



Eugene City Council

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www.eugene-or.gov

EUGENE CITY COUNCIL AGENDA

November 22, 2021

7:30 p.m. CITY COUNCIL MEETING

As the state and community recover from the COVID-19 pandemic, most City Council meetings will continue to be held remotely using virtual meeting technology. Information about online or other options for access and participation will be available at <https://www.eugene-or.gov/3360/Webcasts-and-Meeting-Materials>

**Meeting of November 22, 2021;
Her Honor Mayor Lucy Vinis Presiding**

Councilors

Jennifer Yeh, President
Mike Clark
Randy Groves
Emily Semple

Claire Syrett, Vice President
Greg Evans
Matt Keating
Alan Zelenka

7:30 p.m. CITY COUNCIL MEETING

- 1. COMMITTEE REPORTS AND ITEMS OF INTEREST**
- 2. CONSENT CALENDAR 1**
 - A. Approval of City Council Minutes**
 - B. Approval of City Council Tentative Agenda**
- 3. PUBLIC FORUM**
- 4. ACTION: An Ordinance Granting to BNSF Railway Company a Non-Exclusive Franchise to Use the Public Way to Construct and Maintain Private Commercial Facilities Within the City of Eugene**
- 5. ACTION: An Ordinance Concerning the Crime of Intimidation by Display of a Noose and Increasing the Maximum Penalty for Violating Section 4.731 of the Eugene Code, 1971 (Bias Crime in the 2nd Degree); Adding Section 4.732 to the Eugene Code, 1971; and Amending Section 4.990 of that Code**

The Eugene City Council welcomes your interest in these agenda items. This meeting location is wheelchair-accessible. For the hearing impaired, an interpreter can be provided with 48 hours' notice prior to the meeting. Spanish-language interpretation will also be provided with 48 hours' notice. To arrange for these services, contact the receptionist at 541-682-5010. City Council meetings are telecast live on Metro Television, Comcast channel 21, and rebroadcast later in the week.

El consejo de la Ciudad de Eugene agradece su interés en estos asuntos de la agenda. El lugar de la reunión tiene acceso para sillas de ruedas. Se puede proveer a un intérprete para las personas con discapacidad auditiva si avisa con 48 horas de anticipación. También se puede proveer interpretación para español si avisa con 48 horas de anticipación. Para reservar estos servicios llame al 541-682-5010. Las reuniones del consejo de la ciudad se transmiten en vivo por Metro Television, Canal 21 de Comcast y son retransmitidas durante la semana.

For more information, contact the Council Coordinator at 541-682-5010,
or visit us online at www.eugene-or.gov.

EUGENE CITY COUNCIL AGENDA ITEM SUMMARY



Approval of City Council Minutes

Meeting Date: November 22, 2021
Department: Central Services
www.eugene-or.gov

Agenda Item Number: 2A
Staff Contact: Beth Forrest
Contact Telephone Number: 541-682-5882

ISSUE STATEMENT

This is a routine item to approve City Council minutes.

SUGGESTED MOTION

Move to approve the minutes for the work session on May 24, June 14, September 13, and October 13, 2021; and the meeting on June 28, 2021.

ATTACHMENTS

- A. May 24, 2021, Work Session Minutes
- B. June 14, 2021, Work Session Minutes
- C. June 28, 2021, Meeting Minutes
- D. September 13, 2021, Work Session Minutes
- E. October 13, 2021, Work Session Minutes

FOR MORE INFORMATION

Staff Contact: Beth Forrest
Telephone: 541-682-5882
Staff E-Mail: bforrest@eugene-or.gov

MINUTES

**Eugene City Council
Virtual Work Session
Eugene, Oregon 97401**

**May 24, 2021
5:30 p.m.**

Councilors Present: Emily Semple, Jennifer Yeh, Mike Clark, Matt Keating, Randy Groves, Greg Evans, Alan Zelenka

Councilors Absent: Claire Syrett

Mayor Vinis opened the May 24, 2021, work session of the Eugene City Council.

1. WORK SESSION: Middle Housing Code Amendments (Implementation of HB 2001)

City Manager Sarah Medary, Principal Planner Terri Harding, Healthy Democracy panelists Hunter and Francisco, and ECONorthwest representative Becky Hewitt provided information on the Middle Housing Code Amendments plan.

Council Discussion:

- Councilor Evans – thanked staff and panelists for the information; expressed issue with the plan concerning rental versus home ownership; spoke in favor of ADUs used for ownership and not as rental properties; asked how zoning would affect this process and protect people from discriminatory lending practices; inquired about subsidy programs from the state or federal levels to assist people acquiring these homes; asked if the City could provide a tax incentive for home ownership for those with middle to low income.
- Councilor Clark – agreed with Councilor Evans on the issue of using ADUs for rentals instead of promoting home ownership; noted lending regulatory body on the federal level that regulates bias practices; stated construction costs have at a minimum doubled in past year; noted that the plan is for more smaller rentals; stated that he is in favor of doing something but wished that Council was incentivizing more to help people’s financial health.
- Councilor Keating – stated that he is the only renter on Council, and he rents due to affordability, wage stagnation, lack of upward mobility in workforce; supported this as one solution among many to help these issues; asked if there was a feasibility study done for land along transportation routes that is available for rezoning for commercial and residential purposes; asked how this proposal can help stop the unaffordable pathway to home ownership.
- Councilor Groves – thanked staff and presenters; noted the importance of making home ownership available to as many people as possible to accumulate personal wealth; noted the high cost of housing with the supply and demand imbalance; stated one reason materials are in short supply is the loss of structures in wildland urban interface across the US and mitigating wildfires will be important for this issue, too.
- Councilor Zelenka – thanked staff and presenters for the information; asked about the amount of discretion Council has in implementing this plan within the confines of House Bill 2001; asked if Council proposed a more lenient plan or went beyond the minimum standard, if it would get litigated to have to be the minimum standard; appreciated matrix with different code recommendations in packet materials.
- Councilor Clark – noted the high cost of building the ADUs due to current construction costs and that most people will buy old single-family homes to replace with a fourplex rented at market

rate; emphasized current lower number of permits for single-family homes and the need to incentivize the building of more single-family homes.

- Mayor Vinis – noted the current task for Council is to have City code in compliance and that the next step will be incentivizing ADUs and single family homes to make them more affordable; stated the overall goal is to build for the future and increasing supply of housing.

2. WORK SESSION: Wildfire Preparedness

City Manager Sarah Medary introduced Eugene Springfield Interim Fire Chief Heppel and Deputy Fire Marshal Mark Dahl, filling in for Merrill Harrison, who presented on Wildfire Preparedness and Wildland Urban Interface (WUI). Nuisance Vegetation Specialist Jeff Chandler, Battalion Chief Wayne Morris and Eugene Wildfire Preparedness Coalition representative Tom Peck contributed to the topic.

Council Discussion:

- Councilor Keating – thanked staff and firefighters for all the work they have done for the community; asked what a neighbor could do to reduce fuel load on an adjacent private property when they can't contact the owner.
- Councilor Groves – thanked staff for the presentation; stated belief that the Eugene Wildfire Preparedness Coalition is a good contributor to solutions for mitigating wildfire risk and preparedness, particularly within communities; stated the two main necessities for wildfire preparedness are working together for mitigation and quick response.
- Councilor Clark – thanked staff for their work; asked if there was a time in their memory when the potential for wildfire was higher than now; asked if Chief Heppel agreed that mitigation and quick response are the best defenses against wildfires; highlighted the importance of quick response for wildfires.
- Councilor Keating – noted the particularly high fire risk in the South Hills area.

MOTION: Councilor Keating, seconded by Councilor Zelenka, moved to direct the City Manager to prepare an ordinance and schedule a June 21 public hearing on an uncodified code amendment banning the use of all fireworks south of 18th Avenue or east of Agate Street until 2023, and banning the sale of all fireworks south of 18th Avenue or east of Agate Street in 2022, the proposed ordinance should declare this matter an emergency and include an immediate effective date.

- Councilor Keating – noted that the sale portion of the proposed ordinance would not go into effect until 2023 due to current contracts with vendors; said he hoped that the space at 30th and Hilyard is used as place to educate the public on where and when they can set off fireworks, contingent on passage of ordinance.
- Councilor Groves – stated his support for the motion.
- Councilor Zelenka – thanked Councilor Keating for the proposed motion; noted a similar ban had been put in place before; asked Councilor Keating to speak to the part of the motion about the sale of fireworks.
- Councilor Keating – shared that his proposal addressed an access issue by prohibiting the sale of something in a geographical area where it can't be utilized.
- Councilor Zelenka – asked if it is known how many locations would be impacted by the proposed ordinance.
- Councilor Clark – referenced a previous time when a similar ordinance had passed and the problems encountered around enforcement; asked to hear from Chief Skinner on enforcement difficulties and cost.

MOTION RESTATED and VOTE: Councilor Keating, seconded by Councilor Zelenka, moved to direct the City Manager to prepare an ordinance and schedule a June 21st public hearing on an uncodified code amendment banning the use of all fireworks south of 18th Avenue or east of Agate Street until 2023, and banning the sale of all fireworks south of 18th Avenue or east of Agate Street in 2022, the proposed ordinance should declare this matter an emergency and include an immediate effective date. **PASSED 6:0**, Councilors Evans not present for vote.

- Councilor Groves – referenced the watering restrictions for lawns in the late 80s and that was a bad time for wildfires, but the present conditions are even worse; asked Mr. Morris to add any additional insights to the topic.
- Mayor Vinis – thanked Mr. Morris for showing the evacuation maps that help with public safety.

The meeting adjourned at 7:06 p.m.

Respectfully submitted,

Beth Forrest
City Recorder

(Recorded by Julie Adams)

Link to the webcast of this City Council meeting [here](#).

MINUTES

**Eugene City Council
Virtual Work Session
Eugene, Oregon 97401**

**June 14, 2021
5:30 p.m.**

Councilors Present: Emily Semple, Jennifer Yeh, Claire Syrett, Matt Keating, Randy Groves, Alan Zelenka, Mike Clark

Councilors Absent: Greg Evans

Mayor Vinis opened the June 14, 2021, work session of the Eugene City Council in virtual format.

1. Applicant Statements for the Planning Commission

Council President Yeh outlined the interview process. City councilors heard from the applicant for the open position on the City's Planning Commission. The applicant presented a three-minute statement regarding their interest in serving the community through commission membership.

Planning Commission

1. Scott Lemons

After presenting his three-minute statement, the Planning Commission candidate answered the following three questions:

1. What key issues would you hope to address as a member of the Planning Commission?
2. As a group, the Planning Commission often works on lengthy processes and decisions. Describe your skills, experience and approach that will assist you in working in a constructive, collaborative manner.
3. The Planning Commission must often consider and balance complex issues when reviewing planning documents and making land use decisions. In your opinion, what are the most important factors for the Planning Commission to consider in these efforts?

2. WORK SESSION: Vision, Values, Goals and Process

City Manager Sarah Medary continued the discussion around the Council's vision, values, goals and operating agreements, presenting proposed updates and modifications.

Council Discussion

- Mayor Vinis – noted the significant motions proposed by Councilor Zelenka; outlined thoughts on potential options for Council to proceed on these topics.
- Councilor Clark – noted he does not have any changes and that Councilor Zelenka should state his motions.
- Mayor Vinis – clarified her point was to determine if Council wanted to allow staff more time to come back with responses and information on Councilor Zelenka's motions.
- Councilor Syrett – stated she had not been able to see Councilor Zelenka's motions yet but agreed he could make them tonight; proposed Council discussion of the motions tonight but

also table them for later to allow staff time to gather information on their implications; asked staff if it was possible to display list of speakers to the public, once the queue had been established.

- Councilor Keating – stated his desire for all Councilors and necessary staff to be present to discuss the matter and his agreement to table the topic for the future.
- Councilor Groves – stated that, although a lot of time has been spent on the topic, he would like to discuss Councilor Zelenka’s motions further; asked about the most equitable way to hear from as many people in the community as possible.
- Councilor Yeh – noted her belief that Councilor Zelenka’s motions were to create a more equitable and accessible environment; expressed importance of staff input on this issue for further discussion.
- Councilor Zelenka – agreed that a more in-depth discussion with staff input will be necessary for this issue; stated his belief that Council set a bad precedent of discussing significant public policies late at night; shared his intent with raising these motions are to have Council priority goal items happen before Public Forum, to have new voices prioritized in speaking order to Council and to limit the time for Public Forum to 60 minutes instead of 90 minutes.
- Councilor Keating – asked for process clarification around motions due to his intent to amend them to extend talking time for speakers at Public Forum.
- Mayor Vinis – summarized the agreement of Council to table the topic for future discussion and staff input.

The meeting adjourned at 6:05 p.m.

Respectfully submitted,

Beth Forrest
City Recorder

(Recorded by Julie Adams)

Link to the webcast of this City Council meeting [here](#).

MINUTES

**Eugene City Council
Virtual Meeting
Eugene, Oregon 97401**

**June 28, 2021
7:30 p.m.**

Councilors Present: Emily Semple, Matt Keating, Alan Zelenka, Jennifer Yeh, Mike Clark, Claire Syrett, Randy Groves

Councilors Absent: Greg Evans (present for vote on Item 2C only)

Mayor Vinis opened the June 28, 2021, meeting of the Eugene City Council in a virtual format.

Mayor Vinis read a proclamation declaring June 27, 2021, to be National HIV Testing Day.

1. COMMITTEE REPORTS AND ITEMS OF INTEREST

Council Discussion

- Councilor Syrett – shared concerns from constituents on the danger of fireworks and desire for a citywide ban; requested update on operations plan for July 4th.
- Councilor Semple – shared same concerns as Councilor Syrett; advised those using fireworks to be extremely careful; shared concern for RV-dwelling persons’ safety and wellbeing, particularly in the industrial areas of Eugene; advised people to get vaccinated and stay safe in the heat.
- Councilor Groves – requested a more robust discussion around fireworks safety in the community for the Council’s fall agenda, working towards a permanent solution; acknowledged the extreme danger of wildfires in the South Hills area; noted the laws around fireworks and best practices; expressed agreement with Semple’s concerns related to RVs and parking.
- Councilor Keating – appreciated support for the South Hills fireworks ban; expressed support for any future citywide ban of fireworks; recognized Pride Month and Eugene Emeralds event; thanked Track Town officials for their safety measures, as well as County staff and community groups for cooling centers; noted Human Services Commission and rental assistance options.
- Mayor Vinis – provided overview of cooling centers operations for the past weekend; outlined the partnerships around the cooling centers; identified the urgent need to bring the cooling services directly to those who need them, with which the upcoming Safe Sleeping Sites should help.

2. CONSENT CALENDAR 1

- A. Approval of City Council Minutes
 - September 23, 2020, Work Session
 - November 16, 2020, Public Hearing
- B. Approval of City Council Tentative Agenda

Councilor Keating pulled Item 2C from the Consent Calendar.

MOTION AND VOTE: Councilor Yeh, seconded by Councilor Syrett, moved to approve the items on Consent Calendar 1 minus 2C. **PASSED 7:0.**

Councilor Evans joined the meeting at 7:54 p.m.

C. Approval of Vision, Values and Goals

MOTION AND VOTE: Councilor Yeh, seconded by Councilor Syrett, moved to approve Item 2C on Consent Calendar 1. **PASSED 8:0.**

Councilor Evans left the City Council meeting at 7:55pm.

3. PUBLIC FORUM

1. John Barofsky – spoke about EWEB’s new water storage tanks and the process for installation.
2. Matthew Yook – supported new WinCo, hybrid meetings and more funding for human rights work.
3. Deborah McGee – shared concern on extreme weather events; need for fossil fuel regulation.

Council Discussion

- Councilor Syrett – noted use of the fireworks app to report fireworks in neighborhoods; shared encounter with community member who stated appreciation of work of Council.
- Councilor Keating – noted the environmental impact study by EWEB was done in the fall when fauna and flora are not present; stated that project was initially one tank and was then revised to include a second tank; stated more can be done by EWEB for public engagement; shared number of households in community helped by rental assistance and the urgent need for an eviction moratorium.
- Councilor Semple – recounted meeting on presentation of public water tanks on College Hill; inquired how the tanks on 40th Avenue may affect the College Hill project.

4. PUBLIC HEARING and ACTION: A Resolution Adopting a Supplemental Budget; Making Appropriations for the City of Eugene for the Fiscal Year Beginning July 1, 2020 and Ending June 30, 2021

Mayor Vinis opened the Public Hearing.

1. John Barofsky – noted distressed funds supplemental need; excited about unhoused response.
2. Brittany Quick-Warner – supported supplemental budget; need overnight staff enforcement.
3. Matthew Yook – supported bias prevention training and accessible materials funding for future.

Mayor Vinis closed the Public Hearing.

Council Discussion

- Councilor Clark – thanked speakers; noted Ms. Quick-Warner’s comments and the need for enforcement of laws and rules on expected behavior; asked City Manager if there were adequate resources for the plan; stated Council needs to be clearer to adequately provide for enforcement of existing rules.
- Councilor Syrett – expressed frustration that there is not enforcement of overnight parking; asked for a calculation of revenue generated by enforcement of overnight parking.
- Councilor Groves – stated his interest in how to fund additional parking enforcement staff and hours; noted issues in West Eugene stem directly from lack of enforcement of rules and laws; shared his enthusiasm and appreciation for the Safe Sleep sites and his desire to speed up the process; thanked lead staff and Ed Russo, the City staff liaison for businesses and workers.
- Councilor Keating – stated his support for the supplemental budget; noted impacts of Safe Sleep sites and supported inclusion and equity training for staff at the sites.

MOTION AND VOTE: Councilor Yeh, seconded by Councilor Syrett, moved to adopt a Resolution Adopting a Supplemental Budget; Making Appropriations for the City of Eugene for the Fiscal Year Beginning July 1, 2020 and Ending June 30, 2021. **PASSED 6:1**, Councilor Clark opposed.

5. PUBLIC HEARING and ACTION: A Resolution Adopting the Budget, Making Appropriations, Determining, Levying and Categorizing the Annual Ad Valorem Property Tax Levy for the City of Eugene for the Fiscal Year Beginning July 1, 2021 and Ending June 30, 2022; a Resolution Electing to Receive State Revenue Sharing Funds Pursuant to Section 221.770 of Oregon Revised Statutes; and a Resolution Certifying that the City of Eugene Provides the Municipal Services Required by Oregon Revised Statutes Section 221.760 in Order to Receive State Shared Revenues

Mayor Vinis opened the Public Hearing.

1. John Barofsky – thanked City Manager for the transparent budget; noted cuts to Planning staff.

Mayor Vinis closed the Public Hearing.

MOTION AND VOTE: Councilor Yeh, seconded by Councilor Syrett, moved to adopt a Resolution Electing to Receive State Revenue Sharing Funds Pursuant to Section 221.770 of Oregon Revised Statutes. **PASSED 7:0.**

MOTION AND VOTE: Councilor Yeh, seconded by Councilor Syrett, moved to adopt a Resolution Certifying that the City of Eugene Provides the Municipal Services Required by Oregon Revised Statutes Section 221.760 in Order to Receive State Shared Revenues. **PASSED 7:0.**

MOTION AND VOTE: Councilor Yeh, seconded by Councilor Syrett, moved to adopt a Resolution Adopting the Budget, Making Appropriations, Determining, Levying and Categorizing the Annual Ad Valorem Property Tax Levy for the City of Eugene for the Fiscal Year Beginning July 1, 2021 and Ending June 30, 2022. **PASSED 7:0.**

Mayor Vinis closed the meeting of the Eugene City Council and convened a meeting of the Eugene Urban Renewal Agency.

6. PUBLIC HEARING and ACTION: A Resolution of the Urban Renewal Agency of the City of Eugene Adopting the Budget, Making Appropriations, and Declaring the Amount of Tax to be Certified for the Fiscal Year Beginning July 1, 2021 and Ending June 30, 2022

Mayor Vinis opened the Public Hearing.

1. John Barofsky – discussed URA funds for projects; appreciated his opportunity to service on a commission.

Mayor Vinis closed the Public Hearing.

Council Discussion

- Councilor Clark – thanked Mr. Barofsky for his work on City boards and commissions and his advice on budget matters; appreciated his many years of service.

- Councilor Syrett – echoed Councilor Clark’s appreciation for Mr. Barofsky’s years of service; encouraged him to continue coming to speak to Council during Budget season; shared her appreciation for his insights and volunteer work.
- Councilor Keating – shared his colleagues’ appreciation for Mr. Barofsky’s service and his accessibility for input and advice.
- Councilor Groves – thanked Mr. Barofsky for his many years of service; recounted privilege of seeing his work on the staff side; appreciated his grasp of complicated budget and planning issues.

MOTION AND VOTE: Councilor Yeh, seconded by Councilor Syrett, moved to adopt a Resolution of the Urban Renewal Agency of the City of Eugene Adopting the Budget, Making Appropriations, and Declaring the Amount of Tax to be Certified for the Fiscal Year Beginning July 1, 2021 and Ending June 30, 2022. **PASSED 7:0.**

The meeting adjourned at 8:51 p.m.

Respectfully submitted,

Beth Forrest
City Recorder

(Recorded by Julie Adams)

Link to the webcast of this City Council meeting [here](#).

MINUTES

**Eugene City Council
Virtual Work Session
Eugene, Oregon 97401**

**September 13, 2021
5:30 p.m.**

Councilors Present: Emily Semple, Matt Keating, Alan Zelenka, Jennifer Yeh, Mike Clark, Greg Evans, Claire Syrett, Randy Groves

Mayor Vinis opened the September 13, 2021, work session of the Eugene City Council in virtual format.

1. WORK SESSION: Community Safety Initiative Update

Assistant City Manager Kristie Hammitt gave an update highlighting the progress of the Community Safety Initiative (CSI) and next steps. Lead Staff Kevin Alltucker gave an overview of the community CSI engagement processes. Police Chief Chris Skinner gave an update and timeline on the calls-for-service metrics from his department. Finance Director Twylla Miller gave an update on the payroll tax collection.

Council Discussion:

- Councilor Evans - commented that a reason he voted for CSI was because of the shortage of officers and that makes the community far more unsafe than it is when there's slow response time to service calls; shared that he had the opportunity to talk to line officers and heard a consistent theme that officers are frustrated, tired, feel like expectations about what they can respond to are unrealistic; asked about coordination of mental health services with Lane County and providing a system that can adequately respond to existing needs.
- Councilor Keating - shared his experience of going on a ride along with officers and witnessing the multitude of unanswered calls and how stretched law enforcement officers are; asked for more clarity on community safety services related to homelessness stated in section three of the ordinance; asked about the relationship between the County and City in light of the accusation from a County Commissioner on misapplying tax authority.
- Councilor Groves - commented that the disparity between resources and demands for service continues to widen for EPD response; asked what is driving the call increase; shared his appreciation for the team working to stay on top of quality-of-life issues; expressed concern about the mental health of officers and how this is addressed in the department.
- Councilor Syrett - said the report was thorough; asked what the CSI Project Manager position responsibilities are; commented that a business constituent gave good feedback on the tax collection process and that some of those changes are being implemented; asked if there is ongoing funding for homelessness and youth services programs that is connected to the CSI; asked which current programs gained funding through this initiative.
- Councilor Clark - asked Chief Skinner how he feels about the capacity and understaffing problems and whether he would make any adjustments in spending from what was forecasted two years ago; asked what the bare necessities are to serve victims.
- Councilor Yeh - asked Chief Skinner about the challenges with hiring employees and how he is planning to move forward if the trend continues.
- Councilor Zelenka - commented the appeal of the CSI was to increase capacity and the ability to respond problems in many difference service areas; shared his concern about the mental health of officers and the City of Eugene s ability to retain them; asked how this circumstance is being assessed and how it will impact fulfilling the goals of the CSI; asked how long the cycle takes before

an officer is hired; asked if poaching employees from other agencies is a tactic used by EPD; asked what is needed from Council for the next steps

- Councilor Semple - shared frustration over her efforts to get more officers hired and now the City finds itself further behind in staffing; appreciated the Chief's methods in dealing with the staffing shortage.

Meeting adjourned at 7:06 p.m.

Respectfully submitted,

Beth Forrest
City Recorder

(Recorded by Niyah Ross)

Link to the webcast of this City Council meeting [here](#).

MINUTES

**Eugene City Council
Virtual Work Session
Eugene, Oregon 97401**

**October 13, 2021
12:00 p.m.**

Councilors Present: Emily Semple, Matt Keating, Jennifer Yeh, Mike Clark, Greg Evans, Claire Syrett, Randy Groves

Councilors Absent: Alan Zelenka

Mayor Vinis opened the October 13, 2021, work session of the Eugene City Council in virtual format.

1. WORK SESSION – Housing Implementation Pipeline (HIP) Update

Planning and Development Executive Director Denny Braud, Co-Community Development Director Amanda Nobel Flannery, Co-Community Development Director Will Dowdy, Planning Director Alissa Hansen, and City Manager’s Office Director Brooke Freed presented information about the Housing Implementation Pipeline work to-date.

Council Discussion:

- Councilor Clark – commented that this work represents one of the Council’s highest priorities and is an ambitious plan; asked about the status of the housing needs numbers, noting that the area is already exceeding the projected population growth which significantly impacts the demand for housing; asked about the nexus of the HIP work with growth monitoring efforts and whether the agreed-upon 65/45 split is still accounted for; asked where the land to build needed housing will be located.
- Councilor Syrett – appreciated the clear format used to lay out the plan and thanked staff for the policy and timeline graphics which helps put the work into perspective; appreciated the analysis done, noting it is ambitious but necessary; said the housing crisis is a nationwide problem that is particularly bad on the west coast; requested more information on the City’s anti-displacement plan.
- Councilor Groves – expressed concern about the effects on lower-income residents and renters with the emphasis on incentives for home ownership; noted the impacts of land and construction materials shortages on this work; asked where unhoused youth fall on the continuum and supported addressing that demographic specifically.
- Councilor Yeh – appreciated the presentation and materials and asked for clarification of Opportunity #1; supported investment in downtown; asked what percentage of the planned housing is owner-occupied; supported an anti-displacement plan and asked for more information
- Councilor Evans – shared displacement situations occurring in Ward 6, noting that it is a growing trend; asked what analysis was being done on the demographics of people coming in to the community, where they will live, and the effects of ghettoization; supported housing distribution policies that ensure equitable access and specific strategies to accommodate anticipated growth; noted many people can’t afford to live in Eugene and cautioned against policies that would result in migrations to other communities related to racial and socio-economic factors.
- Councilor Keating – supported requests for more information on anti-displacement policies and plans; expressed alarm about the data and trends presented; asked for staff’s view as to why the

housing need number is growing so quickly; stated the goal of the work is to provide more permanent, stable housing, including for the unhoused population, and asked how the City can set and achieve realistic goals.

- Mayor Vinis – asked for information about the forecasted City-supported housing and shelter pipeline related to the goal for 6,000 planned units; appreciated the data and analysis presented.
- Councilor Clark – asked whether the majority of the planned 6,000 units are market-driven or subsidized housing; asked whether Council should focus on policies that affect the housing market or subsidization opportunities; asked about the plans for single-family and multi-family development and whether plans to densify are weighted toward housing developments or one-off single-family units; asked what role developers and builders play in the HIP plans.
- Councilor Evans – noted that the area’s two percent vacancy rate represents a static housing market; said in the past, there was a range of housing options from starter homes, to transitional homes, to dream homes and the transitional housing stock is no longer available, which disrupts the availability of all housing types; supported concentrating efforts on this middle housing component.
- Councilor Syrett – reminded Council that the current environment of labor shortages and supply chain issues is also playing a role in housing development, and expressed hope that these conditions will improve soon; noted the low vacancy rate means there is a housing shortage in all sectors of housing types; encouraged Council to find ways to support home-ownership and renter protections; noted that multi-family developments can also include ownership opportunities.
- Councilor Groves – supported all efforts to increase housing stock and said larger-scale developments are needed to meet goals; suggested looking at the urban growth boundary again to identify potential housing and business sites.
- Councilor Yeh – requested information about the housing continuum from starter homes to dream homes.
- Councilor Clark – said that impacts of the 2007-2008 market crash were felt more strongly in Eugene and the City’s policies have only exacerbated problems; noted that the City has not met its housing goals since the decision to limit UGB expansion and asked if an analysis of the sufficiency of the UGB will be part of the HIP process and if the results of that analysis will be available before policy decisions are made; noted that the expansion of the UGB for industrial uses addressed the parcel type and suggested adding that factor to the HIP data; supported incentives for developing housing along natural transportation corridors.
- Councilor Evans – encourage Council consideration of the growing demographic of people who want to downsize from larger homes and who those who choose to live smaller and more sustainably.
- Councilor Vinis – noted that cities have traditionally enabled growth in housing opportunities and said it is unknown how much one-off housing will be added as a result of HB2001; expressed appreciation for the conversation and anticipation for subsequent discussion.

Mayor Vinis adjourned the meeting at 1:30 p.m.

Respectfully submitted,

Beth Forrest
City Recorder

Link to the webcast of this City Council meeting [here](#).

EUGENE CITY COUNCIL AGENDA ITEM SUMMARY



Approval of Tentative Working Agenda

Meeting Date: November 8, 2021
Department: Central Services
www.eugene-or.gov

Agenda Item Number: 2B
Staff Contact: Beth Forrest
Contact Telephone Number: 541-682-5882

ISSUE STATEMENT

This is a routine item to approve the City Council Tentative Working Agenda.

BACKGROUND

On July 31, 2000, the City Council held a process session and discussed the Operating Agreements. Section 2 notes, in part, that "The City Manager shall recommend monthly to the council which items should be placed on the council agenda. This recommendation shall be placed on the consent calendar at the regular City Council meetings (regular meetings are those meetings held on the second and fourth Monday of each month in the Council Chamber). If the recommendation contained in the consent calendar is approved, the items shall be brought before the council on a future agenda. If there are concerns about an item, the item may be pulled from the consent calendar at the request of any councilor or the Mayor. A vote shall occur to determine if the item should be included as future council business." Scheduling of this item is in accordance with the Council Operating Agreements.

COUNCIL OPTIONS

The council may choose to approve, amend or not approve the tentative agenda.

SUGGESTED MOTION

Move to approve the items on the Tentative Working Agenda.

ATTACHMENTS

A. Tentative Working Agenda

FOR MORE INFORMATION

Staff Contact: Beth Forrest
Telephone: 541-682-5882
Staff E-Mail: bforrest@eugene-or.gov



City Council Tentative Agenda

Updated November 18, 2021

**** SPECIAL NOTICE ****

As our state and community recover from the COVID-19 pandemic, City Council meetings will continue to be held remotely using virtual meeting technology. Information about how to access these meetings will be available at <https://www.eugene-or.gov/3360/Webcasts-and-Meeting-Materials>.

November 2021					
Date	Day	Time	Title	Length	Dept. Contact
22-Nov	Monday	5:30 pm	Renter Protections (Work Session)	45 mins	Genevieve Middleton, PDD
			2022 Legislative Priorities (Work Session)	45 mins	Ethan Nelson, CS
		7:30 pm	Committee Reports and Items of Interest Public Forum Ordinance Granting BNSF Railway a Franchise for Use of Public Way (Action) Ordinance Adding Crime of Intimidation by Display of a Noose and Increasing Maximum Penalty for Violating EC 4.731 (Bias Crime in the 2nd Degree) (Action)		Pam Berrian, CS CAO
<i>Expected absences for 11/22: none</i>					
24-Nov	Wednesday	12 pm	MEETING CANCELLED		
<i>Expected absences for 11/24: none</i>					

December 2021					
Date	Day	Time	Title	Length	Dept. Contact
8-Dec	Wednesday	12 pm	Joint Work Session with Lane County Board (Work Session)	90 mins	CS
<i>Expected absences for 12/8: none</i>					
8-Dec	Wednesday	5:30 pm	Budget Committee FY22 Supplemental Budget Review (Work Session)		Vicki Silvers, CS
<i>Expected absences for 12/8: none</i>					
				<i>Note: Budget Committee Meeting Added</i>	



Work Session



Action



Public Hearing



Public Forum



Consent Calendar



Committee Reports/Items of Interest














CC Agenda Changes





Official Matters



Pledge of Allegiance

13-Dec	Monday	5:30 pm	 Funding for Climate Change and Homelessness Initiatives (Work Session)	45 mins	Twylla Miller, CS
			 HIP – Downtown Housing (Work Session)	45 mins	Will Dowdy, PDD
		7:30 pm	 Committee Reports and Items of Interest		
			 Res. Acknowledging Receipt of FY21 Annual Financial Report (Consent Calendar 1)		Finn Cronin, CS
			 Res. Approving a Low Income Rental Housing Property Tax Exemption for Green Leaf Village (Consent Calendar 1)		Ellen Meyi-Galloway, PDD
			 Resolution Approving LIRHPTE for Aurora Building (Consent Calendar 1)		Ellen Meyi-Galloway, PDD
			 Public Forum		
			 URA - Resolution Acknowledging Receipt of FY21 URA Annual Financial Report (Action)		Finn Cronin, CS
			 FY22 URA Supplemental Budget (Public Hearing and Action)		Liz Butterfield, CS
			 FY22 City of Eugene Supplemental Budget (Public Hearing and Action)		Liz Butterfield, CS
			 Ward Boundary Scenarios (Public Hearing & Possible Action)		Jason Dedrick, CS

Expected absences for 12/13: none


















15-Dec	Wednesday	12 pm	 City Manager Evaluation (Work Session)	60 mins	CS
			 Library Levy Update (Work Session)	30 mins	Will O'Hearn, LRCS

Expected absences for 12/15: none

Council Break: December 16 – January 5









January 2022					
Date	Day	Time	Title	Length	Dept. Contact
5-Jan	Wednesday	5:30 pm	<i>2022 State of the City</i>		Niyah Ross, CS

Expected absences for 1/5:





10-Jan	Monday	5:30 pm	 TBD (Work Session)	45 mins	Ellen Meyi-Galloway, PDD
			 TBD (Work Session)	45 mins	
		7:30 pm	 Election of 2022 City Council Officers  Committee Reports and Items of Interest  Resolution Approving LIRHPTE for Arthur Street Duplexes (Consent Calendar 1)  Public Forum  Resolution Annexing Vacant Land at 825 Horn Lane (Consent Calendar 2)		
<i>Expected absences for 1/10: none</i>					
12-Jan	Wednesday	12 pm	 TBD (Work Session)	45 mins	
			 TBD (Work Session)	45 mins	
<i>Expected absences for 1/12: none</i>					
18-Jan	Tuesday	5:30 pm	Schedule only as needed		
		7:30 pm	 TBD (Public Hearing)		
<i>Expected absences for 1/18: none</i>					
19-Jan	Wednesday	12 pm	 TBD (Work Session)	45 mins	
			 TBD (Work Session)	45 mins	
<i>Expected absences for 1/19: none</i>					
24-Jan	Monday	5:30 pm	 Housing Implementation Pipeline Review and Action (Work Session)	90 mins	Amanda Nobel, PDD
		7:30 pm	 Committee Reports and Items of Interest  Public Forum		
<i>Expected absences for 1/24: none</i>					
26-Jan	Wednesday	12 pm	 TBD (Work Session)	45 mins	
			 TBD (Work Session)	45 mins	
<i>Expected absences for 1/26: none</i>					

February 2022					
Date	Day	Time	Title	Length	Dept. Contact
9-Feb	Wednesday	12 pm	 TBD (Work Session)	45 mins	
			 TBD (Work Session)	45 mins	
<i>Expected absences for 2/9: none</i>					
14-Feb	Monday	5:30 pm	 TBD (Work Session)	45 mins	
			 TBD (Work Session)	45 mins	
		7:30 pm	 Committee Reports and Items of Interest  Public Forum		
<i>Expected absences for 2/14: none</i>					
16-Feb	Wednesday	12 pm	 TBD (Work Session)	45 mins	
			 TBD (Work Session)	45 mins	
<i>Expected absences for 2/16: none</i>					
22-Feb	Tuesday	5:30 pm	Schedule only as needed		
		7:30 pm	 TBD (Public Hearing)		
<i>Expected absences for 2/22: none</i>					
23-Feb	Wednesday	12 pm	 TBD (Work Session)	45 mins	
			 TBD (Work Session)	45 mins	
<i>Expected absences for 2/24: none</i>					
28-Feb	Monday	5:30 pm	 TBD (Work Session)	45 mins	
			 TBD (Work Session)	45 mins	
		7:30 pm	 Committee Reports and Items of Interest  Public Forum		
<i>Expected absences for 2/28: none</i>					

March 2022

Date	Day	Time	Title	Length	Dept. Contact
9-Mar	Wednesday	12 pm	 TBD (Work Session)	45 mins	
			 TBD (Work Session)	45 mins	
<i>Expected absences for 3/9: none</i>					
14-Mar	Monday	5:30 pm	 TBD (Work Session)	45 mins	
			 TBD (Work Session)	45 mins	
		7:30 pm	 Committee Reports and Items of Interest  Public Forum		
<i>Expected absences for 3/14: none</i>					
16-Mar	Wednesday	12 pm	 TBD (Work Session)	45 mins	
			 TBD (Work Session)	45 mins	
<i>Expected absences for 3/16: none</i>					

Council Break: March 17 – April 11

 Work Session	 Action	 Public Hearing	 Public Forum	 Consent Calendar
 Committee Reports/Items of Interest	 Ceremonial Matters	 Pledge of Allegiance		

Approved Work Session Polls to be Scheduled	Councilor	Date Approved
“Housing Status” as a Protected Class – <i>follow-up TBD</i>	Semple	03/12/20
Response to Hate Crimes – <i>follow-up TBD</i>	Clark	03/18/21
Reparations (two-part work session) – <i>follow-up TBD</i>	Evans	03/18/21
Waste Management at Large Events – <i>follow-up TBD</i>	Semple	04/08/21
Funding Source for Climate Change and Homelessness – <i>scheduled December 13</i>	Zelenka	05/10/21
Fossil Fuel Risk Bonds	Groves, Syrett	10/21/21

UPCOMING PUBLIC HEARINGS			
Date of Public Hearing	Title	Description	Staff Contact
January 18 (7:30 p.m.)			

EUGENE CITY COUNCIL AGENDA ITEM SUMMARY



Public Forum

Meeting Date: November 22, 2021
Department: Central Services
www.eugene-or.gov

Agenda Item Number: 3
Staff Contact: Beth Forrest
Contact Telephone Number: 541-682-5882

ISSUE STATEMENT

This segment allows citizens the opportunity to express opinions and provide information to the council. Testimony presented during the Public Forum should be on city-related issues and should not address items which have already been heard by a Hearings Official or are on the present agenda as a public hearing item.

SUGGESTED MOTION

No action is required; this is an informational item only.

FOR MORE INFORMATION

Staff Contact: Beth Forrest
Telephone: 541-682-5882
Staff E-Mail: bforrest@eugene-or.gov

EUGENE CITY COUNCIL AGENDA ITEM SUMMARY



Action: An Ordinance Granting to BNSF Railway Company a Non-Exclusive Franchise to Use the Public Way to Construct and Maintain Private Commercial Facilities Within the City of Eugene

Meeting Date: November 22, 2021
Department: Public Works & Central Services
www.eugene-or.gov

Agenda Item Number: 4
Staff Contact: Pam Berrian
Contact Telephone Number: 541-682-5590

ISSUE STATEMENT

The council is asked to take action on a request by the BNSF Railway (BNSF) for renewal of its non-exclusive franchise for use of the following public rights-of-way (ROW) for rail transportation purposes: across all intervening streets southerly and easterly of the intersection of the right-of-way of Grantee and the northern city limits of the City of Eugene, and extending southeasterly to the easterly line of the intersection of Grant Street and 5th Avenue, including the crossings of Grant Street, Garfield Street, Roosevelt Boulevard, Bethel Drive and Prairie Road.

BACKGROUND

Currently, Oregon law permits franchise terms of up to 20 years. Staff are proposing a new 20-year franchise with a 10-year opener allowing re-negotiation of terms and conditions. The City reviewed the existing franchise agreement and the majority of the proposed franchise remains the same, including the compensation rate of \$5.00 per linear foot. However, the City did propose revisions to bring certain provisions, such as the indemnification provision, the insurance requirements provision, etc., in line with the City's current preferred franchise language. BNSF has agreed to the updated text.

Should any of the crossings need repair during the term of the proposed new franchise, Public Works staff will coordinate with BNSF per the franchise terms for appropriate repairs.

A public hearing on this franchise ordinance was held September 20, 2021; no speakers testified.

After the public hearing, franchisee requested some revisions/corrections to the insurance provisions in Section 12 of the proposed franchise. The requested changes are intended to correctly reflect that franchisee is subject to, and its employees are protected by, the Federal Employers Liability Insurance program rather than the Oregon Workers' Compensation program, and to allow franchisee to self-insure for that insurance policy (Attachment A is the proposed ordinance with the requested changes shown in legislative format). Because franchisee's requested revisions do not reduce franchisee's obligations below the City's usual insurance requirements, City staff agreed to incorporate those requested changes into the proposed franchise ordinance on which Council is now requested to take action (included as Attachment B).

PREVIOUS COUNCIL DIRECTION

The Eugene City Council has a long history of granting franchises for the use of the public rights of way (ROW) whereby users make agreements relating to conditions and use fees. Chapter X of the City Charter outlines procedures for franchising use of the public way by utilities. The City Attorney reviewed the franchise language for consistency with accepted municipal standards and protections. If the proposed new franchise is granted and during the term of that agreement BNSF wished to use additional ROW than the streets named above, and the City were agreeable, the franchise would have to be amended. However, no additional use is currently anticipated.

Timing

If the proposed franchise ordinance is adopted by the City Council, the ordinance would be sent to the franchisee for acceptance and recorded within 30 days. The next franchise fee / ROW use payment would be due in calendar year 2022. The franchise will be managed by the Public Works Department.

COUNCIL OPTIONS

1. Adopt the franchise ordinance as proposed.
2. Adopt the franchise ordinance with modifications as determined by the Council.
3. Deny the adoption of the franchise ordinance.

CITY MANAGER'S RECOMMENDATION

Staff recommend Option #1, approval of the franchise renewal. The permitted use of the ROW is limited and site-specific, and the City has not experienced problems with BNSF under the previous franchise. City staff have updated the insurance and indemnification franchise language, and the text is acceptable to BNSF.

SUGGESTED MOTION

Move to adopt an Ordinance Granting to BNSF Railway Company a Non-Exclusive Franchise to Use the Public Way to Construct and Maintain Private Commercial Facilities Within the City of Eugene.

ATTACHMENTS

- A. Proposed Ordinance (legislative format showing franchisee's requested revisions)
- B. Proposed Ordinance

FOR MORE INFORMATION

Staff Contact: Pam Berrian, Telecommunications Program Manager
Telephone & E-Mail: 541-682-5590, pberrian@eugene-or.gov

Staff Contact: Jonathan Patrick, Real Property Officer
Telephone & E-Mail: 541-682-6854, jpatrick@eugene-or.gov

ORDINANCE NO. _____

AN ORDINANCE GRANTING TO BNSF RAILWAY COMPANY A NON-EXCLUSIVE FRANCHISE TO USE THE PUBLIC WAY TO CONSTRUCT AND MAINTAIN PRIVATE COMMERCIAL FACILITIES WITHIN THE CITY OF EUGENE.

The City Council of the City of Eugene finds that:

A. On December 10, 2001, the Eugene City Council adopted Ordinance No. 20241 granting to Burlington Northern and Santa Fe Railway Company a non-exclusive 20-year Franchise to use the public way to construct and maintain private commercial facilities within the City of Eugene. That Franchise will expire on January 9, 2022.

B. In or around 2005, Burlington Northern and Santa Fe Railway Company changed its name to BNSF Railway Company.

C. The City of Eugene has determined that it serves the public welfare to enter into the new Franchise agreement with BNSF Railway Company set forth below.

NOW, THEREFORE,

THE CITY OF EUGENE DOES ORDAIN AS FOLLOWS:

Section 1. **Definitions.** As used in this Ordinance, the following words and phrases mean:

City. The City of Eugene, Oregon.

City Manager. The City Manager of the City or his or her designee.

Facilities. All tracks and associated structures located in the public way specified in Section 2 of this Franchise that are owned by Grantee for use by Grantee in providing rail services.

Grantee. BNSF Railway Company, a Delaware corporation, and its successors and assigns, and each of their respective lessees or rail operators.

Public way. Any street, road, alley, right-of-way, pedestrian or bicycle easement or utility easement for public use that is controlled by City.

Section 2. Use of Public Way. Subject to the provisions and restrictions of this Ordinance, the Eugene Code, 1971, and the applicable provisions of the Interstate Commerce Commission Termination Act of 1995 and other federal laws, rules and regulations as amended or replaced, City grants to Grantee the non-exclusive privilege to lay, construct, and maintain its present tracks and its present facilities, and to operate trains and cars thereover, and to transport passengers, freight and other materials upon the following named streets and places in the City:

Across all intervening streets southerly and easterly of the intersection of the right-of-way of Grantee and the northern city limits of the City, and extending southeasterly to the easterly line of the intersection of Grant Street and 5th Avenue, including the crossings of Grant Street, Garfield Street, Roosevelt Boulevard, Bethel Drive and Prairie Road.

Grantee agrees that, except in unusual circumstances such as equipment failures, it will not switch trains or cars on the streets of the City except as necessary to serve warehouses or other loading places. Grantee shall at all times maintain its facilities in a state of reasonably good repair and shall obtain and maintain a subscription to the Oregon Utility Notification Center (OUNC) for the duration of this franchise. All underground facilities shall be located and marked as required under OUNC standards.

Section 3. Use of Private Property. To the extent, if any, that it needs to do so and is authorized to do so, City grants to Grantee the right to maintain and operate cars over all private tracks and private property now occupied by it.

Section 4. Construction and Repairs in Public Way.

4.1 Grantee. City grants to Grantee the right to construct, re-erect, reconstruct, and maintain poles, wires, and other necessary and convenient equipment for the purpose of preserving and maintaining its present equipment for conveying power and electrical current for its own use, upon the designated streets, subject to reasonable and normal utility installation

requirements. It shall be Grantee's responsibility to locate and avoid all utilities located within Grantee's construction area, and Grantee shall be liable for any costs to repair or replace any utilities that may be damaged due to Grantee's construction or location of its facilities.

Underground abandoned facilities shall be mapped and located as required in OUNC standards.

Maps of all underground abandoned facilities shall be submitted to the City Engineer or designee for reference and shall not relieve the Grantee from the responsibility of locating or removing abandoned underground facilities. Grantee shall have the right to make all necessary excavations in any public way for the purpose of constructing and maintaining its facilities. To the extent not preempted by federal law, rules or regulations, Grantee's use of the public way shall comply with the standard specifications of the City, including, but not limited to the City of Eugene Manual on Traffic Control Devices, Signing, etc. for Construction and Maintenance on Streets and Highways, and the City of Eugene Policies and Procedures: Utility and Right-of-Way Permits, Construction Within and Use of the Public Way, and all other applicable Federal, State, and local laws, rules, and regulations. To the extent not preempted by federal law, rules or regulations, Grantee shall do no work affecting the public way without first obtaining the permits required by City, which may include plan submittal, approval and the payment of fees before work begins. Grantee shall furnish all necessary material and labor to install and maintain its facilities at its own expense.

4.2 City. Nothing in this Ordinance shall be construed in any way to prevent City from constructing and maintaining any public improvement in any public way, except that the City agrees that any public improvement in the public ways designated in Section 2 herein shall be constructed and maintained in such a manner as does not unreasonably interfere with the free and unobstructed use by Grantee of its facilities in the public ways.

4.3 Grantee shall construct and maintain its tracks in the public ways designated in Section 2 herein so that the top of the rails shall at all times conform to the street grade (except where the change made is separation of grades). The City hereby reserves the right to change the grade of any public way at any time. When the City shall change the grade of the public ways, Grantee hereby agrees to waive any and all damages that it may sustain on account of having to readjust its tracks by reason of the change of grade. Grantee makes this waiver upon condition that any change of grade hereafter made by the City to the public ways designated in Section 2 herein shall not be unreasonable or such as to interfere with the proper and practical operation of Grantee's facilities after adjustment to the new grade.

Section 5. Abandonment of Facilities. If Grantee ceases to make use of its facilities within the public way for the purposes authorized by this franchise for a continuous period of one year or more and Grantee does not then intend to operate the facilities and has no federal common carrier or other obligation to maintain service, the facilities shall be deemed abandoned. Upon written notice to Grantee at its address indicated in its acceptance of this Ordinance, City may then require Grantee to remove the facilities and restore the public way at Grantee's sole cost and expense. If Grantee fails to commence removal within 90 days and remove the facilities and restore the public way within one year of receipt of notice from City, City may, at its option and in its sole discretion, remove the facilities from the public way and require Grantee to pay for the full cost of removal and restoration of the public way, or City may assume possession and ownership of the facilities. If Grantee removes the facilities from the public way but fails to restore the public way to its prior condition, City may complete the repairs and bill Grantee for the full cost thereof. Whenever used in this Section, the term "Grantee" shall mean Grantee or any successor railroad.

Section 6. Operation of Trains.

To the extent not preempted by federal law, in the maintenance and operation of its trains and facilities, Grantee shall comply with all applicable federal state and City laws, rules and regulations.

Section 7. Term of Franchise. The privileges and franchise herein granted shall continue and be in force for a period of twenty (20) years from and after the date this Ordinance becomes effective; provided, however, that either City or Grantee may, upon at least thirty (30) days written notice to the other prior to the expiration of each ten (10) year period from the effective date of this franchise, open this agreement to negotiate provisions therein including the right-of-way use/occupancy fee; and provided, however, that either City or Grantee may, at any time but upon at least thirty (30) days written notice to the other, open this agreement as necessary to negotiate provisions to address significant changes in applicable laws or uses of additional rights-of-way by Grantee. The negotiations and dispute resolution, if any, shall be governed by the principle that, to the extent possible, the terms of this franchise shall be consistent with local, state and federal law in existence at the time of renegotiation.

Section 8. Effective Date. This Ordinance shall take effect and be in force thirty (30) days after its passage and approval by the Mayor, or upon acceptance by Grantee, whichever is later. Grantee shall, within thirty (30) days of the passage and Mayor's approval of this Ordinance, file with the City Recorder its written acceptance of all the terms and conditions of this Ordinance. If no such acceptance is filed, this Ordinance shall become null and void.

Section 9. Franchise Fee. In consideration of the privileges and franchise granted, Grantee shall pay annually by June 30 of each calendar year an amount equal to \$5.00 per linear foot of public way used. The parties agree that the rights-of-way described in Section 2 herein

total 280 feet.

The payment of the franchise fee shall not be credited toward the payment of property taxes or payments in lieu thereof, nor toward any sales or income tax adopted by the City, nor toward any permit fees required by the Eugene Code, 1971.

Section 10. Taxes. Nothing in this Ordinance shall give Grantee any credit against any nondiscriminatory business tax or ad valorem property tax now or hereafter levied against real or personal property within City, or against any permit fees or inspection fees required by the construction Codes or other ordinances of City with are or may hereafter be adopted.

Section 11. Indemnification. Grantee shall indemnify, defend and save harmless the City and its officers, agents and employees from and against any and all claims, actions, suits, liability, loss, cost, expense, or damage of any kind or description which may accrue to or be suffered by the City by reason of the exercise of the rights and privileges herein by Grantee or Grantee's employees, agents or subcontractors.

Section 12. Insurance. Grantee shall have and maintain the insurance policies specified below. Each policy of insurance shall be written as a primary policy, not contributing with or in excess of any coverage which City may carry. ~~A copy of each policy or a certificate satisfactory to City~~ ***A letter of self-insurance*** shall be delivered to City prior to performance pursuant to this Ordinance. The adequacy of all insurance policies for compliance with this Section shall be subject to approval by City's Risk Manager. Failure to maintain any insurance coverage required by this Ordinance shall be cause for immediate termination by City of the rights and privileges granted by this Ordinance.

12.1 Unless otherwise specified, each policy shall be written on an "occurrence" form with an admitted insurance carrier licensed to do business in the state of Oregon; and shall

contain an endorsement entitling City to not less than 30 days prior written notice of cancellation. In the event the statutory limit of liability of a public body for claims arising out of a single accident or occurrence is increased above the combined single limit coverage requirements specified below, City shall have the right to require that Grantee increase the coverage limits of all liability policies by the amount of the increase in the statutory limit *with thirty (30) days written notice.*

12.2 Commercial General Liability. Grantee shall maintain a broad form commercial general liability insurance policy, including railway liability coverage, reflecting limits of not less than \$2,000,000 combined single limit per occurrence, with an annual aggregate of \$3,000,000 for bodily injury, personal injury or property damage. Such limits may be met in combination with umbrella insurance coverage. Such policy shall contain a contractual liability endorsement to cover Grantee's indemnification obligations under this Ordinance. The policy shall also contain an endorsement naming City as an additional insured, in a form satisfactory to City (blanket endorsement acceptable), and expressly providing that the interest of City shall not be affected by Grantee's breach of policy provisions.

~~12.3 Workers' Compensation Insurance. Grantee shall comply with the Oregon Workers' Compensation law by qualifying as a carrier insured employer or as a self insured employer and shall strictly comply with all other applicable provisions of such law. Grantee shall provide City with such further assurances as City may require from time to time that Grantee is in compliance with these Workers' Compensation coverage requirements and the Workers' Compensation law. Grantee is a subject employer that will comply with ORS 656.017.~~

Federal Employers Liability Insurance. Grantee shall comply with the Federal Employers Liability Insurance Act. Grantee is allowed to self-insure for such policy of insurance.

Grantee shall directly cover any self-insured retention or other financial responsibility for claims in lieu of insurance.

Section 13. Default and Termination. If Grantee fails to comply with or perform any of the requirements imposed on it by this franchise and City give written notice specifying the nature of Grantee's default and demanding that such default be remedied within a reasonable time to be fixed in such notice (but in no event less than 30 days), the rights and privileges granted by this franchise may be terminated and annulled by City if Grantee fails to remedy its default within the time specified. No waiver of any breach of this franchise shall be held to be a waiver of any other or subsequent breach of this franchise.

Section 14. Interpretation; Dispute Resolution.

14.1 Interpretation. This franchise shall be governed by and interpreted in accordance with the laws of the State of Oregon without regard to principles of conflict of laws.

14.2 Dispute Resolution. Grantee and City shall use all reasonable attempts to resolve disputes informally through conferral and negotiation. In the event such efforts are unsuccessful, the parties may mutually agree to voluntary mediation, in which case the parties shall share equally in all common costs of mediation.

14.3 Any litigation between the City and Grantee that arises from or relates to this franchise shall be brought and conducted solely and exclusively within the Lane County Circuit Court; provided, however, if a dispute must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon, Eugene Division. In no event shall this subsection be construed as a waiver by the City of any form of defense or immunity, whether sovereign immunity, governmental immunity or otherwise, from any claim or from the jurisdiction of any court.

Passed by the City Council this
_____ day of _____, 2021

City Recorder

Approved by the Mayor this
_____ day of _____, 2021

Mayor

ORDINANCE NO. _____

AN ORDINANCE GRANTING TO BNSF RAILWAY COMPANY A NON-EXCLUSIVE FRANCHISE TO USE THE PUBLIC WAY TO CONSTRUCT AND MAINTAIN PRIVATE COMMERCIAL FACILITIES WITHIN THE CITY OF EUGENE.

The City Council of the City of Eugene finds that:

A. On December 10, 2001, the Eugene City Council adopted Ordinance No. 20241 granting to Burlington Northern and Santa Fe Railway Company a non-exclusive 20-year Franchise to use the public way to construct and maintain private commercial facilities within the City of Eugene. That Franchise will expire on January 9, 2022.

B. In or around 2005, Burlington Northern and Santa Fe Railway Company changed its name to BNSF Railway Company.

C. The City of Eugene has determined that it serves the public welfare to enter into the new Franchise agreement with BNSF Railway Company set forth below.

NOW, THEREFORE,

THE CITY OF EUGENE DOES ORDAIN AS FOLLOWS:

Section 1. Definitions. As used in this Ordinance, the following words and phrases mean:

City. The City of Eugene, Oregon.

City Manager. The City Manager of the City or his or her designee.

Facilities. All tracks and associated structures located in the public way specified in Section 2 of this Franchise that are owned by Grantee for use by Grantee in providing rail services.

Grantee. BNSF Railway Company, a Delaware corporation, and its successors and assigns, and each of their respective lessees or rail operators.

Public way. Any street, road, alley, right-of-way, pedestrian or bicycle easement or utility easement for public use that is controlled by City.

Section 2. Use of Public Way. Subject to the provisions and restrictions of this Ordinance, the Eugene Code, 1971, and the applicable provisions of the Interstate Commerce Commission Termination Act of 1995 and other federal laws, rules and regulations as amended or replaced, City grants to Grantee the non-exclusive privilege to lay, construct, and maintain its present tracks and its present facilities, and to operate trains and cars thereover, and to transport passengers, freight and other materials upon the following named streets and places in the City:

Across all intervening streets southerly and easterly of the intersection of the right-of-way of Grantee and the northern city limits of the City, and extending southeasterly to the easterly line of the intersection of Grant Street and 5th Avenue, including the crossings of Grant Street, Garfield Street, Roosevelt Boulevard, Bethel Drive and Prairie Road.

Grantee agrees that, except in unusual circumstances such as equipment failures, it will not switch trains or cars on the streets of the City except as necessary to serve warehouses or other loading places. Grantee shall at all times maintain its facilities in a state of reasonably good repair and shall obtain and maintain a subscription to the Oregon Utility Notification Center (OUNC) for the duration of this franchise. All underground facilities shall be located and marked as required under OUNC standards.

Section 3. Use of Private Property. To the extent, if any, that it needs to do so and is authorized to do so, City grants to Grantee the right to maintain and operate cars over all private tracks and private property now occupied by it.

Section 4. Construction and Repairs in Public Way.

4.1 Grantee. City grants to Grantee the right to construct, re-erect, reconstruct, and maintain poles, wires, and other necessary and convenient equipment for the purpose of preserving and maintaining its present equipment for conveying power and electrical current for its own use, upon the designated streets, subject to reasonable and normal utility installation

requirements. It shall be Grantee's responsibility to locate and avoid all utilities located within Grantee's construction area, and Grantee shall be liable for any costs to repair or replace any utilities that may be damaged due to Grantee's construction or location of its facilities.

Underground abandoned facilities shall be mapped and located as required in OUNC standards.

Maps of all underground abandoned facilities shall be submitted to the City Engineer or designee for reference and shall not relieve the Grantee from the responsibility of locating or removing abandoned underground facilities. Grantee shall have the right to make all necessary excavations in any public way for the purpose of constructing and maintaining its facilities. To the extent not preempted by federal law, rules or regulations, Grantee's use of the public way shall comply with the standard specifications of the City, including, but not limited to the City of Eugene Manual on Traffic Control Devices, Signing, etc. for Construction and Maintenance on Streets and Highways, and the City of Eugene Policies and Procedures: Utility and Right-of-Way Permits, Construction Within and Use of the Public Way, and all other applicable Federal, State, and local laws, rules, and regulations. To the extent not preempted by federal law, rules or regulations, Grantee shall do no work affecting the public way without first obtaining the permits required by City, which may include plan submittal, approval and the payment of fees before work begins. Grantee shall furnish all necessary material and labor to install and maintain its facilities at its own expense.

4.2 City. Nothing in this Ordinance shall be construed in any way to prevent City from constructing and maintaining any public improvement in any public way, except that the City agrees that any public improvement in the public ways designated in Section 2 herein shall be constructed and maintained in such a manner as does not unreasonably interfere with the free and unobstructed use by Grantee of its facilities in the public ways.

4.3 Grantee shall construct and maintain its tracks in the public ways designated in Section 2 herein so that the top of the rails shall at all times conform to the street grade (except where the change made is separation of grades). The City hereby reserves the right to change the grade of any public way at any time. When the City shall change the grade of the public ways, Grantee hereby agrees to waive any and all damages that it may sustain on account of having to readjust its tracks by reason of the change of grade. Grantee makes this waiver upon condition that any change of grade hereafter made by the City to the public ways designated in Section 2 herein shall not be unreasonable or such as to interfere with the proper and practical operation of Grantee's facilities after adjustment to the new grade.

Section 5. Abandonment of Facilities. If Grantee ceases to make use of its facilities within the public way for the purposes authorized by this franchise for a continuous period of one year or more and Grantee does not then intend to operate the facilities and has no federal common carrier or other obligation to maintain service, the facilities shall be deemed abandoned. Upon written notice to Grantee at its address indicated in its acceptance of this Ordinance, City may then require Grantee to remove the facilities and restore the public way at Grantee's sole cost and expense. If Grantee fails to commence removal within 90 days and remove the facilities and restore the public way within one year of receipt of notice from City, City may, at its option and in its sole discretion, remove the facilities from the public way and require Grantee to pay for the full cost of removal and restoration of the public way, or City may assume possession and ownership of the facilities. If Grantee removes the facilities from the public way but fails to restore the public way to its prior condition, City may complete the repairs and bill Grantee for the full cost thereof. Whenever used in this Section, the term "Grantee" shall mean Grantee or any successor railroad.

Section 6. Operation of Trains.

To the extent not preempted by federal law, in the maintenance and operation of its trains and facilities, Grantee shall comply with all applicable federal state and City laws, rules and regulations.

Section 7. Term of Franchise. The privileges and franchise herein granted shall continue and be in force for a period of twenty (20) years from and after the date this Ordinance becomes effective; provided, however, that either City or Grantee may, upon at least thirty (30) days written notice to the other prior to the expiration of each ten (10) year period from the effective date of this franchise, open this agreement to negotiate provisions therein including the right-of-way use/occupancy fee; and provided, however, that either City or Grantee may, at any time but upon at least thirty (30) days written notice to the other, open this agreement as necessary to negotiate provisions to address significant changes in applicable laws or uses of additional rights-of-way by Grantee. The negotiations and dispute resolution, if any, shall be governed by the principle that, to the extent possible, the terms of this franchise shall be consistent with local, state and federal law in existence at the time of renegotiation.

Section 8. Effective Date. This Ordinance shall take effect and be in force thirty (30) days after its passage and approval by the Mayor, or upon acceptance by Grantee, whichever is later. Grantee shall, within thirty (30) days of the passage and Mayor's approval of this Ordinance, file with the City Recorder its written acceptance of all the terms and conditions of this Ordinance. If no such acceptance is filed, this Ordinance shall become null and void.

Section 9. Franchise Fee. In consideration of the privileges and franchise granted, Grantee shall pay annually by June 30 of each calendar year an amount equal to \$5.00 per linear foot of public way used. The parties agree that the rights-of-way described in Section 2 herein

total 280 feet.

The payment of the franchise fee shall not be credited toward the payment of property taxes or payments in lieu thereof, nor toward any sales or income tax adopted by the City, nor toward any permit fees required by the Eugene Code, 1971.

Section 10. Taxes. Nothing in this Ordinance shall give Grantee any credit against any nondiscriminatory business tax or ad valorem property tax now or hereafter levied against real or personal property within City, or against any permit fees or inspection fees required by the construction Codes or other ordinances of City with are or may hereafter be adopted.

Section 11. Indemnification. Grantee shall indemnify, defend and save harmless the City and its officers, agents and employees from and against any and all claims, actions, suits, liability, loss, cost, expense, or damage of any kind or description which may accrue to or be suffered by the City by reason of the exercise of the rights and privileges herein by Grantee or Grantee's employees, agents or subcontractors.

Section 12. Insurance. Grantee shall have and maintain the insurance policies specified below. Each policy of insurance shall be written as a primary policy, not contributing with or in excess of any coverage which City may carry. A letter of self-insurance shall be delivered to City prior to performance pursuant to this Ordinance. The adequacy of all insurance policies for compliance with this Section shall be subject to approval by City's Risk Manager. Failure to maintain any insurance coverage required by this Ordinance shall be cause for immediate termination by City of the rights and privileges granted by this Ordinance.

12.1 Unless otherwise specified, each policy shall be written on an "occurrence" form with an admitted insurance carrier licensed to do business in the state of Oregon; and shall contain an endorsement entitling City to not less than 30 days prior written notice of

cancellation. In the event the statutory limit of liability of a public body for claims arising out of a single accident or occurrence is increased above the combined single limit coverage requirements specified below, City shall have the right to require that Grantee increase the coverage limits of all liability policies by the amount of the increase in the statutory limit with thirty (30) days written notice.

12.2 Commercial General Liability. Grantee shall maintain a broad form commercial general liability insurance policy, including railway liability coverage, reflecting limits of not less than \$2,000,000 combined single limit per occurrence, with an annual aggregate of \$3,000,000 for bodily injury, personal injury or property damage. Such limits may be met in combination with umbrella insurance coverage. Such policy shall contain a contractual liability endorsement to cover Grantee's indemnification obligations under this Ordinance. The policy shall also contain an endorsement naming City as an additional insured, in a form satisfactory to City (blanket endorsement acceptable), and expressly providing that the interest of City shall not be affected by Grantee's breach of policy provisions.

12.3 Federal Employers Liability Insurance. Grantee shall comply with the Federal Employers Liability Insurance Act. Grantee is allowed to self-insure for such policy of insurance. Grantee shall directly cover any self-insured retention or other financial responsibility for claims in lieu of insurance.

Section 13. Default and Termination. If Grantee fails to comply with or perform any of the requirements imposed on it by this franchise and City give written notice specifying the nature of Grantee's default and demanding that such default be remedied within a reasonable time to be fixed in such notice (but in no event less than 30 days), the rights and privileges granted by this franchise may be terminated and annulled by City if Grantee fails to remedy its

default within the time specified. No waiver of any breach of this franchise shall be held to be a waiver of any other or subsequent breach of this franchise.

Section 14. Interpretation; Dispute Resolution.

14.1 Interpretation. This franchise shall be governed by and interpreted in accordance with the laws of the State of Oregon without regard to principles of conflict of laws.

14.2 Dispute Resolution. Grantee and City shall use all reasonable attempts to resolve disputes informally through conferral and negotiation. In the event such efforts are unsuccessful, the parties may mutually agree to voluntary mediation, in which case the parties shall share equally in all common costs of mediation.

14.3 Any litigation between the City and Grantee that arises from or relates to this franchise shall be brought and conducted solely and exclusively within the Lane County Circuit Court; provided, however, if a dispute must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon, Eugene Division. In no event shall this subsection be construed as a waiver by the City of any form of defense or immunity, whether sovereign immunity, governmental immunity or otherwise, from any claim or from the jurisdiction of any court.

Passed by the City Council this
_____ day of _____, 2021

Approved by the Mayor this
_____ day of _____, 2021

City Recorder

Mayor

EUGENE CITY COUNCIL AGENDA ITEM SUMMARY



Action: An Ordinance Concerning the Crime of Intimidation by Display of a Noose and Increasing the Maximum Penalty for Violating Section 4.731 of the Eugene Code, 1971 (Bias Crime in the 2nd Degree); Adding Section 4.732 to the Eugene Code, 1971; and Amending Section 4.990 of that Code

Meeting Date: November 22, 2021
Department: City Attorney's Office
www.eugene-or.gov

Agenda Item Number: 5
Staff Contact: Kathryn Brotherton
Contact Telephone Number: 541-682-8447

ISSUE STATEMENT

This is an opportunity for the City Council to consider adopting an ordinance to add the crime of Intimidation by Display of a Noose and to increase the maximum penalty for violating Eugene Code 4.731 (Bias in the 2nd Degree).

BACKGROUND

On April 21, 2021, the City Council amended EC 4.731 to reflect the changes made by the state legislature in 2019 through SB 577; specifically, by changing the crime from "Intimidation in the Second Degree" to "Bias Crime in the Second Degree" and adding the categories of gender identity and disability to the list of characteristics that can give rise to a bias crime. Also on April 21, the City Council further expanded the list of categories beyond those set forth in state statute by adding unhoused status to the list. The City's Bias Crime in the Second Degree, EC 4.731, has a maximum penalty of \$2,500 or 1 year in jail, or both. For the parallel state crime of bias in the second degree, state statute allows for a penalty of up to \$6,250 or 1 year in jail, or both.

On June 11, 2021, Governor Brown signed SB 398, creating the Class A misdemeanor of "crime of intimidation by display of a noose." While SB 398 will go into effect on January 1, 2022, the City Council could adopt an identical law that goes into effect sooner.

On July 26, 2021, the City Council held a work session in response to a Council-initiated poll to discuss the City of Eugene's response to hate crimes, potential options for increasing penalties for hate crimes, and/or other means of deterring these crimes in the community. At that work session the City Council adopted motions directing the City Manager to prepare an ordinance and schedule a public hearing to add the crime of intimidation by display of noose, mirroring Oregon SB 398 and increase the maximum monetary penalty for violating EC 4.731 to \$6,250.00.

On October 18, 2021, the City Council held a public hearing on the proposed ordinance. No one from the public spoke at the public hearing.

PREVIOUS COUNCIL DIRECTION

[October 18, 2021, Public Hearing on an Ordinance Concerning the Crime of Intimidation by Display of a Noose and Increasing the Maximum Penalty for Violating Section 4.731.](#)

[July 26, 2021, Work Session, Response to Hate Crimes](#)

Move to direct the City Manager to prepare an ordinance and schedule a public hearing on a code amendment adding the crime of intimidation by display of noose. Passed: 8-0

Move to direct the City Manager to prepare an ordinance and schedule a public hearing increasing the maximum monetary penalty for violating EC 4.731 to \$6,250. Passed: 8-0

COUNCIL OPTIONS

1. Adopt the ordinance considered at the October 18, 2021, public hearing and as set forth in Attachment A.
2. Direct the City Manager to return to Council with additional information or ordinance revisions.

MOTION

Move to adopt Attachment A to this AIS, An Ordinance Concerning the Crime of Intimidation by Display of a Noose and Increasing the Maximum Penalty for Violating Section 4.731 of the Eugene Code, 1971 (Bias Crime in the 2nd Degree); Adding Section 4.732 to the Eugene Code, 1971; and Amending Section 4.990 of that Code.

CITY MANAGER RECOMMENDATION

The City Manager recommends adopting the proposed ordinance set forth in Attachment A.

ATTACHMENT

- A. Ordinance: An Ordinance Concerning the Crime of Intimidation by Display of a Noose and Increasing the Maximum Penalty for Violating Section 4.731 of the Eugene Code, 1971 (Bias Crime in the 2nd Degree); Adding Section 4.732 to the Eugene Code, 1971; and Amending Section 4.990 of that Code.

FOR MORE INFORMATION

Staff Contact: Kathryn Brotherton
 Telephone: 541-682-8447
 Staff E-Mail: kbrotherton@eugene-or.gov

ORDINANCE NO. _____

AN ORDINANCE CONCERNING THE CRIME OF INTIMIDATION BY DISPLAY OF A NOOSE AND INCREASING THE MAXIMUM PENALTY FOR VIOLATING SECTION 4.731 OF THE EUGENE CODE, 1971 (BIAS CRIME IN THE 2ND DEGREE); ADDING SECTION 4.732 TO THE EUGENE CODE, 1971; AND AMENDING SECTION 4.990 OF THAT CODE.

THE CITY OF EUGENE DOES ORDAIN AS FOLLOWS:

Section 1. Section 4.732 of the Eugene Code, 1971, is added to provide as follows:

4.732 Intimidation by Display of a Noose.

- (1) ***A person commits the crime of intimidation by display of a noose if:***
- (a) ***The person, with the intent to intimidate another person or place another person in fear of imminent bodily harm, knowingly places a noose:***
 - 1. ***On public property; or***
 - 2. ***On private property without the written consent of the property owner;***
 - (b) ***The other person is intimidated or placed in fear of imminent bodily harm by the display; and***
 - (c) ***A reasonable person would be intimidated or placed in fear of imminent bodily harm by the display.***
- (2) ***As used in this section:***
- (a) ***“Intimidate” means to threaten another person in a manner that compels or deters the other person’s conduct.***
 - (b) ***“Noose” means a tied loop in the end of a length of rope or cord.***

Section 2. Subsection (1) of Section 4.990 of the Eugene Code, 1971, is amended by amending the penalty for violation of Section 4.731 of the Eugene Code, 1971, and adding a penalty for violation of Section 4.732 of that Code to provide as follows:

4.990 Penalties – Specific.

- (1) Violation of the following sections is punishable by fine or confinement in jail, or both, up to the amounts indicated opposite each. In addition, the court may order any treatment,

related to the violation, deemed necessary for rehabilitation of the offender and the safety of the community.

Section	Penalty
4.731	[2,500] 6,250 fine or 1 year in jail, or both
4.732	6,250 fine or 1 year in jail, or both

Section 3. The City Recorder, at the request of, or with the consent of the City Attorney, is authorized to administratively correct any reference errors contained herein, or in other provisions of the Eugene Code, 1971, to the provisions added, amended or repealed herein.

Passed by the City Council this

____ day of _____, 2021

City Recorder

Approved by the Mayor this

____ day of _____, 2021

Mayor