

**ORDINANCE NO. 170****AN ORDINANCE REGULATING SALES OF CITY TIMBER TO PROHIBIT EXPORT AND TO CONFORM WITH THE FOREST CONSERVATION AND SHORTAGE RELIEF ACT OF 1990, A FEDERAL LAW; AS AMENDED BY ORDINANCE NO. 192**

The City of Coos Bay Ordains as follows:

**Section 1. Definitions.** For the purposes of this ordinance, the following mean:

**City Timber.** Any timber owned by the City of Coos Bay.

**Export.** Unprocessed timber loaded on a vessel or other conveyance with a foreign destination or present at a facility such as a port or dock with intent to load it on a vessel or other conveyance with a foreign destination.

**Performance bond.** The security required by a city timber sale contract which ensures satisfactory performance of contract requirements by the timber sale purchaser. A performance bond may be in the form of a surety bond, cash, negotiable securities, irrevocable letter of credit, or an assignment of surety.

**Person.** An individual, a partnership, a public or private corporation, and unincorporated association, or any other legal entity. The term includes any subsidiary subcontractor, parent company or other affiliate. Business entities are considered affiliates when one controls or has the power to control the other or when both are controlled directly or indirectly by a third person.

**Purchaser.** Person who has entered into a timber sale contract with the City.

**Unprocessed timber or unprocessed city timber.** Trees or portions of trees or other roundwood not processed to standards and specifications suitable for end product use. The term does not include timber processed into any one of the following:

- (1) Lumber or construction timbers, meeting current American Lumber Standards Grades or Public Lumber Inspection Bureau Export R or N list grades, sawn on 4 sides, not intended for remanufacture;
- (2) Lumber, construction timbers, or cants for remanufacture, meeting current American Lumber Standards Grades or Pacific Lumber Inspection Bureau Export R

or N list clear grades, sawn on 4 sides, not to exceed 12 inches (nominal) in thickness;

(3) Lumber, construction timbers, or cants for remanufacture, that do not meet the grades referred to in subsection (2) and are sawn on 4 sides, with wane less than 1/4 of any face, not exceeding 8-3/4 inches in thickness;

(4) Chips, pulp, or pulp products;

(5) Veneer or plywood;

(6) Poles, posts, or piling cut or treated with preservatives or use as such,

(7) Sakes or shingles,

(8) Aspen or other pulpwood bolts, not exceeding 100 inches in length, exported for processing into pulp,

(9) Pulp logs or cull logs processed at domestic pulp mills, domestic chip plants, or other domestic operations for the purpose of conversion of the logs into chips,

(10) Firewood cut in pieces 48 inches or less in length.

## **Section 2. Criteria for Eligibility to Bid on City Timber Sale Contracts.**

(1) In addition to all other requirements of law, any person submitting a bid for the purchase of city timber must certify that;

(a) The person will not export directly or indirectly unprocessed city timber; and

(b) The person will not sell, transfer, exchange or otherwise convey unprocessed city timber to any other person without obtaining a certification from the person that meets the requirements of Section 6.

(2) A person shall not be disqualified for having exported unprocessed timber from private lands within twenty-four months of the date of submission of this bid. [Section 2(2) added by Ordinance No. 192, section 1, passed January 19. 1993.]

**Section 3. Prohibition Against Indirect Substitution.** In addition to all other requirements of law, no person who is prohibited from purchasing timber directly from the City may purchase city timber from any other person. Acquisitions of Western Red Cedar which are domestically processed into finished products to be sold into domestic or

international markets are exempt from the prohibition contained in this section.

**Section 4. Applicable City Timber.** All unprocessed timber which originates from city lands is prohibited from export.

**Section 5. Surplus Timber.** The prohibitions against export shall not apply to specific quantities of grades and species of unprocessed timber originating from city land which the United States Secretary of Agriculture or Interior has determined by rule to be surplus to the needs of timber manufacturing facilities in the United States.

**Section 6. Reporting Requirements.**

- (1) Before the City will issue final acceptance of timber sale contract requirements, a purchaser of city timber must:
  - (a) Notify the City of the delivery destination of all timber purchased under that contract.
  - (b) Prior to selling, trading, exchanging, or otherwise conveying city timber to any other person, the purchaser of city timber shall obtain a certification of the person's eligibility to purchase city timber, and their intent to comply with the terms and conditions contained in this section. Obtaining certification shall not relieve the purchaser's responsibility to provide the City with an accounting of the delivery destination of that timber.
- (2) Any performance bond required by a city timber sale contract may be retained by the City, until satisfactory notification of city timber delivery destination has been received.
- (3) Failure to provide the City with a final accounting of the delivery destination of city timber will be considered a violation of these export regulations. Violators will be subject to the penalties contained in Section 7.

**Section 7. Purchaser Disqualification and Termination of Contracts.**

- (1) The City shall keep a record of any person who violates the requirements of this ordinance.
- (2) A person whose name appears on the record for violations as stated in (1) above, and who again violates the requirements of this ordinance shall be disqualified from bidding on or purchasing city timber for a period of five years following the date of the violation. Any appeals of disqualification shall be handled as provided in ORS 279.045.

(3) The City may cease operations on and/or terminate any city timber sale contract entered into with a person who has violated the requirements of this ordinance, and assess damages according to the following formula:

$$D = (OSV + AC) - (PR + RSV), \text{ where:}$$

- (a) D= Damages and Expenses
- (b) OSV = Original Sale Value (timber only - does not include project value). The original sale value shall be adjusted to reflect estimated overruns or underruns on recovery sales.
- (c) AC = Administrative Costs. These costs include both the field and office costs required for the preparation of the defaulted parcel for resale. These costs also include rehabilitation or regeneration delay costs, legal service costs, interest, and other costs allowed by law.
- (d) PR = Payments Received.
- (e) RSV = Remaining Sale Value. The value of the remaining timber shall be determined using the City's estimate of remaining volume, multiplied by the dollar values stated in the contract.

#### **Section 8. Log Branding and Marking Requirements.**

- (1) All city timber originating from city timber sales shall be branded with an assigned and registered brand before removal from the sale area. Unless prevented by the size or condition of the wood, both ends of all logs originating from city timber sales shall be hammer branded and both ends shall be painted with a paint type and color determined by the City.
- (2) If properly marked city timber is subdivided into smaller pieces for any other purpose than immediate processing, each piece must be branded with the city brand specifically used for this purpose and signifying the unprocessed timber is city timber ineligible for export.

**Section 9. Enforcement.** Investigation of suspected violations of these rules and/or surveillance of unprocessed timber in transit and at port facilities may be conducted by the City, or contracted by the City to other state or federal agencies. Any alleged violations of the export prohibition provisions of this section will be referred by the City to the appropriate federal or state agency or city department for prosecution or other legal action.

Passed by the Council and approved by the Mayor May 7, 1991.