



Eugene City Council

101 W 10th Ave., Suite 203
Eugene, OR 97401
541-682-5010 • 541-682-5414 Fax
www.eugene-or.gov

EUGENE CITY COUNCIL AGENDA

September 20, 2021

7:30 p.m. CITY COUNCIL PUBLIC HEARING

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 September 20, 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 PUBLIC HEARING

- 1. Presentation of Oregon Mayors' Association Award**
- 2. PUBLIC HEARING: An Ordinance Extending the Term of Ordinance No. 19775 and Ordinance No. 20397 Granting to Comcast of Oregon II, Inc. a Franchise for Operation of a Cable Telecommunications System**
- 3. PUBLIC HEARING: 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**
- 4. PUBLIC HEARING: An Ordinance Vacating Ferry Alley Between East 3rd Avenue and East 2nd Alley, and Providing for an Effective Date**

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



Public Hearing: An Ordinance Extending the Term of Ordinance No. 19775 and Ordinance No. 20397 Granting to Comcast of Oregon II, Inc. a Franchise for Operation of a Cable Telecommunications System

Meeting Date: September 20, 2021
Department: Central Services
www.eugene-or.gov

Agenda Item Number: 2
Staff Contact: Pam Berrian
Contact Telephone Number: 541-682-5590

ISSUE STATEMENT

The purpose of this public hearing is to provide an opportunity for public comment regarding the proposed ordinance extending Comcast's cable television franchise agreement until December 31, 2022. Without the extension, the franchise agreement will expire on December 31, 2021. This ordinance would only extend the term of the franchise; all other franchise terms and conditions would remain the same.

BACKGROUND

The Franchise

City of Eugene, the City of Springfield, and Lane County together granted Comcast of Oregon II, Inc. ("Comcast") a franchise for the operation of a cable communications system (Eugene Ordinance No. 19775). In 2007, the three entities amended and renewed Comcast's franchise (Eugene Ordinance No. 20397) through August 1, 2018.

The Extensions to date

The term of the franchise has been extended several times, most recently to December 31, 2021, by Ordinance No. 20629. Initially, the extensions were necessary due to the fact that while Eugene, Springfield and Lane County staff had been negotiating in good faith with Comcast about the renewal terms and provided progress updates to the Cable Commission, delays occurred while staff tried to resolve a dispute with Comcast arising from a franchise fee review the jurisdictions conducted. That resulted in staff simultaneously dealing with fee review issues for the current franchise and trying to negotiate policy and operational terms for the franchise renewal. Delays also occurred due to the loss of Comcast personnel who had been working on the franchise renewal.

Thereafter, the Federal Communications Commission (FCC) adopted in 2019 a final order and rules regarding cable regulation (FCC Cable Order) that is unfavorable to local government franchising authorities and affects franchise negotiations. For example, the order not only allows cable operators to offset from their 5% franchise fees the value of "cable related, in-kind contributions," like free service or cable boxes in government buildings, it prohibits local

franchising agencies from charging cable operators additional fees - aside from the 5% cable franchise fee - for use of the public rights-of-way to provide other services, including broadband internet. To date, Comcast has not implemented any cable franchise fee reduction nor provided notice of when it may choose to do so.

Numerous local franchising authorities, including the City of Eugene, filed a lawsuit challenging the FCC Cable Order. Although the Sixth Circuit Court of Appeals recently ruled primarily in favor of the FCC and the cable industry and upheld the majority of the order, additional litigation or petitions are likely to be filed in the case and will not be decided before the current franchise expires on December 31, 2021.

Therefore, the three jurisdictions believe additional time is needed to allow for the potential litigation to be completed before agreeing to a new 10-year franchise term. Comcast is also agreeable to this proposed one-year cable franchise extension.

This proposed extension ordinance would extend only the term of the current franchise to December 31, 2022. All other franchise terms and conditions would remain the same, including Comcast's obligation to pay franchise fees for use of the rights of way, which is capped under federal law at five percent of gross revenues earned from providing cable TV services within Eugene City limits. The fees collected from the cable franchise are allocated to the General Fund and are used for general purposes. There are no anticipated costs as a result of the proposed extension.

When negotiations are completed, the proposed franchise renewal agreement will be brought to the City Council for action as an ordinance, with a likely term of 10 years.

PREVIOUS COUNCIL DIRECTION

City Telecommunication Vision and Policy: The City of Eugene's telecommunications vision is completion and operation of a coordinated regional information infrastructure that provides accessible and affordable high-speed connectivity for citizens, public institutions and businesses and is constructed in a manner that best serves the public interest.

Telecommunications Ordinance, Eugene Code 3.005, 3.400 to 3.430.

Ordinance No. 20397, An Ordinance Granting Comcast of Oregon II, Inc., An Additional Term and Franchise Renewal For The Operation Of A Cable Communications System; Amending Ordinance 19775; Adopting A Severability Clause; And Providing an Effective Date.

COUNCIL OPTIONS

This item is scheduled for public hearing only. Council action on the proposed ordinance to extend the franchise term is scheduled for October 11, 2021.

CITY MANAGER'S RECOMMENDATION

No recommendation is provided at this time. A recommendation will be provided for the scheduled action on October 11, 2021.

ATTACHMENTS

- A. Table of Negotiation Issues (many of which have been tentatively agreed upon)
- B. Proposed Extension Ordinance

FOR MORE INFORMATION

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

Section	Issue	Comcast Proposal	LFA Response	Current Status 7/18/18
Section 3	Definition of gross revenues	MACC definition, adding late fee language	Stay with MACC definition originally proposed by Comcast	Add Comcast language stating late fees are prorated based on aggregate pro rata calculation
Section 5(1)	Channel capacity	Change capacity from 35 to 120 channels	OK	OK
Section 5(2)	Service to Institutions	Allow Comcast to elect to offset complimentary service against franchise fees	No basis upon which to agree; remove last two sentences of that paragraph	Grandfathering in existing buildings plus 3 additional new buildings per jurisdiction
Section 5(4)	Number of channels in HD	When channel is averaging 25 hours per week of programming, must be provided in HD	OK	OK
Section 5(4)(b)	Number of digital converters for public safety channel	Drop from 75 to 50	Keep 75 or same as last 10 years; agree to not increase despite anticipated growth in internal viewing locations.	60
Section 7(3)	Expansion of Service	Delete requirement for expansion plan	OK, but keep requirement for boundary maps.	OK
Section 7(4)	Extension of System	Delete	Keep all language after first sentence.	OK
Section 9(8)(a)	Forced relocates	Call for reimbursement of temporary removal of equipment	No basis upon which to agree; remove proposed new language (last sentence of subsection)	Remove language; perhaps insert language from Eugene code re forced relocates based on reasonable necessity
Section 10(4)	Cap on cost of fee review	Where Comcast underpays by 5% or more, Comcast pay only up to \$15,000 of fee review	No \$ cap, limited to 2 reviews per franchise term ¹	No threshold trigger; Comcast pays a total of \$45,000 fees per 10 year term

¹ The LFA is not comfortable relying on a percentage of underpayment to justify Comcast's contribution to the cost of the audit. In the current franchise, the LFA agreed with Comcast's proposal to conduct only one per franchise term if Comcast paid for the review. The MACC franchise limits Comcast to paying \$15,000 per review, but allows a review to occur every two years. The LFA is proposing to limit the number of reviews to two per the franchise term, and proposes that Comcast pay for those two reviews. The LFA would consider capping each of those reviews at \$50,000.

ATTACHMENT A

Section	Issue	Comcast Proposal	LFA Response	
Section 10(5)	PEG fees	Delete; duplicative language	OK	OK
Section 10(6)	Comcast to pay LFA's financial and legal fees	Delete	OK ²	OK
Section 10(8)	Pass through charges	Delete	Keep calculation, revise last paragraph ³	Retain only language that require Comcast to notify MPC of rates
Section 12	Customer Service	Delete Section 12, replace with Customer Service Addendum, which includes ability to close Eugene office	Retain Section 12, adopt revisions of Addendum specifying it is intended to complement but does not preempt Section 12. See attachment A. Eugene office to remain open during term of franchise.	Remove Addendum; retain Section 12; insert store language revised by Kristina into the franchise
Section 13(1)(g)	Certification of annual report	Allow certification to be done by Comcast, not independent CPA	No, retain the independent review	OK to have Comcast do own in house certification
Section 16(2)(b)	Definition of fee review and audit	Comcast disagreed to proposed language stating a fee review is not an audit	LFA proposes to provide only for an "audit," (no distinction between fee review and audit) which will be allowed twice during term, with 3 year look back that will apply for all years preceding audit. Performance review language in the franchise is not changed.	No distinction in audit v. fee review; limited to 2 per term;

² This assumes the determination of who pays for certain fees will be spelled out clearly in other sections of the franchise. For instance, Comcast would pay at least some portion of LCOG's fees, as it agreed to do in this review.

³ FCC Form 1240 Instructions sets forth the method for annual updating of pass through rates. The language proposed by the LFA mirrors those instructions, spells out how the rate will be changed, and provides for notification to the commission. The last paragraph provides the remedy for challenging the pass through rate. The 5-year time for challenging the rate was based on the one-time "fee review" in the current franchise. It might make sense to require the LFA to challenge the rate at or before the next scheduled fee review.

ATTACHMENT A

Section 16(2)(c)(iv)	Summary of FCC regs	Remove requirement to summarize new FCC regs in annual report.	OK	OK
Section 16(2)(d)	Comcast presentation to MPC	Allows Comcast to address MPC	OK to clarify Comcast's ability to comment before MPC	OK
Miscellaneous				
\$30,000 for HD upgrades Side Letter which is linked legally to adoption of renewal franchise Ord.		OK	Will not count toward 5% franchise fees	OK
\$50,000 to Springfield Library for closure of Springfield Customer Service site during the term. Side Letter		OK, provided \$25,000 of the \$50,000 for ARC project	Springfield staff will discuss this ARC project proposal with its city council at next opportunity. Will not count toward 5% franchise fees	\$75,000
Competitive Equity		Addendum requires equity for services not covered by the Cable Act and not appropriately covered by this franchise agreement	LFA does not accept the rationale for any such provision under current law. However, it potentially will accept that sort of addendum as revised in draft; see attachment B	Revised by Tim Lay version
Fee Review				Comcast pay fee review-- \$35,000 LCOG--\$23,000 ½ of difference

ORDINANCE NO. _____

AN ORDINANCE EXTENDING THE TERM OF ORDINANCE NO. 19775 AND ORDINANCE NO. 20397 GRANTING TO COMCAST OF OREGON II, INC. A FRANCHISE FOR OPERATION OF A CABLE TELECOMMUNICATIONS SYSTEM.

The City Council of the City of Eugene finds that:

A. The federal Cable Act requires a franchise for the operation of cable telecommunications systems and provides for a formal or informal renewal process under the Cable Act.

B. The Cities of Eugene and Springfield, together with Lane County, granted a franchise to Comcast of Oregon II, Inc. (“Comcast”) for the operation of a cable communication system, and have designated the Metropolitan Policy Commission (MPC), acting as the cable commission, as the representative of the local franchising authorities in administration of the franchise.

C. The City of Eugene enacted Ordinance No. 19775 on May 13, 1991, granting the franchise.

D. The City of Eugene enacted Ordinance No. 20397 on October 22, 2007, amending and renewing the franchise through August 1, 2018.

E. The term of the franchise has since been extended several times, most recently by Ordinance No. 20629, adopted on April 27, 2020, which extended the franchise through December 31, 2021. The Cities of Eugene and Springfield, Lane County, and Comcast agreed that the extensions were needed for several reasons, including but not limited to, delays in negotiations due to difficulties resolving a franchise fee review, which has since been resolved; and the Federal Communications Commission (FCC) adopting in 2019 a final order and rules regarding cable regulation (FCC Cable Order) that is unfavorable to local government franchising authorities and affects franchise negotiations.

F. Numerous local franchising authorities, including the City of Eugene, filed a lawsuit challenging the FCC Cable Order. Although the Sixth Circuit Court of Appeals recently ruled primarily in favor of the FCC and the cable industry, and upheld the majority of the order, additional litigation or petitions are likely to be filed in the case and will not be decided before the current franchise expires on December 31, 2021.

G. The Cities of Eugene and Springfield, Lane County, and Comcast continue good faith negotiations under the Cable Act’s informal process to renew Comcast’s cable franchise. However, the parties anticipate that because of the likely additional litigation challenging the FCC Cable Order as well as the number of remaining unresolved franchise issues, those negotiations will not be completed in a timeframe that would allow the City of Eugene to adopt a franchise renewal by December 31, 2021.

H. The Cities of Springfield and Eugene, and Lane County have determined that it serves the public welfare to extend the term of the current franchise from December 31, 2021, up to and through December 31, 2022.

NOW, THEREFORE,

THE CITY OF EUGENE DOES ORDAIN AS FOLLOWS:

Section 1. The franchise granted to Comcast in Ordinance No. 19775 and Ordinance No. 20397 shall be extended up to and through December 31, 2022.

Section 2. The City of Eugene and Comcast agree that execution of this extension does not waive any rights that either party may have under the Cable Communications Policy Act of 1984, as amended, 47 U.S.C. §§ 521 *et seq.*, or other provision of federal, state, or local law.

Section 3. Other than the duration of the franchise set forth herein, Ordinance No. 19775 and Ordinance No. 20397 shall continue in full force and effect.

Passed by the City Council this

_____ day of _____, 2021

City Recorder

Approved by the Mayor this

_____ of _____, 2021

Mayor

EUGENE CITY COUNCIL AGENDA ITEM SUMMARY



Public Hearing: 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: September 20, 2021

Agenda Item Number: 3

Department: Public Works & Central Services

Staff Contact: Jonathon Patrick, Pam Berrian

www.eugene-or.gov

Contact Telephone Number: 541-682-6854, 541-682-5590

ISSUE STATEMENT

The council is asked to conduct a public hearing 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.

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

A public hearing before the City Council is scheduled for September 20, 2021. Action by the City Council is scheduled for October 11, 2021. 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 payment would be due in calendar year 2022 and the franchise will be managed by the Public Works Department.

COUNCIL OPTIONS

1. The council may choose to forego consideration of a franchise renewal.
2. The council may conduct the public hearing on the franchise ordinance, as prepared.

CITY MANAGER'S RECOMMENDATION

The City Manager recommends Option #2. The permitted use of the ROW is 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.

ATTACHMENTS

- A. Ordinance

FOR MORE INFORMATION

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

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

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.

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



Public Hearing: An Ordinance Vacating Ferry Alley Between East 3rd Avenue and East 2nd Alley, and Providing for an Effective Date

Meeting Date: September 20, 2021
Department: Planning and Development
www.eugene-or.gov

Agenda Item Number: 4
Staff Contact: Nicholas Gioello
Contact Telephone Number: 541-682-5453

ISSUE STATEMENT

The City Council will hold a public hearing on a right-of-way vacation request submitted by Jeff Wilson-Charles. The requested vacation of improved public right-of-way consists of Ferry Alley located between East 3rd Avenue and East 2nd Alley (City File VRI 21-1). A vicinity map and aerial photo of the alley vacation request is provided as Attachment A.

BACKGROUND

The applicant has requested a vacation of the Ferry Alley public right-of-way to create a "woonerf", also known as a "living street", providing a mix of parking, traffic calming devices, and landscaped outdoor spaces.

The area to be vacated is approximately 2,240 square feet of public right-of-way and currently serves as alley access for properties north of East 3rd Avenue, between Mill Street and the Ferry Street Bridge. The applicant indicates the proposed alley vacation will maintain through access for vehicles and provide an opportunity for pedestrians and cyclists to utilize the enhanced outdoor space of the adjacent businesses, which the applicant owns.

More details on this request can be found in the full record of application materials to date, which will be provided separately to Councilors on a thumb-drive. Otherwise, application materials can be made available to the public in hardcopy or electronic format upon request. These materials can also be accessed online here:

<https://pdd.eugene-or.gov/LandUse/SearchApplicationDocuments?file=VRI-21-0001>

City Council Process

The vacation request process serves as a means to evaluate the need for public ways as land develops and uses change over time, and to address the manner in which the City may dispense with public ways. This request for vacation is being considered in accordance with sections 9.8700 – 9.8725 of the Eugene Code (EC) and Oregon Revised Statutes (ORS) 271.080 – 271.230 and processed pursuant to EC 9.7445 – 9.7455. The public hearing is being conducted consistent with quasi-judicial procedures in State law and as set forth in EC 9.7065 – 9.7095.

Sept. 20, 2021 Public Hearing – Item 4

Notice of public hearing for the requested alley vacation has been provided in the following manner: on August 20, 2021, notice was mailed to owners of property within 100 feet of the alley, interested parties, and the officially recognized neighborhood group, the Downtown Neighborhood Association; on September 3, 2021, the property was posted in the immediate vicinity of the requested alley vacation; and on September 6, 2021 and September 13, 2021, legal notice was published in *The Register-Guard* newspaper.

No public testimony has been received at this time. Any additional written testimony received prior to close of the public record will be forwarded to City Council for consideration.

Consent of Abutting and Affected Property Owners

In accordance with ORS 271.080, the applicant has provided evidence of consent to the vacation from owners of at least two-thirds of the property within the affected area. In this case, the affected area per State law is the land lying on either side of the vacated area to the next lateral street, and 400 feet beyond each terminus of the alley to be vacated.

Based on the signed consent forms submitted with the application, the applicant has obtained consent for the proposed alley vacation from the property owners of 100 percent of the affected area, which exceeds the minimum requirements of ORS 271.080 and EC 9.8710.

ORS 271.080 also requires the applicant to obtain concurrence from all abutting property owners. All properties abutting the proposed alley vacation are owned by the Three Muses Group, LLC, of which Jeff Wilson-Charles is the registered agent for the LLC.

A map showing the affected area, and the area of property owner consent, is included as Attachment B.

Utilities

Public Works has reviewed this application and the surrounding facilities and infrastructure affected by the request. Concurrences from franchise utilities including Eugene Water and Electric Board and Northwest Natural have been included with the application. The alley in its current condition includes underground wastewater, gas lines and a portion of overhead electric (which may be buried in the future). It is therefore in the public interest that prior to final approval, a Public Utility Easement (PUE) be approved over the entire alley being vacated to provide the City and utility companies the necessary perpetual ownership for the operation and maintenance of public utilities that remain in the vacated area.

Circulation and Access

Analysis from Public Works staff confirms the surrounding street network is a traditional blocked street grid, which provides ample street connectivity as required by Eugene Code and negates the need for a secondary public thoroughfare. Because of the existing local street grid, the alley to be vacated does not provide significant public transportation benefit and does not impede the street connection system or fire access to surrounding streets, businesses, and residences.

The vacation of Ferry Alley does not adversely affect direct access to the surrounding street system for any abutting properties. All lots abutting the right-of-way proposed for vacation have frontage and access connections in accordance with Eugene Code on either East 3rd Avenue, Mill Street or East 2nd Alley. As there are existing public streets and an alley providing vehicular and pedestrian access to the lots, public vehicular and pedestrian circulation on adjoining streets will not be compromised as a result of the vacation. Public Works staff supports the right of way vacation from the perspective of providing adequate transportation facilities and services.

Determination of Assessment

Pursuant to EC 9.8710(5), the applicant is required to pay a deposit equal to the assessment of special benefit resulting from the vacation. The amount of money to be deposited is to be determined by the City Manager. The City provided a notice to the applicant of the assessment more than 20 days prior to the public hearing, in accordance with code requirements. The assessment was determined to be a total of \$33,550, which considered the value of the land area to be vacated, less the value of the public utility easement (PUE) to be reserved over the vacated area. At least five (5) working days prior to the public hearing, the applicant must submit a deposit of the full assessed amount with the City. If the application is approved and the vacation becomes effective, the deposit will be retained by the City; if the application is denied or the vacation fails to take effect for another reason, the deposit will be returned to the applicant.

Applicable Criteria

The Eugene City Council must determine whether the consent of the owners of the requisite area has been obtained and whether notice has been duly given, and must address the relevant approval criterion from EC 9.8725 in making a decision on the proposed right-of-way vacation, as listed below in *italics*. Findings demonstrating compliance with these requirements can be found in Attachment C, Exhibit C of the Draft Ordinance.

The city council shall approve, or approve with conditions and reservations of easements, the vacation of improved public right-of-way, public ways acquired with public funds, or undeveloped subdivision and partition plats, or portions thereof, including public right-of-way and improved public easements located therein, only if the council finds that approval of the vacation is in the public interest.

COUNCIL OPTIONS

No action is required at this time; however, options will be provided at the time of City Council deliberations and action scheduled for October 11, 2021.

CITY MANAGER'S RECOMMENDATION

This item is scheduled for a public hearing only. Following the public hearing and City's receipt of any testimony, the City Manager will make a recommendation to be included in the Council packet for deliberations and action on October 11, 2021.

ATTACHMENTS

- A. Vicinity Map and Aerial Map of Vacation Request
- B. Map of Affected Area and the Area of Property Owner Consent
- C. Draft Ordinance
 - a) Exhibit A – Legal Description
 - b) Exhibit B – Site Plan
 - c) Exhibit C – Findings

FOR MORE INFORMATION

Staff Contact: Nicholas Gioello, Associate Planner
Telephone: 541-682-5453
Staff E-Mail: NGioello@eugene-or.gov

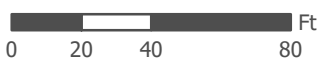
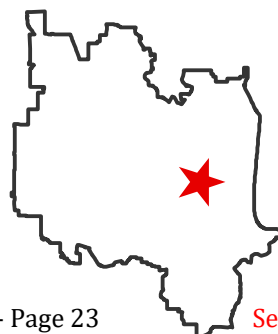




□ Taxlots

▣ Eugene UGB

Caution: This map is based on imprecise source data, subject to change, and for general reference only.

Created on 8/17/2021
by City of Eugene Planning Division



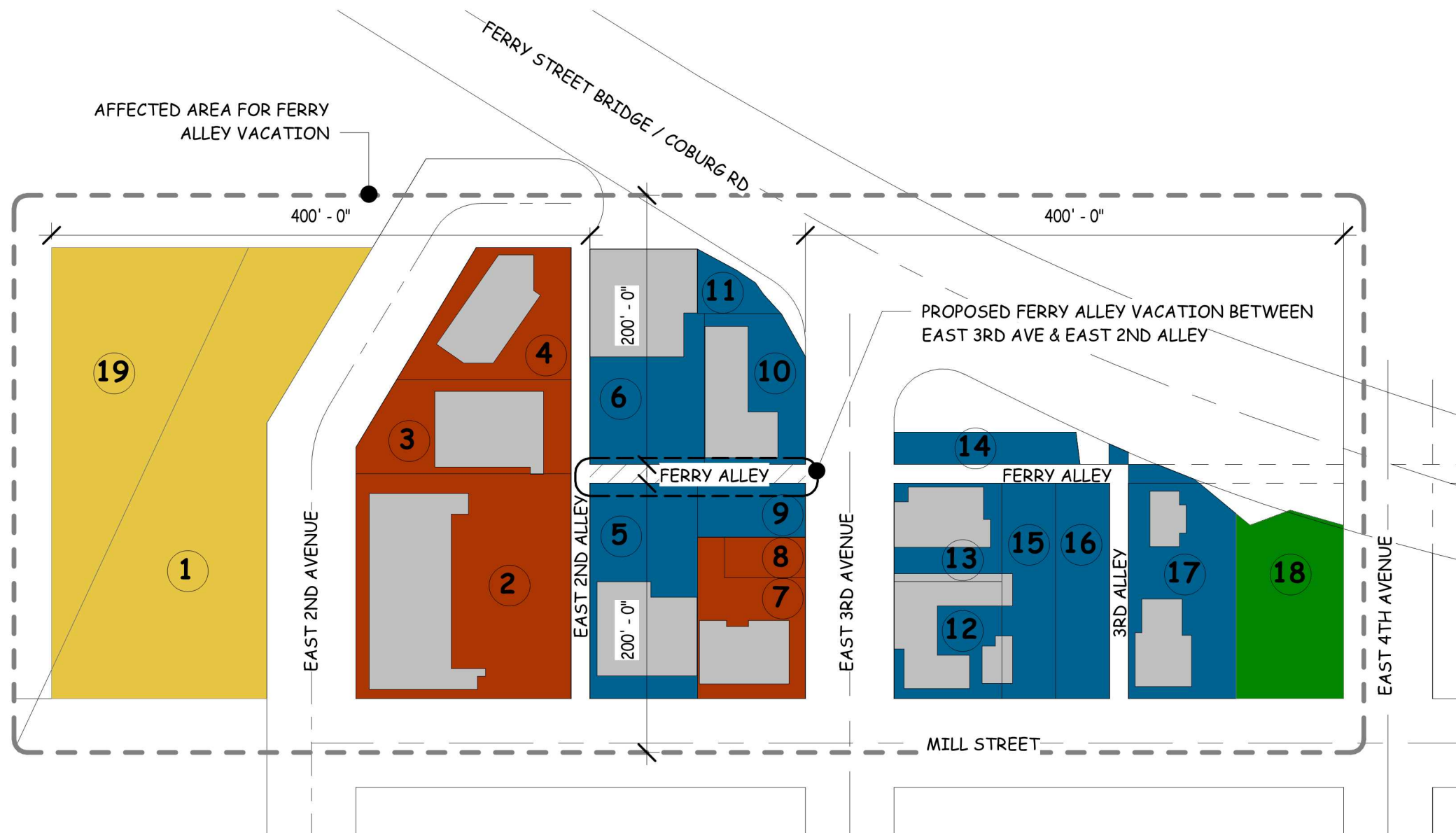
PROPERTY OWNER	PROPERTY AREA	PROPERTY AREA %
 CITY OF EUGENE	1.41 ACRES	28.3%
 EWEB	0.25 ACRES	5.0%
 MANAGED BY JEFF WILSON-CHARLES: - THREE MUSES GROUP, LLC - WATERSHED, LLC - FERRY FOODS, LLC	2.02 ACRES	40.6%
 OTHERS	1.30 ACRES	26.1%
	4.98 ACRES TOTAL	100 % TOTAL

PROPOSAL TO VACATE FERRY ALLEY

THE PROPOSAL TO VACATE THE NORTHERN PORTION OF FERRY ALLEY WILL FACILITATE THE DEVELOPEMENT OF THE PRIVATE ALLEY AS A LIVING STREET, OTHERWISE KNOWN AS A WOONERF. ONCE VACATED, THE ALLEY WILL BE RECONFIGURED TO ACCOMMODATE A VARIETY OF OUTDOOR PUBLIC AMENITIES INCLUDING LANDSCAPING AND OUTDOOR SEATING AREAS WHILE ENCOURAGING SAFE PEDESTRIAN AND BICYCLE ACCESS AND USE. THE WOONERF WILL CONTINUE TO ALLOW VEHICULAR TRAFFIC AND ACCESS TO THE ADJACENT PARKING AREAS, AND INCLUDE TRAFFIC CALMING FEATURES TO SUPPORT THE VARIETY OF PROPOSED USES.

PROPERTY IDENTIFICATION

1. MAP: 17032933 TAX LOT: 00100
NO ASSOCIATED ADDRESS
* CITY OF EUGENE
2. MAP 17032933 TAX LOT: 00400
400 E 2ND AVE
* TAYLOR & TAPPER INSURANCE ATTORNEYS
* ABOVE ALL OFFERS
420 E 2ND AVE
* TENANT UNKNOWN
3. MAP 17032933 TAX LOT 00401
440 E 2ND AVE
* BULLER, WUITE, OLSSON & ROSENBERG P.C.
444 E 2ND AVE
* BUSINESS UNKNOWN
4. MAP 17032933 TAX LOT 00402
460 E 2ND AVE
* GREAT BASIN INSURANCE
5. MAP 17032933 TAX LOT 00500
263 & 265 MILL ST / THREE MUSES GROUP, LLC
* COLDFIRE BREWING COMPANY
6. MAP 17032933 TAX LOT 01200
260 FERRY ST / THREE MUSES GROUP, LLC
* COLDFIRE
7. MAP 17032933 TAX LOT 00700
411 EAST 3RD AVE
* TENANT UNKNOWN
8. MAP 17032933 TAX LOT 00800
NO ASSOCIATED ADDRESS
9. MAP 17032933 TAX LOT 00900
437 EAST 3RD AVE / THREE MUSES GROUP, LLC
10. MAP 17032933 TAX LOT 01000
469 EAST 3RD AVE / THREE MUSES GROUP, LLC
* PARTLOW ENDEAVORS
497 EAST 3RD AVE
* CITY OF EUGENE BIKES
11. MAP 17032933 TAX LOT 03200
270 FERRY ST / THREE MUSES GROUP, LLC
* COLDFIRE
12. MAP 17032933 TAX LOT 02100
321 MILL ST / WATERSHED, LLC
* WATERSHED
13. MAP 17032933 TAX LOT 02200
444 EAST 3RD AVE / FERRY FOODS, LLC
* RYE RESTAURANT
14. MAP 17032933 TAX LOT 03100
NO ASSOCIATED ADDRESS / FERRY FOODS, LLC
15. MAP 17032933 TAX LOT 02300
NO ASSOCIATED ADDRESS / WATERSHED, LLC
16. MAP 17032933 TAX LOT 02400
NO ASSOCIATED ADDRESS / WATERSHED, LLC
17. MAP 17032933 TAX LOT 02500
359 MILL ST / FERRY FOODS, LLC
* AKIRA RESTAURANT
440 EAST 3RD ALLEY
* TENANT UNKNOWN
18. MAP 17032933 TAX LOT 02600
NO ASSOCIATED ADDRESS
*EWEB
19. MAP 17032933 TAX LOT 03000
NO ASSOCIATED ADDRESS
* CITY OF EUGENE



SITE MAP OF NEARBY PROPERTIES TO FERRY ALLEY
SCALE: 1" = 100'-0"



FERRY ALLEY
VACATION
WOONERF PLAN

DESCRIPTION	VACATION APP	ISSUED	04/13/2021

ALLEY
VACATION

A003

ORDINANCE NO. _____

AN ORDINANCE VACATING FERRY ALLEY BETWEEN EAST 3RD AVENUE AND EAST 2ND ALLEY, AND PROVIDING FOR AN EFFECTIVE DATE.

The City Council of the City of Eugene finds that:

A. The City Council of the City of Eugene approved an agenda scheduling a virtual public hearing at 7:30 p.m. on September 20, 2021, for the purpose of hearing protests and remonstrances to the proposed vacation of the following described right-of-way:

The portion of the right-of-way identified as Ferry Alley located between East 3rd Avenue and East 2nd Alley, more particularly described in Exhibit A and depicted on the map attached as Exhibit B to this Ordinance (“the Vacation Area”), and reserving a public utility easement over the entire Vacation Area.

B. Notice was duly and regularly given of the public hearing and, on September 20, 2021, the City Council held a public hearing and heard all objections to the proposed vacation.

NOW, THEREFORE, THE CITY OF EUGENE DOES ORDAIN AS FOLLOWS:

Section 1. The City Council of the City of Eugene finds that notice of the public hearing on the proposed vacation was published and posted as required by law, that consents required by EC 9.8710(6) and ORS 271.080(2) have been filed in the proceedings, and that vacation of the right-of-way described and depicted on Exhibits A and B is in the public interest, as described in the Findings attached as Exhibit C to this Ordinance and hereby adopted in support of this Ordinance.

Section 2. The right-of-way described and depicted on Exhibits A and B attached to this Ordinance is vacated, subject to the public utility easement described in Exhibit A, and shall revert pursuant to the statutes of the State of Oregon.

Section 3. The City Recorder is directed to file a certified copy of this Ordinance, including all attachments with the Recorder of Lane County, Oregon. In addition, a certified copy of this Ordinance shall be filed with the Lane County Assessor and a certified copy shall be filed with the Lane County Surveyor.

Section 4. Notwithstanding the effective date of ordinances as provided in the Eugene Charter of 2002, this ordinance shall be come effective 30 days from the date of passage by the Eugene City Council and approval by the Mayor, or upon the recording of the public utility easement described in Exhibit A, in a form acceptable to the City Manager, whichever is later.

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

Approved by the Mayor this
_____ day of _____, 2021.

City Recorder
Ordinance - Page 1 of 1

Mayor


Legal Description
for
Alley Vacation

A strip of land 14.00 feet wide lying in Block 4, of the Plat of Eugene City, recorded April 20, 1852, in the Lane County Oregon Official Records, Lane County, Oregon, said strip being more particularly described as follows:

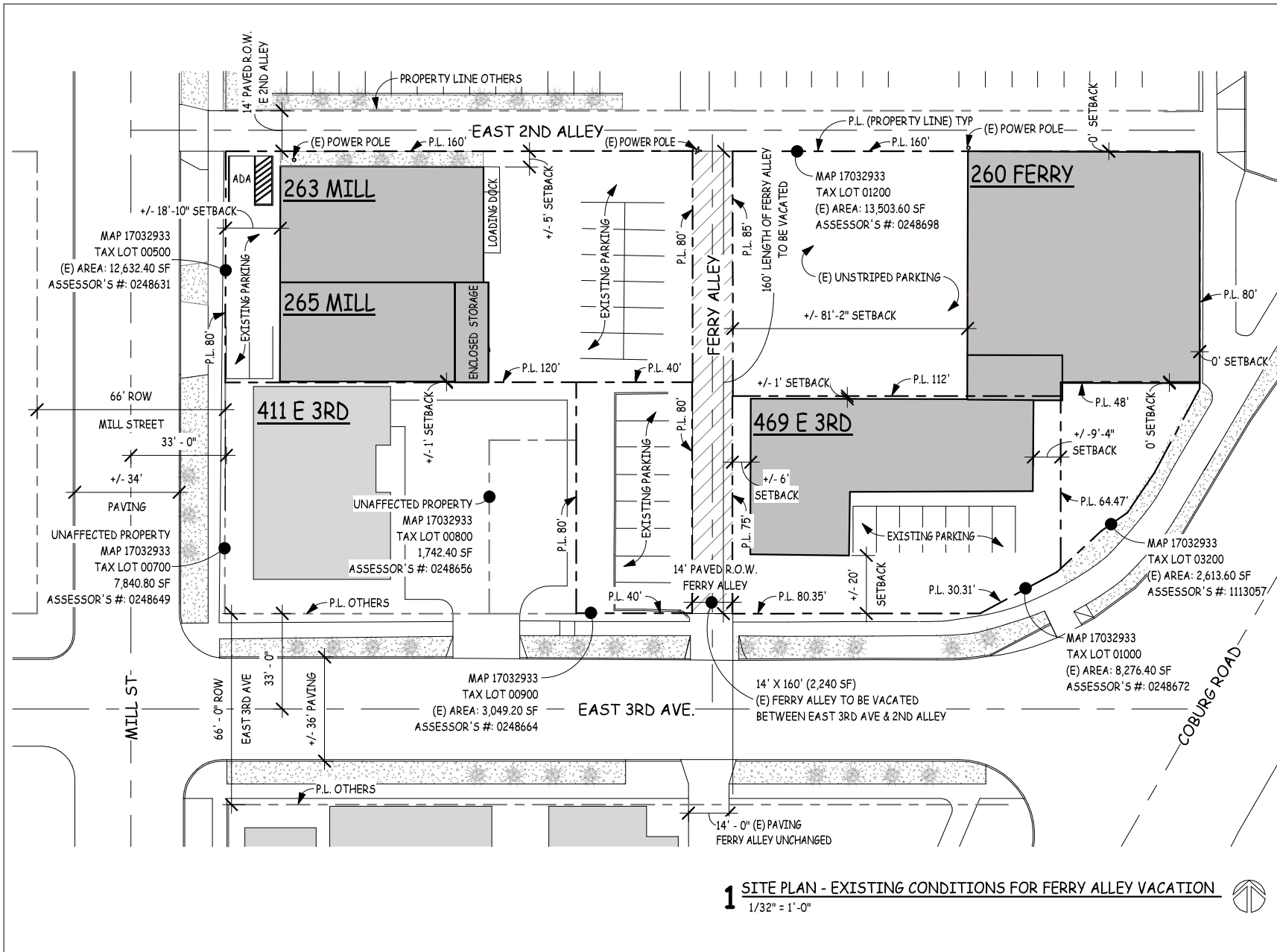
Beginning at the Southwest corner of Lot 8, Block 4, of said Plat of Eugene City, being a point on the north margin of Third Street; Thence along the west line of said Lot 8 and continuing along the west line of Lot 5, Block 4, of said Plat of Eugene City, North 160 feet, more or less, to the Northwest corner of said Lot 5; Thence West 14 feet to the Northeast corner of Lot 6, Block 4 of said Plat of Eugene City; Thence along the east line of said Lot 6 and continuing along the east line of Lot 7, Block 4, said Plat of Eugene City, South 160 feet, more or less, to the Southeast corner of said Lot 7; Thence East 14 feet returning to the point of beginning.

The City of Eugene reserves an easement for public utilities over the above described 14.00 foot wide strip of land. Contains 2,240 square feet, more or less.

**REGISTERED
PROFESSIONAL
LAND SURVEYOR**


**OREGON
MAY 12, 2011
DANIEL ADAM NELSON
#84832**

EXPIRES: 12/31/2022



VOUSSOT ARCHITECTURE
 JESSE R. ELLIOTT
 ARCHITECT, ARCHITECTURAL HISTORIAN, CRAFTSMAN
 JESSE @ VOUSSOTRARCH.COM 541.606.3929

REGISTERED ARCHITECT
 JESSE R. ELLIOTT
 LEXINGTON, MA
 ARI-12865
 STATE OF OREGON

FERRY ALLEY WOONERF
 From E. 2nd Alley
 to E. 3rd Ave
 EUGENE, OR 97401

DESCRIPTION
Ref. Plan to GO.4
ISSUED
08/20/21

EXISTING COND.
 SITE PLAN

GO.4b

Findings

Background:

The applicant is requesting the vacation of Ferry Alley between East 3rd Avenue and East 2nd Alley, which is improved right-of-way. The total requested vacation area consists of approximately 2,240 square feet. The applicant is requesting the vacation of Ferry Alley to create a "woonerf," also known as a "living street," providing a mix of parking, traffic calming devices, and landscaped outdoor spaces. The proposed alley vacation will maintain through access for vehicles and provide an opportunity for pedestrians and cyclists to utilize the enhanced outdoor space of the adjacent businesses.

The portion of Ferry Alley right-of-way to be vacated abuts four parcels, all owned by Three Muses Group, LLC, and consists of Tax Lots 500, 900, 1000 and 1200 of Assessor's Map 17-03-29-33.

The vacation request process serves as a means to evaluate the need for public ways as land develops and uses change over time, and to address the manner in which the City may dispense with public ways. This request for vacation is being considered in accordance with Sections 9.8700 – 9.8725 of the Eugene Code (EC) and Oregon Revised Statutes (ORS) 271.080 – 271.230 and processed pursuant to EC 9.7445 – 9.7455. The public hearing is being conducted consistent with quasi-judicial procedures in State law and as set forth in EC 9.7065 – 9.7095.

When rights-of-way are vacated, ORS 271.140 generally requires ownership of the land underlying the vacated right-of-way to revert back to owners of the adjacent lands from which it was originally dedicated. If the vacation is approved, the vacated right-of-way will revert to private ownership of Three Muses, LLC. EC 9.8710(5) requires the applicant to pay a special assessment to the City equal to the assessed value of the real property and any costs incurred by the City in the construction of public improvements. The applicant has paid the required assessment.

In accordance with ORS 271.080, the applicant has provided evidence of consent to the vacation from owners of at least two-thirds of the property within the affected area. In this case, the affected area per State law is the land lying on either side of the vacated area to the next lateral street, and 400 feet beyond each terminus of the rights-of-way to be vacated. Based on the signed consent forms submitted with the application, the applicant has obtained consent for the requested vacation from 100 percent of property owners in the affected area, which exceeds the requirements of ORS 271.080 and EC 9.8710.

The applicant also received statements of concurrence from affected utility providers for the vacation of the improved right-of-way, provided that a Public Utility Easement (PUE) is maintained over the vacated area. The applicant has agreed to provide a PUE over the vacated area so that the City and utility providers will have necessary perpetual access for the operation

and maintenance of public utilities that remain within the vacated area.

Compliance with Approval Criteria:

Per EC 9.8725, the sole approval criterion for this vacation requires the City Council to find that approval of the requested vacation is in the public interest. The full text of the approval criterion is provided below, with findings demonstrating compliance:

The city council shall approve, or approve with conditions and reservations of easements, the vacation of improved public right-of-way, public ways acquired with public funds, or undeveloped subdivision and partition plats, or portions thereof, including public right-of-way and improved public easements located therein, only if the council finds that approval of the vacation is in the public interest.

The required public notice and hearing have occurred on the vacation request in accordance with applicable statutory and local code requirements. Consent to the vacation request from abutting and affected owners, and payment of a special assessment for the area of vacated right-of-way, has been provided by the applicant, as required by statutes and local code. Utility concurrences were received from impacted utility providers and the applicant has agreed to provide a PUE over the vacated area. The utilities currently provide service to existing developments and other improved public rights of way. The proposed PUE provides the easement necessary to continue perpetual operation and maintenance of public utilities that remain. The City's Public Works Department supports the right of way vacation contingent upon the reservation of a PUE.

Vacation Findings

The following findings demonstrate that a vacation of Ferry Alley is in the public interest.

This determination is based on the conclusion that the vacation of this right-of-way will provide an opportunity for the efficient use of land and will not negatively impact the transportation system, surrounding uses, or emergency access. Should the requested alley vacation be approved the, the vacated area will become private property under the control of the applicant, since the applicant owns all properties that abut the alley. The applicant's intended purpose for the vacation request is as follows:

- To create a "woonerf," also known as a "living street," by providing a mix of parking, traffic calming devices and landscaped outdoor spaces.
- To maintain through access for vehicles, pedestrians, and cyclists.
- To provide an opportunity for pedestrians and cyclists to utilize the enhanced outdoor space of the adjacent businesses.

Analysis from Public Works staff confirms the surrounding street network is a traditional blocked street grid, which provides ample street connectivity as required by Eugene Code and negates the need for a secondary public thoroughfare. Because of the existing local street grid,

the alley to be vacated does not impede the street connection system or fire access to surrounding streets, businesses, and residences.

The vacation of Ferry Alley does not adversely affect direct access to the surrounding streets. All lots abutting the right-of-way proposed for vacation have frontage and access connections in accordance with Eugene Code on East 3rd Avenue, Mill Street and East 2nd Alley. As there are existing public streets and an alley providing vehicular and pedestrian access to the lots, the right-of-way to be vacated does not provide significant public transportation benefit, and public vehicular and pedestrian circulation on adjoining streets will not be compromised as a result of the vacation.

The proposed PUE over the vacated area provides the City and utility providers the necessary perpetual access for the operation and maintenance of public utilities that remain within the vacated area.

Conclusion:

The applicant's requested vacation of Ferry Alley is in the public interest, based on the above facts and the terms of the ordinance.