

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

NC 405

PUBLIC UTILITY COMMISSION OF
OREGON,

Complainant,

vs.

THE CITY OF PORTLAND,

Defendant.

DEFENDANT'S ANSWER

Defendant City of Portland (“the City”) responds to Complainant’s Complaint in correspondingly numbered paragraphs below. The City denies any allegations in the Complaint not specifically admitted herein.

1.

The City asserts that Paragraph 1 is not directed at the City and requires no response.

2.

The City asserts that Paragraph 2 is not directed at the City and requires no response.

3.

The City asserts that Paragraph 3 is not directed at the City and requires no response.

4.

The City asserts that Paragraph 4 is not directed at the City and requires no response.

5.

The City admits that, in the instant case, it is acting through its Bureau of Environmental Services (“BES”). The City admits that, at all material times, the City, through BES, provided sewage and stormwater services to residents of Portland, Oregon.

6.

The City admits that it operates underground facilities for providing sewer, wastewater, and stormwater services (“Service”) to Portland residents.

7.

The City admits that, at all times material to the Complaint, the City provided Service to the real property located at 2818 NE Ainsworth Street in Portland (“the Property”) and that Scott Donnell (“Donnell”) was the name on the sewer and stormwater account for the Property. The City lacks sufficient knowledge or information to admit or deny whether Scott Donnell resided at the Property during all times material to the Complaint.

8.

The City denies that it provides or has ever provided Service to the Property through facilities located in the NE Ainsworth St. – NE Jarrett St. right-of-way (“the Alley”). The City asserts that it does not own or operate any facilities in the Alley and thus cannot provide Service through them. The City admits that the Property is connected to the system used by the City to provide Service to the Property (“the Public Sewer System”). The City denies that any facilities that may be located in the Alley are part of the Public Sewer System. The City asserts that the elements of the Public Sewer System nearest the Alley consist of, as relevant here, (1) a public sewer service lateral located within NE 28th Avenue and known as

“AHU933”¹ (“the Public Branch,” labeled “Public branch AHU933” on Exhibit A, attached hereto and by this reference made a part hereof), and (2) a 24-inch-diameter sewer main running south to north within NE 28th Avenue and known as “AAN316-AAN340” (“the NE 28th Main,” labeled “Public main AAN316-AAN340” on Exhibit A).

9.

The City denies that any facilities that may be located in the Alley are used or have ever been used to provide Service to the Property. Upon information and belief, the City asserts that the Property is connected to the Public Sewer System by a 106-foot-long sewer lateral running east to west, connecting to the Public Branch, and indicated in its approximate location as “Donnell lateral” on Exhibit A (“the Donnell Lateral”). The City asserts that it does not own, operate, or use the Donnell Lateral. The City admits that the Donnell Lateral is considered a nonconforming sewer under Portland City Code (“PCC”) section 17.32.020 O.

10.

The City admits that the Alley is considered a public right-of-way under PCC 17.32.020 P.

11.

The allegation in Paragraph 11 lacks context sufficient to allow the City either to admit or deny the same. To the extent a response is required from the City, the City provides herein the provisions of PCC 17.24.005, in their entirety:

¹ Public sewer infrastructure discussed in this Answer may be viewed on PortlandMaps at https://www.portlandmaps.com/detail/sewer-assets/2818-NE-AINSWORTH-ST/R190229_did/.

Jurisdiction and Management of Public Right-of-Way.

- A. The City has jurisdiction and exercises regulatory management over all public right-of-way within the City, as provided under City Charter, ordinances, and Oregon law.
- B. The City has jurisdiction and exercises regulatory management over public right-of-way whether the City has a fee, easement, or other legal interest in the right-of-way, and whether the legal interest in the right-of-way was obtained by grant, dedication, prescription, reservation, condemnation, annexation, foreclosure or other means.
- C. No person may occupy or encroach on a public right-of-way without the permission of the City, as provided under Portland City Code.
- D. The exercise of jurisdiction and regulatory management of a public right-of-way by the City is not official acceptance of the right-of-way, and does not obligate the City to maintain or repair any part of the right of way.
- E. The City retains the right and privilege to immediately require any person to remove, move or otherwise adjust its facilities located within the public rights-of-way whenever, in the determination of the Director of the Bureau of Transportation, the public need requires it. If the person ordered to remove, move, or adjust the facility does not do so as directed by the Director of the Bureau of Transportation the City may remove, move or otherwise adjust such facilities with its own forces or contract forces and the full cost of such removal, movement or adjustment shall be the responsibility of the person responsible for the facility.
- F. The Bureau of Transportation shall be the agency responsible for management of the public right-of-way.

12.

The allegation in Paragraph 12 lacks context sufficient to allow the City either to admit or deny the same. To the extent a response is required from the City, the City provides herein those provisions of PCC 17.32.030 as may be relevant hereto:

Permit Required.

- A. It is unlawful for any person to take the following actions without first obtaining authorization from the Director and approval from the BES Chief Engineer via permit, contract or other legal agreement and paying applicable fees:

1. Access any City sewer or drainage system component;
 2. Encroach into a City sewer easement;
 3. Dig up, break into, excavate, disturb, dig under, or undermine any public street or City sewer easement for the purpose of laying or working upon any City or private sewer or drainage improvement of any kind;
 4. Make connection with, obstruct or interfere with the City sewer, storm sewer or drainage system;
 5. Cut, break, connect, modify or remove any component of the City sewer or drainage system;
 6. Direct water, from any source, on private property to run onto any City sidewalk, street, easement or right of way. . . .
- C. Repair of nonconforming sewers located in public right-of-way or a City easement is prohibited unless the BES Chief Engineer determines that it is in the public interest to allow the nonconforming system to remain. . . .

13.

The City asserts that Paragraph 13 is not directed at the City and requires no response.

14.

The City asserts that Paragraph 14 is not directed at the City and requires no response.

15.

The City asserts that Paragraph 15 is not directed at the City and requires no response.

16.

The City asserts that Paragraph 16 is not directed at the City and requires no response.

17.

The City admits that it is subscribed to the Oregon Utility Notification Center (“the OUNC”) as an operator.

18.

The City asserts that Paragraph 18 is not directed at the City and requires no response.

19.

The City asserts that Paragraph 19 is not directed at the City and requires no response. To the extent a response is required from the City, the City asserts that the quoted text in Paragraph 19 is not an accurate representation of OAR 952-001-0070.

20.

The City lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 20 and therefore denies the same.

21.

The City lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 21 and therefore denies the same.

22.

The City lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 22 and therefore denies the same.

23.

The City admits that it received Oregon One Call ticket number 21334979 (“the Ticket”) on November 15, 2021.

24.

The City denies that it failed to respond to the Ticket, if Complainant’s use of the term “respond” is intended to refer to compliance with the requirements of OAR 952-001-0070(1), which are reproduced here in relevant part:

[W]ithin two full business days following the day an excavator notifies the Oregon Utility Notification Center of a proposed excavation, the operator or its designated agent must:

(a) Mark within 24 inches of the outside lateral dimensions of both sides of all its locatable underground facilities within the area of proposed excavation. . . ;

(b) Provide marks to the excavator of the unlocatable underground facilities in the area of proposed excavation . . . ; or

(c) Notify the excavator that the operator does not have any underground facilities in the area of the proposed excavation. . . .

The City asserts that it marked the locations of its locatable underground facilities.

Specifically, the City marked the locations of those portions of the NE 28th Main and the Public Branch that were within the area requested by the excavator, in addition to other elements of the Public Sewer System. See declaration of Lynda Hofmann, attached hereto as Exhibit B and by this reference made a part hereof.

25.

The City admits that it did not provide any response to the excavator within two days of the notification of the Ticket. The City asserts that no such response is necessary when, as provided by OAR 952-001-0070(1)(a), an operator marks “all its locatable underground facilities within the area of proposed excavation.”

26.

The City asserts that Paragraph 26 is not directed at the City and requires no response.

27.

The City admits that, at all material times, it was the operator, as that term is defined in ORS 757.542(5) and OAR 952-001-0010(15), of the Public Sewer System, which provides Service to city of Portland residents and Service customers.

28.

The City denies that it is the operator, as that term is defined in ORS 757.542(5) and OAR 952-001-0010(15), of any facilities that may be located in the Alley.

29.

The City denies that it violated OAR 952-001-0070.

PRAYER

WHEREFORE, having fully answered the Complaint, Defendant City of Portland asks that judgment be entered in favor of Defendant City of Portland.

Dated this 28th day of April, 2023.

Respectfully submitted,

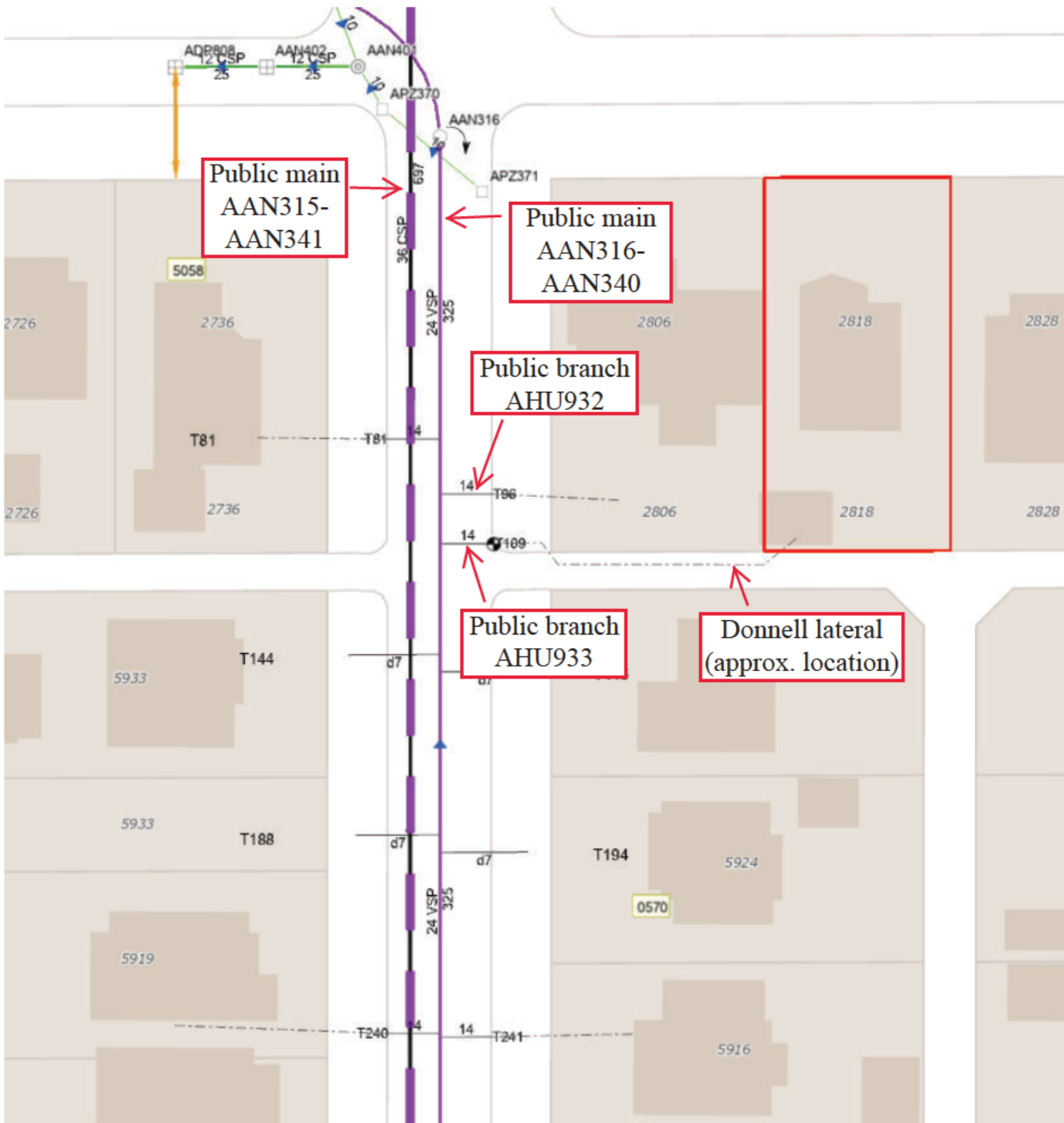
/s/ Eric Shaffner

Eric Shaffner, OSB No. 081238

Deputy City Attorney

Eric.shaffner@portlandoregon.gov

Exhibit A



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BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON

NC 405

PUBLIC UTILITY COMMISSION OF
OREGON,

Complainant,

v.

CITY OF PORTLAND,

Defendant.

DECLARATION OF LYNDA HOFMANN IN
SUPPORT OF DEFENDANT CITY OF
PORTLAND’S ANSWER

I, Lynda Hofmann, hereby declare as follows:

1. I am a Maintenance Supervisor for the Portland Bureau of Transportation (“PBOT). I have held this position since 2018. At all times relevant to this matter, I held the position of Utility Locates Supervisor. In that role, I oversaw the Utility Locates group at PBOT, which is responsible for performing utility locates on behalf of the City, for a period of seven months.

2. I am intimately familiar with the statutory and regulatory requirements pertaining to utility locates, as administered by the Oregon Utility Notification Center.

3. I am intimately familiar with the City’s Code and policy provisions pertaining to utility locates. It is and has been my understanding that the City is only required to locate City-operated infrastructure and that only infrastructure that has been constructed or formally accepted by the City is considered to be City-operated infrastructure.

Page 1 – DECLARATION OF LYNDA HOFMANN IN SUPPORT OF DEFENDANT CITY OF PORTLAND’S ANSWER

1 4. On or about November 15, 2021, the City received Oregon One Call ticket
2 number 21334979.

3 5. On or about November 16, 2021, Carmen Scott, then a PBOT Utility Locator,
4 located all City infrastructure within the requested excavation area. That infrastructure consisted
5 of the following assets:

6 AAN316-AAN340 24" CIPP Combo Main on NE 28th

7 AAN315-AAN341 24" VSP Combo Main on NE 28th

8 AHU933 4" Lateral- 14' City Ownership From Curb to Main

9 AHU932 6" Lateral- 14' City Ownership From Curb to Main

10 6. Ms. Scott has since resigned from City employment.

11 7. At all times relevant to this matter, I oversaw Ms. Scott's work performing utility
12 locates on behalf of the City.

13 8. I attest that Ms. Scott correctly and satisfactorily located the above-listed City
14 infrastructure within the requested excavation area.

15 9. I further attest that Ms. Scott did not locate the private sewer lateral connecting
16 the real property located at 2818 NE Ainsworth Street in Portland to the public sewer.

17 10. I make this declaration in support of Defendant City of Portland's Answer.

18 **I hereby declare that the above statement is true to the best of my knowledge and**
19 **belief, and that I understand it is made for use as evidence in court and is subject to penalty**
20 **for perjury.**

21
22 DATED: 4/26/2023

23 
24 Lynda Hofmann

25
26 Page 2 – DECLARATION OF LYNDA HOFMANN IN SUPPORT OF DEFENDANT CITY
OF PORTLAND'S ANSWER