

RESOLUTION NO. 2308

A RESOLUTION OF THE CITY OF WILSONVILLE AUTHORIZING PARK CLOSURE OF THE THUNDERBIRD MOBILE CLUB, L.L.C.

WHEREAS, in 2006, Thunderbird Mobile Club, L.L.C. (TMC) filed a declaratory judgment action in Clackamas County Circuit Court, Case No. CV0511027, challenging the City's Mobile Home Park Closure Ordinance on state and federal constitutional grounds; and

WHEREAS, in 2007, the Circuit Court declared the ordinance invalid and enjoined the City from enforcing the closure ordinance against TMC; and

WHEREAS, the City appealed the judgment to the Oregon Court of Appeals and, in 2010, the Court reversed the trial court and remanded the matter to the Circuit Court for further proceedings; and

WHEREAS, during the pendency of the appeal, TMC closed the mobile home park and evicted park residents; and

WHEREAS, TMC and the City agreed to preclude further litigation and provide for a manner in which TMC could obtain the Mobile Home Park Closure Permit ("Closure Permit"), in exchange for providing a measure of compensation due former tenants; and

WHEREAS, pursuant to Resolution No. 2278, the City authorized entry into a Settlement Agreement that provided for the issuance of the Closure Permit after certain conditions of the Settlement Agreement had been met, including payment of \$750,000 to the City in order to allow the City to establish a compensation fund for the former tenants ("Compensation Fund"); and

WHEREAS, Resolution No. 2278 provided that the City would deem the deposit of the Compensation Fund to be full compliance with the outstanding Closure Permit requirements and thereby allow the Closure Permit to be issued; and

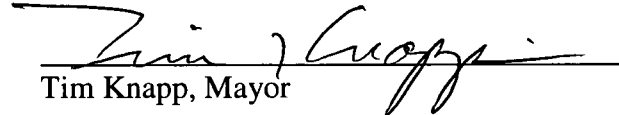
WHEREAS, TMC, pursuant to the sale of its interest in the land that was the former Thunderbird Mobile Club Park to Brenchley Estates Partners, L.P., has now deposited the Compensation Fund into escrow with First American Title Insurance Company ("Escrow Agent"), with instructions to release the Compensation Fund to the City immediately upon delivery of the Closure Permit to Escrow Agent.

WHEREAS, the City Council held an evidentiary hearing on the Park Closure Permit on this 7th day of July, as required by Ordinance No. 600, in accordance with the requirements of City Code 2.560.

NOW, THEREFORE, THE CITY OF WILSONVILLE RESOLVES AS FOLLOWS:

1. The City Council hereby authorizes the City Manager to sign the Park Closure Permit, attached hereto as **Exhibit A**, and directs legal and other staff to administer its terms.
2. This resolution becomes effective upon the date of adoption.

ADOPTED by the City Council of the City of Wilsonville at a regular meeting thereof this 7th day of July 2011, and filed with the Wilsonville City Recorder this date.


Tim Knapp, Mayor

ATTEST:


Sandra C. King, MMC, City Recorder

SUMMARY OF VOTES:

Mayor Knapp	Yes
Council President Núñez	Yes
Councilor Hurst	Yes
Councilor Goddard	Yes
Councilor Starr	Yes

Attachment: Exhibit A – Park Closure Permit

MOBILE HOME CLOSURE PERMIT

This Mobile Home Closure Permit ("Closure Permit") is granted this 7th day of July, 2011, by the City of Wilsonville ("City"), a municipal corporation of the State of Oregon, to Brenchley Estates Partners, L.P. ("Brenchley"), a Delaware limited partnership, as successors in interest to Thunderbird Mobile Club L.L.C. ("TMC"), pursuant to City of Wilsonville Ordinances Nos. 600 and 603 and the Settlement Agreement entered into between the City and TMC, as described below.

RECITALS:

1. City Ordinances Nos. 600 and 603 require the issuance of a Mobile Home Closure Permit before a Mobile Home Park can be legally closed within the City of Wilsonville, notwithstanding Oregon State law. Due to circumstances outlined below, many of the applicant submittals and Findings required under the Ordinances to be made in conjunction with a Closure Permit are moot and therefore the Settlement Agreement described below and the Findings set forth herein shall be used in substitute therefor.
2. The City's right to require issuance of a Closure Permit was challenged in 2006 by TMC in Clackamas County Circuit Court (Case No. CV511027). The Circuit Court's decision on the matter was subsequently appealed to the Oregon Court of Appeals (*Thunderbird Mobile Club v. City of Wilsonville*, 234 Or App 457 (2010)). The Oregon Court of Appeals reversed the Circuit Court decision and remanded the matter back to the Circuit Court for further proceedings.
3. Through mediation, the City and TMC agreed to avoid protracted litigation pursuant to a Settlement Agreement dated February 23, 2011, whereby the City agreed to issue a Closure Permit pursuant to Paragraph 4 of Ordinance No. 600 at the time a Closure Fund, in the amount of Seven Hundred Fifty Thousand Dollars (\$750,000), was paid to the City by TMC or its successor or assign. Simultaneously with the issuance of the Closure Permit, TMC, or its successor or assign, must also pay the City for certain water bills and utility charges in the amount of One Hundred Eighty-One Thousand Nine Hundred Forty-Three Dollars (\$181,943) at two percent (2%) interest per annum, with such interest commencing on January 20, 2011 and continuing to accrue until the date the funds are disbursed to the City. The Settlement Agreement is incorporated by reference as if fully set forth herein.
4. TMC has assigned its right, title, and interest in the property that was formerly the Mobile Home Park to Brenchley ("Park"). The Park is legally described on **Exhibit 1**, attached hereto and incorporated by reference herein.

NOW THEREFORE, the parties being legally bound hereby, the City does issue a Closure Permit based on the following Findings of Fact, which incorporate the foregoing Recitals by reference:

FINDINGS:

1. The Park closed, and its residents were forced to vacate the Park, on or about February 14, 2007.
2. TMC failed to follow the requirements of Ordinances Nos. 600 and 603 in conjunction with that closure, and litigation ensued.
3. In order to fully and finally settle the litigation, the parties negotiated the Settlement Agreement. According to the Settlement Agreement, the City agreed to provide TMC, or its successor or assign, with a Park Closure Permit ("Closure Permit") upon fulfillment of the conditions precedent set forth in the Settlement Agreement.
4. At a special public meeting held on February 24, 2011, the City Council passed Resolution No. 2278 which approved the Settlement Agreement and authorized issuance of the Closure Permit upon fulfillment of the obligations of the parties contained therein, including deposit of the sum of Seven Hundred Fifty Thousand Dollars (\$750,000) with the City to allow the City to establish a compensation fund for evicted displaced residents ("Compensation Fund").
5. Ordinance No. 600 requires an evidentiary hearing to be held before a Closure Permit can be issued, pursuant to the requirements of City Code 2.560, and that evidentiary hearing was held on even date herewith.
6. Ordinance No. 600 requires certain findings be made, pursuant to Section 6.360 thereof, but those findings are moot because the Park has already been closed.
7. Because of the closure in violation of the Ordinances, pursuant to Resolution No. 2278, the City Council agreed that the City would enter into a Settlement Agreement to resolve the disputes concerning the Ordinances and, pursuant to that Resolution, that the City would deem deposit of the Compensation Funds to constitute full compliance with the Closure Permit requirements.
8. The Compensation Fund has been delivered into escrow with First American Title Insurance Company with instructions to release the Compensation Fund to the City upon receipt of the Closure Permit.

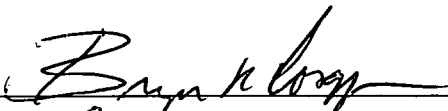
Based on the foregoing Findings, the City Council has approved and the City hereby issues this Closure Permit for the Park on this 7th day of July, 2011, pursuant to Resolution No. 2308, to which this Closure Permit is attached as **Exhibit A** and incorporated by reference therein.

This Closure Permit is effective immediately. Nothing contained herein shall be deemed a release of any claim by any former resident. Such release will only occur when such resident accepts payment from the Compensation Fund and signs the required Release.

Dated this 7th day of July, 2011.

CITY OF WILSONVILLE

BRENCHLEY ESTATES PARTNERS, L.P.

By: 

By: _____

As Its: City Manager

As Its: _____

Exhibit 1
Property Legal Description

Parcels 1, 2 and 3, PARTITION PLAT NO. 2002-006, a duly filed plat, in the City of Wilsonville, County of Clackamas, and State of Oregon.