u) to manage stormwater and fund infrastructure that prevents stormwater runoff carrying dirt, oil, and other pollutants from reaching waterways and prevents erosion and flooding that harm properties and wildlife habitat.

**Section 7 - Statements of Law - Prohibitions Necessary to Secure Trust Protections**

- (1) No permit, license, privilege, eminent domain authority, or charter issued by any State or Federal agency, Commission, Board, Bureau or Department to any person or any corporation operating under a State charter, or any director, officer, owner, or manager of a corporation operating under a State charter, which would violate the prohibitions of this Title or deprive the residents, natural communities, or ecosystems of the City of Portland of any rights, privileges, or immunities secured by this Title, the Oregon Constitution, the United States Constitution, or other laws, shall be valid within the City of Portland.

- (2) The City of Portland and its agents shall oppose, in good faith, the granting of any permit, license, privilege, eminent domain authority, or charter, that would deprive any resident(s), natural communities, or ecosystems of any rights, privileges, immunities, or beneficiary protections secured by this Title or impair trustee duties as described in this Title. This opposition will include, but is not limited to, directing the City's lobbyist to oppose the proposal and testifying against said proposal in all relevant public hearings and processes.
- (3) Existing permits issued or obtained by any Bureau within the City of Portland shall be re-evaluated under the provisions of this Title. Any previously issued permit that violates the prohibitions of this Title or deprives any City Resident(s), natural community, or ecosystem of any rights, privileges, or immunities secured by this Title, the Oregon Constitution, the United States Constitution, or other laws, shall be deemed invalid within the City of Portland.
- (4) No private rights previously granted shall be recognized in the Portland water supply, but shall be treated as temporary licenses.

### **Section 8 - Enforcement**

- (1) All City of Portland Bureaus shall review and amend their administrative rules to ensure compliance with trust duties within a reasonable time, no longer than 6 months, after passage of this Title.
- (2) All City of Portland Bureaus shall include whistleblower protections in their administrative rules to ensure that employees who expose violations of trust duties by trustees are protected against retaliation. The Ombudsman of the City of Portland shall have the duty to investigate complaints originating from trust powers in this section and publish findings.
- (3) Any City of Portland resident, as trust beneficiary, shall have the authority to enforce this Title through a public interest action brought in the Multnomah County Circuit Court or other court of competent jurisdiction. Any action brought under this Title shall be regarded as a property interest, not as a political question. Remedies may be granted in both law and equity, depending on the circumstances of the specific action. In such action, the resident shall be entitled to recover all reasonable costs of litigation, including expert and attorney's fees.
- (4) Any City of Portland resident, as a trust beneficiary, who brings a public interest action to secure or protect the rights of natural communities or ecosystems within the City of Portland, may bring the action in the name of the natural community or ecosystem in a court of competent jurisdiction. The claimed injury to the natural community or ecosystem shall be considered an injury to beneficiary interests, and the resident shall have standing to bring action on this ground. Damages shall cover the cost of restoring the natural community or ecosystem to its pre-damaged state, and shall be paid by the parties responsible for the degradation to be used exclusively for the full and complete restoration of the natural community or ecosystem. In such action, the resident shall be entitled to recover all reasonable costs of litigation, including expert and attorney's fees.
- (5) The fiduciary duty of the trustees shall be tied to the health of trust assets as determined by the best available independent science. Any person, corporation, or other entity found to be intentionally manipulating scientific results or reports shall be referred for prosecution for any criminal offenses that may apply in addition to any other penalties the City of Portland may impose.

### **Section 9 - Effective Date and Existing Permit Holders**

This Title shall be effective ninety (90) days after the date of its enactment, at which point the Title shall apply to any and all public actions or commercial dealings that would violate this Title regardless of the date of any applicable local, state, or federal permits.

### **Section 10 - Severability**

The provisions of this Title are severable. If a court of competent jurisdiction declares any portion of this Title illegal, invalid, or unconstitutional, the remaining portions of this Title shall remain in full force and effect.

### **Section 11 - Repealer**

All inconsistent provisions of prior Ordinances adopted by the City of Portland are hereby repealed, but only to the extent necessary to remedy the inconsistency with this Title.