

CITY OF WOODBURN

CITY COUNCIL AGENDA

OCTOBER 12, 2020– 7:00 P.M.

ERIC SWENSON, MAYOR
DEBBIE CABRALES, COUNCILOR WARD 1
LISA ELLSWORTH, COUNCILOR WARD II
ROBERT CARNEY, COUNCILOR WARD III
SHARON SCHAUB, COUNCILOR WARD IV
MARY BETH CORNWELL, COUNCILOR WARD V
ERIC MORRIS, COUNCILOR WARD VI

VIA VIDEO CONFERENCING

1. CALL TO ORDER AND FLAG SALUTE
2. ROLL CALL
3. ANNOUNCEMENTS AND APPOINTMENTS

Announcements:

- A. City Hall and the Library will be closed on November 11 in observance of Veterans Day.

Appointments:

None.

4. COMMUNITY/GOVERNMENT ORGANIZATIONS

None.

5. PROCLAMATIONS/PRESENTATIONS

Proclamations:

- A. October - Domestic Violence Awareness Month

1

Presentations:

None.

6. COMMUNICATIONS

None

7. BUSINESS FROM THE PUBLIC – *This allows the public to introduce items for Council consideration not already scheduled on the agenda.*

This facility is ADA accessible. If you need special accommodation, please contact the City Recorder at 503-980-6318 or *Statewide Toll Free Relay (800) 735-1232*, at least 48 hours prior to this meeting.

Si usted necesita asistencia especial, comuníquese al 503-980-6322 o a la línea telefónica gratuita, (800) 735-1232, con un mínimo de 48 horas, antes de la reunión.

Habrá intérpretes disponibles para aquellas personas que no hablan Inglés, previo acuerdo. Comuníquese al (503) 980-6322.

8. **CONSENT AGENDA** – *Items listed on the consent agenda are considered routine and may be adopted by one motion. Any item may be removed for discussion at the request of a Council member.*

- A. Woodburn City Council minutes of September 14, 2020** 2
Recommended Action: Approve the minutes.
- B. Acceptance of a Statutory Warranty Deed for Right-of-Way Dedication and Two Public Utility Easements at 1220 Fifth Street, Woodburn, OR 97071 (Tax Lot 051W07DB02500)** 6
Recommended Action: Authorize the acceptance of a Right-of-Way dedication and two Public Utility Easements to be granted by Pacific Valley Auto, LLC, owners of the property located at 1220 Fifth Street, Woodburn, OR 97071 (Tax Lot 051W07DB02500).
- C. Leasing Specialist, LLC. Contract Award** 20
Recommended Action: That the City Council, acting as the Local Contract Review Board, award a police vehicle lease contract to Leasing Specialists, LLC. and authorize the City Administrator to sign the police vehicle lease contract.
- D. Liquor License Application – Metropolis LLC.** 22
Recommended Action: The Woodburn City Council does not provide a recommendation for an approval or denial that the OLCC may take on the Liquor License Application for Metropolis LLC.
- E. Crime Statistics through August 2020** 25
Recommended Action: Receive the report.
- F. Building Activity for September 2020** 30
Recommended Action: Receive the report.

9. **TABLED BUSINESS**

None.

10. **PUBLIC HEARINGS**

None.

11. **GENERAL BUSINESS** – *Members of the public wishing to comment on items of general business must complete and submit a speaker's card to the City Recorder prior to commencing this portion of the Council's agenda. Comment time may be limited by Mayoral prerogative.*

A. Workshop- Utility Service Ordinance & Resolution setting ROW Utility License and Usage Fee Rates 39

Recommended Action: The City Council will be having a workshop to discuss the upcoming adoption of a utility services ordinance that will implement a new licensing program to regulate utility service providers that utilize the City right-of-way ("ROW") and that do not otherwise have a franchise agreement with the City. No action is suggested to be taken at this work session.

Council Bill No. 3137 – An Ordinance Providing for the Management of Access to and Use of the City's Rights-of-Way for Utility Purposes and Declaring an Emergency

Council Bill No. 3138- A Resolution Setting the Right-of-Way Utility License and Usage Fee Rates within the City of Woodburn

B. PUBLIC TESTIMONY ON THIS ITEM IS CLOSED. NO PUBLIC COMMENTS WILL BE RECEIVED 101

Design Review DR 2019-05 Allison Way Apartments Final Decision

Recommended Action: Authorize the mayor to sign the attached final land use decision document.

12. PLANNING COMMISSION OR ADMINISTRATIVE LAND USE ACTIONS – *These are Planning Commission or Administrative Land Use actions that may be called up by the City Council.*

A. Call-Up Briefing: Planning Commission Approval of a Variance for Eric & Charmaine Cottrell at 1311 E. Lincoln Street (VAR 2020-04) 134

Recommended Action: Staff recommends no action and briefs the Council on this item pursuant to Woodburn Development Ordinance (WDO) Section 4.02.02. The Council may call up this item for review if desired and, by majority vote, initiate a review of this decision.

13. CITY ADMINISTRATOR'S REPORT

14. MAYOR AND COUNCIL REPORTS

15. EXECUTIVE SESSION

A. To review and evaluate, pursuant to standards, criteria and policy directives adopted by the governing body, the employment-related performance of the chief executive officer of any public body, a public officer, employee or staff member unless the person whose performance is being reviewed and evaluated requests an open hearing pursuant to ORS 192.660 (2)(i).

- B. To consider records that are exempt by law from public inspection pursuant to ORS 192.660 (2)(f).

16. ADJOURNMENT

COUNCIL GOALS 2019-2021

Thematic Goals

1. *Create an inclusive environment where residents participate and are engaged in the community (that is vibrant, safe and active).*
2. *Promote an environment that encourages sustainable economic health maximizing our geographic, workforce, cultural and community assets.*

Strategic Goals

3. *Create an inclusive environment where Woodburn residents want to participate and are engaged in the community.*
4. *Develop innovative funding sources to help support the completion of capital improvement projects.*
5. *Grow and support strategic partnerships for economic health.*
6. *Explore the development of a non-profit consolidation facility.*
7. *Improve Communication and Coordination with School District on matters of mutual interest.*
8. *Completion of the First Street remodel.*
9. *Completion of Phase 1 & 2 of the Community Center Project including the formation of an ad hoc steering committee to review and recommend design.*
10. *Creation of the Dick Jennings Community Leadership Academy.*
11. *Develop a strategy to limit PERS liability.*
12. *Establishment of a Woodburn 20 year community-visioning plan.*

PROCLAMATION

DOMESTIC VIOLENCE AWARENESS MONTH – OCTOBER 2020

Whereas, the impact of domestic violence extends beyond individuals, reaching into families and communities; and

Whereas, in the last year Marion County has experienced three domestic violence homicide crimes resulting in the deaths of four victims; and

Whereas, the Marion County District Attorney's office received 1,126 law enforcement reports of domestic violence last year and filed 989 domestic violence cases; and

Whereas, the Marion County Courts received 1,128 requests for protective orders last year; and

Whereas, the Center for Hope and Safety received 33,189 contacts to their program last year and provided 4,855 nights of shelter; and

Whereas, the Marion County Victim Assistance Division provided 20,737 victim services and assisted 1,728 victims of domestic violence last year, walking alongside them and giving them a voice in the criminal justice process; and

Whereas, we know, as individuals, we can make a difference by speaking up and reaching out to help victims and survivors; and

NOW, THEREFORE, the Mayor for the City of Woodburn proclaims October 2020 as

Domestic Violence Awareness Month

And resolves to honor those who have died and acknowledge those who have survived by supporting meaningful and accessible services that create safety and hope for survivors in our community.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the City of Woodburn to be affixed this 12th day of October 2020.

Eric Swenson, Mayor
City of Woodburn

COUNCIL MEETING MINUTES

SEPTEMBER 14, 2020

DATE COUNCIL CHAMBERS, CITY HALL, CITY OF WOODBURN, COUNTY OF MARION, STATE OF OREGON, SEPTEMBER 14, 2020

CONVENED The meeting convened at 7:03 p.m. with Mayor Swenson presiding.

ROLL CALL

Mayor Swenson	Present
Councilor Carney	Present -via video conferencing
Councilor Cornwell	Present -via video conferencing
Councilor Schaub	Present -via video conferencing
Councilor Morris	Present -via video conferencing
Councilor Ellsworth	Present -via video conferencing
Councilor Cabrales	Present -via video conferencing

Staff Present (via video conferencing): City Administrator Derickson, Assistant City Administrator Row, Economic Development Director Johnk, Community Development Director Kerr, Police Chief Ferraris, Finance Director Turley, Assistant City Attorney Granum, Human Resources Director Gregg, Engineering Director Liljequist, Parks and Recreation Manager Cuomo, City Recorder Pierson

PROCLAMATION

The Mayor read a proclamation declaring September 15th - October 15th, 2020 Hispanic Heritage Month.

CONSENT AGENDA

- A. Woodburn City Council minutes of August 10, 2020,
- B. Woodburn City Council Work Session minutes of August 31, 2020,
- C. Building Activity for August 2020,

Morris/Ellsworth... adopt the Consent Agenda. The motion passed unanimously.

PUBLIC HEARINGS

Continuance of Council Call-up Hearing of Planning Commission approval of Allison Way Apartments (Design Review DR 2019-05, Phasing Plan PP 2019-01, Property Line Adjustment PLA 2019-04, Street Exception EXCP 2020-05, and Variances 2019-04)

A Public Hearing to consider input on Continuance of Council Call-up Hearing of Planning Commission approval of Allison Way Apartments (Design Review DR 2019-05, Phasing Plan PP 2019-01, Property Line Adjustment PLA 2019-04, Street Exception EXCP 2020-05, and Variances 2019-04). Mayor Swenson declared the hearing open at 7:09 p.m. for the purpose of hearing public input on Continuance of Council Call-up Hearing of Planning Commission approval of Allison Way Apartments (Design Review DR 2019-05, Phasing Plan PP 2019-01, Property Line Adjustment PLA 2019-04, Street Exception EXCP 2020-05, and Variances 2019-04). The Mayor asked the Council if they had any declarations to add from the last public hearing.

COUNCIL MEETING MINUTES

SEPTEMBER 14, 2020

There were no further declarations. City Recorder Pierson read the Public Hearing Statement. Community Development Director Kerr provided a staff report. Eugene Labunsky provided information on the application. Mayor Swenson asked if anyone from the public would like to speak in favor of the application. Steve Rippeteau, 562 Prairie St., stated that he reviewed the changes made and he is satisfied with what has been done. Mayor Swenson asked if anyone from the public would like to speak in opposition of the application. No one from the public spoke in opposition of the application. Mayor Swenson declared the hearing closed at 7:44 p.m.

Carney/Schaub... City Council tentatively approve Design Review 2019-05, Property Line Adjustment 2019-04 and Phasing Plan 2019-01 with the Planning Commission conditions and direct staff to prepare a final decision document for Council consideration. On roll call vote the motion passed unanimously.

Carney/Ellsworth... City Council tentatively approve Street Exception 2020-05 with the Planning Commission conditions, except that Stacy Allison Way shall have 5-foot wide bicycle lanes, and direct staff to modify the conditions and prepare a final decision document for Council consideration. On roll call vote the motion passed unanimously.

Carney/Morris... City Council tentatively approve Variance 2019-04, which consists of the six (6) variances summarized in the staff report, and direct staff to prepare a final decision document for Council consideration incorporating the parking ratio and compact parking numerical standards per the applicants letter exhibit. On roll call vote the motion passed unanimously.

FY 2020-2021 Supplemental Budget Request for Acceptance of Grant Awards for Covid Relief Funds (CRF) and Business Oregon Small Business Grant Funds and the Appropriation Authority for Expending the Grant Revenue for their Approved Purposes

A Public Hearing to consider input on the FY 2020-2021 Supplemental Budget Request for Acceptance of Grant Awards for Covid Relief Funds (CRF) and Business Oregon Small Business Grant Funds and the Appropriation Authority for Expending the Grant Revenue for their Approved Purposes. Mayor Swenson declared the hearing open at 7:52 p.m. for the purpose of hearing public input on the FY 2020-2021 Supplemental Budget Request for Acceptance of Grant Awards for Covid Relief Funds (CRF) and Business Oregon Small Business Grant Funds and the Appropriation Authority for Expending the Grant Revenue for their Approved Purposes. Finance Director Turley provided a staff report. Mayor Swenson asked if anyone from the public would like to speak on this subject. No members of the public wished to speak in either support or opposition of the FY 2020-2021 Supplemental Budget Request for Acceptance of Grant Awards for Covid Relief Funds (CRF) and Business Oregon Small Business Grant Funds and the Appropriation Authority for Expending the Grant Revenue for their Approved Purposes. Mayor Swenson declared the hearing closed at 7:56 p.m.

COUNCIL BILL NO. 3137 – AN ORDINANCE PROVIDING FOR THE MANAGEMENT OF ACCESS TO AND USE OF THE CITY'S RIGHTS-OF-WAY FOR UTILITY PURPOSES AND DECLARING AN EMERGENCY

Carney introduced Council Bill No. 3137. City Recorder Pierson read the bill twice by title only

COUNCIL MEETING MINUTES

SEPTEMBER 14, 2020

since there were no objections from the Council. Assistant City Attorney McKenzie Granum provided a staff report. Reba Crocker, ROW Consultants LLC, provided information and answered questions from City Council. There was a consensus of the City Council that they did not have enough information on this item to vote on it tonight and asked that staff get information on the City's costs for managing the right-of-way, pass through costs, who currently does not pay but would be included and if it will cost the City more to implement it then it costs right now.

COUNCIL BILL NO. 3139 – A RESOLUTION APPROVING A SUPPLEMENTAL BUDGET FOR FY 2020-2021

Carney introduced Council Bill No. 3139. City Recorder Pierson read the bill by title only since there were no objections from the Council. Finance Director Turley provided a staff report. Mayor Swenson declared Council Bill No. 3139 duly passed.

T-MOBILE WATER TOWER SITE LEASE AGREEMENT

Carney/Morris... Authorize the City Administrator to enter into the attached Water Tower Site Lease Agreement with T-Mobile. Assistant City Administrator Row provided a staff report. The motion passed unanimously.

CITY ADMINISTRATOR'S REPORT

The City Administrator reported the following:

- Commended City staff and noted that 18 employees have been impacted by the fires and those involved in public safety are still showing up and doing their job.
- Communication is up to speed and up to date with information pertaining to Woodburn. The City has received accolades for the updates that the City is providing in relation to the wild fires. Air quality is biggest threat to our community and encouraging people to stay indoors.
- There was an incident where a City bus was hijacked. The bus driver was able to get away and the bus was then stolen. There were no injuries and the bus received a flat tire as the only damage.
- The City is working with Love Inc. on having a clean air shelter and there is a breathing room at Washington Elementary to get healthier air.
- City has directed people who want to help with wild fires to Marion County who has the information on how people can help.
- Trying to communicate with Council as much as he can and sending out information.
- Police Chief Ferraris provided information on his daily communications as the City's Emergency Manager.

MAYOR AND COUNCIL REPORTS

Councilor Schaub thanked staff and the communications team and Chief Ferraris have been doing a stellar job. She stated that her heart goes out to family's who have had to weather this.

Councilor Ellsworth stated that she appreciates the calming words from City staff and that it is a good message the City is sending out about taking care of family, staying indoors and helping your

COUNCIL MEETING MINUTES
SEPTEMBER 14, 2020

neighbors if you can.

Councilor Cabrales gave a shout out to those volunteering and that PCUN can help direct people to places that are taking donations.

Councilor Cornwell thanked Scott and Jim for keeping everything organized and making her feel safe. She was happy to see the street sweeper taking care of ash on the street. She also wants to be sure that protocols are being followed so that we don't get in each other's way and have to clean up messes because we overstepped.

Councilor Morris thanked first responders and those affected by this. He stated that he looks forward to the after action report.

Councilor Carney stated that he concurs with what has already been said and we owe a debt of gratitude to the fine professionals who have been working with us.

ADJOURNMENT

Ellsworth/Morris... meeting be adjourned. The motion passed unanimously.
The meeting adjourned at 9:21 p.m.

APPROVED _____
ERIC SWENSON, MAYOR

ATTEST _____
Heather Pierson, City Recorder
City of Woodburn, Oregon



Agenda Item

October 12, 2020

TO: Honorable Mayor and City Council through City Administrator

FROM: Eric Liljequist, Public Works Projects & Engineering Director

SUBJECT: **Acceptance of a Statutory Warranty Deed for Right-of-Way Dedication and Two Public Utility Easements at 1220 Fifth Street, Woodburn, OR 97071 (Tax Lot 051W07DB02500)**

RECOMMENDATION:

Authorize the acceptance of a Right-of-Way dedication and two Public Utility Easements to be granted by Pacific Valley Auto, LLC, owners of the property located at 1220 Fifth Street, Woodburn, OR 97071 (Tax Lot 051W07DB02500).

BACKGROUND:

As a condition of approval of Design Review (DR 2019-04), the property owner is required to provide a 3-foot wide Right-of-Way dedication, and a 5-foot wide Public Utility Easement to comply with the cross-sectional street requirements of the Woodburn Transportation System Plan. The property owner also agreed to dedicate a 33-foot wide Public Utility Easement at the southerly property boundary to allow the City to reserve this land for future Right-Of-Way for important east-west connectivity through the local road network.

DISCUSSION:

The 3-foot wide Right-of-Way dedication is located along the western boundary of the property, adjacent to Fifth Street. The 5-foot wide Public Utility Easement is located along both the western boundary of the property, adjacent to Fifth Street. The 33-foot wide Public Utility Easement is located along the entire southerly property boundary. The Public Utility Easement dedications provide a permanent Right-of-Way and permanent easement to construct, reconstruct, and operate public and franchised utilities.

Agenda Item Review: City Administrator X City Attorney X Finance X

FINANCIAL IMPACT:

There is no cost to the City for the Right-of-Way Dedication and Public Utility Easements.

ATTACHMENTS:

A copy of the Statutory Warranty Deed and Public Utility Easement documents are included in Exhibit "A" and Exhibit "B" for each dedication.

AFTER RECORDING RETURN TO:

Woodburn City Recorder
City of Woodburn
270 Montgomery Street
Woodburn, OR 97071

**CITY OF WOODBURN, OREGON
PUBLIC UTILITY EASEMENTS
(Temporary and Permanent)**

Pacific Valley Auto LLC *GRANTOR*, grants to the CITY OF WOODBURN, OREGON, hereinafter called *CITY*, a permanent easement and right-of-way, including the permanent right to construct, reconstruct, operate, and maintain 33' Public Utility Easement on the following described land:

See attached Exhibit "A" Legal Description of Permanent Easement and attached Exhibit "B" Sketch for Legal Description of Permanent Easement which are by this reference incorporated herein

GRANTOR also grants to *CITY* a temporary easement and right-of-way upon, across, and under so much of the aforesaid land as described as:

See attached Exhibit "C" Legal Description of Temporary Easement and attached Exhibit "D" Sketch for Legal Description of Temporary Easement, which are by this reference incorporated herein

It being understood that said temporary easement is only for the original excavation, construction and installation of the public utilities referenced above and upon the completion of the construction thereof shall cease to exist, save and except for that portion hereinbefore described as being a permanent easement.

GRANTOR reserves the right to use the surface of the land for any purpose that will not be inconsistent or interfere with the use of the easement by *CITY*. No building or utility shall be placed upon, under, or within the property subject to the foregoing easement during the term thereof, however, without the written permission of *CITY*.

Upon completion of the construction, *CITY* shall restore the surface of the property to its original condition and shall indemnify and hold *GRANTOR* harmless against any and all loss, cost, or damage arising out of the exercise of the rights granted herein.

The true consideration of this conveyance is Zero Dollars (\$ 0.00), and other valuable consideration, the receipt of which is acknowledged by *GRANTOR*.

GRANTOR covenants to *CITY* that *GRANTOR* is lawfully seized in fee simple of the above-granted premises, free from all encumbrances and that *GRANTOR* and their heirs

and personal representatives shall warrant and forever defend the said premises and every part thereof to CITY against the lawful claims and demands of all persons claiming by, through, or under GRANTOR.

DATED this 26 day of August, 2020.

Pacific Valley Auto LLC

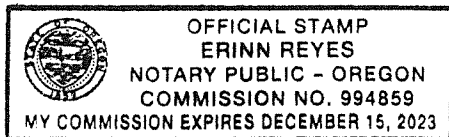
BY:

Al Ayhan, Owner

CORPORATE ACKNOWLEDGEMENT

STATE OF OREGON, County of Marion ss.

The foregoing instrument was acknowledged before me this 26 day of August, 2020 by Afanasi Ayhan, as Owner of Pacific Valley Auto, LLC a corporation and the foregoing instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors; and each of them acknowledged said instrument to be its voluntary act and deed.



Erin Reyes
NOTARY PUBLIC FOR OREGON
My Commission Expires: December 15, 2023

City of Woodburn
270 Montgomery Street
Woodburn, OR 97071

(Grantee's Name and Address)

By Signature below, the City of Woodburn, Oregon,
Approves and Accepts this Conveyance Pursuant to
ORS 93.808.

City Recorder:

Heather Pierson

Exhibit A

Beginning at a 5/8" Iron Rod with a Red Plastic Cap at the Southeast corner of a tract of land described in Reel 4135, Page 267 Marion County Deed Records, located in the Southeast Quarter of Section 7, Township 5 South, Range 1 West, of the Willamette Meridian, City of Woodburn, Marion County, Oregon; thence along the South line of said tract of land North 48°45'00" West 145.28 feet; thence North 41°25'24" East 33.00 feet; thence South 48°45'00" East 145.18 feet to the East line of said Tract of Land; thence along said East line South 41°15'00" West 33.00 feet to the point of beginning and containing 4,793 Square Feet more or less.

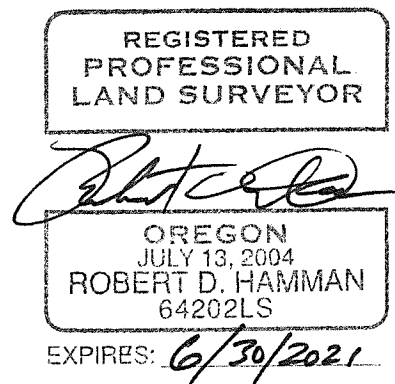


EXHIBIT B
TAX LOT 2500
1220 NORTH 5TH STREET

5TH STREET

REEL 4135
PAGE 267



1" = 40'
04/06/2020
#6811

N41°25'24"E
33.00'

33' P.U.E.
CITY OF WOODBURN DESIGN REVIEW DR
2019-04 FOR YEW STREET EXTENSION

POINT OF
BEGINNING

S48°45'00"E 145.18'

N48°45'00"W 145.28'

S41°15'00"W
33.00'

REGISTERED
PROFESSIONAL
LAND SURVEYOR

OREGON
JULY 13, 2004
ROBERT D. HAMMAN
64202LS

EXPIRES: 6-30-2021

BY:
MULTI/TECH ENGINEERING SERVICES, INC.
1155 13TH ST. S.E. SALEM, OREGON 97302
503-363-9227

AFTER RECORDING RETURN TO:

Woodburn City Recorder
City of Woodburn
270 Montgomery Street
Woodburn, OR 97071

**CITY OF WOODBURN, OREGON
PUBLIC UTILITY EASEMENTS
(Temporary and Permanent)**

Pacific Valley Auto LLC *GRANTOR*, grants to the CITY OF WOODBURN, OREGON, hereinafter called *CITY*, a permanent easement and right-of-way, including the permanent right to construct, reconstruct, operate, and maintain 5' Public Utility Easement on the following described land:

See attached Exhibit "A" Legal Description of Permanent Easement and attached Exhibit "B" Sketch for Legal Description of Permanent Easement which are by this reference incorporated herein

GRANTOR also grants to *CITY* a temporary easement and right-of-way upon, across, and under so much of the aforesaid land as described as:

See attached Exhibit "C" Legal Description of Temporary Easement and attached Exhibit "D" Sketch for Legal Description of Temporary Easement, which are by this reference incorporated herein

It being understood that said temporary easement is only for the original excavation, construction and installation of the public utilities referenced above and upon the completion of the construction thereof shall cease to exist, save and except for that portion hereinbefore described as being a permanent easement.

GRANTOR reserves the right to use the surface of the land for any purpose that will not be inconsistent or interfere with the use of the easement by *CITY*. No building or utility shall be placed upon, under, or within the property subject to the foregoing easement during the term thereof, however, without the written permission of *CITY*.

Upon completion of the construction, *CITY* shall restore the surface of the property to its original condition and shall indemnify and hold *GRANTOR* harmless against any and all loss, cost, or damage arising out of the exercise of the rights granted herein.

The true consideration of this conveyance is Zero Dollars (\$ 0.00), and other valuable consideration, the receipt of which is acknowledged by *GRANTOR*.

GRANTOR covenants to *CITY* that *GRANTOR* is lawfully seized in fee simple of the above-granted premises, free from all encumbrances and that *GRANTOR* and their heirs

and personal representatives shall warrant and forever defend the said premises and every part thereof to CITY against the lawful claims and demands of all persons claiming by, through, or under GRANTOR.

DATED this 26 day of August, 2020

Pacific Valley Auto LLC

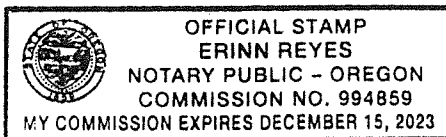
BY:

Al Ayhan, Owner

CORPORATE ACKNOWLEDGEMENT

STATE OF OREGON, County of Marion ss.

The foregoing instrument was acknowledged before me this 26 day of August 2020 by Afanasi Ayhan, as Owner of Pacific Valley Auto LLC a corporation and the foregoing instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors; and each of them acknowledged said instrument to be its voluntary act and deed.



Erin Reyes
NOTARY PUBLIC FOR OREGON
My Commission Expires: December 15, 2023

City of Woodburn
270 Montgomery Street
Woodburn, OR 97071

(Grantee's Name and Address)

By Signature below, the City of Woodburn, Oregon,
Approves and Accepts this Conveyance Pursuant to
ORS 93.808.

City Recorder:

Heather Pierson

Exhibit A

Commencing at a 5/8" Iron Rod with a Red Plastic Cap at the Northwest corner of a tract of land described in Reel 3890, Page 356 Marion County Deed Records, located in the Southeast Quarter of Section 7, Township 5 South, Range 1 West, of the Willamette Meridian, City of Woodburn, Marion County, Oregon; thence along the North line of said tract of land South 48°45'00" East 3.00 feet to the East Right of Way line of 5th Street and the True Point of Beginning; thence along said right of Way line North 41°25'24" East 131.42 feet to the North line of a tract of land as described in Reel 4135, Page 267 Marion County Deed Records; thence along said North line North 88°31'43" West 6.52 feet; thence South 41°25'24" West 135.62 feet to the South line of said tract of land; thence North 48°45'00" West 5.00 feet to the true point of beginning and containing 668 Square Feet more or less.

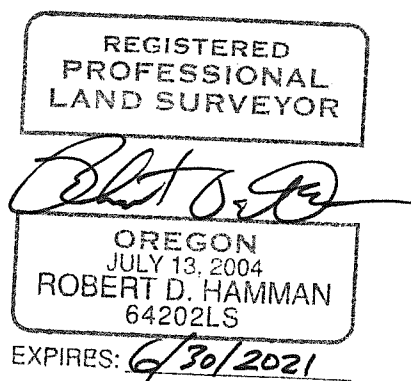
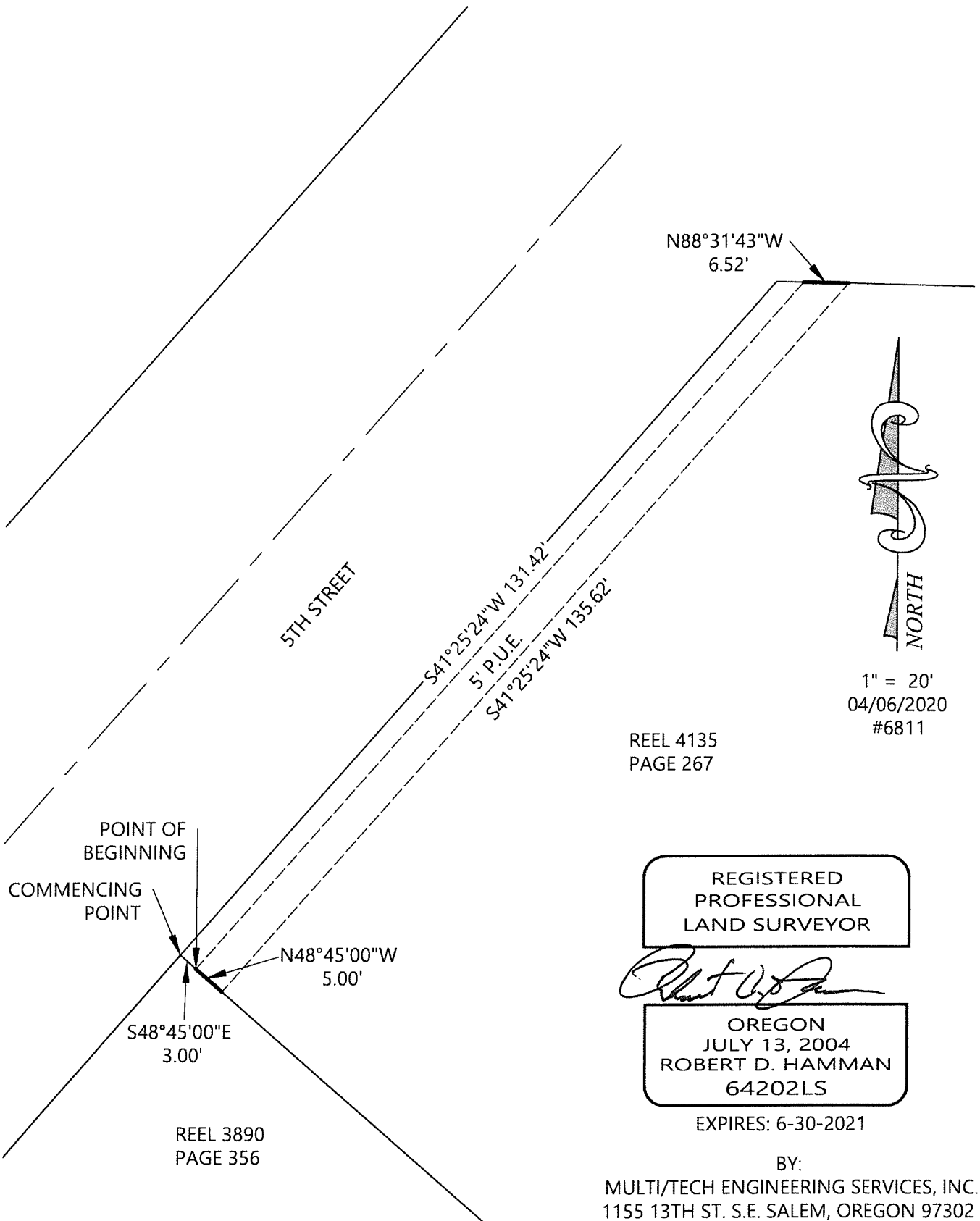


EXHIBIT B



1" = 20'
04/06/2020
#6811

REGISTERED
PROFESSIONAL
LAND SURVEYOR

OREGON
JULY 13, 2004
ROBERT D. HAMMAN
64202LS

EXPIRES: 6-30-2021

BY:
MULTI/TECH ENGINEERING SERVICES, INC.
1155 13TH ST. S.E. SALEM, OREGON 97302
503-363-9227

After Recording Return to:
City Recorder
City of Woodburn
270 Montgomery Street
Woodburn, Oregon 97071

Send Tax Statements to:
City Recorder
City of Woodburn
270 Montgomery Street
Woodburn, Oregon 97071

STATUTORY WARRANTY DEED

PACIFIC VALLEY AUTO, LLC, Grantor, conveys and warrants to CITY OF WOODBURN, a municipal corporation of the State of Oregon, Grantee, the following described real property free of encumbrances except as specifically set forth herein:

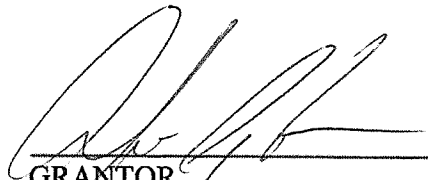
Description: PACIFIC VALLEY AUTO, LLC is dedicating 3 ft wide
portion of map for Lot 051W07DB02500 Along 5th St Property Line as
Right of way to the city as described in Exhibits "A" & "B"
Exceptions: NO EXCEPTIONS

The true and whole consideration for this conveyance is \$ 0.

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

Dated this 10 day of September, 2010.

Signed:

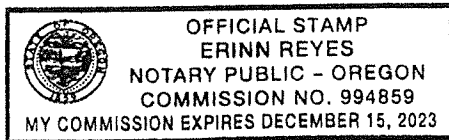

GRANTOR

STATE OF OREGON)

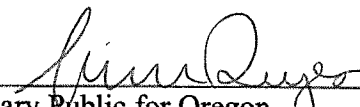
) ss

County of Marion)

This instrument was acknowledged before me on Sept. 10, 2020, by
Afanas Ayhan.



By:


Notary Public for Oregon

My Commission Expires: December 15, 2023

City of Woodburn
270 Montgomery Street
Woodburn, OR 97071

(Grantee's Name and Address)

By Signature below, the City of Woodburn,
Oregon, Approves and Accepts this
Conveyance Pursuant to ORS 93.808.

City Recorder:

Heather Pierson

Exhibit A

Beginning at a 5/8" Iron Rod with a Red Plastic Cap at the Southwest corner of a tract of land described in Reel 4135, Page 267 Marion County Deed Records, located in the Southeast Quarter of Section 7, Township 5 South, Range 1 West, of the Willamette Meridian, City of Woodburn, Marion County, Oregon; thence along the East Right of Way line of 5th Street North 41°25'24" East 128.91 feet to a 1 1/2" Iron Pipe at the Northwest corner of said tract of land; thence along the North line of said tract of land South 88°31'43" East 3.91 feet; thence South 41°25'24" West 131.42 feet to the south line of said tract of land; thence along said line North 48°45'00" West 3.00 feet to the point of beginning and containing 390 Square Feet more or less.

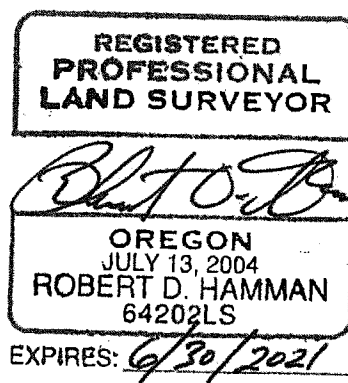
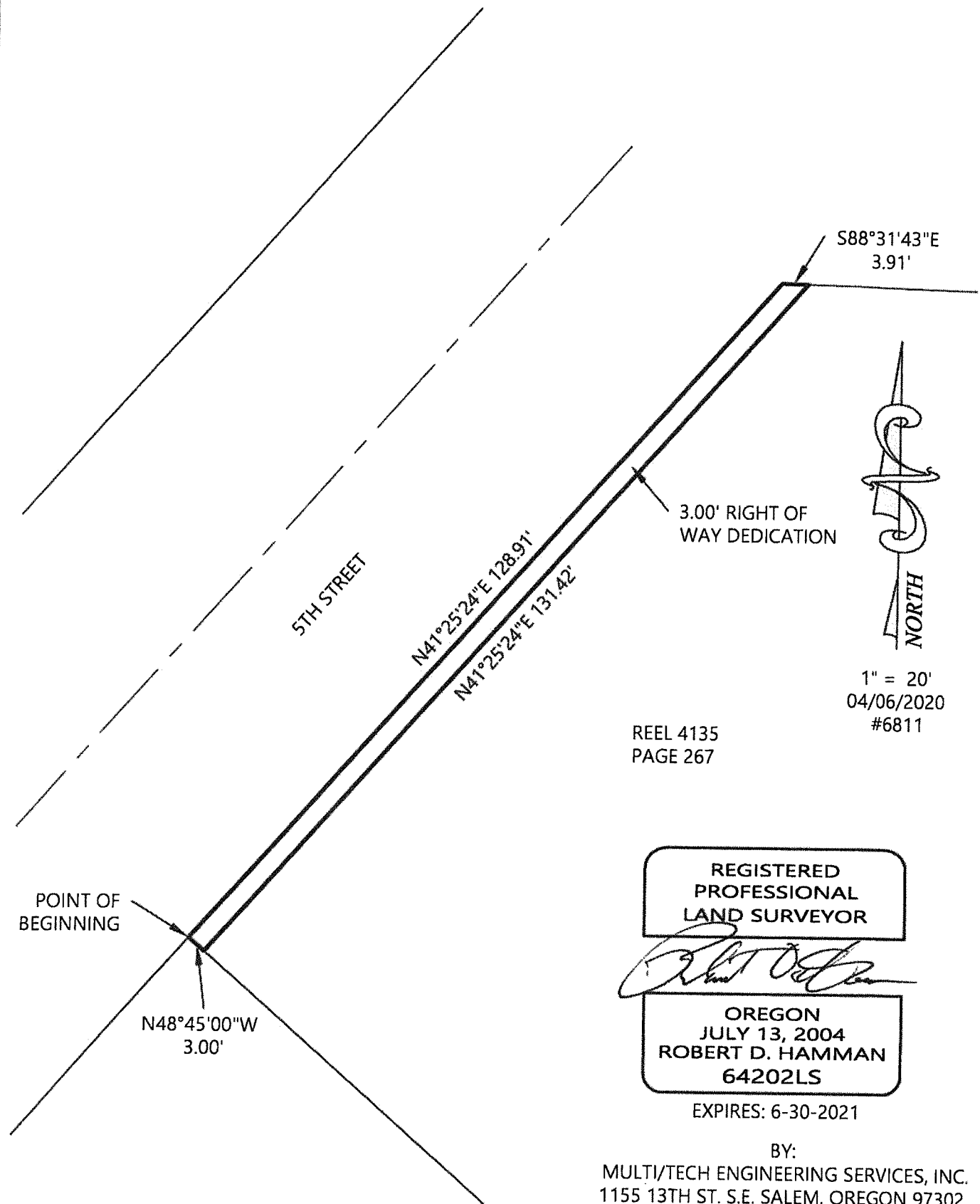


EXHIBIT B



1" = 20'
04/06/2020
#6811

REEL 4135
PAGE 267

REGISTERED
PROFESSIONAL
LAND SURVEYOR

OREGON
JULY 13, 2004
ROBERT D. HAMMAN
64202LS

EXPIRES: 6-30-2021

BY:
MULTI/TECH ENGINEERING SERVICES, INC.
1155 13TH ST. S.E. SALEM, OREGON 97302
503-363-9227

October 12, 2020

TO: Mayor, City Council and Scott Derickson, City Administrator
THROUGH: James C. Ferraris, Chief of Police 
FROM: Jason Millican, Lieutenant 
SUBJECT: Leasing Specialists, LLC. Contract Award
Staff Report

RECOMMENDATION:

That the City Council, acting as the Local Contract Review Board, award a police vehicle lease contract in the amount of \$122,168.00 (total contract price over the next four years) to Leasing Specialists, LLC. and authorize the City Administrator to sign the police vehicle lease contract.

BACKGROUND:

The Police Department currently has two canine patrol vehicles assigned for use to the patrol division. The vehicles are now five years old and due for replacement, because of the mileage and additional service needs. The Police Department is wanting to lease two 2021 Ford Explorer canine patrol vehicles.

DISCUSSION:

Pursuant to ORS 279A.215, the City may utilize a price agreement established through a permissive cooperative procurement to award a contract for goods and services. This process is in lieu of the City pursuing its own formal competitive selection process.

Employing the Oregon Cooperative Purchasing Program, which provided established competitive price quotes for Ford vehicle leases, the City identified Leasing Specialists, LLC. as a suitable vendor for leasing police vehicles. Leasing Specialists, LLC. was able to offer the vehicle lease to the City at the Oregon State contracted price with a competitive interest rate and stipulate to the ability to take delivery and make the first payment during the 2020/21 fiscal year. The Police Department will be leasing two

Agenda Item Review: City Administrator _____ City Attorney _____ Finance _____

vehicles (2 Ford Explorers) through this program. The pricing also includes all of the necessary equipment for all of the vehicles mentioned.

FINANCIAL IMPACT:

The City will pay a total vehicle lease rate of \$30,542.00 per year for the next four years (\$122,168.00 total contract price). The Police Department's existing budget will cover the expenses.



Agenda Item

October 12, 2020

TO: Honorable Mayor and City Council through City Administrator
THRU: James C. Ferraris, Chief of Police
FROM: Andy Shadrin, Lieutenant
SUBJECT: **Liquor License Application**

RECOMMENDATION:

The Woodburn City Council does not provide a recommendation for an approval or denial that the OLCC may take on the **Liquor License Application** for Metropolis LLC.

BACKGROUND:

Applicant: Noe Valenzuela-Valles
855 Larch Street
Canby OR, 97032
503-989-2318

Point of
Contact: Noe Valenzuela-Valles
855 Larch Street
Canby OR, 97032
503-989-2318

Business: Metropolis Growlers
347 N. Front St., # 7
Woodburn, OR 97071
503-989-2318

Owner(s): Noe Valenzuela-Valles

Agenda Item Review: City Administrator _____ City Attorney _____ Finance _____

License Type(s):

Off-Premises – May sell factory sealed containers of beer, wine and cider for consumption off the licensed premises. May sell beer, wine, and cider in a secure container, "growler", for consumption off licensed premises

On August 4, 2020, the Woodburn Police Department received an application for Off-Premises sales liquor license for Metropolis Growlers. The business will operate as a beer/wine/cider sales and growler fill station. The business will be located inside the Metropolis Marketplace and Venue, which is located at 347 N. Front Street in Woodburn, Oregon 97071. The hours of operation are from 12 PM to 2 PM on Sunday, 12 PM to 10 PM on Saturday and 2 PM to 10 PM Monday through Friday. The establishment will have recorded music. The business will have banquet seating available for up to 200 persons. The business will have no outside seating. The Woodburn Police Department has not received any communication from the public or surrounding businesses in support of or against the proposed change.

DISCUSSION:

The Police Department has completed a background investigation on Metropolis Growlers, Metropolis Marketplace and Venue and the subject listed on the OLCC application, Noe Valenzuela-Valles. Noe Valenzuela-Valles has several arrest and conviction cycles in his personal computerized criminal history check. The most recent arrest occurred on May 24, 2013, for a bench warrant for an original charge of DUII. On January 6, 2013, Noe Valenzuela-Valles was arrested and later convicted of misdemeanor criminal driving while suspended. On October 21, 2012, Noe Valenzuela-Valles was arrested and later convicted of DUII. On April 14, 2002, Noe Valenzuela-Valles was arrested for a theft, fraudulent use of a credit card and identity theft. There is no information available in the career criminal history check that the theft, fraudulent use of a credit card and identity theft charges concluded in a court conviction. According to the career criminal history check the most recent arrest was over six years ago. The theft and fraud arrest occurred over seventeen years ago.

On April 28, 2020, Woodburn Police had responded to Metropolis Marketplace and Venue in regards to a social event that was occurring at the location. It was discovered that Noe Valenzuela-Valles had hired uncertified bodyguards and had allowed the upstairs banquet venue to be rented for a funeral wake. During that time, any social gatherings were prohibited by Governor's order 20-07, due to the unfolding Covid-19 pandemic. It was noted that there were attendees of the wake that were in violation of the social distancing orders.

Noe Valenzuela was advised that the event was in violation of the governor's order. The following day it was discovered that the wake was still occurring despite law enforcement contact the prior day. At that time no police arrest or citations were issued for the violation of the governor's order but reports were forwarded to OLCC, Oregon Health Agency and OSHA.

The Salem office of OLCC was contacted for additional information in regards to their review of the April 28, 2020, Governor's order 20-07, violation report forwarded from the Woodburn Police Department. OLCC advised that the police reports documenting the violation of order 20-07 had been received and reviewed prior to issuance of a previous liquor license after the April 28, 2020, incident. OLCC advised that Noe Valenzuela (Metropolis Growlers) has a current liquor license and that the current application is for additional liquor license approvals. OLCC advised that the previously reported violation of Governor's order 20-07, would not impact the current license application since the incident had already been reviewed and Metropolis Growlers was already granted a liquor license after the reported violation.

There was no other notable information in remaining database checks. Noe Valenzuela-Valles has a valid State of Oregon operator's license. Noe Valenzuela-Valles has a number of driving related infractions on his driving record that have involved driving without a valid license, insurance and speeding, that occurred from 2012 through 2018. Noe Valenzuela-Valles was most recently reinstated in his driving privileges on July 6, 2018.

FINANCIAL IMPACT:

None

Woodburn Police Department

MONTHLY ARRESTS BY OFFENSES

2020 Year to Date

CHARGE DESCRIPTION	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Total
AGGRAVATED ASSAULT	2	0	0	3	1	4	1	2	13
ANIMAL CRUELTY	0	0	0	0	1	0	0	0	1
ANIMAL ORDINANCES	2	2	0	0	2	3	1	0	10
ARSON	1	0	0	0	0	0	1	0	2
ASSAULT SIMPLE	14	7	5	9	8	12	9	6	70
ATTEMPTED MURDER	0	0	0	0	0	0	0	1	1
BURGLARY - BUSINESS	0	1	0	0	0	0	0	1	2
BURGLARY - OTHER STRUCTURE	0	1	0	0	0	0	0	0	1
BURGLARY - RESIDENCE	0	1	1	0	0	1	1	0	4
CHILD NEGLECT	0	0	0	0	1	0	0	0	1
CRIME DAMAGE-NO VANDALISM OR ARSON	2	2	3	4	2	0	0	3	16
CURFEW	0	0	0	1	0	0	0	0	1
CUSTODY - MENTAL	4	0	0	8	4	5	3	3	27
DISORDERLY CONDUCT	8	9	5	7	10	3	4	5	51
DRINKING IN PUBLIC	0	0	0	0	4	0	0	0	4
DRIVING UNDER INFLUENCE	5	9	3	1	3	8	8	9	46
DRUG LAW VIOLATIONS	16	17	10	9	21	18	6	15	112
DWS/REVOKED - FELONY	0	0	0	0	0	1	0	0	1
DWS/REVOKED-MISDEMEANOR	2	1	2	3	3	3	5	3	22
ELUDE	0	0	2	4	0	3	0	1	10
ESCAPE FROM YOUR CUSTODY	1	1	0	1	0	0	0	0	3
EXTORTION/BLACKMAIL	0	1	0	3	0	1	1	1	7
FAIL TO DISPLAY OPERATORS LICENSE	0	3	0	1	1	0	0	0	5
FAILURE TO REGISTER AS SEX OFFENDER	0	0	1	0	1	0	0	0	2
FORCIBLE RAPE	0	0	1	0	0	0	1	0	2
FORGERY/COUNTERFEITING	0	1	0	0	1	0	0	1	3
FRAUD - BY DECEPTION/FALSE PRETENSES	0	2	0	0	0	0	0	0	2
FRAUD - CREDIT CARD/AUTOMATIC TELLER MACHINE	0	1	0	0	1	0	0	0	2
FRAUD - OF SERVICES/FALSE PRETENSES	0	0	0	0	0	1	0	0	1
FUGITIVE ARREST FOR ANOTHER AGENCY	47	24	23	19	33	35	32	39	252
GARBAGE LITTERING	0	0	0	0	1	0	0	0	1
HIT AND RUN-MISDEMEANOR	4	4	2	2	1	3	3	4	23
IDENTITY THEFT	0	1	0	0	1	0	0	0	2
INTIMIDATION /OTHER CRIMINAL THREAT	5	4	2	4	4	5	2	3	29
KIDNAP - FOR ADDITIONAL CRIMINAL PURPOSE	0	2	0	0	0	0	1	0	3
MINOR IN POSSESSION	0	1	2	1	0	0	5	3	12
MOTOR VEHICLE THEFT	2	4	6	12	7	3	1	7	42
OTHER	4	3	6	4	10	3	6	2	38
PROPERTY RECOVER FOR OTHER AGENCY	0	0	0	1	0	0	0	1	2
RECKLESS DRIVING	2	4	2	4	1	4	0	3	20
RECKLESSLY ENDANDERING	3	2	0	2	1	1	0	2	11
RESTRAINING ORDER VIOLATION	3	2	0	2	1	0	1	1	10
ROBBERY - BUSINESS	0	0	0	0	1	0	0	0	1
ROBBERY - CONV.STORE	0	0	0	0	0	1	0	0	1
ROBBERY - OTHER	1	1	0	0	0	0	0	0	2
ROBBERY - RESIDENCE	1	0	0	0	0	0	0	0	1
RUNAWAY	0	1	0	1	0	0	0	0	2
SEX CRIME - CONTRIBUTE TO SEX DELINQUENCY	0	0	0	0	0	0	0	1	1
SEX CRIME - EXPOSER	1	0	0	0	0	0	0	2	3
SEX CRIME - FORCIBLE SODOMY	0	0	1	0	0	0	0	0	1
SEX CRIME - INCEST	0	0	1	0	0	0	0	0	1
SEX CRIME - MOLEST (PHYSICAL)	2	1	1	0	0	0	0	0	4
SEX CRIME - NON-FORCE RAPE	0	0	0	0	0	1	0	0	1
STALKER	1	0	0	1	0	1	1	1	5

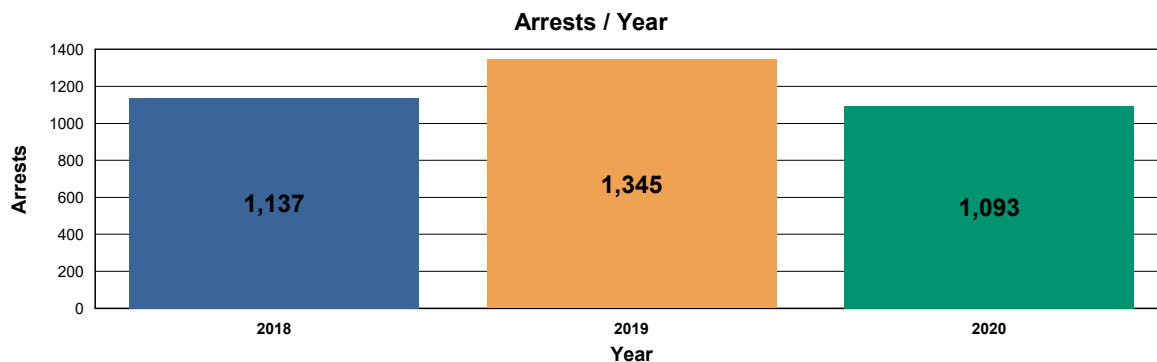
Woodburn Police Department

MONTHLY ARRESTS BY OFFENSES

2020 Year to Date

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Total
STOLEN PROPERTY - RECEIVING,BUYING,POSSESSING	1	2	0	1	1	0	0	4	9
SUICIDE	0	0	0	0	0	1	0	0	1
THEFT - BUILDING	0	0	0	3	0	0	0	1	4
THEFT - FROM MOTOR VEHICLE	1	1	0	2	0	0	0	1	5
THEFT - MOTOR VEHICLE PARTS/ACCESSORIES	2	0	0	0	0	0	0	0	2
THEFT - OTHER	2	7	3	2	1	0	2	1	18
THEFT - SHOPLIFT	4	4	3	0	3	11	2	1	28
TRAFFIC VIOLATIONS	7	4	4	1	5	6	1	3	31
TRESPASS	8	3	7	7	5	7	3	6	46
UNAUTHORIZED ENTRY INTO MOTOR VEHICLE	0	1	2	3	1	1	0	1	9
VANDALISM	0	1	0	1	1	2	3	2	10
VEHICLE RECOVERD FOR OTHER AGENCY	0	0	0	1	3	1	1	0	6
WEAPON - CARRY CONCEALED	1	1	2	1	2	0	1	2	10
WEAPON - EX FELON IN POSSESSION	0	1	0	0	1	0	0	0	2
WEAPON - OTHER	0	0	0	1	0	0	0	0	1
WEAPON - POSSESS ILLEGAL	1	1	3	3	1	4	3	1	17
WEAPON - SHOOTING IN PROHIBITED AREA	1	0	2	0	0	0	0	1	4

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Total
2020 Total	161	139	105	133	149	153	109	144	1,093
2019 Total	178	115	157	146	172	174	231	172	1345
2018 Total	187	111	138	136	147	101	162	155	1137



Woodburn Police Department

MONTHLY CRIMINAL OFFENSES

2020 Year to Date

CHARGE DESCRIPTION	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Total
AGGRAVATED ASSAULT	2	4	0	4	3	6	4	4	27
ANIMAL CRUELTY	0	0	0	0	1	1	0	0	2
ANIMAL ORDINANCES	2	1	0	0	4	2	1	0	10
ARSON	1	1	0	0	0	2	3	0	7
ASSAULT SIMPLE	18	16	9	10	15	17	13	14	112
ATTEMPTED MURDER	0	0	0	0	0	0	1	1	2
BURGLARY - BUSINESS	1	5	1	1	3	3	0	2	16
BURGLARY - OTHER STRUCTURE	1	1	3	0	1	1	0	1	8
BURGLARY - RESIDENCE	2	8	2	1	0	5	3	4	25
CHILD NEGLECT	0	0	0	0	1	0	0	1	2
CITY ORDINANCE	0	0	0	1	0	0	0	0	1
CRIME DAMAGE-NO VANDALISM OR ARSON	9	23	4	12	15	13	16	12	104
CRIMINAL MISTREATMENT	1	0	0	0	0	0	1	0	2
CURFEW	0	0	0	1	0	0	0	0	1
CUSTODY - MENTAL	5	0	0	8	4	5	3	3	28
DISORDERLY CONDUCT	8	6	4	6	5	3	8	5	45
DRINKING IN PUBLIC	0	0	0	0	1	0	0	0	1
DRIVING UNDER INFLUENCE	5	10	2	1	3	8	9	8	46
DRUG LAW VIOLATIONS	13	9	7	9	17	14	9	10	88
DRUG PARAPHERNALIA	0	0	0	0	0	1	0	0	1
DWS/REVOKED - FELONY	0	0	0	0	0	1	0	0	1
DWS/REVOKED-MISDEMEANOR	2	1	2	3	3	3	6	2	22
ELUDE	1	2	2	4	1	4	0	4	18
ESCAPE FROM YOUR CUSTODY	1	1	1	1	0	0	0	0	4
EXTORTION/BLACKMAIL	0	0	0	3	0	1	1	1	6
FAIL TO DISPLAY OPERATORS LICENSE	0	3	0	1	1	0	0	0	5
FAILURE TO REGISTER AS SEX OFFENDER	0	0	1	0	1	0	0	0	2
FORCIBLE RAPE	2	3	3	1	2	6	1	0	18
FORGERY/COUNTERFEITING	2	5	4	4	2	3	3	1	24
FRAUD - BY DECEPTION/FALSE PRETENSES	3	5	9	2	4	4	6	4	37
FRAUD - CREDIT CARD/AUTOMATIC TELLER MACHINE	3	4	2	1	1	1	1	2	15
FRAUD - NOT SUFFICIENT FUNDS CHECK	0	0	2	0	0	0	0	0	2
FRAUD - OF SERVICES/FALSE PRETENSES	0	0	0	0	0	1	0	0	1
FRAUD - WIRE	0	0	0	1	0	0	2	0	3
FUGITIVE ARREST FOR ANOTHER AGENCY	35	20	15	13	19	26	22	25	175
GARBAGE LITTERING	0	0	0	0	1	0	0	0	1
HIT AND RUN FELONY	0	1	0	0	0	0	0	0	1
HIT AND RUN-MISDEMEANOR	18	14	9	14	16	18	19	38	146
IDENTITY THEFT	3	5	6	1	3	4	0	2	24
INTIMIDATION /OTHER CRIMINAL THREAT	3	5	4	1	5	6	5	4	33
KIDNAP - FOR ADDITIONAL CRIMINAL PURPOSE	1	1	0	0	0	0	2	0	4
MINOR IN POSSESSION	0	2	2	1	0	0	2	0	7
MISCELLANEOUS	24	19	15	12	17	14	27	26	154
MOTOR VEHICLE THEFT	8	12	26	31	53	30	22	30	212
NEGLIGENT MANSLAUGHTER	0	0	0	0	0	0	1	0	1
NON CRIMINAL DOMESTIC DISTURBANCE	15	6	13	21	14	16	16	16	117
OTHER	3	4	3	6	8	8	5	2	39
PROPERTY - FOUND LOST MISLAID	5	1	4	0	6	3	3	6	28
PROPERTY RECOVER FOR OTHER AGENCY	0	0	0	0	1	1	0	3	5
PUBLIC HEALTH AND SAFETY ORDINANCES	0	0	0	1	0	0	0	0	1
RECKLESS DRIVING	4	6	1	4	2	4	0	4	25
RESTRAINING ORDER VIOLATION	5	2	0	2	1	0	1	1	12
ROBBERY - BUSINESS	0	1	0	0	1	0	0	0	2
ROBBERY - CONV.STORE	0	0	0	0	0	1	0	0	1
ROBBERY - HIGHWAY	0	0	1	0	0	0	0	0	1
ROBBERY - OTHER	4	2	0	0	0	0	1	1	8
RUNAWAY	1	4	1	2	0	2	2	1	13

Woodburn Police Department

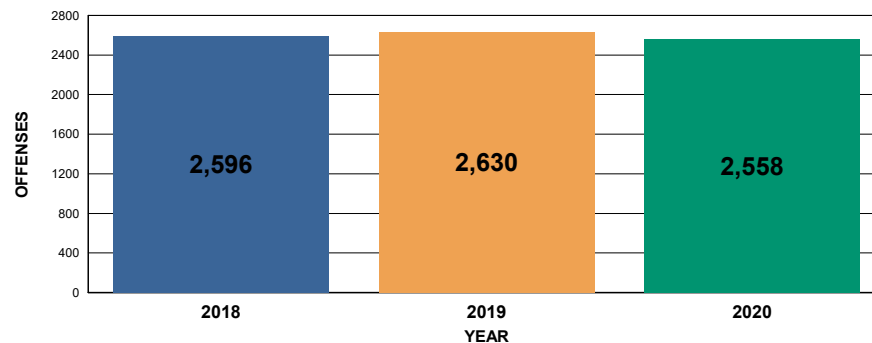
MONTHLY CRIMINAL OFFENSES

2020 Year to Date

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Total
SEX CRIME - CONTRIBUTE TO SEX DELINQUENCY	1	1	0	0	0	1	1	0	4
SEX CRIME - EXPOSER	0	1	1	0	1	0	0	2	5
SEX CRIME - FORCIBLE SODOMY	1	0	0	0	0	1	0	0	2
SEX CRIME - INCEST	0	0	1	0	0	0	0	0	1
SEX CRIME - MOLEST (PHYSICAL)	3	2	2	1	1	1	0	0	10
SEX CRIME - NON-FORCE RAPE	0	0	1	0	0	1	1	0	3
SEX CRIME - OTHER	1	0	0	0	0	0	0	0	1
SEX CRIME - PORNOGRAPHY/OBSCENE MATERIAL	0	0	1	0	0	1	0	0	2
STALKER	1	0	0	1	0	3	1	1	7
STOLEN PROPERTY - RECEIVING,BUYING,POSSESSING	1	2	1	0	1	0	1	0	6
SUICIDE	0	0	0	0	0	1	0	0	1
THEFT - BICYCLE	2	2	3	3	3	3	2	3	21
THEFT - BUILDING	2	4	1	4	0	1	2	0	14
THEFT - COIN OP MACHINE	0	2	1	0	1	0	1	1	6
THEFT - FROM MOTOR VEHICLE	14	15	18	25	29	18	14	17	150
THEFT - MOTOR VEHICLE PARTS/ACCESSORIES	4	4	6	5	8	10	4	7	48
THEFT - OTHER	15	23	13	7	18	14	13	5	108
THEFT - PICKPOCKET	0	1	0	0	0	0	0	2	3
THEFT - SHOPLIFT	12	16	8	5	7	16	14	16	94
TRAFFIC VIOLATIONS	8	11	6	1	5	4	1	6	42
TRESPASS	11	5	5	7	7	8	4	5	52
UNAUTHORIZED ENTRY INTO MOTOR VEHICLE	2	0	2	0	5	7	2	0	18
VANDALISM	14	15	14	22	20	31	36	15	167
VEHICLE RECOVERD FOR OTHER AGENCY	1	1	1	7	14	11	10	7	52
WEAPON - CARRY CONCEALED	1	1	1	1	2	1	2	1	10
WEAPON - EX FELON IN POSSESSION	0	1	1	2	0	1	0	0	5
WEAPON - OTHER	0	0	1	0	0	0	0	0	1
WEAPON - POSSESS ILLEGAL	1	2	2	2	1	4	6	3	21
WEAPON - SHOOTING IN PROHIBITED AREA	1	0	1	1	3	0	2	0	8

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Total
2020 Total	307	322	249	278	361	376	336	329	2,558
2019 Total	330	235	325	297	371	374	352	346	2,630
2018 Total	409	284	317	342	316	309	311	308	2,596

Offenses / Year



Woodburn Police Department

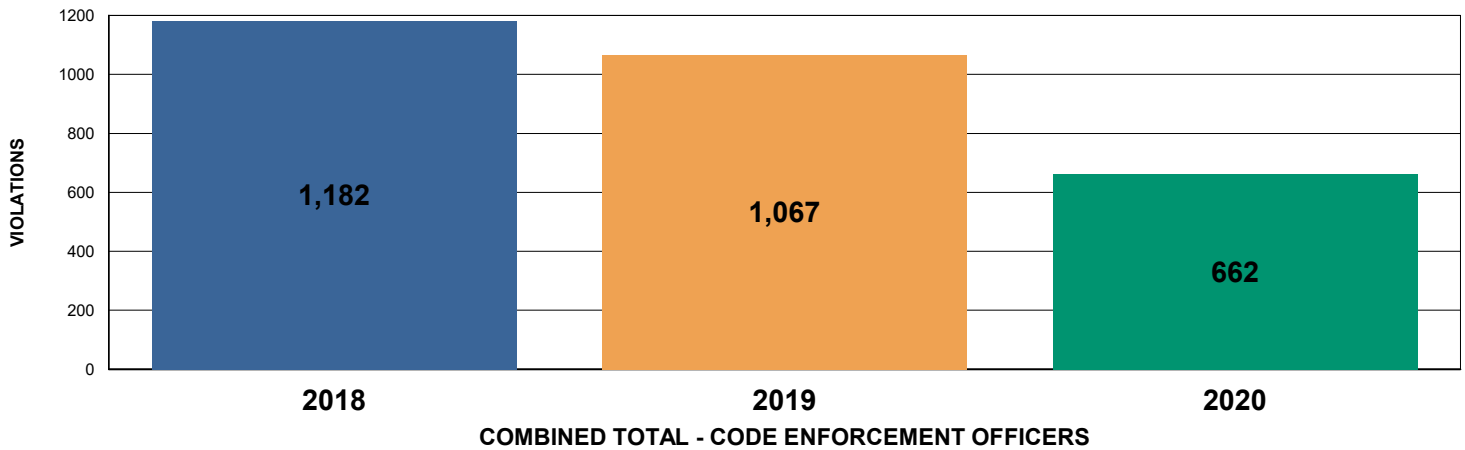
ORDINANCE VIOLATIONS

2020 Year to Date

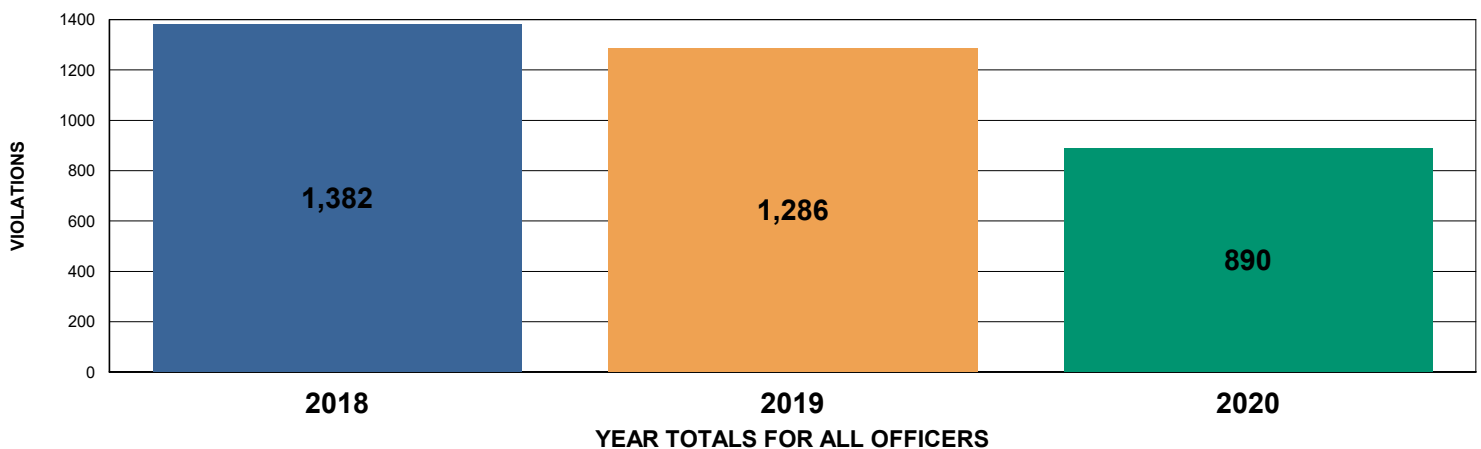
9/21/2020

Ordinance Discription	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Total
Animal Complaint	49	43	35	26	45	37	35	27	297
Ordiinance - Abate/Nuisances	0	0	1	2	0	0	0	0	3
Ordinance - Abandoned Vehicles	21	47	34	17	21	26	35	23	224
Ordinance - Abate Graffiti	4	1	0	1	0	0	1	1	8
Ordinance - Land Use Violations	1	2	2	4	7	3	4	0	23
Ordinance - Oth Violation	34	28	25	30	26	26	20	22	211
Ordinance - Tall Grass	0	0	0	0	57	31	19	17	124
2020 Total	109	121	97	80	156	123	114	90	890
2019 Total	141	99	148	116	205	197	173	207	1,286
2018 Total	176	133	156	182	223	167	140	205	1,382

Ordinance Violations / Code Enforcement Officers



Ordinance Violations / Year



CITY OF WOODBURN

Economic and Development Services Department

MEMORANDUM

270 Montgomery Street

Woodburn, Oregon 97071

(503) 982-5246

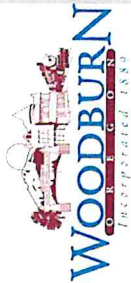
Date: October 1, 2020

To: Chris Kerr, Community Development Director

From: Ted Cuno, Building Division 

Subject: Building Activity for September 2020

	2018		2019		2020	
	No.	Dollar Amount	No.	Dollar Amount	No.	Dollar Amount
Single-Family Residential	0	\$0	0	\$0	0	\$0
Multi-Family Residential	0	\$0	0	\$0	0	\$0
Assisted Living Facilities	0	\$0	0	\$0	0	\$0
Residential Adds & Alts	3	\$19,787	4	\$247,214	4	\$56,540
Industrial	0	\$0	0	\$0	0	\$0
Commercial	16	\$264,232	3	\$27,708	4	\$331,300
Signs and Fences	1	\$9,800	0	\$0	0	\$0
Manufactured Homes	0	\$0	1	\$33,000	0	\$0
TOTALS	20	\$362,427	8	\$307,922	8	\$387,840
Fiscal Year to Date (July 1 – June 30)		\$22,298,224		\$2,895,563		\$6,432,046



www.ci.woodburn.or.us

Permits Issued

9/1/2020 through 9/30/2020

Includes all valuations

building.dept@ci.woodburn.or.us

WOODBURN BUILDING DEPARTMENT
270 Montgomery Street
Woodburn, OR 97071
503-982-5246
FAX: 503-980-2496

Record Types Selected: -All-

Commercial Alarm or Suppression Systems

971-20-000381-FIRE

Issued: 9/2/20

Address: 2919 TOM TENNANT DR, WOODBURN, OR 97071

Owner: WOODBURN-DENN PROPERTIES LLC ATTN: PAUL FOX C/O DUSKIN DUSKIN CPAS

Licensed Prof:

Category of Construction: Commercial

Work Description: New Fire Alarm system

NEW FA Panel - Cell communicator - Smoke above the panel, Annunciator and Manual pull station at main entrance, new OD H/S on street facing and FDC.

System will connect to and monitor sprinkler system and Ansul system.

Type of Work: Alteration

Fees: \$362.32
Parcel: 052W12AC04400

Valuation: \$4,700.00

Commercial Alarm or Suppression Systems

1 permits issued

\$362.32

\$4,700.00

Permits Issued:

Commercial Mechanical				
971-20-000363-MECH				
Address:	1776 COUNTRY CLUB RD, WOODBURN, OR 97071	Issued:	9/11/20	
Owner:	SENIOR ESTATES COUNTRY CLUB	Fees:	\$300.83	Valuation:
Licensed Prof:		Parcel:	052W12A 00100	\$5,375.00
Category of Construction:	Commercial	Type of Work:	Replacement	
Work Description:	Remove existing pool exhaust fan and replace with new			
971-20-000403-MECH				
Address:	2225 N PACIFIC HWY, WOODBURN, OR 97071	Issued:	9/28/20	
Owner:	HYLA REGILLA INVESTMENTS LLC	Fees:	\$767.65	Valuation:
Licensed Prof:		Parcel:	051W08A 01700	\$25,212.00
Category of Construction:	Commercial	Type of Work:	Replacement	
Work Description:	Replace two package units. Units are sitting in the same area as existing units. Calculations by structural engineer are included. Also removing two additional package units (not replacing) and a unit heater.			
Commercial Mechanical			2 permits issued	\$1,068.48
				\$30,587.00

Permits Issued:

Commercial Structural

971-20-000108-STR		Issued: 9/30/20			
Address:	1001 ARNEY RD NE, WOODBURN, OR 97071				
Owner:	WOODBURN PREMIUM OUTLETS LLC C/O SIMON PROPERTY GROUP PROPERTY TAX				
Licensed Prof:	Gray West Construction, Inc.				
Category of Construction:	Commercial	Type of Work:	Alteration	Parcel: 052W12B 00200	Valuation: \$150,000.00
Work Description:	TI				
971-20-000342-STR		Issued: 9/3/20			
Address:	1358 MERIDIAN DR, WOODBURN, OR 97071				
Owner:	ANTONIA V ENTENA LT & ENTENA, ANTONIA V TRE & ENTENA, MONCHITO C TRE				
Licensed Prof:	WITHERS LUMBER COMPANY				
Category of Construction:	Commercial	Type of Work:	Alteration	Parcel: 051W07AC04100	Valuation: \$3,000.00
Work Description:	Tenant Improvement includes; Add 7' X 3'-6" and 4' X 3'-6" windows at east elevation. Remove 2' X 6' window east elevation. Demo restroom and remove interior non-bearing walls. Add three (3) 4' X 3'-6" windows at existing interior non-bearing walls.				
971-20-000385-STR		Issued: 9/30/20			
Address:	1001 ARNEY RD NE, STE# 107, WOODBURN, OR 97071				
Owner:	WOODBURN PREMIUM OUTLETS LLC PROPERTY TAX C/O SIMON PROPERTY GROUP				
Licensed Prof:	LJP Construction, LLC				
Category of Construction:	Commercial	Type of Work:	Alteration	Parcel: 052W12B 00200	Valuation: \$50,000.00
Work Description:	Interior renovation of a 2,400 s.f. retail space including the addition of changing rooms (one ADA) and a storage room. Non-load bearing wall construction only. New drop ceiling, Existing MEP system will be utilized.				
971-20-000402-STR		Issued: 9/28/20			
Address:	2225 N PACIFIC HWY, WOODBURN, OR 97071				
Owner:	HYLA REGILLA INVESTMENTS LLC				
Licensed Prof:					
Category of Construction:	Commercial	Type of Work:	Alteration	Parcel: 051W08A 01700	Valuation: \$128,300.00
Work Description:	TPO Mechanically Attached Systems				
	1. Loose lay EPS flute filler in existing metal panel flutes. 2. Furnish and install a ¼" densdek cover board over the existing roof system and mechanically attach. This will maintain the existing fire rating for the new roof assembly. 3. Over the cover board, furnish and install a new 60 mil reinforced TPO roof membrane and mechanically attach to the substrate. 4. Furnish and install new TPO base flashings around all curb penetrations				

Permits Issued:
Commercial Structural

4 permits issued

\$7,285.04

\$331,300.00

Permits Issued:

Residential Mechanical

971-20-000388-MECH		Issued: 9/1/20			
Address:	1667 VANDERBECK LN, WOODBURN, OR 97071		Fees: \$100.80	Valuation:	\$5,686.00
Owner:	OMAR, MOHAMMAND O & BONETTE, BRITTA FIA		Parcel: 052W01DD02900		
Licensed Prof:					
Category of Construction:	Single Family Dwelling		Type of Work:	Replacement	
Work Description:	replace ac				
971-20-000393-MECH		Issued: 9/2/20			
Address:	1385 GREENVIEW DR, WOODBURN, OR 97071		Fees: \$100.80	Valuation:	\$0.00
Owner:	HENSLEY, STEPHEN		Parcel: 051W08DA05300		
Licensed Prof:					
Category of Construction:	Single Family Dwelling		Type of Work:	Replacement	
Work Description:	REPLACE HEAT PUMP				
971-20-000394-MECH		Issued: 9/2/20			
Address:	765 S Pacific Hwy., SPC# 16		Fees: \$100.80	Valuation:	\$0.00
Owner:	SHALIMAR LLC C/O CURTIS, GERRY		Parcel: 051W19A 02300		
Licensed Prof:	ADVANTAGE HEATING AND AIR CONDITIONING LLC				
Category of Construction:	Manufactured Dwelling		Type of Work:	Addition	
Work Description:	Install new addition heat pump				
971-20-000395-MECH		Issued: 9/11/20			
Address:	460 4TH ST, WOODBURN, OR 97071		Fees: \$100.80	Valuation:	\$0.00
Owner:	TE, MOE K & TE, D MICHELLE		Parcel: 051W07CD09500		
Licensed Prof:	EDEN HOMES INC				
Category of Construction:	Single Family Dwelling		Type of Work:	Other	
Work Description:	Extend gas line 30 feet				
971-20-000396-MECH		Issued: 9/3/20			
Address:	944 HERMANSON ST, WOODBURN, OR 97071		Fees: \$100.80	Valuation:	\$4,095.00
Owner:	CHASE, MICHAEL & CLARK-CHASE, CLOE		Parcel: 051W18DC00400		
Licensed Prof:					
Category of Construction:	Single Family Dwelling		Type of Work:	Alteration	
Work Description:	Install air conditioner				
971-20-000397-MECH		Issued: 9/9/20			
Address:	612 N CASCADE DR, SPC# 81, WOODBURN, OR 97071		Fees: \$100.80	Valuation:	\$0.00
Owner:	WESTERN SAGE MANAGEMENT INC C/O MICHAEL HUARTE		Parcel: 052W12DD00600		
Licensed Prof:	ADVANTAGE HEATING AND AIR CONDITIONING LLC				
Category of Construction:	Manufactured Dwelling		Type of Work:	Addition	
Work Description:	Replacement of air handler. New addition heat pump.				

Permits Issued:

Residential Mechanical

971-20-000399-MECH	Issued: 9/9/20	Fees: \$100.80	Valuation: \$0.00
Address: 802 HARVEST WAY, WOODBURN, OR 97071		Parcel: 052W13 00102	
Owner: DETOM LLC			
Licensed Prof: ADVANTAGE HEATING AND AIR CONDITIONING LLC			
Category of Construction: Manufactured Dwelling	Type of Work: Replacement		
Work Description: 802 Harvest Wy. Replacement of air-handler and heat pump.			
971-20-000400-MECH	Issued: 9/11/20	Fees: \$100.80	Valuation: \$7,674.00
Address: 232 E CLACKAMAS CIR, WOODBURN, OR 97071		Parcel: 052W12DD02800	
Owner: GAPPERT, KATHY			
Licensed Prof:			
Category of Construction: Single Family Dwelling	Type of Work: Replacement		
Work Description: Replace air handler and add heat pump			
971-20-000401-MECH	Issued: 9/14/20	Fees: \$100.80	Valuation: \$3,865.00
Address: 3001 MCNAUGHT ST, WOODBURN, OR 97071		Parcel: 052W12BC01800	
Owner: RAUER, RICHARD H & RAUER, BARBARA J			
Licensed Prof:			
Category of Construction: Single Family Dwelling	Type of Work: Alteration		
Work Description: install gas furnace			
971-20-000404-MECH	Issued: 9/23/20	Fees: \$100.80	Valuation: \$0.00
Address: 26 JUNIPER CIR, WOODBURN, OR 97071		Parcel: 052W12BB10100	
Owner: NORTH HILLS PROPERTIES LLC			
Licensed Prof: ADVANTAGE HEATING AND AIR CONDITIONING LLC			
Category of Construction: Manufactured Dwelling	Type of Work: Addition		
Work Description: 26 Juniper Cir. New addition install heat pump			
971-20-000405-MECH	Issued: 9/23/20	Fees: \$100.80	Valuation: \$0.00
Address: 2875 HAZELNUT DR, WOODBURN, OR 97071		Parcel: 051W06DC00600	
Owner: BOTTARO, TREENA L & BOTTARO, GREGORY R			
Licensed Prof:			
Category of Construction: Single Family Dwelling	Type of Work: Addition		
Work Description: install gas furnace			
971-20-000409-MECH	Issued: 9/25/20	Fees: \$100.80	Valuation: \$4,000.00
Address: 1565 SALLAL CT, WOODBURN, OR 97071		Parcel: 052W12AD07600	
Owner: BUTTERFIELD, LYMAN H & BUTTERFIELD, CARMEN L			
Licensed Prof:			
Category of Construction: Single Family Dwelling	Type of Work: Replacement		
Work Description: A/C Replacement			

Permits Issued:

Residential Mechanical					
971-20-000411-MECH	Issued: 9/25/20	Type of Work: Addition	Fees: \$112.00	Valuation:	\$3,500.00
Address: 367 W CLEVELAND ST, WOODBURN, OR 97071					
Owner: PEREGRINA PROPERTIES LLC					
Licensed Prof:					
Category of Construction: Other					
Work Description: Adding small laundry room.					
971-20-000413-MECH	Issued: 9/28/20	Type of Work: Alteration	Fees: \$100.80	Valuation:	\$17,497.00
Address: 795 S COLUMBIA DR, WOODBURN, OR 97071					
Owner: GROTH, JOHN SR & GROTH, DEBORAH					
Licensed Prof:					
Category of Construction: Single Family Dwelling					
Work Description: Install furnace and AC and vent water heater					
971-20-000415-MECH	Issued: 9/29/20	Type of Work: Replacement	Fees: \$100.80	Valuation:	\$8,413.00
Address: 951 ALDER LN, WOODBURN, OR 97071					
Owner: PEREZ, JOSE A LEONARDO & LEONARDO, MARIA D					
Licensed Prof:					
Category of Construction: Single Family Dwelling					
Work Description: replace air handler and heat pump					
971-20-000416-MECH	Issued: 9/29/20	Type of Work: Replacement	Fees: \$100.80	Valuation:	\$0.00
Address: 2490 TRACY LN, WOODBURN, OR 97071					
Owner: PETERS, GERALD & PETERS, JOAN					
Licensed Prof:					
Category of Construction: Single Family Dwelling					
Work Description: replace furnace and air conditioner					
971-20-000417-MECH	Issued: 9/30/20	Type of Work: Alteration	Fees: \$100.80	Valuation:	\$1,400.00
Address: 389 W HAYES ST, WOODBURN, OR 97071					
Owner: JACKSON, SARAH A					
Licensed Prof:					
Category of Construction: Single Family Dwelling					
Work Description: Install gas line to new range					
Residential Mechanical			17 permits issued	\$1,724.80	\$56,130.00

Permits Issued:

Residential Structural

971-20-000219-STR **Issued:** 9/14/20 **Fees:** \$432.20 **Valuation:** \$20,000.00
Address: 2504 MERIDIAN CT, WOODBURN, OR 97071
Owner: FROCHEN,MERRA **Parcel:** 051W07AB09100

Licensed Prof:

Category of Construction: Single Family Dwelling **Type of Work:** Other
Work Description: Patio cover 360 sqft.

971-20-000392-STR **Issued:** 9/21/20 **Fees:** \$147.00 **Valuation:** \$2,800.00
Address: 1379 WILLOW AVE, WOODBURN, OR 97071
Owner: MANGUAL, PATRICK & MANGUAL, VERONIKA **Parcel:** 052W01CC03900

Licensed Prof:

Category of Construction: Projsect Edge Home Improvement LLC **Type of Work:** Alteration
Work Description: Detached Accessory Structure **Type of Work:** Alteration
Install 2 windows and 1 glass sliding door In a Non-habitable Garage

971-20-000398-STR **Issued:** 9/9/20 **Fees:** \$147.00 **Valuation:** \$3,000.00
Address: 1008 HARDCASTLE AVE, WOODBURN, OR 97071
Owner: RODRIGUEZ, FILIBERTO **Parcel:** 051W08CC05900

Licensed Prof:

Category of Construction: Single Family Dwelling **Type of Work:** Replacement
Work Description: Re-roof 17 ' X 30' 510 sqft at front of dwelling and 15% or more of new roof sheathing as needed.

971-20-000412-STR **Issued:** 9/30/20 **Fees:** \$552.90 **Valuation:** \$30,740.00
Address: 1250 MT HOOD AVE, WOODBURN, OR 97071
Owner: AFONASIEV, ANA **Parcel:** 051W08CA02700

Licensed Prof:

Category of Construction: Single Family Dwelling **Type of Work:** Alteration
Work Description: Remove existing flat roof and replace with new 5/12 pitch roof.

Residential Structural

4 permits issued

\$1,279.10

\$56,540.00

28 permits issued

\$11,719.74

\$479,257.00



Agenda Item

October 12, 2020

TO: Honorable Mayor and City Council

FROM: Jim Row, Assistant City Administrator
McKenzie Granum, Assistant City Attorney

SUBJECT: **Workshop: Utility Service Ordinance & Resolution setting ROW Utility License and Usage Fee Rates**

RECOMMENDATION:

The City Council will be having a workshop to discuss the upcoming adoption of a utility services ordinance that will implement a new licensing program to regulate utility service providers that utilize the City right-of-way ("ROW") and that do not otherwise have a franchise agreement with the City. No action is suggested to be taken at this work session.

BACKGROUND:

Earlier this year, staff initiated a review of the City's process for regulating utility services providers' use of the City's ROW. At the July 13th City Council Meeting, Consultant Reba Crocker of ROW Consultants LLC, introduced what is to be a new utility licensing program in the City. At that a meeting a general introduction to the topic was presented and an initial draft ordinance and associated fee resolution was presented for the Council's review. Following that meeting, the proposed draft was sent to numerous providers of telecommunications, gas, and electric services in Oregon.

The City has received written feedback regarding its ordinance proposal from four companies (AT&T, Verizon, Fatbeam, and PGE). The providers' feedback and written comments are attached and included with this staff report.

After receiving the provider feedback and completing further review of the draft ordinance and resolution with City staff, some edits and updates were incorporated into both documents being presented for council adoption.

DISCUSSION:

Agenda Item Review: City Administrator ☒ City Attorney ☒ Finance ☒

By adopting the Utility Service Ordinance and correlating fee schedule, the City will join roughly one dozen other municipalities in Oregon that have implemented a uniform ROW licensing system.

Given the complexity of developing and implementing the proposed ROW management program, staff has worked closely with ROW Consultants LLC, and its Principal Reba Crocker, to develop the program and work towards an implementation date of October 1, 2020.

Reba Crocker will again be available as part of the Council's discussion regarding adoption of the utility license program to assist in addressing technical questions, policy concerns, industry dealings, and general impacts that may result from adopting this new program.

If upon review of the proposed ordinance, resolution, or provider correspondence, any Councilor has an immediate question or concern they would like addressed, then please feel free to submit questions ahead of the council meeting to staff so that Ms. Crocker or City staff can be sure to cover the subject in full detail during the council meeting.

After the City adopts the new Utility Services Ordinance, utility service providers will be actively identified and subjected to the new licensing program. The six (6) providers that are currently operating under franchise agreements will not be subject to the new ROW management/licensing program until their existing agreements expire.

As provided previously, the pertinent provisions of the enclosed Utility Services Ordinance includes:

- Utilities operated by the City and other municipalities are exempted from the requirements of the ordinance;
- Providers are required to maintain a City of Woodburn Business Registration;
- Providers with existing franchises agreements are exempted until their agreements expire;
- Preserves the City's right to enter into franchise agreements with individual providers in situations where the public interest warrants;
- Wire line cable television providers will continue to operate under franchise agreements due to protections under FCC law;
- Each license with utility providers will be for a term of five (5) years;
- Licenses are transferrable upon the written consent of the City, provided the transfers are consistent with state and federal law;

- Providers seeking license renewals shall submit license applications at least thirty (30) days, but not more than ninety (90) days prior to expiration;
- Includes provisions under which the City may terminate licenses;
- Includes requirements that providers must comply with related to the location, construction, maintenance and removal of facilities in the ROW; and
- Provides for ROW license and usage fees to be established by resolution.

FINANCIAL IMPACT:

The development of a uniform utility service provider licensing program is anticipated to result in an increase in ROW usage fees, formally referred to as franchise fees. The amount of the increase is unknown at this time and will depend on the number of utility service providers the City is able to determine are utilizing the ROW.

Enclosures:

Utility Service Ordinance

Utility License & Usage Fee Resolution

August 3rd Letter from Fatbeam LLC

August 7th Ordinance Comments received from PGE

August 10th Letter from Wireless Policy Group LLC on behalf of Verizon Wireless

August 11th Letter from Wireless Policy Group LLC on behalf of New Cingular Wireless PCS, LLC ("AT&T")



August 11, 2020

McKenzie Granum, Assistant City Attorney
City of Woodburn
270 Montgomery Street
Woodburn, OR 97071

SENT VIA EMAIL: mckenzie.granum@ci.woodburn.or.us

Re: Small Wireless Facilities
Draft Utility Licensing and Right-of-Way Usage Fees

Dear Ms. Granum:

New Cingular Wireless PCS, LLC ("AT&T") appreciates the opportunity to comment on the draft utility licensing and right-of-way usage fees proposed to apply to communications services and wireless facilities, which the City of Woodburn ("City") plans to take to public hearing on September 14, 2020.

AT&T supports the City's efforts to update its wireless codes and fees for greater consistency with federal law – most notably, the 2018 Federal Communications Commission ("FCC") Order¹ – as well as advancements in technology.

With regard to the City's proposed utility licensing and right-of-way ("ROW") usage fees, AT&T has numerous concerns.

Specifically, AT&T objects to the proposed assessment of ROW "usage" fees based on revenue from its wireless communication facilities located on private property. At this time, AT&T has no wireless facilities located in the City's ROW, and the AT&T wireless facilities currently serving Woodburn citizens do not "use" the ROW under the proposed utility services ordinance or under commonly-understood principles.

Also of concern, the draft fee resolution states that the 7% fee will apply to "Communications (other than Small Cell Wireless Facilities)." As a practical matter, it is simply not possible to separate revenue derived from service provided by small wireless

¹ *Accelerating Wireless and Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, Declaratory Ruling and Third Report and Order, 33 FCC Rcd 9088 (2018) ("Order").

facilities from other wireless service revenue. Among other issues, by their design, small wireless facilities typically add capacity to an area that is already covered; in other words, they are often installed to improve the *quality* of wireless service in an area, so the exception is practicably ineffective.

AT&T is Not Currently “Using” the City’s ROW

Because AT&T provides wireless service in the City through facilities located on private property, AT&T is not “using” the ROW for purposes of assessing a ROW usage fee.

AT&T does not “use” the ROW when it is merely a customer of other utilities. AT&T currently provides wireless “Communications Services,” as that term is defined in the draft utility services ordinance, within the City, but not yet via wireless facilities located in the ROW.

We understand the City’s ROW consultant to believe that a wireless service provider “uses” the ROW when it is a backhaul customer via fiber owned and operated by another service provider. To confirm, AT&T has not installed any fiber facilities within the City’s ROW to connect to its wireless facilities located on private property. Further, even if AT&T were to install small wireless facilities in the City’s ROW, AT&T’s practice has been to contract with a licensed fiber provider to bring fiber service to its wireless facilities. In other words, for its wireless facilities AT&T is the fiber provider’s customer, not a provider of communications service via fiber. The fiber provider will at all times remain the owner and operator of the fiber lines, and as such will be responsible for obtaining its own licenses, permits and approvals from the City for installation and operation of fiber within the City’s ROW and paying any relevant fees for usage of the City’s ROW. See Section 5 of draft fee resolution. Most of AT&T’s wireless facilities consume power provided through facilities laid in the ROW – would the City take the position that AT&T is “using” the ROW to provide wireless service because it is an electric customer?

AT&T does not “use” the ROW when it merely emits radio frequency (“RF”) waves that may cross a ROW. We understand the City’s ROW consultant has also advanced the opinion that a wireless provider “uses” the ROW any time its RF waves cross a ROW. We do not believe that the utility services ordinance supports such a position. Importantly, the purpose of the ordinance is to “conserve the limited *physical capacity*” of the ROW and reimburse the City for the “costs of granting and regulating access” from those entities “causing such costs.” Section 2. AT&T’s emission of RF waves over a

ROW does not impact the physical capacity of the ROW or add costs to the City's ROW management.

Finally, the City's consultant's view of the applicability of a ROW usage fee based on a percentage of revenue is contrary to AT&T's understanding of the League of Oregon Cities model utility ordinance. You will see in the Usage Fee section of the City's draft ordinance, Section 13(A)-(B), that the site-specific usage fee for a utility facility mounted on an above-ground structure within the ROW, when the structure is owned by another entity, is said to be an *exception* to otherwise applicable ROW fees based on a percentage of revenue. Section 13(A) ("*Except as set forth in subsection B of this section*").

The 2018 FCC Order

In 2018, the FCC addressed the limits imposed by Sections 253 and 332 of the Telecommunications Act² on a local jurisdiction's regulation of small wireless facility deployment.³ The FCC concluded that ROW access fees and other fees violate Sections 253 or 332(c)(7) unless three conditions are met: (1) the fees are a reasonable approximation of the local government's costs, (2) only objectively reasonable costs are factored into those fees, and (3) the fees are no higher than the fees charged to similarly-situated competitors in similar situations.⁴

Specifically, Sections 253 and 332 bar local governments from imposing requirements that would prohibit or have the effect of prohibiting the ability of an entity to provide telecommunications service, although local governments are allowed to charge telecommunications providers "fair and reasonable compensation" for use of the ROW.⁵

Further, the FCC concluded "that an appropriate yardstick for 'fair and reasonable compensation,' and therefore an indicator of whether a fee violates Section 253(c), is whether it recovers a reasonable approximation of a state or local government's objectively reasonable costs of... maintaining the ROW... or processing an application or permit."⁶ The FCC continued, "fees are only permitted to the extent they represent a reasonable approximation of the local government's objectively reasonable costs..."⁷ otherwise, the fees violate Sections 253 and 332. ROW fees must be "*related to and*

² 47 U.S.C. §§ 253, 337.

³ *Id.*

⁴ FCC Order, ¶ 50.

⁵ 47 U.S.C. §253(c).

⁶ FCC Order, ¶ 72 (citations omitted).

⁷ *Id.*, ¶ 32, footnote 71.

caused by” the location of a small wireless facility and reflect the facility’s “*degree of actual use* of the public rights-of-way.”⁸ The FCC *Order* set a presumptively reasonable recurring fee for small wireless facilities located in the right-of-way of \$270 per year, per facility.⁹

Moreover, the courts have specifically recognized that “gross revenue fees generally are not based on the costs associated with an entity’s use of the ROW, and where that is the case, are preempted under Section 253(a).”¹⁰

The extension of the proposed 7% communications fee to small wireless facilities, which would be the practical effect of the City’s proposal, is unlawful.

Finally, while the 2018 *Order* did not set a presumptively reasonable ROW fee for macrocell facilities, such fees must also meet the requirements of Sections 253 and 332.

We appreciate the City’s consideration of AT&T’s comments and for all of the efforts by the City’s leaders and staff to establish workable policies for the wireless industry, including AT&T, and the people living and working in the Woodburn community.

Thank you for your consideration of these comments.

Sincerely,



Meridee Pabst
meridee.pabst@wirelesspolicy.com

cc: Reba Crocker, ROW Consultants LLC

⁸ Id. at footnote 131 (emphasis added).

⁹ FCC *Order*, ¶ 79.

¹⁰ Id., ¶ 70 (citations omitted).

August 7th Ordinance Comments received from PGE

Utility Services Ordinance

Section 1. Title.

The ordinance will be known and may be referenced as the Utility Service Ordinance.

Section 2. Purpose and Intent.

The purpose and intent of this Ordinance is to:

A. Permit and manage reasonable access to and use of the City's rights-of-way for utility purposes and conserve the limited physical capacity of those rights-of-way held in trust by the City consistent with applicable state and federal law;

B. Assure that the City's current and ongoing costs of granting and regulating access to, the use of the rights-of-way and utility services provisioned in the City, are fully compensated by the persons seeking such access and causing such costs;

C. Secure fair and reasonable compensation to the City and its residents for permitting use of the rights-of-way by persons who generate revenue by placing, owning, controlling, using or operating facilities therein or generate revenue for utility services;

D. Assure that all utility companies, persons and other entities owning, operating facilities, using facilities, or providing services within the City comply with the ordinances, rules and all regulations of the City heretofore or hereafter amended or adopted;

1. For the purposes of this Ordinance, all utility services owned or operated by the City are excluded.
2. For the purposes of this Ordinance, all utility services owned or operated by other municipalities are excluded.

E. Assure that the City can continue to fairly and responsibly protect the public health, safety and welfare of its residents;

F. Encourage the provision of advanced and competitive utility services on the widest possible basis to businesses and residents of the City by;

1. Allow the City to enter into other or additional agreements with Utility Providers and Operators, if the public's interest is served, and to amend the requirement of this Ordinance and the City regulations, as new technology is developed;
2. Allow the City to be resilient and adaptive to changes in technology; and

G. Comply with applicable provisions of state and federal law.

Section 3. Jurisdiction and Management of the Public Rights-of-way.

A. The City has jurisdiction and exercises regulatory management over, all rights-of-way within the City and provision of services, under authority of the City Charter and Oregon law.

B. The City has jurisdiction and exercises regulatory management over each right-of-way whether the City has a fee, easement, or other legal interest in the right-of-way, and whether the legal interest in the right-of-way was obtained by grant, dedication, prescription, reservation, condemnation, annexation, foreclosure or other means.

C. The exercise of jurisdiction and regulatory management of a right-of-way by the City is not official acceptance of the right-of-way and does not obligate the City to maintain or repair any part of the right-of-way.

D. The provisions of this Ordinance are subject to and will be applied consistent with applicable state and federal laws, rules and regulations, and, to the extent possible, will be interpreted to be consistent with such laws, rules and regulations.

Section 4. Regulatory Fees and Compensation Not a Tax.

A. The fees and costs provided for in this Ordinance, and any compensation charged and paid for use of the rights-of-way and the provision of services provided for in this Ordinance, are separate from, and in addition to, any and all other federal, state, local, and City charges, including but not limited to: any permit fee, or any other generally applicable fees, tax, or charge on business, occupations, property, or income as may be levied, imposed, or due from a utility operator, utility provider, franchisee or licensee, its customers or subscribers, or on account of the lease, sale, delivery, or transmission of utility services.

B. The City has determined that any fee or tax provided for by this Ordinance is not subject to the property tax limitations of Article XI, Sections 11 and 11b of the Oregon Constitution. These fees or taxes are not imposed on property or property owners.

C. The fees and costs provided for in this Ordinance are subject to applicable federal and state laws.

Section 5. Definitions.

For the purpose of this Ordinance the following terms, phrases, words and their derivations will have the meaning given herein. When not inconsistent with the context, words not defined herein will be given the meaning set forth in the Communications Act of 1934, as amended, the Cable Act, and the Telecommunications Act. If not defined in those statutes, the words will be given their common and ordinary meaning. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number and words in the singular number include the plural number. The words “shall” and “will” are mandatory and “may” is permissive.

“Cable Act” means the Cable Communications Policy Act of 1987, 47 U.S.C., Section 521, et seq., as now and hereafter amended.

“Cable service” is to be defined consistent with federal laws and means the one-way transmission to subscribers of: (i) video programming, or (ii) other programming service; and subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

“Calendar year” means January 1 to December 31, unless otherwise noted.

“City” means the city of Woodburn, an Oregon municipal corporation, and individuals authorized to act on the City’s behalf.

“City council” means the elected governing body of the city of Woodburn, Oregon.

“City facilities” means City or publicly owned structures or equipment located within the right-of-way or public easement used for governmental purposes.

“City standards” means the all ordinances, codes, regulations and rules of the City of Woodburn, in effect at the time of any work.

“City property” means and includes all real property owned by the City, other than public right-of-way and utility easement as those are defined herein, and all property held in proprietary capacity by the City.

“Communications services” means any service provided for the purpose of transmission of information including, but not limited to, voice, video, or data, without regard to the transmission protocol employed, whether or not the transmission medium is owned by the provider itself. Communications service includes all forms of telephone services and voice, video, data or information transport, but does not include: (1) cable service; (2) open video system service, as defined in 47 C.F.R. 76; (3) private communications system services provided without using the public rights-of-way or private communication system services that utilize the public rights-of-way only for the purposes of providing other utility services that are covered by this ordinance or franchise agreement; (4) public communications systems; (5) over-the-air radio or television broadcasting to the public-at-large from facilities licensed by the Federal Communications Commission or any successor thereto; and (6) direct-to-home satellite service within the meaning of Section 602 of the Telecommunications Act.

Commented [CL1]: PGE’s electric system requires the transmission of information since our metering system is wireless and many of our substations are remotely operated. We are not generating any gross revenue from these private communication systems/services though.

“Construction” means any activity in the public right-of-way resulting in physical change thereto, including excavation or placement of structures.

“Control” or “Use of Facilities” means actual working control over utility facilities in whatever manner exercised, whether or not the facility is owned. For example, but not limitation, Control means and includes leased capacity, transport, or any other use.

“Days” mean calendar days unless otherwise specified.

“Emergency” means a circumstance in which immediate work to repair damaged or malfunctioning facilities is necessary to restore lost service or prevent immediate harm to persons or property.

“Federal Communications Commission” or “FCC” means the federal administrative agency, or its lawful successor, authorized to regulate and oversee telecommunications carriers, services and providers on a national level.

“Gross Revenue” means any and all amounts, of any kind, nature or form, without deduction for expense, less net uncollectable, derived from the operation (including revenue derived from a leases or other agreements allowing use of facilities to other utility operators or providers), or use of utility facilities in the City, operation of a Communications Services or the provision of utility service(s) in the City, subject to all applicable limitations in federal or state law. Gross Revenues do not include proceeds from the sale of bonds, mortgages or other evidence of indebtedness, securities or stocks, any amounts collected from utility customers that are subsequently passed through to one or more third party entities pursuant to law or a tariff, or sales at wholesale by one public utility to another of electrical energy when the utility purchasing such electrical energy is not the ultimate customer. Gross Revenue also does not include revenue from joint pole use. For purposes of this Ordinance, revenue from joint pole use includes any revenue collected by a utility from other franchisees, permittees, or licensees of the City for the right to attach wires or cable to utility’s poles or places them in utility’s conduits. For purposes of this Ordinance, revenue from joint pole use does not include rental or other similar revenue collected by utility from other franchisees, permittees, or licensees of the City for the right to pole attachments for Small Cell Wireless Facilities.

Commented [CL2]: As we discussed on our call, we find that adding more specificity around the definition of Gross Revenue significantly reduces the cost both parties of administration and auditing the fees owed/paid to the City. This proposed language is borrowed from the recently passed Franchise in Tualatin.

“License” or “Utility License” means the authorization granted by the City to a utility operator or utility provider pursuant to this Ordinance.

“Licensee” or “Utility Licensee” means any person that has a valid Utility license issued by the City.

“Person” means and includes any individual, firm, sole proprietorship, corporation, company, partnership, co-partnership, joint-stock company, trust, limited liability company, association, municipality, special district, government entity or other organization, including any natural person or any other legal entity.

“Private communications system” means a system, including the construction, maintenance or operation of the system, for the provision of a service or any portion of a service which is owned or operated exclusively by a person for their use and not for sale or resale, including trade, barter or other exchange of value, directly or indirectly, to any person.

“Public communications system” means any system owned or operated by a government entity or entities for its exclusive use for internal communications or communications with other government entities, and includes services provided by the state of Oregon pursuant to ORS 283.140. “Public communications system” does not include any system used for sale or resale,

including trade, barter or other exchange of value, of communications services or capacity on the system, directly or indirectly, to any person.

“Public utility easement” means the space in, upon, above, along, across, over or under an easement for the constructing, reconstructing, operating, maintaining, inspecting, and repairing of utilities facilities. “Public utility easement” does not include an easement (i) that has been privately acquired by a utility operator, (ii) solely for the constructing, reconstructing, operating, maintaining, inspecting, and repairing of city facilities, or (iii) where the proposed use by the utility operator is inconsistent with the terms of any easement granted to the City.

“Right-of-way” , “Rights-of-Way”, “Public right-of-way”, or “ROW” means and includes, but is not limited to, the space in, upon, above, along, across, over or under the public streets, roads, highways, lanes, courts, ways, alleys, boulevards, bridges, trails, paths, sidewalks, bicycle lanes, public utility easements and all other public ways or areas, including the subsurface under and air space over these areas, but does not include parks, parkland, or other city property not generally open to the public for travel. This definition applies only to the extent of the City’s right, title, interest and authority to grant a license to occupy and use such areas for utility facilities.

“Small Cell Wireless Facility” means Facilities owned or operated for the provision of communications that are shorter ranged, wireless systems affixed to a structure with generally smaller components than traditional Macro Wireless Facilities and are deployed where suitable in flexible configurations to provide capacity and coverage. Small Cell Wireless Facilities means a facility that meets each of the following conditions per 47 C.F.R § 1.6002(l), as may be amended or superseded:

- (1) The facilities (i) are mounted on structures 50 feet or less in height including the antennas, or (ii) are mounted on structures no more than 10 percent taller than other adjacent structures, or (iii) do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater; and,
- (2) Each antenna associated with the deployment, excluding associated antenna equipment, is no more than three cubic feet in volume; and,
- (3) All other wireless equipment associated with the structure, including wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume; and,
- (4) The facilities do not result in human exposure to radio frequency in excess of the applicable safety standards specified in 47 C.F.R. § 1.1307(b).

“State” means the state of Oregon.

“Structure” means any facility a Utility Provider or Utility Operator places in the ROW, including but not limited to poles, vaults or manholes, hand holds, or junction boxes, conduit, direct bury cable, wires, pedestals, aerial cables or wires and transformers.

“Telecommunications Act” means the Communications Policy Act of 1934, as amended by subsequent enactments including the Telecommunications Act of 1996 (47 U.S.C., 151 et seq.) and as hereafter amended.

“Utility facility” or “facility” means any physical component of a system, including but not limited to the poles, pipes, mains, conduits, ducts, cables, wires, transmitters, plant, equipment and other facilities, located within, under or above the rights-of-way, any portion of which is used or designed to be used to deliver, transmit or otherwise provide utility service.

“Utility operator” or “operator” means any person who owns, places, controls, operates or maintains a utility facility within the City.

“Utility provider” or “Provider” means any person who provides utility service or communication services to customers within the City limits, whether or not any facilities in the ROW are owned by such provider.

“Utility service” means the provision, by means of utility facilities permanently located within, under or above the rights-of-way, whether or not such facilities are owned by the service provider, of electricity, natural gas, communications services, or cable services, to or from customers within the City limits, or the transmission or provision of any of these services through the City whether or not customers within the City are served by those transmissions and whether or not the facilities used for transmission are owned by the service provider.

“Work” means the construction, demolition, installation, replacement, repair, maintenance or relocation of any utility facility, including but not limited to any excavation and restoration required in association with such construction, demolition, installation, replacement, repair, maintenance or relocation.

Section 6. Business Registration

Business Registration Required. Every person that desires to use, operate or control utility facilities, or provide utility services to customers within the City will register with the City prior to use, operation, control of utility facilities, or providing any utility services to any customer in the City, in compliance with Ordinance No. 2399. Every person using, operating, controlling, or providing utility services to customers within the City as of the effective date of this Ordinance will obtain a Business Registration within thirty (30) days of the effective date of this Ordinance. Every person subject to this Ordinance will renew and maintain a Business Registration as required in Woodburn’s Ordinances that are heretofore or hereafter amended, at all times that the person, uses, operates, controls, provides or operates a utility services, to customers within the City.

Section 7. Utility License.

A. License Required.

Except those utility operators and utility providers with a valid franchise or other valid agreement from the City, every person will obtain a Utility License from the City prior to conducting any work in or use of the ROW, or providing utility services or communication services to or from customers within the City limits, or the transmission or provision of any of these services through the City whether or not customers within the City are served by those transmissions and whether or not the facilities used for transmission are owned by the service provider.

1. Every person that owns, or controls, provides utility services, or uses utility facilities in the rights-of-way as of the effective date of this Ordinance will apply for a Utility License from the City within thirty (30) days of the later of: (1) the effective date of this Ordinance, or (2) the expiration of a valid agreement granted by the City, unless a new agreement is granted by the City (3) for a person that is not a utility operator, providing utility services within the City.
2. The provisions of this section do not apply to any person subject to and in compliance with the cable television franchise requirement, except that subsection K will apply to the extent such person provides multiple services, subject to applicable law.

B. Utility License Application. The license application will be on a form provided by the City, and will be accompanied by any additional documents required by the application or the City, in the City's sole discretion, to identify the applicant, its legal status, including its authorization to do business in Oregon, a description of the type of utility service provided or to be provided by the applicant, a description of the facilities over which the utility service will be provisioned, and other information necessary to determine the applicant's ability to comply with the terms of this Ordinance.

C. Utility License Application & Renewal Fee. The application and renewal application will be accompanied by a nonrefundable fee or deposit set by resolution of the City Council.

D. Determination by City. The City will issue, within a reasonable period of time, a written determination granting or denying the Utility License in whole or in part. If the Utility License is denied, the written determination will include the reasons for denial. The Utility License will be evaluated based upon the provisions of this Ordinance, the information contained on the Utility License application, the continuing capacity of the rights-of-way to accommodate the applicant's proposed utility facilities and the applicable federal, state and local laws, rules, regulations and policies.

E. Changes to information contained on the Utility License application. Within thirty (30) days of a change to the information contained in the license application, the Licensee will notify the City in writing of such change(s).

F. Franchise Agreements. If the public interest warrants, as determined by the City in its sole discretion, the City and any ~~communications~~ provider – including cable providers, utility operator or utility provider, excluding Small Cell wireless providers, may enter into a written franchise or

other agreement that includes terms that clarify, enhance, expand, waive or vary the provisions of this Ordinance, consistent with applicable state and federal law. The agreement may conflict with the terms of this Ordinance with the review and approval of City Council. The franchisee will be subject to the provisions of this Ordinance to the extent such provisions are not in conflict with the express provisions of any such franchise or agreement. In the event of a conflict between the express provisions of a franchise or other agreement and this Ordinance, the franchise or other agreement will control.

- ~~1. The provider requesting a franchise agreement will deposit a non-refundable fee, as set by resolution of the City Council before negotiations occur.~~

Commented [CL3]: This is a highly unusual requirement, something that no other City in our service territory has ever required. We view franchise agreements no different than any other commercial contact that we negotiate and enter into, whereby each party bears its own costs (usually just internal costs) associated with such negotiations. Our experience has been that the costs associated with negotiating our franchise agreements with Woodburn historically have been negligible and result in only minimal internal costs (for both parties). Perhaps a compromise would be to say "Unless otherwise agreed to in writing by the City, the provider requesting a franchise agreement will deposit..."

G. Rights Granted.

1. The Utility License granted hereunder will authorize and permit the licensee, subject to the provisions of the City regulations and ordinance and other applicable provisions of the City, state or federal law, in effect and as may be subsequently amended, to construct, place, maintain, upgrade, repair and operate, control or use utility facilities in the rights-of-way for the term of the license for the provision of utility service(s) authorized in the license. In the event the licensee offers different service(s) than those authorized in the license, the licensee will inform the City of such changes no later than thirty (30) days after the change.
2. Any Utility License granted pursuant to this Ordinance will not convey equitable or legal title in the rights-of-way and may not be assigned or transferred except as permitted in subsection L of this section.

Neither the issuance of the Utility License nor any provisions contained therein will constitute a waiver or bar to the exercise of any governmental right or power, including without limitation, the police power or regulatory power of the City, in existence at the time the license is issued or thereafter obtained.

H. Term. Subject to the termination provisions in subsection N of this section, the Utility License granted pursuant to this Ordinance will be effective as of the date it is issued by the City or the date services began, whichever comes first, and will have a term of five (5) calendar years beginning: (1) January 1st of the year in which the license took effect for licenses that took effect between January 1st and June 30th; or (2) January 1st of the year after the license took effect for licenses that become effective between July 1st and December 31st.

I. Utility License Nonexclusive. No license granted pursuant to this section will confer any exclusive right, privilege, license or franchise to occupy or use the rights-of-way for delivery of utility services or any other purpose. The City expressly reserves the right to grant licenses, franchises or other rights to other persons, as well as the City's right to use the rights-of-way, for similar or different purposes. The license is subject to all recorded deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims of title of record that may affect the rights-of-way. Nothing in the license will be deemed to grant, convey, create, or vest in licensee a real property interest in land, including any fee, leasehold interest or easement.

J. Reservation of City Rights. Nothing in the Utility License will be construed to prevent the City from grading, paving, repairing and/or altering any rights-of-way, constructing, laying down, repairing, relocating or removing City facilities or establishing any other public work, utility or improvement of any kind, including repairs, replacement or removal of any city facilities. If any of licensee's utility facilities interfere with the construction, repair, replacement, alteration or removal of any rights-of-way, public work, city utility, city improvement or city facility, except those providing utility services in competition with a licensee, licensee's facilities will be removed or relocated as provided in subsections C, D and E of Section 9, in a manner acceptable to the City and consistent with City standards, industry standard engineering and safety codes in effect at the time the work is required.

K. Multiple Services.

1. A utility operator that provides or transmits or allows the provision or transmission of utility services and other services over its facilities is subject to the license and Usage fee requirements of this Ordinance for the portion of the facilities and extent of utility services delivered over those facilities. Nothing in this subsection J (1) requires a utility operator to pay the Usage use fee, if any, owed to the City by another person using the utility operator's facilities.
2. A utility operator that provides or transmits more than one utility service to customers in the City may not be required to obtain a separate Utility License or franchise for each utility service, but is required to file separate reports, remittances and submit any Usage fees due for each service provided.

L. Transfer or Assignment. To the extent permitted by applicable state and federal laws, the Utility Licensee will obtain the written consent of the City prior to the transfer or assignment of the license. The license will not be transferred or assigned unless;

1. The proposed transferee or assignee is authorized under all applicable laws to own or operate the utility facilities and/or provide the utility service authorized under the license; and
2. The transfer or assignment is approved by all agencies or organizations required or authorized under federal and state laws to approve such transfer or assignment.

The Utility Licensee requesting the transfer or assignment will fully cooperate with the City and provide requested documentation, as the City deems necessary, in the City's sole discretion, at no cost to the City, to sufficiently understand the transferees' ability to perform under the license.

If the City approves such transfer or assignment, the transferee or assignee will become responsible for fulfilling all obligations under the Utility License. A transfer or assignment of a license does not extend the term of the license.

M. Renewal. At least thirty (30) days, but no more than ninety (90) days prior to the expiration of a Utility License granted pursuant to this section, a licensee seeking renewal of its license will submit a license application to the City, including all information required in subsection B of this

section and applicable fees fee required in subsection C of this section. The City will review the application as required by subsection D of this section and grant or deny the license. If the City determines that the licensee is in violation of the terms of this Ordinance, or other City Ordinances, rules or regulations, at the time it submits its application, the City may require that the licensee cure the violation or submit a detailed plan to cure the violation within a reasonable period of time, as determined by the City, before the City will consider the application and/or grant the license. If the City requires the licensee to cure or submit a plan to cure a violation, the City will grant or deny the license application within ninety (90) days of confirming that the violation has been cured or of accepting the licensee's plan to cure the violation.

N. Termination.

1. Revocation or Termination of a Utility License. The City may terminate or revoke the license granted pursuant to this Ordinance for any of the following reasons:
 - a. Violation of any of the provisions of this Ordinance;
 - b. Violation of any provision of the license;
 - c. Misrepresentation in a license application;
 - d. Failure to pay taxes, compensation, fees or costs due the City after final determination by the City, of the taxes, compensation, fees or costs;
 - e. Failure to restore the rights-of-way after construction as required by this Ordinance or other applicable state and local laws, ordinances, rules and regulations;
 - f. Failure to comply with technical, safety and engineering standards related to work in the rights-of-way; or
 - g. Failure to obtain or maintain any and all licenses, permits, certifications and other authorizations required by state or federal law for the placement, maintenance and/or operation of the utility facilities.
2. Standards for Revocation or Termination. In determining whether termination, revocation or some other sanction is appropriate, the following factors will be considered:
 - a. The egregiousness of the misconduct;
 - b. The harm that resulted;
 - c. Whether the violation was intentional;
 - d. The Licensee's history of compliance; and/or
 - e. The Licensee's cooperation in discovering, admitting and/or curing the violation.
3. Notice and Cure. The City will give the Utility Licensee written notice of any apparent violations before terminating a Utility License. The notice will include a short and concise statement of the nature and general facts of the violation or noncompliance and provide a reasonable time (no less than twenty (20) and no more than forty (40) days) for the Licensee to demonstrate that the Licensee has remained in compliance, that the Licensee has cured or is in the process of curing any violation or noncompliance, or that it would be in the public interest to impose a penalty or sanction less than termination or revocation. If the Licensee is in the process of curing a violation or noncompliance, the Licensee must demonstrate that it acted promptly and continues to actively work on compliance. If the Licensee does not respond or if the City determines that the Licensee's response is inadequate, the City may revoke and/or terminate the Utility License.

4. Termination by Utility Licensee. If a licensee ceases to be required to have a Utility License, as defined under this Ordinance, the licensee may terminate or surrender its license, with a thirty (30) day notice to the City. Licensee may reapply for a Utility License at any time. No refunds or credits will be given for licenses terminated by the licensee or the City.
 - a. Within thirty (30) days of surrendering a Utility License, the licensee will file a final remittance form with the City stating, "final remittance" and will remit any funds due.
 - b. Upon surrendering a Utility License, the licensee will file a written statement that it has removed, or will commence and diligently pursue removal within 60 days, any and all facilities from the City and no longer provides Utility Services, as defined in this ordinance.

Commented [CL4]: It would be technically impossible to remove our entire electric infrastructure in the entire City within 60 days. We also have a regulatory mandate to provide electric power to the residents and businesses in the City. Perhaps there is a process by which the parties could agree to a different schedule in this very remote circumstance.

Section 8. Construction and Restoration.

A. Construction Codes. Utility facilities will be constructed, installed, operated, repaired and maintained in accordance with all applicable federal, state and local codes, rules and regulations, including but not limited to the National Electrical Code and the National Electrical Safety Code and the City Standards, in effect at the time of the work. When a utility operator, utility provider or licensee, or any person acting on its behalf, does any work in or affecting the rights-of-way, the utility operator will, at its own expense, promptly restore the rights-of-way as directed by the City consistent with applicable city codes, rules and regulations, in effect at the time of the work. A utility operator, utility provider, licensee or other person acting on its behalf will use suitable barricades, flags, flagging attendants, lights, flares and other measures as required for the safety of all members of the general public and to prevent injury or damage to any person(s), vehicle or property by reason of such work in or affecting the rights of way or property.

B. Construction Permits.

1. Except in cases of emergency when obtaining a permit prior to commencing the work in the rights-of-way is impracticable, no person will perform any work on utility facilities within the rights-of-way without first obtaining all required permits. In cases of an emergency when obtaining a permit prior to commencing the work in the rights-of-way is impracticable, such person shall promptly obtain all requisite permits as soon as practicable. The City will not issue a permit for the construction, installation, maintenance or repair of utility facilities unless the utility operator of the facilities has applied for and received a valid license, franchise agreement or other valid agreement (if applicable), required by this Ordinance, and all applicable fees have been paid. No permit is required for routine maintenance or repairs to customer service drops where such, repairs or maintenance do not require cutting, digging, or breaking of, or damage to, the right of way and do not result in closing or blocking any portion of the travel lane for vehicular traffic, bicycle lanes or sidewalks.

Commented [CL5]: There are emergency circumstances that require us to take immediate action prior to obtaining a permit to either prevent injury to people or property or to restore power (e.g., car accident that knocks over a pole, leaving a live wire laying across the street or an outage during an ice storm that leaves City offices closed).

Section 9. Location of Facilities.

A. Location of Facilities. Unless otherwise agreed to in writing by the City:

1. All utility operators are required to make good faith effort to both cooperate with and coordinate their construction schedule with those of the City and other users.

2. Utility facilities will be installed underground in all areas of the City where there are no existing poles in the ROW, there is no space on existing poles in the ROW, or where the only poles in the ROW are used only for high voltage lines (as defined below). This requirement will not apply to facilities used for transmission of electric energy at nominal voltages in excess of thirty-five thousand (35,000) volts or to antennas, pedestals, cabinets or other above-ground equipment of any utility operator for which the utility operator had written authorization to place above-ground when such facilities were installed.

Commented [CL6]: Much of our authority to place these types of facilities above ground was granted through the past franchises. If the franchise expires, we would like assurances that those facilities are still in the proper location since they were authorized at the time of installation.

2. Whenever any existing electric utilities, cable facilities or communications facilities are located underground within the ROW of the City, the utility operator with permission to occupy the same ROW will install all new facilities underground at no cost to the City, unless otherwise agreed to in writing by the City. This requirement will not apply to facilities used for transmission of electric energy at nominal voltages in excess of thirty-five thousand (35,000) volts ("high voltage lines") or to antennas, pedestals, cabinets or other above-ground equipment of any utility operator. The City reserves the right to require written approval of the location of any such above-ground equipment in the ROW at the time such equipment is installed.

Commented [CL7]: Other cities have wanted the discretion to help subsidize the costs of undergrounding in order to keep the costs to residents lower.

B. Interference with the Rights-of-Way. No utility operator or other person may locate or maintain its facilities so as to unreasonably interfere with the use of the rights-of-way by the City, by the general public or by other persons authorized to use or be present in or upon the rights-of-way. Utility facilities will not be located in area of restricted sight distance nor interfere with the proper function of traffic control signs, signals, lighting, or other devices that affect traffic operation. All use of the rights-of-way will be consistent with City codes, ordinances, rules and regulations in effect and as may be subsequently amended.

C. Relocation of Utility Facilities.

1. A utility operator will, at no cost to the City, unless otherwise agreed to in writing by the City, temporarily or permanently remove, relocate, change or alter the position of any utility facility within the ROW, including relocation of aerial facilities underground, when requested to do so in writing by the City for a City project.

Commented [CL8]: Other cities have wanted to reserve the flexibility to agree to pay for certain relocation costs, in particular for forced undergrounding situations.

a. If relocation is required by the City, the City will bear no responsibility or incur any costs, to provide or in any way secure alternate locations.

2. Nothing herein will be deemed to preclude the utility operator from ~~requesting-seeking~~ reimbursement or compensation from a third party, pursuant to applicable laws, regulations, tariffs or agreements, provided that the utility operator will timely comply with the requirements of this section regardless of whether or not it has requested or received such reimbursement or compensation.

3. The City may coordinate the schedule for relocation of utility facilities and based on such effort will provide written notice of the time by which the utility operator must remove, relocate, change, alter or underground its facilities. If a utility operator fails to remove, relocate, change, alter or underground any utility facility as requested by the City by the date reasonably established by the City, the utility operator will pay all costs incurred by

the City due to such failure, including but not limited to costs related to project delays, and the City may cause, using qualified personnel or contractors consistent with applicable state and federal safety laws and regulations, the utility facility to be removed, relocated, altered, or undergrounded at the utility operator's sole expense. Upon receipt of an invoice from the City, the utility operator will reimburse the City for the costs the City incurred within thirty (30) days.

4. The City will cooperate with the utility operator in securing alternate locations. However, the City will bear no responsibility or costs for securing alternate locations. ~~The City will bear no responsibility to obtain, compensate, or otherwise assist the utility operator in relocation of its facilities to location not in the control of the City.~~

Commented [CL9]: "Otherwise assist" could be read to be in conflict with the cooperation obligation in the first sentence.

D. Removal of Unauthorized Facilities.

1. Unless otherwise agreed to in writing by the City, within thirty (30) days following written notice from the City or such other time agreed to in writing by the City, a utility operator and any other person that owns, controls, or maintains any abandoned or unauthorized utility facility within the rights-of-way will, at its own expense, remove the facility and restore the affected area.
2. A utility system or facility is unauthorized under any of the following circumstances:
 - a. The utility facility, or any portion of the facility, is outside the scope of authority granted by the City under the Utility License, franchise or other written agreement. This includes facilities that were never licensed or franchised and facilities that were once licensed or franchised but for which the license or franchise has expired or been terminated. This does not include any facility for which the City has provided written authorization for abandonment in place.
 - b. The facility has been abandoned and the City has not provided written authorization for abandonment in place. A facility is abandoned if it is not in use and is not planned for further use. A facility will be presumed abandoned if it is not used for a period of twelve (12) consecutive months. A utility operator may overcome this presumption by presenting plans for future use of the facility.
 - c. The utility facility is improperly constructed or installed or is in a location not permitted by the construction permit, license, franchise or this Ordinance.
 - d. The utility operator is in violation of a material provision of this Ordinance and fails to cure such violation within thirty (30) days of the City sending written notice of such violation ~~(or in the event the cure cannot be completed within thirty (30) days, the utility operator shall have commenced to cure and be diligently pursuing completion of such cure)~~, unless the City extends such time period in writing.

Commented [CL10]: Certain scopes of work may take longer than 30 days to complete.

E. Removal by City.

1. The City retains the right and privilege to cut or move any utility, without notice, as the City determines, at its sole discretion to be necessary, appropriate or useful in response to a public health or safety emergency. The City will use qualified personnel or contractors consistent with applicable state and federal safety laws and regulations to the extent reasonably practicable without impeding the City's response to the emergency. The City will use best efforts to provide the utility operator with notice prior to cutting or moving

facilities. If prior notice is not possible, the City will provide such notice as soon as reasonably practicable after resolution of the emergency.

2. If the utility operator fails to remove any facility when required to do so under this Ordinance and after receiving notice from the City, the City may remove the facility using qualified personnel or contractors consistent with applicable state and federal safety laws and regulations, and the utility operator will be responsible for paying the full cost of the removal and any administrative costs incurred by the City in removing the facility and obtaining reimbursement. Upon receipt of an invoice from the City, the utility operator will reimburse the City for the costs the City incurred within thirty (30) days. The obligation to remove will survive the termination of the license or franchise.
3. The City will not be liable to any utility operator for any damage to utility facilities, or for any incidental or consequential losses resulting directly or indirectly therefrom, by the City or its contractor in removing, relocating or altering the facilities pursuant to ~~subsections B, C or D of this~~ Section 9 ~~or undergrounding its facilities as required by subsection A of Section 9, or~~ resulting from the utility operator's failure to remove, relocate, alter or underground its facilities as required by ~~those subsections~~ this Section 9, unless such damage arises directly from the City's or it's contractor's negligence or willful misconduct.

F. Engineering Record Drawings. The utility operator will provide the City with ~~two~~ a complete sets of record drawings in a form acceptable to the City showing the location of all its utility facilities after initial construction if such plan changed during construction. The utility operator will provide updated complete sets of as built plans upon request of the City, but not more than once per year.

Commented [CL11]: As more information, including drawings, move toward digital mediums, it seems redundant to require two copies and will likely bog down your systems to have duplicative digital copies.

G. Utility operator, Utility provider and Utility Licensee will provide, at no cost to the City, a comprehensive map showing the location of any facility in the City. Such map will be provided in a format acceptable to the City, with accompanying data sufficient enough for the City to determine the exact location of facilities, currently in Shapefile or Geodatabase format. The Utility Operator, Utility Provider and Utility Licensee will provide such map yearly by February 1.

Section 10. Leased Capacity.

A utility operator may lease capacity on or in its facilities to others, provided that the utility operator requires, through contract or otherwise, and has verified with the City, that the proposed lessor has obtained proper authority from the City prior to leasing capacity or allowing use of its facilities. Upon request, at no cost to the City, the utility operator will provide a complete list with the name, business address and contact information of any lessee. ~~If requested by the City, the utility operator will also provide exact details of any attachment by lessee.~~ A utility operator is not required to provide such information if disclosure is expressly prohibited by applicable law.

Commented [CL12]: We require all of our pole attachees to make a legal representation to us in their contract with us that they have all required legal authority to operate. We also provide a list of all attachees on poles located in the City. We believe enforcement of this legal requirement should be the responsibility of the City.

Commented [CL13]: Just as PGE has an obligation under our franchise and under this ordinance to provide information about our facilities, we believe it is more appropriate for the City to seek this information from the owner/operator of each specific attachment (which they too are obligated under franchise or this ordinance to provide that information). Our information about attachments is often in flux and can be stale since the owner/operator is often the entity who is doing the work on that attachment itself rather than us.

Section 11. Maintenance.

A. Every utility operator will install and maintain all facilities in a manner that complies with applicable federal, state and local laws, rules, regulations and policies. The utility operator will, at

its own expense, repair and maintain facilities from time to time as may be necessary to accomplish this purpose.

B. If, after written notice from the City of the need for repair or maintenance as required in subsection A of this section, a utility operator fails to repair and maintain facilities as requested by the City and by the date reasonably established by the City, the City may perform such repair or maintenance using qualified personnel or contractors consistent with applicable state and federal safety laws and regulations at the utility operator's sole expense. Upon receipt of an invoice from the City, the utility operator will reimburse the City for the costs the City incurred within thirty (30) days.

Section 12. Vacation.

If the City vacates any ROW, or portion thereof, that a utility operator uses, the utility operator will, at its own expense, remove its facilities from the ROW unless the City reserves a public utility easement, which the City will make a reasonable effort to do provided that there is no expense to the City, or the utility operator obtains an easement for its facilities. If the utility operator fails to remove its facilities within thirty (30) days after a ROW is vacated (or if removal cannot be completed within thirty (30) days, utility operator fails to commence and diligently pursue completion of such removal), or as otherwise directed or agreed to in writing by the City, the City may remove the facilities using qualified personnel or contractors consistent with applicable state and federal safety laws and regulations at the utility operator's sole expense. Upon receipt of an invoice from the City, the utility operator will reimburse the City for the costs the City incurred within thirty (30) days.

Section 13. Usage Fee.

A. Except as set forth in subsection B of this section, every person that owns utility facilities in the City's rights-of-way and every person that uses or controls utility facilities in the City's rights-of-way to provide utility service, whether or not the person owns the utility facilities used to provision the utility services and every person that provides utility services within the City, will pay the usage fee for every utility service provided in the amount determined by resolution of the City Council.

B. A utility operator whose only facilities in the ROW are facilities mounted on above-ground structures within the ROW, which structures are owned by another person, and with no facilities strung between such structures or otherwise within, under or above the ROW (other than equipment necessary to operate the mounted facilities that has been expressly approved by the City to be placed in the ROW), will pay the attachment fee set by City Council resolution for each attachment, or such other fee set forth in the license granted by the City. Unless otherwise agreed to in writing by the City, the fee will be paid quarterly, in arrears, within thirty (30) days after the end of each calendar quarter and will be accompanied by information sufficient to illustrate the calculation of the amount payable.

C. No acceptance of any payment will be construed as accord that the amount paid is in fact the correct amount, nor will such acceptance of payment be construed as a release of any claim the City may have for further or additional sums payable.

D. Usage fee payments required by this section will be reduced by any franchise fees or privilege taxes, due to the City, but in no case will be less than zero dollars (\$0).

E. Unless otherwise agreed to in writing by the City, the Usage fee set forth in subsection A of this section will be paid quarterly, in arrears, within thirty (30) days after the end of each calendar quarter. Each payment will be accompanied by an accounting of gross revenues, if applicable, and a calculation of the amount payable (a remittance form will be provided by the City). The City may request and will be provided at no cost to the City, any additional reports or information it deems necessary, in its sole discretion, to ensure compliance by the utility provider, utility operator or licensee. Such information may include, but is not limited to: chart of accounts, total revenues by categories and dates, list of products and services, narrative documenting calculation, details on number of customers within the City limits, or any other information needed for the City to easily verify compliance.

F. The calculation of the Usage fee required by this section will be subject to all applicable limitations imposed by federal or state law in effect and as may be subsequently amended.

G. The City reserves the right to enact other fees and taxes applicable to the utility providers, utility operators and licensee subject to this Ordinance. Unless expressly permitted by the City in enacting such fee or tax, or required by applicable state or federal law, no utility operator may deduct, offset or otherwise reduce or avoid the obligation to pay any lawfully enacted fees or taxes based on the payment of the Usage fees or any other fees required by this Ordinance

Section 14. ~~Penalties and Interest on Usage Fee~~

~~Penalties and interest~~ imposed by this section are in addition to any penalties that may be assessed under other ordinances or regulations of the City.

1. Any person who has not submitted the required remittance forms or remitted the correct fees when due as provided in Section 13 will pay ~~City a penalty listed below in addition to the amount due~~ interest on any past due amounts in the amount of nine percent (9%) per annum, or such maximum amount permitted by law:-
 - ~~a. First occurrence during any one calendar year; Ten percent (10%) of the amount owed, or Twenty five dollars (\$25.00), whichever is greater.~~
 - ~~b. Second occurrence during any one calendar year; Fifteen percent (15%) of the amount owed, or Fifty dollars (\$50.00), whichever is greater.~~
 - ~~c. Third occurrence during any one calendar year; Twenty percent (20%) of the amount owed, or Seventy five dollars (\$75.00), whichever is greater.~~
 - ~~d. Fourth occurrence during any one calendar year; Twenty five percent (25%) of the amount owed, or One hundred dollars (\$100.00), whichever is greater.~~
2. If the City determines that the nonpayment of any remittance due under this section is due to fraud or intent to wrongfully evade the provisions hereof, ~~an additional~~ penalty of twenty-five percent (25%) of the amount owed, or Five hundred dollars (\$500.00), whichever is greater, will be added thereto in addition to other penalties stated in ~~s~~Section 14.

Commented [CL14]: We believe these penalties are excessive and likely unenforceable under Oregon law, in particular for unintentional wrongdoing. We suggest limiting the interest payments to the maximum interest permitted by Oregon law and rely on the penalty provision in subpart 2 and in Section 19.

3. ~~In addition to the penalties imposed, any person who fails to remit any fee when due as provided in Section 13 will pay interest at the rate of 1.5% per month or fractions thereof, without proration for portions of a month, on the total amount due (including penalties), from the date on which the remittance first became delinquent, until received by the City.~~

Commented [CL15]: We suggest one interest rate calculation for past due amounts.

4.3. Every penalty imposed, and ~~such~~ interest as it accrues under the provision of this section, will be merged with, and become part of, the fee required to be paid.

The City or its designee, in their sole discretion, will have the authority to reduce or waive the penalties and interest due under Section 14.

Section 15. Audits and Records Requests.

A. Within thirty (30) days of a written request from the City, or as otherwise agreed to in writing by the City:

1. Every Utility Licensee, Utility Operator and Utility Provider will furnish the City, at no cost to the City, with information sufficient to demonstrate compliance with all the requirements of this Ordinance, any franchise agreements or other agreements, if any, including but not limited to payment of any applicable Business Registration fee, licensing fee, usage fee, attachment fee, franchise fee or privilege taxes.
2. Every Utility Operator, Utility Provider and Utility Licensee will make available for inspection by the City at reasonable times and intervals ~~all~~ maps, records, books, diagrams, plans and other documents, maintained by the utility operator with respect to its facilities or use of facilities, within the rights-of-way. Access will be provided within the City unless prior arrangement for access elsewhere has been made and approved by the City.

Commented [CL16]: For the safety and security of our electric system/grid, we cannot provide ALL information about our facilities. We will provide sufficient information to verify compliance with the ordinance/franchise though.

B. If the City's audit of the books, records and other documents or information of the Utility Licensee, Utility Operator or Utility Provider demonstrate that there has been underpaid the usage fee, licensing fee, attachment fee or franchise fee or any other fee or payment by two percent (2%) or more in any one (1) year, the licensee, utility operator, or utility provider will reimburse the City for the cost of the audit, in addition to any interest owed pursuant to Section 14 or as specified in other agreements or franchises with the City.

C. Any underpayment, including any interest or audit cost reimbursement, will be paid within thirty (30) days of the City's notice of such underpayment. Any overpayment will be credited toward the next quarterly payment owed to the City or in the event no payment is owed at the end of the next calendar quarter, City shall pay such amounts to the licensee, utility operator or utility provider within thirty (30) days after the end of such quarter.

D. The Licensee, Utility Provider or Utility Operator is not required to maintain records for more than ~~six~~ three (3) years. The City is not required to maintain records beyond the State retention schedules.

Section 16. Insurance and Indemnification.

A. Insurance.

1. All utility operators will maintain in full force and effect the following liability insurance policies that protect the utility operator and the City, as well as the City's officers, agents, and employees:
 - a. Comprehensive general liability insurance with limits not less than:
 - i. Three million dollars (\$3,000,000.00) for bodily injury or death to each person;
 - ii. Three million dollars (\$3,000,000.00) for property damage resulting from any one accident; and
 - iii. Three million dollars (\$3,000,000.00) for all other types of liability.
 - b. Commercial Automobile liability insurance for owned, non-owned and hired vehicles with a limit of one million dollars (\$1,000,000.00) for each person and three million dollars (\$3,000,000.00) for each accident.
 - c. Worker's compensation within statutory limits and employer's liability with limits of not less than one million dollars (\$1,000,000.00).
 - d. If not otherwise included in the policies required by subsection a. above, maintain comprehensive form premises-operations, explosions and collapse hazard, underground hazard and products completed hazard with limits of not less than three million dollars (\$3,000,000.00).
 - e. Utility operator may utilize primary and umbrella liability insurance policies to satisfy the preceding insurance policy limit requirements.
2. The limits of the insurance will be subject to statutory changes as to maximum limits of liability imposed on municipalities of the state of Oregon. The insurance will be without prejudice to coverage otherwise existing and will name, or the certificate of insurance will name, with the exception of worker's compensation, as additional insureds the City and its officers, agents, and employees. The coverage must apply as to claims between insureds on the policy. The insurance will not be canceled or materially altered without thirty (30) days prior written notice first being given to the City, and the certificate of insurance will include such an endorsement. If the insurance is canceled or materially altered, the utility operator will obtain a replacement policy that complies with the terms of this section and provide the City with a replacement certificate of insurance. The utility operator will maintain continuous uninterrupted coverage, in the terms and amounts required. The utility operator may self-insure, or keep in force a self-insured retention plus insurance, for any or all of the above coverage.
3. The utility operator will maintain on file with the City a certificate of insurance, or proof of self-insurance acceptable to the City, certifying the coverage required above.

- B. Financial Assurance. Unless otherwise agreed to in writing by the City, before a franchise is granted or license issued pursuant to this Ordinance is effective, and as necessary thereafter, the utility operator will provide a performance bond or other financial security or assurance, in a form acceptable to the City, as security for the full and complete performance of the franchise or license, if applicable, and compliance with the terms of this Ordinance, including any costs, expenses, damages or loss the City pays or incurs because of any failure attributable to the utility operator to comply with the codes,

ordinances, rules, regulations or permits of the City. This obligation is in addition to the performance surety required under this Ordinance.

C. Indemnification.

Each utility licensee will ~~defend~~ indemnify and hold the City and its officers, employees, agents and representatives harmless from and against any and all liability, causes of action, claims, damages, losses, judgments and other costs and expenses, including attorney fees and costs of suit or defense (at both the trial and appeal level, whether or not a trial or appeal ever takes place) that may be asserted by any person in any way arising out of, resulting from, during or in connection with, or alleged to arise out of or result from the negligent, careless, or wrongful acts, omissions, failure to act, or other misconduct of the utility licensee or its affiliates, officers, employees, agents, contractors, subcontractors, or lessees in the construction, operation, maintenance, repair, ~~relocation~~ or removal of its facilities, and in providing or offering utility services over the facilities, whether such acts or omissions are authorized, allowed, or prohibited by this Ordinance or by a franchise agreement. The acceptance of a Utility license, or of a franchise granted by the City, will constitute such an agreement by the applicant whether the same is expressed or not, unless expressly stated otherwise in the license or franchise. Upon notification of any such claim the City will notify the utility operator and provide the utility operator with an opportunity to provide defense regarding any such claim.

Commented [CL17]: The last sentence implies an option to defend rather than an obligation. The licensee would still be obligated to pay the costs of defense if it chose not to.

Commented [CL18]: We suggest consolidating paragraphs 1 and 2.

~~1. Every utility licensee will also indemnify the City for any damages, claims, additional costs or expenses assessed against or payable by the City arising out of or resulting, directly or indirectly, from the utility licensee's failure to remove or relocate any of its facilities in a timely manner, unless the utility licensee's failure arises directly from the City's negligence or willful misconduct.~~

Section 17. Compliance.

Every Utility licensee, utility operator and utility provider will comply with all applicable federal and state laws and regulations, including regulations of any administrative agency thereof, as well as all applicable ordinances, resolutions, rules and regulations of the City, heretofore or hereafter adopted or established during the entire term of any Utility License granted under this Ordinance.

Section 18. Confidential/Proprietary Information.

If any person is required by this Ordinance to provide books, records, maps or information to the City that the person reasonably believes to be confidential or proprietary, and such books, records, maps or information are clearly marked as confidential at the time of disclosure to the City ("confidential information"), the City will take reasonable steps to protect the confidential information to the extent permitted by Oregon Public Records Laws. In the event the City receives a public records request to inspect any confidential information and the City determines that it will be necessary to reveal the confidential information, to the extent reasonably possible the City will notify the person that submitted the confidential information of the records request prior to releasing the confidential information. The City will not be required to incur any costs to protect any confidential information, other than the City's routine internal procedures for complying with the Oregon Public Records Law.

Section 19. Penalties.

A. Any person found in violation of any of the provision of this Ordinance or the Utility License will be subject to a penalty of not less than one hundred fifty dollars (\$150), nor more than twenty-five hundred dollars (~~\$2,500~~) for each offense. A violation will be deemed to exist separately for each and every day during which a violation exists.

B. Nothing in this Ordinance will be construed as limiting any judicial or other remedies the City may have at law or in equity, for enforcement of this Ordinance.

C. The City or its designee, in their sole discretion, will have the authority to reduce or waive the penalties and interest due under this subsection 19.

Section 20. Severability and Preemption.

A. The provisions of this Ordinance will be interpreted to be consistent with applicable federal and state law, and will be interpreted, to the extent possible, to cover only matters not preempted by federal or state law.

B. If any article, section, subsection, sentence, clause, phrase, term, provision, condition or portion of this Ordinance is for any reason declared or held to be invalid or unenforceable by any court of competent jurisdiction or superseded by state or federal legislation, rules, regulations or decision, the remainder of this Ordinance will not be affected thereby but will be deemed as a separate, distinct and independent provision, and such holding will not affect the validity of the remaining portions hereof, and each remaining section, subsection, clause, phrase, term, provision, condition, covenant and portion of this Ordinance will be valid and enforceable to the fullest extent permitted by law. In the event any provision is preempted by federal or state laws, rules or regulations, the provision will be preempted only to the extent required by law and any portion not preempted will survive. If any federal or state law resulting in preemption is later repealed, rescinded, amended or otherwise changed to end the preemption, such provision will thereupon return to full force and effect and will thereafter be binding without further action by the City.

Section 21. Application to Existing Agreements.

To the extent that this Ordinance is not in conflict with and can be implemented consistent with existing franchise agreements, this Ordinance will apply to all existing franchise agreements granted to utility operators and utility providers by the City.

Commented [CL19]: The scale of the penalties are significantly higher than we see in the majority of the cities in our service territory. \$500 is most common. This would be in addition to the penalties associated with intentional wrongdoing in Section 14.



2065 w. Riverstone drive ste. 105
Coeur d'Alene, id 83814

o 509 344 1008
f 509 344 1009

August 3, 2020

VIA USPS and ELECTRONIC MAIL

City Hall
ATTN: Mayor Eric Swenson
270 Montgomery Street
Woodburn, Oregon 97071

With a copy to:
ROW Consultants LLC
ATTN: Reba Crocker
E-Mail: reba@rowmanagers.com

RE: Proposed Adoption of Right-of-Way Ordinance

Dear Mayor Swenson:

As an attorney for Fatbeam, LLC ("Fatbeam"), it is my duty to protect Fatbeam's interest. It has come to my attention that the City of Woodburn (the "City") has decided to move forward with the adoption of a new Right-of-Way ("ROW") ordinance which will create a "substantial barrier to entry" for Fatbeam of the sell of its telecommunication services within the City, treat Fatbeam in a discriminatory manner, and create a fee that is not "fair and reasonable compensation . . . for use of public rights-of-way" under the Telecommunications Act, specifically 47 U.S.C. § 253.

As I am sure you are aware, in 1996 Congress made sweeping amendments to the Communications Act of 1934 ("Telecommunications Act"), 47 U.S.C. §§ 151 et seq., "to promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies." Pub. L. No. 104-104 pmbl., 110 Stat. 56, 56; accord S. Rep. No. 104-230, at 1 (1996) (Conf. Rep.). Access to high speed fiber optic based services has been deemed an essential and critical service which has only become even more critical during this COVID pandemic.

Although the City has the absolute right to move to a ROW license instead of a franchise agreement, the City still has an obligation to treat all telecommunication providers in a competitively neutral and nondiscriminatory way. Under the Telecommunications Act, specifically 47 U.S.C. § 253(c), "a State or local government" may "manage the public rights-of-way" or "require fair and reasonable

compensation from telecommunications providers . . . for use of public rights-of-way” if the requirements operate “on a competitively neutral and nondiscriminatory basis” Id. § 253(c).

My understanding of the City's ordinance, and proposed use of the ROW license, is that a new telecommunications provider who is seeking entry into the City has to pay a large linear foot fee (\$3.00/foot) for its installation of conduit/facilities into the ROW, something no other telecommunications provider under an existing franchise agreement had to pay when it entered the Woodburn market.

A linear foot fee required for only new providers who wish to enter into the City is not competitively neutral and provides a barrier of entry into the City as every other competitor was able to build their network without paying a linear foot fee. All other telecommunications providers in the City received a Franchise Agreement which does not contain a linear foot fee on the construction of the network and instead provides a 7% fee on gross revenue (likely less than 7%, or a 0% for an ILEC/RBOC). Gross revenue only occurs after installation and is a fee Fatbeam also must pay, making the linear foot fee an additional fee only required for new providers in the City.

Section 253 entitled “Removal of Barriers to Entry,” provides: “No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any . . . telecommunications service.” 47 U.S.C. § 253(a). The Supreme Court has described this provision as “prohibit[ing] state and local regulation that impedes the provision of telecommunications service.” *Verizon Commc’ns, Inc. v. FCC*, 535 U.S. 467, 491 (2002) (internal quotation marks omitted). If “a State or local government . . . permit[s] or impose[s] any statute, regulation, or legal requirement that violates” this provision, Section 253(d) directs that “the Commission shall preempt the enforcement of” the offending requirement. 47 U.S.C. § 253(d).

Additionally, it is well-settled case law, 23-year-old decision known as *California Payphone*, that has been reaffirmed multiple times by the Federal Communication Commission (“FCC”), that a state or local measure has “the effect of prohibiting” service, in violation of Section 253, if it “materially inhibits or limits the ability of any competitor or potential competitor to compete in a fair and balanced legal and regulatory environment.” [Small Cell Order](#) ¶¶ 16, 37– 42 (Chairman William Kennard, stated that, in determining whether a state or local law has the effect of prohibiting the provision of telecommunications services, it “consider[s] whether the ordinance materially inhibits or limits the ability of any competitor or potential competitor to compete in a fair and balanced legal and regulatory environment.”¹⁷ *California Payphone Ass’n*, 12 FCC Rcd 14191, 14206, para. 31 (1997) (*California Payphone*). The FCC specifically stated that this standard applies even when telecommunications providers are first deploying services. [Id.](#) ¶ 37.

The City's ROW license requirement of a linear foot fee is not competitively neutral and is a direct barrier to entry being imposed on Fatbeam. Additionally, multiple courts and the FCC have found that state or locality ordinances have the effect of prohibiting service when it demands fees for telecommunications deployments that exceed any reasonable approximation of the actual costs it must incur due to the ROW use.

Fatbeam's ROW License Linear Foot Fee owed to the City could be hundreds of thousands of dollars. It is hard for me to see how the City could assert that such a large sum, in addition to the gross revenue fee Fatbeam would pay once it started collecting revenue, is a fee related to the City's actual costs and therefore is "fair and reasonable compensation . . . for use of public rights-of-way" under Section 253(c), when no other existing telecommunications provider under a City Franchise Agreement has paid such a fee for installation of its facilities in the ROW. If paying a large linear foot fee for installation of facilities into the City's ROW represents the direct and actual cost the City will suffer, wouldn't every telecommunications provider who has ever installed facilities in the City's ROW have paid a linear foot fee?

Please feel free to contact me if you should have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Danielle Maves". The signature is stylized with a large, looped "D" and a cursive "Maves".

Danielle Maves, Esq.

Attorney

720-374-2030

Danielle@MavesLaw.com

cc:



August 10, 2020

Via Email

McKenzie Granum, Assistant City Attorney
City of Woodburn
270 Montgomery Street
Woodburn, OR 97071
mckenzie.granum@ci.woodburn.or

Reba Crocker
ROW Consultants LLC
usreba@rowmanagers.com

Re: Verizon Wireless Comments--Woodburn OR ROW Ordinance

Ms. Granum and Ms. Crocker-

Thank you for the opportunity to comment on the proposed ordinance on behalf of Verizon Wireless. We appreciate the city's work to update the right of way code to allow for small wireless facilities and to comply with federal law. There are, however, a number of concerning issues we identify below and would accept your Ms. Crocker's offer of a virtual meeting to work through them:

1. Section 2 B PURPOSE AND INTENT, encourages the provision of advanced and competitive utility services on the widest possible basis to businesses and residents of the City and suggests that full cost recovery are priorities for the city. The fee schedule does not reflect these priorities. Percentage of gross revenue fees have been recognized as not being reflective of actual costs.¹ This purpose section also speaks to the purpose of the utility license to reimburse the city's costs associated with the use of the right of way. Requiring a license and fees for persons who are providing communications services without actually using the right of way lacks the appropriate nexus to justify the requirement.

¹ Accelerating Wireless and Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, Declaratory Ruling and Third Report and Order, 33 FCC Rcd 9088 (2018)(“Order”).

2. The term "attachment" is undefined in this ordinance. Verizon requests inclusion of this definition: "Attachment" means all of the physical components of a system or network, including but not limited to the poles, pipes, mains, conduits, ducts, cables, wires, transmitters, plant, antennas, equipment, and other facilities, located within, under or above the ROW, any portion of which are used or designed to be used to deliver, transmit, or otherwise provide utility service.

3. Section 13 USAGE FEE --Section B--It is not clear why the city would be entitled to collect an attachment fee when an operator places equipment on ROW structures that are not owned by the city. The city is already made whole by the fees paid by the owner of the structure. It is also unclear in Section A as to whether a utility operator would pay both a right of way usage fee and an attachment fee. Verizon suggests that the city clarify that the utility operators that attach to city owned structures in the right of way and meet the criteria in Subsection B and will pay an attachment fee, and are not subject to the ROW Usage fee in Subsection A.

4. The city's fee schedule assesses a percentage of gross revenue fee for communications services other than small wireless facilities. The recent FCC Order specifically provides that gross revenue fees are not reflective of actual cost to the city for use of the right of way and that municipalities may not recover more than actual and reasonable costs for small wireless facilities in the right of way. Order at ¶170. Service and revenue cannot be broken down by type of equipment, so it would not be possible to calculate a gross revenue fee for macro sites only. Moreover, Verizon neither owns nor uses macro facilities in the right of way to provide communications services in Woodburn. To the extent that communications services are provided without use of any facilities within the right of way, there is no adequate nexus to assess a right of way use or license fee or to require a license.

5. Section 8 N (4) provides that there is no pro-rata refund of annual license fees in the event the operator terminates the license. This is an unearned windfall for the city and should be deleted.

August 11, 2020
Page 3

Thank you again for the opportunity to weigh in on the proposed ordinance. We look forward to working with you to help develop an ordinance that makes the city whole, complies with all applicable federal and state law and allows for reasonable use of the right of way.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kim Allen', with a long horizontal flourish extending to the right.

Kim Allen, Wireless Policy Group
On behalf of Verizon Wireless

COUNCIL BILL NO. 3137

ORDINANCE NO. 2583

AN ORDINANCE PROVIDING FOR THE MANAGEMENT OF ACCESS TO AND USE OF THE CITY'S RIGHTS-OF-WAY FOR UTILITY PURPOSES AND DECLARING AN EMERGENCY

WHEREAS, the City of Woodburn ("City") has a statutory and Constitutional authority to manage its rights-of-way and to receive compensation for private use of the rights-of-way consistent with applicable state and federal law;

WHEREAS, the City has generally granted individually-negotiated franchises to each utility using the City's rights-of-way to provide utility services;

WHEREAS, the City has determined that it can more effectively, efficiently, and fairly manage the City's rights-of-way and provide consistent standards for utility use of the rights-of-way through licenses rather than franchises;

THE CITY OF WOODBURN ORDAINS AS FOLLOWS:

Section 1. Title. The ordinance will be known and may be referenced as the Utility Service Ordinance.

Section 2. Purpose and Intent. The purpose and intent of this Ordinance is to:

A. Permit and manage reasonable access to and use of the City's rights-of-way for utility purposes and conserve the limited physical capacity of those rights-of-way held in trust by the City consistent with applicable state and federal law;

B. Assure that the City's current and ongoing costs of granting and regulating access to, the use of the rights-of-way and utility services provisioned in the City, are fully compensated by the persons seeking such access and causing such costs;

C. Secure fair and reasonable compensation to the City and its residents for permitting use of the rights-of-way by persons who generate revenue by placing, owning, controlling, using or operating facilities therein or generate revenue for utility services;

D. Assure that all utility companies, persons and other entities owning, operating facilities, using facilities, or providing services within the City comply with the ordinances, rules and all regulations of the City heretofore or hereafter amended or adopted;

1. For the purposes of this Ordinance, all utility services owned or operated by the City are excluded.
2. For the purposes of this Ordinance, all utility services owned or operated by other municipalities are excluded.

E. Assure that the City can continue to fairly and responsibly protect the public health, safety and welfare of its residents;

F. Encourage the provision of advanced and competitive utility services on the widest possible basis to businesses and residents of the City by,

1. Allowing the City to enter into other or additional agreements with Utility Providers and Operators, if the public's interest is served, and to amend the requirement of this Ordinance and the City regulations, as new technology is developed;
2. Allowing the City to be resilient and adaptive to changes in technology; and

G. Comply with applicable provisions of state and federal law.

Section 3. Jurisdiction and Management of the Public Rights-of-way.

A. The City has jurisdiction and exercises regulatory management over, all rights-of-way within the City and provision of services, under authority of the City Charter and Oregon law.

B. The City has jurisdiction and exercises regulatory management over each right-of-way whether the City has a fee, easement, or other legal interest in the right-of-way, and whether the legal interest in the right-of-way was obtained by grant, dedication, prescription, reservation, condemnation, annexation, foreclosure or other means.

C. The exercise of jurisdiction and regulatory management of a right-of-way by the City is not official acceptance of the right-of-way and does not obligate the City to maintain or repair any part of the right-of-way.

D. The provisions of this Ordinance are subject to and will be applied consistent with applicable state and federal laws, rules and regulations, and, to the extent possible, will be interpreted to be consistent with such laws, rules and regulations.

Section 4. Regulatory Fees and Compensation Not a Tax.

A. The fees and costs provided for in this Ordinance, and any compensation charged and paid for use of the rights-of-way and the provision of services provided for in this Ordinance, are separate from, and in addition to, any and all other federal, state, local, and City charges, including but not limited to: any permit fee, or any other generally applicable fees, tax, or charge on business, occupations, property, or income as may be levied, imposed, or due from a utility operator, utility provider, franchisee or licensee, its customers or subscribers, or on account of the lease, sale, delivery, or transmission of utility services.

B. The City has determined that any fee or tax provided for by this Ordinance is not subject to the property tax limitations of Article XI, Sections 11 and 11b of the Oregon Constitution. These fees or taxes are not imposed on property or property owners.

C. The fees and costs provided for in this Ordinance are subject to applicable federal and state laws.

Section 5. Definitions. For the purpose of this Ordinance the following terms, phrases, words and their derivations will have the meaning given herein. When not inconsistent with the context, words not defined herein will be given the meaning set forth in the Communications Act of 1934, as amended, the Cable Act, and the Telecommunications Act. If not defined in those statutes, the words will be given their common and ordinary meaning. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number and words in the singular number include the plural number. The words "shall" and "will" are mandatory and "may" is permissive.

"Cable Act" means the Cable Communications Policy Act of 1987, 47 U.S.C., Section 521, et seq., as now and hereafter amended.

"Cable service" is to be defined consistent with federal laws and means the one-way transmission to subscribers of: (i) video programming, or (ii) other programming service; and subscriber interaction, if any, which is required for the selection or use of such video programming or other programming service.

"Calendar year" means January 1 to December 31, unless otherwise noted.

“City” means the city of Woodburn, an Oregon municipal corporation, and individuals authorized to act on the City’s behalf.

“City council” means the elected governing body of the city of Woodburn, Oregon.

“City facilities” means City or publicly owned structures or equipment located within the right-of-way or public easement used for governmental purposes.

“City standards” means the all ordinances, codes, regulations and rules of the City of Woodburn, in effect at the time of any work.

“City property” means and includes all real property owned by the City, other than public right-of-way and utility easement as those are defined herein, and all property held in proprietary capacity by the City.

“Communications services” means any service provided for the purpose of transmission of information including, but not limited to, voice, video, or data, without regard to the transmission protocol employed, whether or not the transmission medium is owned by the provider itself. Communications service includes all forms of telephone services and voice, video, data or information transport, but does not include: (1) cable service; (2) open video system service, as defined in 47 C.F.R. 76; (3) private communications system services provided without using the public rights-of-way; (4) public communications systems; (5) over-the-air radio or television broadcasting to the public-at-large from facilities licensed by the Federal Communications Commission or any successor thereto; and (6) direct-to-home satellite service within the meaning of Section 602 of the Telecommunications Act.

“Construction” means any activity in the public right-of-way resulting in physical change thereto, including excavation or placement of structures.

“Control” or “Use of Facilities” means actual working control over utility facilities in whatever manner exercised, whether or not the facility is owned. For example, but not limitation, Control means and includes leased capacity, transport, or any other use.

“Days” mean calendar days unless otherwise specified.

“Emergency” means a circumstance in which immediate work to repair damaged or malfunctioning facilities is necessary to restore lost service or prevent immediate harm to persons or property.

“Federal Communications Commission” or “FCC” means the federal administrative agency, or its lawful successor, authorized to regulate and oversee telecommunications carriers, services and providers on a national level.

“Gross Revenue” means any and all amounts, of any kind, nature or form, without deduction for expense, less net uncollectable, derived from the operation (including revenue derived from a leases or other agreements allowing use of facilities to other utility operators or providers), or use of utility facilities in the City, operation of a Communications Services or the provision of utility service(s) in the City, subject to all applicable limitations in federal or state law.

“License” or “Utility License” means the authorization granted by the City to a utility operator or utility provider pursuant to this Ordinance.

“Licensee” or “Utility Licensee” means any person that has a valid Utility licensed issued by the City.

“Person” means and includes any individual, firm, sole proprietorship, corporation, company, partnership, co-partnership, joint-stock company, trust, limited liability company, association, municipality, special district, government entity or other organization, including any natural person or any other legal entity.

“Private communications system” means a system, including the construction, maintenance or operation of the system, for the provision of a service or any portion of a service which is owned or operated exclusively by a person for their use and not for sale or resale, including trade, barter or other exchange of value, directly or indirectly, to any person.

“Public communications system” means any system owned or operated by a government entity or entities for its exclusive use for internal communications or communications with other government entities, and includes services provided by the state of Oregon pursuant to ORS 283.140. “Public communications system” does not include any system used for sale or resale, including trade, barter or other exchange of value, of communications services or capacity on the system, directly or indirectly, to any person.

“Public utility easement” means the space in, upon, above, along, across, over or under an easement for the constructing, reconstructing, operating, maintaining, inspecting, and repairing of utilities facilities. “Public utility easement” does not include an easement (i) that has been privately acquired by a utility operator, (ii) solely for the constructing, reconstructing, operating, maintaining,

inspecting, and repairing of city facilities, or (iii) where the proposed use by the utility operator is inconsistent with the terms of any easement granted to the City.

“Right-of-way” , “Rights-of-Way”, “Public right-of-way”, or “ROW” means and includes, but is not limited to, the space in, upon, above, along, across, over or under the public streets, roads, highways, lanes, courts, ways, alleys, boulevards, bridges, trails, paths, sidewalks, bicycle lanes, public utility easements and all other public ways or areas, including the subsurface under and air space over these areas, but does not include parks, parkland, or other city property not generally open to the public for travel. This definition applies only to the extent of the City’s right, title, interest and authority to grant a license to occupy and use such areas for utility facilities.

“Small Cell Wireless Facility” means Facilities owned or operated for the provision of communications that are shorter ranged, wireless systems affixed to a structure with generally smaller components than traditional Macro Wireless Facilities and are deployed where suitable in flexible configurations to provide capacity and coverage. Small Cell Wireless Facilities means a facility that meets each of the following conditions per 47 C.F.R § 1.6002(l), as may be amended or superseded:

- (1) The facilities (i) are mounted on structures 50 feet or less in height including the antennas, or (ii) are mounted on structures no more than 10 percent taller than other adjacent structures, or (iii) do not extend existing structures on which they are located to a height of more than 50 feet or by more than 10 percent, whichever is greater; and,
- (2) Each antenna associated with the deployment, excluding associated antenna equipment, is no more than three cubic feet in volume; and,
- (3) All other wireless equipment associated with the structure, including wireless equipment associated with the antenna and any pre-existing associated equipment on the structure, is no more than 28 cubic feet in volume; and,
- (4) The facilities do not result in human exposure to radio frequency in excess of the applicable safety standards specified in 47 C.F.R. § 1.1307(b).

“State” means the state of Oregon.

“Structure” means any facility a Utility Provider or Utility Operator places in the ROW, including but not limited to poles, vaults or manholes, hand holds, or junction boxes, conduit, direct bury cable, wires, pedestals, aerial cables or wires and transformers.

“Telecommunications Act” means the Communications Policy Act of 1934, as amended by subsequent enactments including the Telecommunications Act of 1996 (47 U.S.C., 151 et seq.) and as hereafter amended.

“Utility facility” or “facility” means any physical component of a system, including but not limited to the poles, pipes, mains, conduits, ducts, cables, wires, transmitters, plant, equipment and other facilities, located within, under or above the rights-of-way, any portion of which is used or designed to be used to deliver, transmit or otherwise provide utility service.

“Utility operator” or “operator” means any person who owns, places, controls, operates or maintains a utility facility within the City.

“Utility provider” or “Provider” means any person who provides utility service or communication services to customers within the City limits, whether or not any facilities in the ROW are owned by such provider.

“Utility service” means the provision, by means of utility facilities permanently located within, under or above the rights-of-way, whether or not such facilities are owned by the service provider, of electricity, natural gas, communications services, or cable services, to or from customers within the City limits, or the transmission or provision of any of these services through the City whether or not customers within the City are served by those transmissions and whether or not the facilities used for transmission are owned by the service provider.

“Work” means the construction, demolition, installation, replacement, repair, maintenance or relocation of any utility facility, including but not limited to any excavation and restoration required in association with such construction, demolition, installation, replacement, repair, maintenance or relocation.

Section 6. Business Registration. Business Registration Required. Every person that desires to use, operate or control utility facilities, or provide utility services to customers within the City will register with the City prior to use, operation, control of utility facilities, or providing any utility services to any customer in the City, in compliance with Ordinance No. 2399. Every person using, operating, controlling, or providing utility services to customers within the City as of the effective date of this Ordinance will obtain a Business Registration within thirty (30) days of the effective date of this Ordinance. Every person subject to this

Ordinance will renew and maintain a Business Registration as required in Woodburn's Ordinances that are heretofore or hereafter amended, at all times that the person, uses, operates, controls, provides or operates a utility services, to customers within the City.

Section 7. Utility License.

A. License Required. Except those utility operators and utility providers with a valid franchise or other valid agreement from the City, every person will obtain a Utility License from the City prior to conducting any work in or use of the ROW, or providing utility services or communication services to or from customers within the City limits, or the transmission or provision of any of these services through the City whether or not customers within the City are served by those transmissions and whether or not the facilities used for transmission are owned by the service provider.

1. Every person that owns, or controls, provides utility services, or uses utility facilities in the rights-of-way as of the effective date of this Ordinance will apply for a Utility License from the City within thirty (30) days of the later of: (1) the effective date of this Ordinance, or (2) the expiration of a valid agreement granted by the City, unless a new agreement is granted by the City (3) for a person that is not a utility operator, providing utility services within the City.
2. The provisions of this section do not apply to any person subject to and in compliance with the cable television franchise requirement, except that subsection K will apply to the extent such person provides multiple services, subject to applicable law.

B. Utility License Application. The license application will be on a form provided by the City, and will be accompanied by any additional documents required by the application or the City, in the City's sole discretion, to identify the applicant, its legal status, including its authorization to do business in Oregon, a description of the type of utility service provided or to be provided by the applicant, a description of the facilities over which the utility service will be provisioned, and other information necessary to determine the applicant's ability to comply with the terms of this Ordinance.

C. Utility License Application & Renewal Fee. The application and renewal application will be accompanied by a nonrefundable fee or deposit set by resolution of the City Council.

D. Determination by City. The City will issue, within a reasonable period of time, a written determination granting or denying the Utility License in whole or in part. If the Utility License is denied, the written determination will include the reasons for denial. The Utility License will be evaluated based upon the provisions of this Ordinance, the information contained on the Utility License application, the continuing capacity of the rights-of-way to accommodate the applicant's proposed utility facilities and the applicable federal, state and local laws, rules, regulations and policies.

E. Changes to information contained on the Utility License application. Within thirty (30) days of a change to the information contained in the license application, the Licensee will notify the City in writing of such change(s).

F. Franchise and other Agreements. If the public interest warrants, as determined by the City in its sole discretion, the City and any communications provider – including cable providers, utility operator or utility provider, including Small Cell wireless providers, may enter into a written franchise or other agreement that includes terms that clarify, enhance, expand, waive or vary the provisions of this Ordinance, consistent with applicable state and federal law. The agreement may conflict with the terms of this Ordinance with the review and approval of City Council. The franchisee will be subject to the provisions of this Ordinance to the extent such provisions are not in conflict with the express provisions of any such franchise or agreement. In the event of a conflict between the express provisions of a franchise or other agreement and this Ordinance, the franchise or other agreement will control.

1. The provider requesting a franchise agreement will deposit a non-refundable fee, as set by resolution of the City Council before negotiations occur.

G. Rights Granted.

1. The Utility License granted hereunder will authorize and permit the licensee, subject to the provisions of the City regulations and ordinance and other applicable provisions of the City, state or federal law, in effect and as may be subsequently amended, to construct, place, maintain, upgrade, repair and operate, control or use utility facilities in the rights-of-way for the term of the license for the provision of utility service(s) authorized in the license. In the event the licensee offers different service(s) than those authorized in the license, the licensee will inform the City of such changes no later than thirty (30) days after the change.

2. Any Utility License granted pursuant to this Ordinance will not convey equitable or legal title in the rights-of-way and may not be assigned or transferred except as permitted in subsection L of this section.

Neither the issuance of the Utility License nor any provisions contained therein will constitute a waiver or bar to the exercise of any governmental right or power, including without limitation, the police power or regulatory power of the City, in existence at the time the license is issued or thereafter obtained.

H. Term. Subject to the termination provisions in subsection N of this section, the Utility License granted pursuant to this Ordinance will be effective as of the date it is issued by the City or the date services began, whichever comes first, and will have a term of five (5) calendar years beginning: (1) January 1st of the year in which the license took effect for licenses that took effect between January 1st and June 30th; or (2) January 1st of the year after the license took effect for licenses that become effective between July 1st and December 31st.

I. Utility License Nonexclusive. No license granted pursuant to this section will confer any exclusive right, privilege, license or franchise to occupy or use the rights-of-way for delivery of utility services or any other purpose. The City expressly reserves the right to grant licenses, franchises or other rights to other persons, as well as the City's right to use the rights-of-way, for similar or different purposes. The license is subject to all recorded deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims of title of record that may affect the rights-of-way. Nothing in the license will be deemed to grant, convey, create, or vest in licensee a real property interest in land, including any fee, leasehold interest or easement.

J. Reservation of City Rights. Nothing in the Utility License will be construed to prevent the City from grading, paving, repairing and/or altering any rights-of-way, constructing, laying down, repairing, relocating or removing City facilities or establishing any other public work, utility or improvement of any kind, including repairs, replacement or removal of any city facilities. If any of licensee's utility facilities interfere with the construction, repair, replacement, alteration or removal of any rights-of-way, public work, city utility, city improvement or city facility, except those providing utility services in competition with a licensee, licensee's facilities will be removed or relocated as provided in subsections C, D and E of Section 9, in a manner acceptable to the City and consistent with City standards, industry standard engineering and safety codes in effect at the time the work is required.

K. Multiple Services.

1. A utility operator that provides or transmits or allows the provision or transmission of utility services and other services over its facilities is subject to the license and Usage fee requirements of this Ordinance for the portion of the facilities and extent of utility services delivered over those facilities. Nothing in this subsection J (1) requires a utility operator to pay the Usage use fee, if any, owed to the City by another person using the utility operator's facilities.
2. A utility operator that provides or transmits more than one utility service to customers in the City may not be required to obtain a separate Utility License or franchise for each utility service, but is required to file separate reports, remittances and submit any Usage fees due for each service provided.

L. Transfer or Assignment. To the extent permitted by applicable state and federal laws, the Utility Licensee will obtain the written consent of the City prior to the transfer or assignment of the license. The license will not be transferred or assigned unless:

1. The proposed transferee or assignee is authorized under all applicable laws to own or operate the utility facilities and/or provide the utility service authorized under the license; and
2. The transfer or assignment is approved by all agencies or organizations required or authorized under federal and state laws to approve such transfer or assignment.

The Utility Licensee requesting the transfer or assignment will fully cooperate with the City and provide requested documentation, as the City deems necessary, in the City's sole discretion, at no cost to the City, to sufficiently understand the transferees' ability to perform under the license.

If the City approves such transfer or assignment, the transferee or assignee will become responsible for fulfilling all obligations under the Utility License. A transfer or assignment of a license does not extend the term of the license.

M. Renewal. At least thirty (30) days, but no more than ninety (90) days prior to the expiration of a Utility License granted pursuant to this section, a licensee seeking renewal of its license will submit a license application to the City, including all information required in subsection B of this section and applicable fees required in subsection C of this section. The City will review the application as required by subsection D of this section and grant or deny the

license. If the City determines that the licensee is in violation of the terms of this Ordinance, or other City Ordinances, rules or regulations, at the time it submits its application, the City may require that the licensee cure the violation or submit a detailed plan to cure the violation within a reasonable period of time, as determined by the City, before the City will consider the application and/or grant the license. If the City requires the licensee to cure or submit a plan to cure a violation, the City will grant or deny the license application within ninety (90) days of confirming that the violation has been cured or of accepting the licensee's plan to cure the violation.

N. Termination.

1. Revocation or Termination of a Utility License. The City may terminate or revoke the license granted pursuant to this Ordinance for any of the following reasons:
 - a. Violation of any of the provisions of this Ordinance;
 - b. Violation of any provision of the license;
 - c. Misrepresentation in a license application;
 - d. Failure to pay taxes, compensation, fees or costs due the City after final determination by the City, of the taxes, compensation, fees or costs;
 - e. Failure to restore the rights-of-way after construction as required by this Ordinance or other applicable state and local laws, ordinances, rules and regulations;
 - f. Failure to comply with technical, safety and engineering standards related to work in the rights-of-way; or
 - g. Failure to obtain or maintain any and all licenses, permits, certifications and other authorizations required by state or federal law for the placement, maintenance and/or operation of the utility facilities.
2. Standards for Revocation or Termination. In determining whether termination, revocation or some other sanction is appropriate, the following factors will be considered:
 - a. The egregiousness of the misconduct;
 - b. The harm that resulted;
 - c. Whether the violation was intentional;
 - d. The Licensee's history of compliance; and/or
 - e. The Licensee's cooperation in discovering, admitting and/or curing the violation.
3. Notice and Cure. The City will give the Utility Licensee written notice of any apparent violations before terminating a Utility License. The

notice will include a short and concise statement of the nature and general facts of the violation or noncompliance and provide a reasonable time (no less than twenty (20) and no more than forty (40) days) for the Licensee to demonstrate that the Licensee has remained in compliance, that the Licensee has cured or is in the process of curing any violation or noncompliance, or that it would be in the public interest to impose a penalty or sanction less than termination or revocation. If the Licensee is in the process of curing a violation or noncompliance, the Licensee must demonstrate that it acted promptly and continues to actively work on compliance. If the Licensee does not respond or if the City determines that the Licensee's response is inadequate, the City may revoke and/or terminate the Utility License.

4. Termination by Utility Licensee. If a licensee ceases to be required to have a Utility License, as defined under this Ordinance, the licensee may terminate or surrender its license, with a thirty (30) day notice to the City. Licensee may reapply for a Utility License at any time. No refunds or credits will be given for licenses terminated by the licensee or the City.
 - a. Within thirty (30) days of surrendering a Utility License, the licensee will file a final remittance form with the City stating, "final remittance" and will remit any funds due.
 - b. Upon surrendering a Utility License, the licensee will file a written statement that it has removed, or will remove within 60 days, any and all facilities from the City and no longer provides Utility Services, as defined in this ordinance.

Section 8. Construction and Restoration.

A. Construction Codes. Utility facilities will be constructed, installed, operated, repaired and maintained in accordance with all applicable federal, state and local codes, rules and regulations, including but not limited to the National Electrical Code and the National Electrical Safety Code and the City Standards, in effect at the time of the work. When a utility operator, utility provider or licensee, or any person acting on its behalf, does any work in or affecting the rights-of-way, the utility operator will, at its own expense, promptly restore the rights-of-way as directed by the City consistent with applicable city codes, rules and regulations, in effect at the time of the work. A utility operator, utility provider, licensee or other person acting on its behalf will use suitable barricades, flags, flagging attendants, lights, flares and other measures as required for the safety of all members of the general public and to prevent injury or damage to any person(s), vehicle or property by reason of such work in or affecting the rights of

way or property.

B. Construction Permits.

1. No person will perform any work on utility facilities within the rights-of-way without first obtaining all required permits. The City will not issue a permit for the construction, installation, maintenance or repair of utility facilities unless the utility operator of the facilities has applied for and received a valid license, franchise agreement or other valid agreement (if applicable), required by this Ordinance, and all applicable fees have been paid. No permit is required for routine maintenance or repairs to customer service drops where such, repairs or maintenance do not require cutting, digging, or breaking of, or damage to, the right of way and do not result in closing or blocking any portion of the travel lane for vehicular traffic, bicycle lanes or sidewalks.
2. In the event of an Emergency, a utility operator or provider with a license pursuant to this Ordinance or its contractor may perform work on its utility facilities without first obtaining a permit from the City, provided that, to the extent reasonably feasible, it attempts to notify the City prior to commencing the emergency work and in any event applies for a permit from the City as soon as reasonably practicable, but not later than 5:00pm PST of the next business day after commencing the emergency work.

Section 9. Location of Facilities.

A. Location of Facilities. Unless otherwise agreed to in writing by the City:

1. All utility operators are required to make good faith effort to both cooperate with and coordinate their construction schedule with those of the City and other users.
2. Utility facilities will be installed underground in all areas of the City where there are no existing poles in the ROW, there is no space on existing poles in the ROW, or where the only poles in the ROW are used only for high voltage lines (as defined below). This requirement will not apply to facilities used for transmission of electric energy at nominal voltages in excess of thirty-five thousand (35,000) volts or to antennas, pedestals, cabinets or other above-ground equipment of any utility operator for which the utility operator has written authorization to place above-ground.

3. Whenever any existing electric utilities, cable facilities or communications facilities are located underground within the ROW of the City, the utility operator with permission to occupy the same ROW will install all new facilities underground at no cost to the City. This requirement will not apply to facilities used for transmission of electric energy at nominal voltages in excess of thirty-five thousand (35,000) volts ("high voltage lines") or to antennas, pedestals, cabinets or other above-ground equipment of any utility operator. The City reserves the right to require written approval of the location of any such above-ground equipment in the ROW.

B. Interference with the Rights-of-Way. No utility operator or other person may locate or maintain its facilities so as to unreasonably interfere with the use of the rights-of-way by the City, by the general public or by other persons authorized to use or be present in or upon the rights-of-way. Utility facilities will not be located in area of restricted sight distance nor interfere with the proper function of traffic control signs, signals, lighting, or other devices that affect traffic operation. All use of the rights-of-way will be consistent with City codes, ordinances, rules and regulations in effect and as may be subsequently amended.

C. Relocation of Utility Facilities. Unless otherwise agreed to in writing by the City:

1. A utility operator will, at no cost to the City, temporarily or permanently remove, relocate, change or alter the position of any utility facility within the ROW, including relocation of aerial facilities underground, when requested to do so in writing by the City. If relocation is required by the City, the City will bear no responsibility or incur any costs, to provide or in any way secure alternate locations.
2. Nothing herein will be deemed to preclude the utility operator from seeking reimbursement or compensation from a third party, pursuant to applicable laws, regulations, tariffs or agreements, provided that the utility operator will timely comply with the requirements of this section regardless of whether or not it has requested or received such reimbursement or compensation.
3. The City may coordinate the schedule for relocation of utility facilities and based on such effort will provide written notice of the time by which the utility operator must remove, relocate, change, alter or underground its facilities. If a utility operator fails to remove, relocate,

change, alter or underground any utility facility as requested by the City by the date reasonably established by the City, the utility operator will pay all costs incurred by the City due to such failure, including but not limited to costs related to project delays, and the City may cause, using qualified personnel or contractors consistent with applicable state and federal safety laws and regulations, the utility facility to be removed, relocated, altered, or undergrounded at the utility operator's sole expense. Upon receipt of an invoice from the City, the utility operator will reimburse the City for the costs the City incurred within thirty (30) days.

4. The City will cooperate with the utility operator in securing alternate locations. However, the City will bear no responsibility or costs for securing alternate locations. The City will bear no responsibility to obtain, compensate, or otherwise assist the utility operator in relocation of its facilities to location not in the control of the City.

D. Removal of Unauthorized Facilities.

1. Unless otherwise agreed to in writing by the City, within thirty (30) days following written notice from the City or such other time agreed to in writing by the City, a utility operator and any other person that owns, controls, or maintains any abandoned or unauthorized utility facility within the rights-of-way will, at its own expense, remove the facility and restore the affected area.
2. A utility system or facility is unauthorized under any of the following circumstances:
 - a. The utility facility, or any portion of the facility, is outside the scope of authority granted by the City under the Utility License, franchise or other written agreement. This includes facilities that were never licensed or franchised and facilities that were once licensed or franchised but for which the license or franchise has expired or been terminated. This does not include any facility for which the City has provided written authorization for abandonment in place.
 - b. The facility has been abandoned and the City has not provided written authorization for abandonment in place. A facility is abandoned if it is not in use and is not planned for further use. A facility will be presumed abandoned if it is not used for a period of twelve (12) consecutive months. A utility operator may overcome this presumption by presenting plans for future use of the facility.

- c. The utility facility is improperly constructed or installed or is in a location not permitted by the construction permit, license, franchise or this Ordinance.
- d. The utility operator is in violation of a material provision of this Ordinance and fails to cure such violation within thirty (30) days of the City sending written notice of such violation, unless the City extends such time period in writing.

E. Removal by City.

1. The City retains the right and privilege to cut or move any utility, without notice, as the City determines, at its sole discretion to be necessary, appropriate or useful in response to a public health or safety emergency. The City will use qualified personnel or contractors consistent with applicable state and federal safety laws and regulations to the extent reasonably practicable without impeding the City's response to the emergency. The City will use best efforts to provide the utility operator with notice prior to cutting or moving facilities. If prior notice is not possible, the City will provide such notice as soon as reasonably practicable after resolution of the emergency.
2. If the utility operator fails to remove any facility when required to do so under this Ordinance, the City may remove the facility using qualified personnel or contractors consistent with applicable state and federal safety laws and regulations, and the utility operator will be responsible for paying the full cost of the removal and any administrative costs incurred by the City in removing the facility and obtaining reimbursement. Upon receipt of an invoice from the City, the utility operator will reimburse the City for the costs the City incurred within thirty (30) days. The obligation to remove will survive the termination of the license or franchise.
3. The City will not be liable to any utility operator for any damage to utility facilities, or for any incidental or consequential losses resulting directly or indirectly therefrom, by the City or its contractor in removing, relocating or altering the facilities pursuant to this Section 9, or resulting from the utility operator's failure to remove, relocate, alter or underground its facilities as required by this Section 9, unless such damage arises directly from the City's or its contractor's negligence or willful misconduct.

F. Engineering Record Drawings. The utility operator will provide the City with two complete sets of record drawings in a form acceptable to the City showing the location of all its utility facilities after initial construction if such plan changed during construction. The utility operator will provide updated complete sets of as built plans upon request of the City, but not more than once per year.

G. Facility Map. Utility operator, Utility provider and Utility Licensee will provide, at no cost to the City, a comprehensive map showing the location of any facility in the City. Such map will be provided in a format acceptable to the City, with accompanying data sufficient enough for the City to determine the exact location of facilities, currently in Shapefile or Geodatabase format. The Utility Operator, Utility Provider and Utility Licensee will provide such map yearly by February 1 if any changes occurred during the prior year. The City may also request and will be provide the map, at no cost to the City, upon request, no more than once per year.

Section 10. Leased Capacity. A utility operator may lease capacity on or in its facilities to others, provided that the utility operator requires and has verified with the City, that the proposed lessor has obtained proper authority from the City prior to leasing capacity or allowing use of its facilities. Upon request, at no cost to the City, the utility operator will provide a complete list with the name, business address and contact information of any lessee. If requested by the City, the utility operator will also provide exact details of any attachment by lessee. A utility operator is not required to provide such information if disclosure is expressly prohibited by applicable law.

Section 11. Maintenance.

A. Every utility operator will install and maintain all facilities in a manner that complies with applicable federal, state and local laws, rules, regulations and policies. The utility operator will, at its own expense, repair and maintain facilities from time to time as may be necessary to accomplish this purpose.

B. If, after written notice from the City of the need for repair or maintenance as required in subsection A of this section, a utility operator fails to repair and maintain facilities as requested by the City and by the date reasonably established by the City, the City may perform such repair or maintenance using qualified personnel or contractors consistent with applicable state and federal safety laws and regulations at the utility operator's sole expense. Upon receipt of an invoice from the City, the utility operator will reimburse the City for the costs the City incurred within thirty (30) days.

Section 12. Vacation. If the City vacates any ROW, or portion thereof, that a utility operator uses, the utility operator will, at its own expense, remove its facilities from the ROW unless the City reserves a public utility easement, which the City will make a reasonable effort to do provided that there is no expense to the City, or the utility operator obtains an easement for its facilities. If the utility operator fails to remove its facilities within thirty (30) days after a ROW is vacated, or as otherwise directed or agreed to in writing by the City, the City may remove the facilities using qualified personnel or contractors consistent with applicable state and federal safety laws and regulations at the utility operator's sole expense. Upon receipt of an invoice from the City, the utility operator will reimburse the City for the costs the City incurred within thirty (30) days.

Section 13. Usage Fee.

A. Except as set forth in subsection B of this section, every person that owns utility facilities in the City's rights-of-way and every person that uses or controls utility facilities in the City's rights-of-way to provide utility service, whether or not the person owns the utility facilities used to provision the utility services and every person that provides utility services within the City, will pay the usage fee for every utility service provided in the amount determined by resolution of the City Council.

B. A utility operator whose only facilities in the ROW are facilities mounted on above-ground structures within the ROW, which structures are owned by another person, and with no facilities strung between such structures or otherwise within, under or above the ROW (other than equipment necessary to operate the mounted facilities that has been expressly approved by the City to be placed in the ROW), will pay the attachment fee set by City Council resolution for each attachment, or such other fee set forth in the license granted by the City. Unless otherwise agreed to in writing by the City, the fee will be paid quarterly, in arrears, within thirty (30) days after the end of each calendar quarter and will be accompanied by information sufficient to illustrate the calculation of the amount payable.

C. No acceptance of any payment will be construed as accord that the amount paid is in fact the correct amount, nor will such acceptance of payment be construed as a release of any claim the City may have for further or additional sums payable.

D. Usage fee payments required by this section will be reduced by any franchise fees or privilege taxes, due to the City, but in no case will be less than zero dollars (\$0).

E. Unless otherwise agreed to in writing by the City, the Usage fee set forth in subsection A of this section will be paid quarterly, in arrears, within thirty (30) days after the end of each calendar quarter. Each payment will be accompanied by an accounting of gross revenues, if applicable, and a calculation of the amount payable (a remittance form will be provided by the City). The City may request and will be provided at no cost to the City, any additional reports or information it deems necessary, in its sole discretion, to ensure compliance by the utility provider, utility operator or licensee. Such information may include, but is not limited to: chart of accounts, total revenues by categories and dates, list of products and services, narrative documenting calculation, details on number of customers within the City limits, or any other information needed for the City to easily verify compliance.

F. The calculation of the Usage fee required by this section will be subject to all applicable limitations imposed by federal or state law in effect and as may be subsequently amended.

G. The City reserves the right to enact other fees and taxes applicable to the utility providers, utility operators and licensee subject to this Ordinance. Unless expressly permitted by the City in enacting such fee or tax, or required by applicable state or federal law, no utility operator may deduct, offset or otherwise reduce or avoid the obligation to pay any lawfully enacted fees or taxes based on the payment of the Usage fees or any other fees required by this Ordinance

Section 14. Penalties and Interest on Usage Fee. Penalties and interest imposed by this section are in addition to any penalties that may be assessed under other ordinances or regulations of the City.

A. Any person who has not submitted the required remittance forms or remitted the correct fees when due as provided in Section 13 will pay a penalty listed below in addition to the amount due:

1. First occurrence during any one calendar year; Ten percent (10%) of the amount owed, or Twenty-five dollars (\$25.00), whichever is greater.
2. Second occurrence during any one calendar year; Fifteen percent (15%) of the amount owed, or Fifty dollars (\$50.00), whichever is greater.
3. Third occurrence during any one calendar year; Twenty percent (20%) or the amount owed, or Seventy-five dollars (\$75.00), whichever is greater.

4. Fourth occurrence during any one calendar year; Twenty-five percent (25%) of the amount owed, or One hundred dollars (\$100.00), whichever is greater.

B. If the City determines that the nonpayment of any remittance due under this section is due to fraud or intent to evade the provisions hereof, an additional penalty of twenty-five percent (25%) of the amount owed, or Five hundred dollars (\$500.00), whichever is greater, will be added thereto in addition to other penalties stated in section 14.

C. In addition to the penalties imposed, any person who fails to remit any fee when due as provided in Section 13 will pay interest at the rate of 1.5% per month or fractions thereof, without proration for portions of a month, on the total amount due (including penalties), from the date on which the remittance first became delinquent, until received by the City.

D. Every penalty imposed, and such interest as accrues under the provision of this section, will be merged with, and become part of, the fee required to be paid.

The City or its designee, in their sole discretion, will have the authority to reduce or waive the penalties and interest due under Section 14.

Section 15. Audits and Records Requests.

A. Within thirty (30) days of a written request from the City, or as otherwise agreed to in writing by the City:

1. Every Utility Licensee, Utility Operator and Utility Provider will furnish the City, at no cost to the City, with information sufficient to demonstrate compliance with all the requirements of this Ordinance, any franchise agreements or other agreements, if any, including but not limited to payment of any applicable Business Registration fee, licensing fee, usage fee, attachment fee, franchise fee or privilege taxes.
2. Every Utility Operator, Utility Provider and Utility Licensee will make available for inspection by the City at reasonable times and intervals all maps, records, books, diagrams, plans and other documents, maintained by the utility operator with respect to its facilities or use of facilities, within the rights-of-way. Access will be

provided within the City unless prior arrangement for access elsewhere has been made and approved by the City.

B. If the City's audit of the books, records and other documents or information of the Utility Licensee, Utility Operator or Utility Provider demonstrate that there has been underpaid the usage fee, licensing fee, attachment fee or franchise fee or any other fee or payment by two percent (2%) or more in any one (1) year, the licensee, utility operator, or utility provider will reimburse the City for the cost of the audit, in addition to any interest owed pursuant to Section 14 or as specified in other agreements or franchises with the City.

C. Any underpayment, including any interest or audit cost reimbursement, will be paid within thirty (30) days of the City's notice of such underpayment.

D. The Licensee, Utility Provider or Utility Operator is not required to maintain records for more than six (6) years. The City is not required to maintain records beyond the State retention schedules.

Section 16. Insurance and Indemnification.

A. Insurance.

1. All utility operators will maintain in full force and effect the following liability insurance policies that protect the utility operator and the City, as well as the City's officers, agents, and employees:
 - a. Comprehensive general liability insurance with limits not less than:
 - i. Three million dollars (\$3,000,000.00) for bodily injury or death to each person;
 - ii. Three million dollars (\$3,000,000.00) for property damage resulting from any one accident; and
 - iii. Three million dollars (\$3,000,000.00) for all other types of liability.
 - b. Commercial Automobile liability insurance for owned, non-owned and hired vehicles with a limit of one million dollars (\$1,000,000.00) for each person and three million dollars (\$3,000,000.00) for each accident.
 - c. Worker's compensation within statutory limits and employer's liability with limits of not less than one million dollars (\$1,000,000.00).
 - d. If not otherwise included in the policies required by subsection a. above, maintain comprehensive form premises-operations, explosions and collapse hazard, underground hazard and

products completed hazard with limits of not less than three million dollars (\$3,000,000.00).

- e. Utility operator may utilize primary and umbrella liability insurance policies to satisfy the preceding insurance policy limit requirements.
2. The limits of the insurance will be subject to statutory changes as to maximum limits of liability imposed on municipalities of the state of Oregon. The insurance will be without prejudice to coverage otherwise existing and will name, or the certificate of insurance will name, with the exception of worker's compensation, as additional insureds the City and its officers, agents, and employees. The coverage must apply as to claims between insureds on the policy. The insurance will not be canceled or materially altered without thirty (30) days prior written notice first being given to the City, and the certificate of insurance will include such an endorsement. If the insurance is canceled or materially altered, the utility operator will obtain a replacement policy that complies with the terms of this section and provide the City with a replacement certificate of insurance. The utility operator will maintain continuous uninterrupted coverage, in the terms and amounts required. The utility operator may self-insure, or keep in force a self-insured retention plus insurance, for any or all of the above coverage.
3. The utility operator will maintain on file with the City a certificate of insurance, or proof of self-insurance acceptable to the City, certifying the coverage required above.

B. Financial Assurance. Unless otherwise agreed to in writing by the City, before a franchise is granted or license issued pursuant to this Ordinance is effective, and as necessary thereafter, the utility operator will provide a performance bond or other financial security or assurance, in a form acceptable to the City, as security for the full and complete performance of the franchise or license, if applicable, and compliance with the terms of this Ordinance, including any costs, expenses, damages or loss the City pays or incurs because of any failure attributable to the utility operator to comply with the codes, ordinances, rules, regulations or permits of the City. This obligation is in addition to the performance surety required under this Ordinance.

C. Indemnification.

1. Each utility licensee will defend, indemnify and hold the City and its officers, employees, agents and representatives harmless from and

against any and all liability, causes of action, claims, damages, losses, judgments and other costs and expenses, including attorney fees and costs of suit or defense (at both the trial and appeal level, whether or not a trial or appeal ever takes place) that may be asserted by any person in any way arising out of, resulting from, during or in connection with, or alleged to arise out of or result from the negligent, careless, or wrongful acts, omissions, failure to act, or other misconduct of the utility licensee or its affiliates, officers, employees, agents, contractors, subcontractors, or lessees in the construction, operation, maintenance, repair, or removal of its facilities, and in providing or offering utility services over the facilities, whether such acts or omissions are authorized, allowed, or prohibited by this Ordinance or by a franchise agreement. The acceptance of a Utility license, or of a franchise granted by the City, will constitute such an agreement by the applicant whether the same is expressed or not, unless expressly stated otherwise in the license or franchise. Upon notification of any such claim the City will notify the utility operator and provide the utility operator with an opportunity to provide defense regarding any such claim.

2. Every utility licensee will also indemnify the City for any damages, claims, additional costs or expenses assessed against or payable by the City arising out of or resulting, directly or indirectly, from the utility licensee's failure to remove or relocate any of its facilities in a timely manner, unless the utility licensee's failure arises directly from the City's negligence or willful misconduct.

Section 17. Compliance. Every Utility licensee, utility operator and utility provider will comply with all applicable federal and state laws and regulations, including regulations of any administrative agency thereof, as well as all applicable ordinances, resolutions, rules and regulations of the City, heretofore or hereafter adopted or established during the entire term of any Utility License granted under this Ordinance.

Section 18. Confidential/Proprietary Information. If any person is required by this Ordinance to provide books, records, maps or information to the City that the person reasonably believes to be confidential or proprietary, and such books, records, maps or information are clearly marked as confidential at the time of disclosure to the City ("confidential information"), the City will take reasonable steps to protect the confidential information to the extent permitted by Oregon Public Records Laws. In the event the City receives a public records request to inspect any confidential information and the City determines that it will be necessary to reveal the confidential information, to the extent reasonably

possible the City will notify the person that submitted the confidential information of the records request prior to releasing the confidential information. The City will not be required to incur any costs to protect any confidential information, other than the City's routine internal procedures for complying with the Oregon Public Records Law.

Section 19. Penalties and Violations.

A. Any person found in violation of any of the provisions of this Ordinance or the Utility License will be subject to a penalty of not less than one hundred fifty dollars (\$150), nor more than twenty-five hundred dollars (\$2,500) for each offense, and shall be processed in accordance with the Civil Infraction Ordinance (Ord. No. 1998). A violation will be deemed to exist separately for every section violated and be assessed each and every day during which a violation exists.

B. Nothing in this Ordinance will be construed as limiting any judicial or other remedies the City may have at law or in equity, for enforcement of this Ordinance, including those Civil Infractions that may be imposed under Ordinance 1998.

C. The City or its designee, in their sole discretion, will have the authority to reduce or waive the penalties and interest due under this subsection 19.

Section 20. Severability and Preemption.

A. The provisions of this Ordinance will be interpreted to be consistent with applicable federal and state law, and will be interpreted, to the extent possible, to cover only matters not preempted by federal or state law.

B. If any article, section, subsection, sentence, clause, phrase, term, provision, condition or portion of this Ordinance is for any reason declared or held to be invalid or unenforceable by any court of competent jurisdiction or superseded by state or federal legislation, rules, regulations or decision, the remainder of this Ordinance will not be affected thereby but will be deemed as a separate, distinct and independent provision, and such holding will not affect the validity of the remaining portions hereof, and each remaining section, subsection, clause, phrase, term, provision, condition, covenant and portion of this Ordinance will be valid and enforceable to the fullest extent permitted by law. In the event any provision is preempted by federal or state laws, rules or regulations, the provision will be preempted only to the extent required by law and any portion not preempted will survive. If any federal or state law resulting in

preemption is later repealed, rescinded, amended or otherwise changed to end the preemption, such provision will thereupon return to full force and effect and will thereafter be binding without further action by the City.

Section 21. Application to Existing Agreements. To the extent that this Ordinance is not in conflict with and can be implemented consistent with existing franchise agreements, this Ordinance will apply to all existing franchise agreements granted to utility operators and utility providers by the City.

Section 22. Emergency Clause. This ordinance being necessary for the immediate preservation of the public peace, health, and safety since it is in the City's interest to have this regulatory program in place for utility services that occupy City right-of-way, an emergency is declared to exist and this ordinance shall take effect as of October 1, 2020.

Approved as to form: _____
City Attorney Date

Approved: _____
Eric Swenson, Mayor

Passed by the Council _____
Submitted to the Mayor _____
Approved by the Mayor _____
Filed in the Office of the Recorder _____

ATTEST: _____
Heather Pierson, City Recorder
City of Woodburn, Oregon

COUNCIL BILL NO. 3138

RESOLUTION NO. 2162

**A RESOLUTION SETTING THE RIGHT-OF-WAY UTILITY LICENSE AND USAGE FEE RATES
WITHIN THE CITY OF WOODBURN**

WHEREAS, the City of Woodburn ("City") has constitutional and charter authority to manage its rights-of-way and utility usage within the City; and

WHEREAS, the Woodburn City Council adopted an ordinance regulating utilities operating within the City and exercising the City's authority to secure compensation to the City and its residents for utility use;

WHEREAS, per the ordinance the Woodburn Council shall by resolution establish Utility Licensing fees;

WHEREAS, per the ordinance the Woodburn Council shall by resolution establish a Franchise negotiations fee; and

WHEREAS, per ordinance the Woodburn City Council shall by resolution establish Usage fees; **NOW, THEREFORE**,

THE CITY OF WOODBURN RESOLVES AS FOLLOWS:

Section 1. The Utility License application fee shall be \$300.00 (excluding Small Cell Wireless Facilities) and shall include an initial five-year license (if approved).

Section 2. Utility License application fee for Small Cell Wireless Facilities, as they involve both access to rights-of-way and vertical infrastructure shall be \$500.00 for up to 5 sites and \$100.00 for each additional site, plus any additional reasonable fees the City must incur for outside expertise to evaluate such applications, including compliance with the Federal Communication Commission "RF" standards.

Section 3. The Utility License renewal fee (excluding Small Cell Wireless Facilities) shall be \$250.00 for a five-year license.

Section 4. The refundable franchise negotiation deposit shall be \$5,000.00;

Section 5. The usage fee shall be as follows, to the extent permitted under applicable law:

<i>Service</i>	<i>Usage Fee Rate</i>
Electric: Provides services to customer within Woodburn via owned or non-owned facilities located within the City's ROW	5% of gross revenue
Natural Gas: Providing services to customer within Woodburn via owned or non-owned facilities located within the City's ROW.	5% of gross revenue
Cable Television	5% of gross revenue
Communications* (other than Small Cell Wireless** Facilities): Providing services to customer within Woodburn via owned or non-owned facilities located within the City's ROW	7% of gross revenue
Attachment fee (other than Small Cell Wireless** Facilities)	\$5,000 per attachment per year
Small Cell Wireless** Communications Facilities	\$270.00 per attachment per year
Usage of owned or non-owned facilities in the rights-of-way for purposes other than generating revenue or providing services to customers within the City.	\$3.00 per linear foot of Utility Facilities in the rights-of-way or a minimum annual fee of \$5,000.00, whichever is greater. The per-linear-foot fee and the minimum fee shall increase 3% annually on July 1 st of each year, beginning July 1, 2022

"Gross Revenue" shall have the meaning defined in the Utility Services Ordinance.

Section 6: The annual attachment fee (excluding Small Cell Wireless Facilities) shall be \$5,000.00 per attachment. The attachment fee shall increase 3% annual on July 1st of each year, beginning on July 1, 2022.

Section 7: The annual attachment fee for Small Cell Wireless Facilities shall be the fair market value of such attachments, but until the Federal Communications Commission September 26, 2018 small cell order is overturned, City staff are directed to establish what the reasonable approximation of costs for such attachment are, but it no case less than \$270.00 per attachment, per year.

* "Communications" shall have the meaning defined in Woodburn's Utility Service Ordinance and shall include telecommunication utilities, long distance providers, private networks, wireless, wireline, VoIP, ILEC, CLEC, inter and intrastate.

** "Small Cell Wireless Facilities" shall have the meaning defined in Woodburn's Utility Service Ordinance.

Section 8. The fees implemented by this Resolution take effect on October 1, 2020.

Approved as to Form: _____
City Attorney Date

APPROVED: _____
Eric Swenson, Mayor

Passed by the Council _____
Submitted to the Mayor _____
Approved by the Mayor _____
Filed in the Office of the Recorder _____

ATTEST: _____
Heather Pierson, City Recorder
City of Woodburn, Oregon

October 12, 2020

TO: Honorable Mayor and City Council through City Administrator

FROM: Chris Kerr, Community Development Director
Colin Cortes, AICP, CNU-A, Senior Planner

SUBJECT: **Design Review DR 2019-05 Allison Way Apartments Final Decision**

RECOMMENDATION:

Authorize the mayor to sign the attached final decision document.

BACKGROUND/DISCUSSION:

The City Council had called up the Planning Commission decision on the subject project pursuant to Woodburn Development Ordinance (WDO) 4.02.02 and then on July 13 and September 14, 2020 held public hearings that resulted in the Council on September 14 tentatively approving the project the same as did the Planning Commission except that Condition:

1. EX2 is revised such that Stacy Allison Way will have 5-foot bicycle lanes;
2. V9-2 that establishes the standard of approved Variance request 2 is revised from a parking ratio minimum average of 1.77 stalls per dwelling to an absolute minimum of 1.9 stalls per dwelling; and
3. V5-3-1 that establishes the standard of approved Variance request 3 is revised from a compact parking maximum of 60% to 25%.

FINANCIAL IMPACT:

None.

ATTACHMENT:

1. Final Decision document (October 12, 2020) with its Attachment 107 Applicant's letter (The Council agenda packet copy of the final decision document excludes the remaining attachments listed on final decision final page that were attachments to the July 13, 2020 Council agenda packet.)

Agenda Item Review: City Administrator X City Attorney X Finance X



Final Decision

City Council

File number(s): DR 2019-05, EXCP 2020-05, PP 2019-01, PLA 2019-04, & VAR 2019-04

Project name: Allison Way Apartments

Date of decision: October 12, 2020

Applicant: Leeb Architects; attn Robert Leeb, Principal in Charge & Doug Hamilton, 308 SW 1st Avenue, Suite 200 Portland, OR 97204-3567

Landowner: Stacy Allison Way Holdings, Attn: Eugene Labunsky, 25030 SW Parkway Avenue, Suite 110, Wilsonville, OR 97070-9816

Site location: 0 Hooper St & 0 Stacy Allison Way NE; Tax Lots 052W14 02000, 2100, & 2300

Summary: First, the Planning Commission held a public hearing on May 28, 2020 and approved by 3-2 vote the consolidated applications package (Type III) with the conditions recommended by staff through the staff report published May 21, except for three revision items:

1. Striking transportation Condition T-BP9 that would have required the Evergreen Path, a bicycle/pedestrian path approximately 350 feet (ft) long within the unimproved Evergreen right-of-way (ROW) and extending from Smith Creek Development Phase 1A Tract 'D' boundary north to the existing Montebello 2 subdivision bicycle/pedestrian path that connects to Baylor Drive at Citadel Street per the image below:



Exhibit T-BP9A. Location and Conceptual Alignment

2. Revising Street Exception Condition EX2 to omit a landscaped median from the required custom cross section of the Stacy Allison Way extension to maintain a continuous two-way left turn lane along and between Interstate 5 and the approximately 800 ft of site development frontage that has no driveways; and



Exhibit EX2b revised June 2 (Median example concept not to scale.)

3. Approving variance request 2 regarding parking ratio minimum (WDO Table 3.05A, Residential 1) and setting a minimum average of 1.77 stalls per dwelling. (See Condition V9-2.)

Second, the City Council called up the Commission decision on June 8, 2020 pursuant to Woodburn Development Ordinance (WDO) 4.02.02 and held a public hearings on July 13 and September 14, 2020 that resulted in the Council on September 14 tentatively approving the project per the applicant's September 1 letter of testimony that was agenda item Attachment 1 (final decision Attachment 106).

The Council tentative approval results in conditions of approval the same as were in the Planning Commission decision document except that Condition:

1. EX2 is revised such that Stacy Allison Way will have 5-foot bicycle lanes;
2. V9-2 that establishes the standard of approved Variance request 2 is revised from a parking ratio minimum average of 1.77 stalls per dwelling to an absolute minimum of 1.9 stalls per dwelling; and

3. V5-3-1 that establishes the standard of approved Variance request 3 is revised from a compact parking maximum of 60% to 25%.

Staff returned to Council on October 12, 2020 with this final decision document for the mayor's signature.

Two (2) parties testified (besides the applicant). They are listed at bottom.

The request was for site development of three lots totaling 19.03 acres into 586 apartments across 23 buildings across Phases 1 & 2 such that the one parcel north/northeast of Hooper Street (5.93 acres) would be 180 apartments across 7 buildings as Phase 1 and the two parcels south/southwest of Hooper (13.1 acres) would have 406 apartments across 16 buildings as Phase 2.

The buildings are three-story walk-ups, conventional for new construction. Each phase has a common building and landscaped and paved common areas.

Regarding street improvements, Phase 1 includes for existing Stacy Allison Way removal of curb-tight sidewalk to install a planter with street trees and construct new, wide sidewalk. Phase 2 includes extension of Stacy Allison Way that relocates the dead-end from Hooper Street south/southwest along Interstate 5 (I-5) to city limits.

The subject property is in the Commercial General (CG) zoning district.

Section references are to the [Woodburn Development Ordinance \(WDO\)](#).

Conditions of Approval:

General

G1. As part of building permit application, the applicant shall submit revised site plans meeting the conditions of approval and obtain Planning Division approval through sign-off on permit issuance.

G2. The applicant or successors and assigns shall develop the property in substantial conformance with the final plans submitted and approved with these applications, except as modified by these conditions of approval. Were the applicant to revise plans other than to meet conditions of approval or meet building code, even if Planning Division staff does not notice and signs off on building permit issuance, Division staff retains the right to obtain restoration of improvements as shown on an earlier land use review plan set in service of substantial conformance.

G3. References: The descriptions below define certain words, phrases, and assumptions in the context of the conditions of approval:

- “Access way” means an on-site walkway paved at least eight (8) feet wide to serve as a bicycle/pedestrian path to and from sidewalk – or to and from an off-street public bicycle/pedestrian path – and that is ADA-compliant.
- “ADA” refers to the federal Americans with Disabilities Act of 1990.
- “Allison” refers to Stacy Allison Way.
- “A1,” “A2,” & “A3” driveways refer to the three Allison driveways from north to south. A1 is in Phase 1, and A2 & A3 are in Phase 2.
- “County” refers to Marion County.
- “Courtyard” refers to each of five places – two in Phase 1 and three in Phase 2 – that is a landscaped linear central common area framed by three buildings forming a “U” shape or four buildings enclosing the common area.
- “Director” refers to the Community Development Director.
- “EV” refers to electric vehicle.
- “Evergreen” with a capital “E” refers to Evergreen Road, especially south from OR 214.
- “ft” refers to feet.
- “Hooper” refers to Hooper Street.
- “H1,” “H2,” “H3,” & “H4” driveways refer to the four Hooper driveways clockwise from the northwest. H1 & H2 are in Phase 1, and H3 & H4 are in Phase 2.
- “Lawson” refers to Lawson Avenue.
- “Modal share” means the percentage of travelers using a particular type of transportation or number of trips using a type, as examples walking, cycling, riding transit, and driving.
- “Modal shift” means a change in modal share.
- “MUTCD” refers to *Manual on Uniform Traffic Control Devices* of the U.S. Department of Transportation (U.S. DOT) Federal Highway Administration (FHWA).
- “NE” means northeast.
- “NW” means northwest.
- “OAR” refers to Oregon Administrative Rules.
- “o.c.” refers to on-center spacing, such as of trees or shrubs.
- “ODOT” refers to the Oregon Department of Transportation.

- “OR 214” refers to Oregon Highway 214 / Newberg Highway.
- “Oxford” refers to Oxford Street.
- “Parking court” means each of three peninsulas of on-site surface parking extending southeast and framed by a “U” of five buildings. Phase 1 has one and Phase 2 has two.
- “Phase 1” or “Phase I” encompasses Tax Lot 052W14 02300 (Town Center at Woodburn subdivision Lot 9) and the full extents of adjacent Allison and Hooper and the whole of their intersection.
- “Phase 2” or “Phase II” encompasses Tax Lots 052W14 02000 & 2100 (Town Center at Woodburn subdivision Lots 7 & 8) to be consolidated and the full extent of adjacent Allison from Hooper.
- “PLA” refers to property line adjustment.
- “PUE” refers to public utility easement.
- “PW” refers to Public Works (the department) or public works (civil infrastructure) depending on context.
- “Root barrier” refers to that illustrated by PW SS&Ds, [Drawing No. 1 “Street Tree Planting New Construction”](#).
- “ROW” refers to right-of-way.
- “SDCs” refers to system development charges, also known as impact fees.
- “SE” means southeast.
- “Speed table” means a walkway crossing of a drive aisle that: is concrete; with a tabletop that is raised at least four (4) inches above drive aisle grade, at least six (6) ft wide, flat, and stamped or otherwise treated to have a pattern; and, with the vehicular ramps striped in compliance with *MUTCD* Figure 3B-30, Option A, and with minimum and maximum slope ratios of 1:25 and 1:10 respectively.
- “SS&Ds” refers to PW [standard specifications and drawings](#).
- “Street trees” refer to trees that conform to the WDO, including 3.06.03A and Table 3.06B.
- “SW” means southwest.
- “TSP” means the [Woodburn Transportation System Plan](#).
- “VCA” refers to vision clearance area as WDO 1.02 and 3.03.06 establish.
- “WDO” refers to the [Woodburn Development Ordinance](#).
- “W. Hayes” refers to W. Hayes Street.
- “WTS” refers to the Woodburn Transit System.

G4. Due dates / public improvements:

- a. By application: Unless a condition specifies otherwise, conditions including those relating to any of final subdivision, final partition, property line adjustment or lot consolidation recordation are due by building permit application. Prior to both any recordation of any final subdivision, final partition, or property line adjustment and building permit application, the applicant shall submit and obtain approval of an [Address Assignment Request](#).
- b. By issuance: Unless a condition specifies otherwise, ROW and easement dedications and recordation(s), construction of frontage/street improvements, and construction of off-site, park, and other public improvements are due by building permit issuance. Where phasing is relevant, building permit issuance means issuance for the phase in which the conditioned improvement is located. See also the Phasing Plan (PP) condition(s).

G5. Recordation due dates: The applicant shall apply to the County for recordations of items that the City requires no later than six (6) months past an anticipated Planning Commission tentative decision date, i.e. by December 30, 2022, and shall complete recordations no later than almost three years past, i.e. by May 25, 2023. The due date to complete recordations shall not supersede when recordations are due relative to the building permit stage.

G6. Public Improvements Civil Plan Review: The process by which to receive, review, and approve drawings and other documents related to public improvements required by these conditions of approval may be paired with or incorporated into building permit review, or, if directed by the City Engineer, through a civil engineering plans (CEP) review process led by the Engineering Division. If opting for CEP, the applicant shall not only follow the direction of the Engineer Division, but also take some actions to facilitate tracking by Planning staff and coordination with Engineering:

- a. Cover letter: Upon submitting application to the Engineering Division, simultaneously alert the Planning Division through a cover letter to the attention of the Planning Division referencing the intended or, if known, actual submittal date as well as the project name, project phase, tax lot number(s), street address(es), and the land use / planning / zoning final decision conditions of approval that require the public improvement that is the subject of the civil engineering plans. Referencing conditions may be by quotation or citing the identification numbers (e.g., T-A1). Identify the specific sheet (by number) or document page number that illustrates or notes how each subpart of a condition is met.
- b. Contact information: State the applicant's name, company, phone number, e-mail, and desired date for City staff to respond with review comments. The cover letter may include these.
- c. Plan copies: Submit to the attention of the Planning Division at least two plan size copies of plan sets (24 by 36 inches). Within the cover sheet title block(s), include the phrase "civil engineering plans" or "public improvements civil plans". Submit also Adobe PDFs using a fileshare service.
- d. Re-submittal fee: If there are multiple re-submittals, beginning with a third submittal / second revised submittal and continuing with each subsequent submittal, the applicant shall pay through the Planning Division into City general revenue a fee of \$100.

G-PW. Public Works: Follow the appended Public Works comments (May 19, 2020; Attachment 102A). If conflict arises between implementation of public works conditions and referenced standards in that document with implementation of the remaining conditions in this document, the Assistant City Administrator would arbitrate or mediate based on guidance from legal counsel, the Director, the Public Works Engineering Director, and the City Engineer.

Design Review 2019-05

D1. PUE(s): To meet WDO Figures 3.01D "Service Collector" & G "Local ...", as part of PLA recordation the applicant shall resolve existing easements with newly required easements so as to conform to the streetside PUE minimum width of five (5) ft per WDO 3.02.01B, conform to all other conditions, and follow the direction of the City Engineer per WDO 3.02.01A.

D2. Driveways:

- a. Number: To meet WDO 3.04.03B.1 regarding access management, the number of driveways is limited as follows:

ROW	Phase 1	Phase 2
Allison	1 joint (A1)	2 (A2 & A3)
Hooper	2 (H1 & H2)	2 (H3 & H4)

- b. Approach / apron / curb cut: Driveways shall conform to PW SS&Ds, Section [4150](#).

- c. Traffic control: To meet WDO 3.05.02J:

- (1) Parking on site: The central and narrowest drive aisle in each of the parking courts and between Buildings P & R shall have one-way traffic to the northwest, and the applicant shall:
- (a) Stripe on the pavement an arrow at each of the beginning and end of each aisle; and
 - (b) Install at the end of each aisle a do-not-enter sign that complies with *MUTCD* Figure 2B-11, sign R5-1.



- (2) Allison: Outbound left turns are prohibited from driveway A3, and the applicant shall install a no left turn sign that complies with *MUTCD* Figure 2B-4, sign R3-2.



D3. Cross access / joint driveway A1: To meet WDO 3.04.03B, the applicant shall:

- a. On Tax Lot 052W14 02300 (Town Center of Woodburn subdivision Lot 9; Phase 1):
- (1) Spur the easterly northeast-southwest drive aisle to the north property line of Tax Lot 052W13 01600 (subdivision Lot 10) at minimum width of twenty (20) ft minimum width between face of curb, and
 - (2) Spur the westerly northeast-southwest drive aisle to the north property line of Tax Lot 052W13 01600 (subdivision Lot 10) at minimum width of twenty (20) ft minimum width between face of curb.
- b. To meet WDO 3.04.03B.1 & 3, dedicate a public access and utility easement that is to the satisfaction of the Director, revocable only with the concurrence of the Director, and connects the two bulges with driveway A1.
- c. Have the easement width be either (i) minimum twenty (20) ft and centered on the drive aisle centerlines or (ii) minimum twenty-eight and a half (28½) ft measured southwest from the north lot line.

- d. Have the easement text include a paragraph that states that the delineated easement area serves as a public access easement to the benefit of Lot 10 of the Town Center at Woodburn subdivision plat (Tax Lot 052W13 01600), and such cross access to and from the joint driveway at Stacy Allison Way shall not be revoked without concurrence of the City Community Development Director in conformance with Woodburn Development Ordinance (WDO) 3.04.03B.3. Place such text under a Cross Access & Joint Driveway Easement header.

D4. Parking signage/stripping: To meet WDO 3.05.02J, the applicant shall designate compact stalls "COMPACT" in lettering one (1) foot high minimum and stripe them as such in the field prior to building permit final inspection.

D5. Parking stall double striping: To meet WDO 3.05.02K, the applicant shall delineate parking stalls with double parallel lines pursuant to Figure 3.05C and stripe them as such in the field prior to building permit final inspection.

D6. Bicycle parking near main entrance: To meet WDO 3.05.03E, prior to building permit final inspection the applicant shall provide bicycle parking within fifty (50) ft of a main entrance. In the context of a new construction apartment complex with conventional three-story buildings with open stairwells, each apartment building has two main entrances as follows:

- a. In all apartment buildings except Phase 1 B & C and Phase 2 B, C, J, & L there are four points where a building main wall plane intersects the walkway serving building ground floor entrances and the stairwell to upper floor entrances;
- b. In Phase 1 Buildings B & C and Phase 2 Buildings B, C, J, & L there are six such points;
- c. Each building has either (a) two walkways with two points each totaling the four or (b) three walkways with six points total; and so
- d. The condition shall apply to three points minimum for each of Phase 1 Buildings B & C and Phase 2 Buildings B, C, J, & L and two points minimum for remaining buildings and apply to one point minimum per walkway.

D7. Patios: Visual separation shall conform to WDO 3.07.05B.1a as follows:

- a. Pavement: As proposed, patios shall be paved with brick, concrete pavers, or poured concrete.
- b. Railings/fencing & gate: The outermost edges of patio concrete slabs that do not abut building walls shall have either metal or wood railings or cedar wood fencing at least three (3) ft high. If the latter, then opacity shall be full, but if fencing is higher than the minimum height, it shall be no more than ninety percent (90%) opaque, such as by being fully opaque from grade but from the top having a lattice pattern. The railings or fencing shall have a gated opening at least two (2) ft and four (4) inches wide.
- c. Height maximum: the railings or fencing maximum height shall be either five (5) ft or, where a patio faces a courtyard, three and a half (3½) ft.
- d. Shrubbery: Evergreen shrubbery shall line fully the outermost edges of patio concrete slabs, except along the gated opening.

Phasing Plan 2019-01

PP1. Phases / Phasing:

- a. Number and extent: As Condition G3 defines.
- b. Order / ordering: The applicant shall construct Phase 1 first.
- c. Improvements: Improvements within a phase are due by that phase.
- d. Vesting: Construction of Phase 1 shall vest land use / planning / zoning entitlement for Phase 2; but, were the applicant (or successors and assigns) to fail to make use of any of the two provisions of WDO 4.02.04B.1 or 3 to avoid expiration, expiration shall occur upon one of the two following events:
 - (1) The arrival of July 1, 2030; or
 - (2) City adoption of a unified development ordinance replacing the WDO were to have intervened on or between July 24, 2023 and June 24, 2030, approximately 3 to 10 years from the anticipated land use final decision date.

Property Line Adjustment 2019-04

PLA-1. Recording: To meet WDO 5.01.08B.5., upon City approval of the subject PLA, the applicant shall revise the drawing or drawings as needed and record the re-plat (or whatever it is that the County terms it) with the County. The expiration date is per WDO 4.02.04B, and were subsection 2 that refers to "the activity approved in the decision has commenced" to become relevant, that provision would mean recordation of the subject PLA, and to this end the applicant shall apply to Marion County for recordation by December 30, 2022 and complete recordation by May 25, 2023. In any case, the applicant shall record the re-plat prior to both City assignment of street addresses, which would follow the applicant submitting an address assignment request, and building permit application.

Street Exception

EX1. Hooper:

- a. Existing improvements: The planter strips, including curb widths, may remain 6½ ft instead of 7 ft, sidewalks may remain 5½ ft instead of 5 ft, and existing curbs may remain in place where not otherwise disturbed by newer improvements.
- b. Curb extensions: The applicant shall construct the proposed four curb extensions that cap the on-street parking aisles.
- c. Mid-block crossing: The applicant shall construct of the proposed two mid-block crossings of Hooper Street only the southeastern one and shall:
 - (1) Construct it of poured concrete minimum width of eight (8) ft;
 - (2) Stamp or otherwise treat the concrete to have a pattern that drivers would sense tactilely as well as visually.
 - (3) Install ADA-compliant curb ramps and pave connections to the sidewalks.
 - (4) Provide signage and striping per PW SS&Ds, or, if none exist for a given topic, per the direction of the City Engineer. Required signage may include two advance warning signs for drivers; and

- (5) Meet federal or state criteria or guidelines that the City Engineer may establish in writing as standards for the mid-block crossing.
- d. Crosswalk upgrade: Instead of the proposed northwestern of the two proposed mid-block crossings, the applicant shall traffic calm the crosswalk of the southeast leg of the T-intersection of Allison & Hooper. The applicant shall construct a poured concrete crosswalk at minimum width of eight (8) ft and that is either stamped or otherwise treated to have a pattern tactilely that drivers would sense tactilely as well as visually. The applicant shall stripe the crosswalk.
- e. Street trees: The applicant shall plant trees at 1 per 30 ft of frontage, equaling fourteen (14) trees per frontage (instead of 1 per 50 typical, 9 trees per frontage). For up to no more than two (2) of the absolute number of trees required along each frontage (4 total), the applicant may pay a fee in-lieu of \$125 per tree. This fee provision is intended to substitute for the applicant invoking 3.06.03A.3 (Director modification/relocation).

EX2. Allison: The City modifies and approves the street exception request as follows regarding improvements and that applies to both phases:

- a. Phase 1:
 - (1) Northbound travel lane: Either narrow from twelve (12) to eleven (11) ft, or, restripe the center left turn lane from twelve (12) to eleven (11) and shift the travel lane accordingly. However, were the sidewalk described below within this list were to overlap the PUE by at least one and a half (1½) ft, if the bicycle lane is removed, or by up to four and a half (4½) ft, if the bicycle lane remains, no lane narrowing would be required.
 - (2) Bicycle lanes: ~~Remove or narrow to~~ Minimum five (5) ft each.
 - (3) Planter strip: Install a planter strip six (6) ft wide and landscape with street trees at 1 per 30 ft of frontage, equaling twenty (20) trees along the Phase 1 frontage (instead of 1 per 50 typical). The total number shall be divided evenly between either *Betula pendula* [silver or European white birch] or another *Betula* [birch] species and an evergreen species among any of *Magnolia grandiflora* "Victoria" cultivar [magnolia cultivated for the Pacific Northwest], *Arbutus menziesii* [Pacific madrone], and *Tsuga heterophylla* [Western hemlock]. Ninety-seven percent (97%) of the remainder of the strip shall be medium size category shrubbery to the minimum size at planting per Table 3.06B and at maximum size that maintains conformance with VCA, and at least two (2) distinct openings in the shrubbery that total the remaining area of three percent (3%) shall be lawn grass.
 - (4) Sidewalk: Construct a sidewalk as a bicycle/pedestrian path at minimum width of eight (8) ft (whether or not a northbound bicycle lane remains) that the City shall allow to overlap the streetside PUE by at least a half (½) ft and as much as four and a half (4½) ft from edge of ROW. If and where sidewalk would need to deflect or meander, such as at driveway A1 or at the northeast corner of Allison & Hooper, it may fully overlap a streetside PUE.
 - (5) Striping:
 - (a) Bicycle: At the Phase 1 north end where the existing bicycle lane will continue at the north side of driveway A1, at the opening of the bicycle lane the developer shall stripe an MUTCD-compliant bicycle lane symbol or symbols.
 - (b) Turn: The applicant shall stripe a turn arrow within the existing center left turn lane southbound at Hooper.

- (6) Utilities: Relocate underground/subsurface utilities that would conflict with street trees, such as a potable water line, and surface utilities such as street light poles and boxes to be within either or both of the planter strip and a streetside PUE. Existing covered vaults may be incorporated within altered or additional sidewalk if meeting PW SS&Ds.
 - (7) NW side landscaping: The following applies between the project north end and the south end of the existing stormwater detention pond fencing – a point approximately 330 ft southwest along Allison ROW from Hooper centerline. The applicant shall plant at least two hundred and forty-eight (248) woody shrubs of large size category as WDO Table 3.06B defines, of one or more evergreen species capable of growing to a mature minimum height of ten (10) ft (preferably *Taxus brevifolia* var. *reptaneta* [English yew reptaneta variant]), and with average o.c. spacing of four (4) ft.
- b. Phase 2 / extension:
- (1) Lanes, travel: Minimum width twelve (12) ft.
 - (2) Lane, center left turn lane and turn pockets: Width eleven (11) ft.
 - (3) Bicycle lanes: ~~Northbound: none; and, southbound, either none or m~~ Minimum five (5) ft each.
 - (4) Planter strip: Install a planter strip six (6) ft wide and landscape with street trees at 1 per 30 ft of frontage, equaling forty-one (41) trees along the Phase 2 frontage (instead of 1 per 50 typical). The total number shall be divided evenly between *Betula pendula* [silver or European white birch] or another *Betula* [birch] species and an evergreen species among any of *Magnolia grandiflora* “Victoria” cultivar [magnolia cultivated for the Pacific Northwest], *Arbutus menziesii* [Pacific madrone], and *Tsuga heterophylla* [Western hemlock]. Ninety-five percent (95%) of the remainder of the strip shall be medium size category shrubbery to the minimum size at planting per Table 3.06B and at maximum size that maintains conformance with VCA, and at least six (6) distinct openings in the shrubbery that total the remaining area of five percent (5%) shall be lawn grass.
 - (5) Sidewalk: Construct a sidewalk as a bicycle/pedestrian path at minimum width of eight (8) ft (whether or not there is a northbound bicycle lane) that the City shall allow to overlap the streetside PUE by at least a half (½) ft and as much as four and a half (4½) ft from edge of ROW. If and where sidewalk would need to deflect or meander, such as at driveways A2 and A3 or at the southeast corner of Allison & Hooper, it may farther overlap a streetside PUE.
 - (6) ~~Median:~~ ... [previously struck by the Planning Commission]
 - (7) ~~Turn areas: At the north, the median shall~~ ... [previously struck by the Commission]
 - (8) NW side landscaping: The following applies between the fencing south end and the south end of extended Allison. The applicant shall plant at least two hundred and fifty-two (252) woody shrubs of large size category as WDO Table 3.06B defines, of one or more evergreen species capable of growing to a mature minimum height of ten (10) ft (preferably *Taxus brevifolia* var. *reptaneta* [English yew reptaneta variant]), and with average o.c. spacing of four (4) ft.:
 - (9) Interim signage: Signed barricades remain required per WDO 3.01.05A.2.b & c. and to PW SS&Ds. The developer shall also install an MUTCD-compliant dead-end sign, either W14-1 or W14-2, at the intersection of Allison & Hooper for southbound drivers. The City Engineer may require the developer to install either (a) also at the intersection either a W14-1a or a W14-

2a sign to warn drivers turning south from Hooper that Allison ends in the left direction as the arrow within the sign copy would indicate, or (b) a sign or signs serving similar purpose.



Design Review 2019-05: Transportation

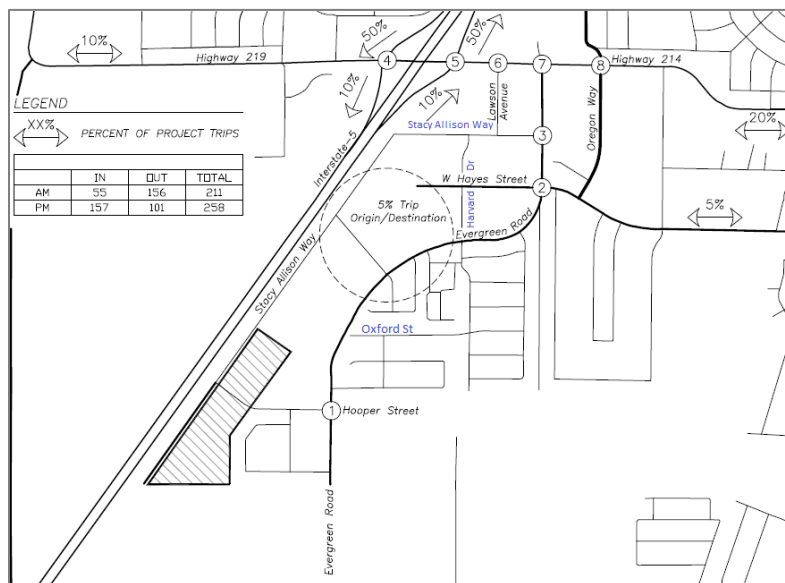


Exhibit T Vicinity map

T-A1. [Evergreen & W. Hayes](#): The developer shall:

- Mitigation fee / Fee in-lieu: Pay a mitigation fee or fee in-lieu of \$33,000 to fund a transportation study. This is due by Phase 2, building permit issuance. [TIA]
- Evergreen sidewalk west: See Condition T-BP2.

T-A2. [Allison & Evergreen](#): The developer shall pay a mitigation fee or fee in-lieu of \$33,000 to fund a transportation study. This is due by Phase 2, building permit issuance. [TIA]

T-A3. [OR 214 & Evergreen](#): The developer shall pay a mitigation fee or fee in-lieu of \$15,000 to fund a transportation study, specifically to investigate corridor signal timing and coordination adjustments in coordination with ODOT. This is due by Phase 1, building permit issuance. [R10]

T-BP1. Allison & Lawson: The developer shall upgrade the T-intersection so that the south landing of either the east or west leg crosswalk has an ADA-compliant curb ramp and the crosswalk is striped. This is due by Phase 1, building permit issuance.

T-BP2. Evergreen sidewalk west: The developer shall fill in the sidewalk gap along the Evergreen frontage of Tax Lot 052W12C 01600 (601 Evergreen Road). The sidewalk shall be minimum eight (8) feet wide and located no closer than one (1) ft from edge of ROW and no more than six (6) ft from edge of ROW. The developer shall to the extent feasible meander the sidewalk as needed to save existing trees in or partially within existing ROW, upgrade the intersection west leg crosswalk by installing an ADA-compliant north curb ramp, and stripe the crosswalk. This is due by Phase 1, building permit issuance. [P6]

T-BP3. Evergreen sidewalk east: The developer shall fill in the sidewalk gap along the Evergreen frontage of Tax Lots 052W12DC01400 (2333 W. Hayes Street), 052W12DC01200 & 1300, and 052W12DB04400 (2330, 2340, & 2343 Oregon Court). The sidewalk shall be minimum six (6) feet wide and located no closer than one (1) ft from edge of ROW and no more than six (6) ft from edge of ROW. The applicant shall to the extent feasible meander the sidewalk as needed to save existing trees in or partially within existing ROW, upgrade the W. Hayes intersection east leg crosswalk by installing an ADA-compliant north curb ramp, and stripe the crosswalk. This is due by Phase 2, building permit issuance. [P6]

T-BP4. W. Hayes sidewalk: The developer shall fill in the sidewalk gap along the W. Hayes frontage of Tax Lot 052W12C 01600 (601 Evergreen Road). The sidewalk shall be minimum six (6) feet wide. The applicant shall to the extent feasible meander the sidewalk as needed to save existing trees in or partially within existing ROW, including to align sidewalk curb-tight. Within the parameters of this condition, the sidewalk placement shall otherwise reasonably conform to WDO Figure 3.01G, particularly regarding placement relative to centerline and establishing a planter strip with street trees where they can fit. This is due by Phase 2, building permit issuance.

T-BP5. Harvard curb ramp(s): At the T-intersection with W. Hayes, the developer shall install at least one ADA-compliant curb ramp at the west end of either the north or south leg crosswalk, pave new sidewalk minimum six (6) ft wide that connects to existing sidewalk, and stripe the crosswalk. The applicant shall to the extent feasible save existing trees in or partially within existing ROW, including by using returned curbs instead of flares along ramps. This is due by Phase 2, building permit issuance.



Exhibit T-BP North: This exhibit illustrates locations and represents improvements related to Conditions T-BP1 through 5. Sidewalk is in blue dashes and ADA ramps are in yellow trapezoids.

T-BP6. Evergreen sidewalk south: The developer shall fill in the sidewalk gap along the Evergreen frontage of Tax Lot 052W12C 02400 (0 Evergreen Road NE). The minimum width and placement shall conform to WDO Figure 3.01C, and within the planter strip the applicant shall plant at least two (2) street trees with root barriers, one each near Harvard and the driveway and to allow future adjacent site development to add trees to conform fully with the quantity required by WDO 3.06.03A (1 per 50 ft typical). This is due by Phase 2, building permit issuance.

T-BP7. Evergreen / Walmart driveway curb ramp: The developer shall fill in the sidewalk gap along the Evergreen frontage of the pole of the flag lot that is Tax Lot 052W12C 01900 (3002 Stacy Allison Way) and install an ADA-compliant curb ramp at the west side of the driveway. This is due by Phase 2, building permit issuance.

T-BP8. Evergreen curb ramp(s): At the T-intersection with Oxford, the developer shall install at least one ADA-compliant curb ramp at the west end of either the north or south leg crosswalk, pave new sidewalk minimum six (6) ft wide that connects to existing sidewalk, and stripe the crosswalk. The applicant shall to the extent feasible save existing street trees, including by using returned curbs instead of flares along ramps. This is due by Phase 1, building permit issuance.

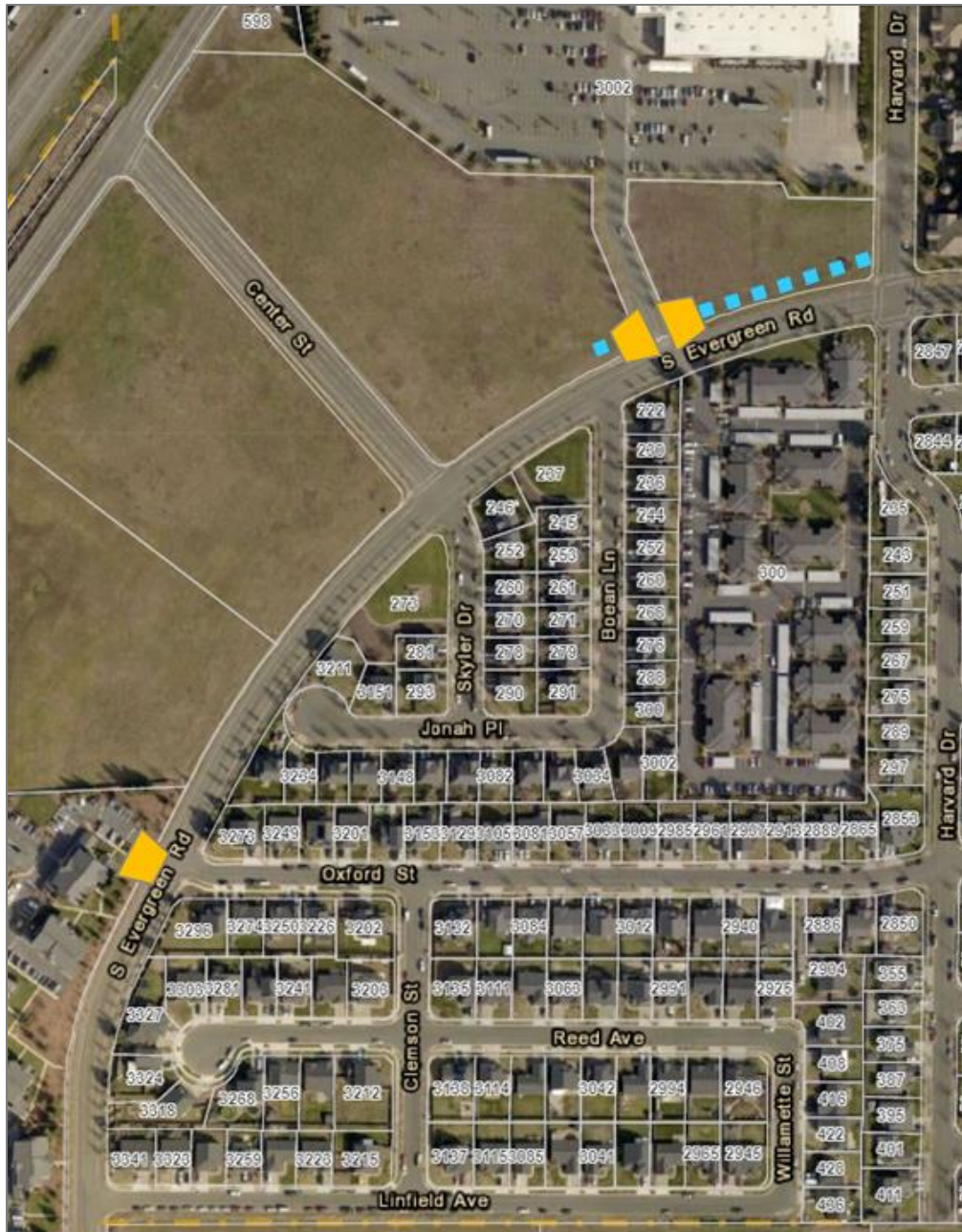


Exhibit T-BP South: This exhibit illustrates locations and represents improvements related to Conditions T-BP6 through 8. Sidewalk is in blue dashes and ADA ramps are in yellow trapezoids.

T-BP9. ~~Evergreen Path~~: ... [previously struck by the Planning Commission]

T-BP10. BP fee in-lieu option: In order for the City to construct any of the bicycle/pedestrian improvements that Condition T-A1b (Evergreen sidewalk west) and the T-BP conditions above describe, a developer may pay a fee in-lieu as follows:

- a. Percentage: Equal to at least one hundred and twenty (120%) of a licensed civil engineer's cost estimate.
- b. Estimate: An estimate shall have construction cost item estimates based on the improvements being bid on as a "Public Works Project" paying prevailing wages. The City Engineer shall review and approve a construction estimate prior to acceptance of a fee in-lieu payment.
- c. Bond/bonding/performance guarantee: If the applicant were to bond, then the above condition subparts a. and b. about percentage and estimate shall apply also to a bond.

T-T. Bus transit fee: The developer shall pay a mitigation fee that is a total of a fixed base amount plus a rate per dwelling of \$208.28. The fixed base amount shall be \$12,510.20 for Phase 1 and \$46,750 for Phase 2. (This condition relates to TSP projects T1, 2, 4, 16, 18 & TSP Fig. F5, and TPU projects 9, 11, 12, & 20.)

Variance 2019-04

V1-1. Driveway (WDO Table 3.04A):

- a. The minimum driveway widths shall be per the table below (instead of 24 feet typical):

<i>Minimum Driveway Width (feet)</i>			
<i>One-way Travel</i>		<i>Two-way Travel</i>	
<i>Single Lane</i>	<i>Paired Lanes</i>	<i>Paired Lanes</i>	<i>With Left Turn Lane</i>
10	9 per lane; 18 total	20	30 total

- b. The maximum driveway widths shall be per the table below (instead of 38 feet typical):

<i>Maximum Driveway Width (feet)</i>			
<i>One-way Travel</i>		<i>Two-way Travel</i>	
<i>Single Lane</i>	<i>Paired Lanes</i>	<i>Paired Lanes</i>	<i>With Left Turn Lane</i>
11	10 per lane; 20 total	22*	31 total

*Except 26 ft where required by Oregon Fire Code (OFC) Appendix D

- c. The condition applies within ROW, and may apply outside ROW along driveway throat length, so as not to interfere with the drive aisle width provisions of WDO Table 3.05C.

V2-4. Drive aisle (WDO Table 3.05C):

- a. The minimum drive aisle widths shall be per the table below (instead of 24 feet typical):

<i>Parking Context</i>	<i>Minimum Drive Aisle Width (feet)</i>		
	<i>One-way Travel</i>		<i>Two-way Travel</i>
	<i>Single Lane</i>	<i>Paired Lanes</i>	
<i>Standard or ADA-compliant stalls</i>	18	10 per lane; 20 total	20
<i>Compact stalls</i>	16	9 per lane; 18 total	20
<i>No adjacent stalls</i>	10	9 per lane; 18 total	20

- b. The condition applies up to newly dedicated ROW so as not to interfere with the driveway minimum width provisions of WDO Table 3.04A.

V3-5. Curb dimensions, parking area (WDO 3.06.02I): Curb or curbing that delineates on-site walkways and landscaped, parking, and vehicular circulation areas shall have a minimum height and width each of four (4) inches (instead of 6 inches typical).

- a. Speed table: The applicant shall construct a speed table along the walkway crossing nearest and between the Phase 2 clubhouse, play area, and Building R. (See Condition G3 for specifications.)
- b. Wheel stops: Wherever required or proposed, wheel stops shall be four (4) inches high maximum.

V4-6. Architectural Wall (WDO Table 3.06D & 3.06.06):

- a. The property lines subject to the Architectural Wall provisions of Table 3.06D and 3.06.06 are exempt from those provisions.
- b. Landscaping:
 - (a) Along the Phase 2 southeast and east lot lines, the applicant shall landscaped a buffer of minimum width five (5) ft to the minimum planting density of WDO Table 3.06A, row "Buffer yards".
 - (b) The landscaping shall include evergreen shrubbery planted at the large category minimum size per WDO Table 3.06B.
 - (c) The applicant shall include within fifteen (15) ft of the lot lines at least twenty-one (21) trees. The applicant shall add at least four (4) trees of large category per WDO Table 3.06B for a total of 25 trees. The four additional trees shall be in the lawns near Buildings Q & R, within sixty (60) ft of the lot lines, and with one (1) near Building Q and three (3) near Building R. The proposed site perimeter tree closest to the east/northeast corner of Building R shall be changed to a coniferous or evergreen species.
 - (d) Transformer box: Any on-site at-grade electrical transformer box shall be screened with evergreen shrubbery on all sides except the panel door side.
- c. Fence, cedar: Along the two segments of the Phase 2 southeast and east lot lines within six (6) ft of parking stalls that face the lot lines, the applicant shall install a treated cedar wood fence at least five (5) ft, ten (10) inches high and with boards arranged for opacity, except that the highest foot may be mostly opaque lattice pattern. Fence height shall not supersede applicable height limits per WDO 2.06.02.
- d. Lighting: If proposed, exterior light fixtures shall be full cut-off or fully shielded and limited in height as follows:
 - (a) Full cut-off: Exterior lighting fixtures shall be full cut-off or fully shielded models.
 - (b) Heights: As measured to the underside of the fixture:
 - a. Wall: Exterior wall-mounted fixtures shall be no higher than ten (10) feet above walkway finished grade. (This height limit is not applicable to emergency egress lighting and permanent wall signs allowed through WDO 3.10 were they to have interior illumination.)
 - b. Parking pole: Exterior pole-mounted fixtures within four (4) feet of or in parking, loading, and vehicular circulation areas shall be no higher than fourteen-and-a-half (14½) feet above vehicular finished grade.
 - c. Other pole: Remaining exterior pole-mounted fixtures, if any, shall be no higher than twelve (12) feet above grade.

V5-3-1. Compact parking (WDO 3.05.03C):

- a. Percentage: The compact parking maximum as a percentage of the required minimum amount of parking shall be ~~sixty~~**twenty-five** percent (~~60~~**25**%; instead of 20% typical) and hundred percent (100%) of any amount in excess of the minimum required. For each phase, at least twenty percent (20%) of the minimum amount of stalls shall be compact
- b. Striping: The applicant shall stripe each stall with the word "COMPACT" in lettering one (1) foot high minimum.
- c. Wheel stops: Where used, wheel stops shall be four (4) inches high maximum.

V6-3-2. Off-street parking provisions:

- a. Bicycle parking amount and distribution: For each phase unless otherwise specified, the applicant shall provide a minimum number of bicycle parking stalls as follows:
 - (1) At least one (1) per dwelling in each dwelling in the outdoor closet of the balcony or patio in which the applicant shall install a wall-mounted folding or retractable hook designed for the hanging of a bicycle;
 - (2) At least one (1) stall at the base of each building stairwell, with each of these locations having a bicycle parking sign with minimum face dimensions of (1) foot wide by one-and-a-half (1½) feet high;
 - (3) Phase 1: Guest: Excluding outdoor closet and stairwell stalls, a set of at least two (2) stalls within five to fifteen (5-15) ft of Hooper ROW and near or along the access way;
 - (4) Phase 2: Guest: Excluding outdoor closet and stairwell stalls, at least two sets of at least two (2) stalls each, one northwesterly within five to fifteen (5-15) ft of Hooper and one southeasterly within ninety (90) ft of Hooper ROW.
 - (5) Phase 1: Common: Excluding outdoor closet, stairwell, and guest stalls, there shall be at least twenty (20) outdoor stalls. Of these at least four (4) shall be among the clubhouse / leasing office, clubhouse plaza, or barbeque (BBQ) area, and sixteen (16) shall be covered/sheltered.
 - (6) Phase 2: Common: Excluding outdoor closet, stairwell, and guest stalls, there shall be at least fifty-six (56) outdoor stalls. Of these at least four (4) shall among the clubhouse / leasing office, clubhouse plaza, BBQ area and play area, two (2) shall be northeast of Building F and within ninety (90) ft of Allison ROW, two (2) shall be northeast of Building K and within ninety (90) ft of Allison ROW, and thirty-two (32) shall be covered/sheltered.
 - (7) At least two (2) stalls outside and near each apartment building spaced to conform to the 50-foot distance provision of WDO 3.05.03E as applied through a Design Review (D) condition.
 - (8) In no case shall the total number of bicycle parking stalls equal fewer than 1.2 per dwelling, and in no case shall the minimum coverage/sheltering from precipitation of bicycle parking be for fewer than forty-eight (48) stalls excluding outdoor closet and stairwell stalls.
- b. Bicycle standards: Stalls shall conform to City of Portland [Title 33, Chapter 33.266.220C](#) (amended 5/24/2018), except that the applicant may ignore subsections C6, C7, & C5c, and that C4b does not apply to the outdoor storage closets for which the minimum stall depth from wall instead shall be four (4) feet minimum. Vertical clearance instead shall be eight (8) feet or, where a stall is under stairs, six (6) feet.

- c. Access ways:
 - (1) Phase 1: At least one access way shall remain as proposed that extends from Hooper sidewalk at least one-hundred and fifty (150) ft to the plaza between the clubhouse and the barbeque (BBQ) shelter.
 - (2) Phase 2: At least one access way shall remain as proposed that extends from Hooper sidewalk at least five-hundred and fifty (550) ft from to the clubhouse southwest doors / play area.
- d. Walkways:
 - (1) Courtyards: The applicant shall revise Sheets SP-1 through 3 (Exhibits 10-12; civils) and each Note 6 to illustrate and note the proposed decorative pavement of the segments of courtyard walkways that the landscape plans (Exhibits 38-42) illustrate.
 - (2) Drive aisle crossings: The shall revise Sheets SP-1 through 3 (Exhibits 10-12; civils) and install in the field at least six (6) walkway drive aisle crossings not only as striping but also as extensions of poured concrete, listed north to south clockwise:
 - (a) Phase 1, north of Building A
 - (b) Phase 2, north of Building R
 - (c) Phase 2, north of Building P
 - (d) Phase 2, south of Building L
 - (e) Phase 2, east of Building M, and
 - (f) Phase 2, SW of Building K.
 - (3) Parking courts: The applicant shall pour concrete or lay concrete pavers to form a pedestrian shortcut up and over the curbed landscaped strip island within each parking court, in order to pass amid groundcover and shrubbery. It shall be roughly aligned at the boundaries of parking stalls, with the side of a landscaped peninsula, and with the nearest walkways that orient northeast-southwest and are between buildings. The minimum width shall be twenty-one (21) inches.
 - (4) Building stormwater scuppers shall not dump onto walkways.
- e. EV: As proposed and premised on OAR 918-020-0380 "Electric Vehicle Ready Parking", a minimum of either 36 stalls or three and half percent (3.5%) of minimum required parking— whichever is greater – shall be a designated EV stall or stalls and with a charging station or stations, which the landowner may limit to tenant use. Of 36 or more stalls, Phase 1 shall have at least twelve (12) and Phase 2 at least twenty-four (24).
 - (1) Striping: Stripe each stall in lettering 1 ft high minimum "ELECTRIC VEHICLE CHARGING" or similar and also stencil an EV image or logo. Reflect this on revised site plans.
 - (2) Signage: Post at each stall a wall-mounted or pole-mounted sign for "Electric Vehicle Charging Only" or similar and also include an EV image or logo. Use a minimum sign face size of one (1) foot wide by one-and-a-half (1½) feet high. The top of a posted sign is to be between five-and-a-half (5½) and six-and-a-half (6½) feet above vehicular grade. Reflect this on revised site plans including with an elevation detail.
- f. Balconies/patios: WDO 3.07.05B.1 (area/size and narrowest dimension) shall apply as minimum standards, except that for whatever balconies and patios among those proposed exceed these dimensions, their larger areas/sizes and wider narrowest dimensions shall be the minimum standards for those.

- g. Common open space facilities:
 - (1) Benches: Install at courtyards, clubhouse plazas, or common lawns at least two (2) Phase 1 benches and at least eight (8) Phase 2 benches. Each bench shall at least six (6) feet wide and with a back. In Phase 2 were 7 benches are proposed, add the eighth bench at the lawn southeast of Building M. Relocate two Phase 2 benches:
 - 1. From NW of Building G to the lawn NE of Building R and roughly in line with the walkway drive aisle crossing; and
 - 2. From NE of Building K to the lawn SE of Building R.
 - (2) Clubhouse plazas and BBQ grill shelters: As proposed, build at least one (1) each of a clubhouse plaza and a barbeque (BBQ) grill shelter in each of Phase 1 and 2.
 - (3) Administrative minor adjustment by the Director to the above common open space facilities is permissible.
- h. Windows:
 - (1) Proportion: All windows shall be square or vertically proportioned, except that horizontally proportioned windows are allowed if they have grilles or muntins dividing lights or panes so as to be vertically proportioned.
 - (2) Per room: Within apartments, every habitable room abutting a building exterior wall shall have at least one window.
 - (3) Insect screens: All operable windows shall have insect screens.

V7-3-3. Public access easement:

- a. Dedication: Regarding the Phase 1 proposed public park in the form of a plaza along Hooper and its related improvements, the applicant as part of re-plat recordation shall dedicate to the City a public access and utility easement encompassing the plaza and some extra perimeter area, specifically with a boundary that follows the centerlines of the walkways to the northwest and northeast that border the plaza and, to the southeast, along the back side of drive aisle curb. The easement shall grant public access during the same hours and subject to the rules and regulations for City parks per Ordinance Nos. 2060 (1991) and 2377 (2004) or as the City may amend ordinances.
- b. Boundary marking: The developer shall mark the public boundary through one of the following two options:
 - (1) Caps: Metal caps that either are or mimic land survey markers, are minimum diameter of three and a quarter (3¼) inches, and at a minimum number equal to and with average placement of 1 cap per 10 lineal ft of walkway. There shall be two additional caps along the boundary where it follows the drive aisle curb. The caps shall have the phrases "Open to Public" and "Private Property", and a line as a separator between the two phrases.
 - (2) Plaques: Metal plaques embedded within walkway concrete, aligned with the boundary, and that read "Property beyond Plaque not Dedicated to Public" with text oriented to be read by persons looking away from the plaza. The minimum size shall result from a minimum lettering height of two (2) inches, and the minimum number shall be equal to and with average placement on center of 1 plaque per 20 lineal ft of walkway. There shall be two additional plaques along the boundary where it follows the drive aisle curb.

c. Sign:

The applicant shall install a permanent sign conforming to WDO 3.10 that reads “Plaza Open to Public 7AM - 10PM April - September, & 7AM - 7 PM October - March” with minimum lettering height of two (2) inches. The developer shall place it near the plaza entry that is along the sidewalk and within five (5) to nine (9) ft of ROW.

- (1) If a monument sign type, the sign face area shall be twelve (12) sq ft minimum, with a flat top at least three (3) ft above grade and in the form of a concrete cap at least three (3) inches wide.
- (2) If a pole sign type, the lettering shall be green, and the sign face shall be no lower than three and a half (3½) ft above grade and no higher than five (5) ft and of minimum dimensions of two (2) ft by one-and-a-half (1½) ft.

d. Due date: These shall be due by Phase 1, building permit issuance.

V8-3-4. Parking management:

a. Survey: The applicant or any successor and assigns such as a property manager shall collect data about off-street parking usage or allocation and provide it to the City to the attention of the Director.

- (1) Reporting period: Collect data by each half of a year – January through June and July through December. Submit each biannual report by the last City business day in the last month of the next quarter of a year and that is not a federal holiday. (For example, a report for January through June 2022 would be due by September 30, 2022.)
- (2) First report: The first report shall cover whatever irregular length of time would pass between phase occupancy and the end of the next half of a year ending June or December.
- (3) Attributes: Collect and report on:
 - i. Geography: Report numbers divided between Phases 1 & 2 (as defined in Condition G3).
 - ii. The number of off-street spaces/stalls that are available and how many, if any, are closed due to occasional events such as parking area resurfacing, temporary outdoor events, outdoor storage, or the stationing of large trucks or truck trailers.
 - iii. Track stalls and usage by type: regular standard size, regular compact, accessible/ADA/handicap, EV, and any other type (such as those designated for visitors, leasing office employees, staff golf cart, or mail carrier).
 - iv. Collection: The property manager shall do field counts as per condition subpart (4 “field count”) below and also provide a separate set of assumed counts based on lease agreements, i.e. what tenant households are allocated a stall or stalls and for what periods, assumed that stalls are occupied as lease agreements describe.
 - v. Usage: Report how many stalls are used and allocated. For vacant apartments in the context of assumed counts, record stalls associated with vacant apartments as unallocated.
 - vi. If and when a parking area resurfacing project were to happen, provide written notice to the Director of approximate start date and duration, location, and number of stalls involved.

- vii. Format: Use tables to report by phase absolute numbers and percentages of stall type occupancies. Include phase and sitewide totals.
- (4) Field count: The property manager shall do at least two field counts per reporting period, meaning to travel the project and count in real time occupied and vacant stall types such as by marking a project site plan. Each count shall be on Tuesday, Wednesday, or Thursday that is neither a federal holiday nor within a week (7 days) of a federal holiday. One count shall be daytime starting no earlier than 9:30 a.m. and concluding no later than 4:30 p.m., and one count shall be nighttime starting no earlier than 10:00 p.m. and concluding no later than 12:30 a.m. Report when on a given date the counts were done and how long it took, for example, from 11:30 a.m. to noon.
 - (5) Bicycle parking: For outdoor bicycle parking stalls, including those within stairwells but excluding outdoor closets, the property manager shall also do field counts the same way as per condition subpart (4) above and as part of the larger report confirm the total number of existing outdoor bicycle stalls.
 - (6) Parking demand management: The reporting that a parking demand management condition requires, if it exists, may be incorporated with the parking usage data collection report.
 - (7) Context: In each report, cite the project name, phases, street addresses, master/parent case file number DR 2019-05, and the condition identification(s), state what period the report covers, state the number of vacant apartments and when and how the number was determined given fluctuation over six months, and provide an employee name and direct contact information for questions City staff might have.
 - (8) Intent: It is not the express intent of this condition to police property management or punish tenants or management for perceived misuse of parking, but instead without judgment to collect data on how parking is actually used in a conventional large apartment complex.
 - (9) Change of ownership: If and when property ownership were to change, the property manager shall pass along record of the conditions of approval to the contract purchaser and successive property manager.
 - (10) Expiration: This parking usage/allocation data collection condition becomes optional as of July 1, 2031. If reporting were to cease, the last report – for the January to June 2031 period – would be due September 30, 2031.

V9-2. Parking ratio minimum:

- a. The minimum ratio shall be ~~by unit type as follows for each:~~

~~(1) Studio dwelling, 1.0 stall;~~

~~(2) One bedroom, 1.0 stall;~~

~~(3) Two bedroom, 1.77 stalls; and~~

~~(4) Three or more bedroom unit type, 4.14;~~

~~which would result in an average of 1.771.9 stalls per dwelling based on the unit type mix across both phases.~~

- b. Location: Regarding Phase 1, the applicant may exercise WDO 3.05.02D.1.b. regarding “another site” if that site is Phase 2.
- c. Trial period: Until July 1, 2025, there shall be a trial period in which the Director may receive evidence of a chronic parking overflow problem and choose to investigate, review, and act upon it, including by obtaining the latest documentation of any parking permit system were the property manager to have instituted and be managing such.
 - (1) This condition authorizes the Director to require that the applicant or any successors and assigns apply for and receive approval of a solution to the satisfaction of the Director. The review shall default to a Type II process, but the Director may instead elevation the review to Type III to obtain Planning Commission review and decision.
 - (2) The Director may condition that the applicant or any successors and assigns fulfill the offer made through the revised narrative (submitted March 25, 2020, p. 12; Attachment 106) to contact a car share company and allow a parking space or two to be allocated such a company car or cars for tenant use. (This condition does not supersede WDO 4.02.07 Modification of Conditions.)
- d. EV: The property manager:
 - (1) Shall keep EV stalls available for EVs and plug-in hybrid vehicles and keep conventional gasoline vehicles from parking in them. Priority users shall be tenants and property management company employees; guests/visitors would be secondary.
 - (2) May charge EV stall users for the costs of charging an EV through a charging station, but shall not (a) charge tenants for either simply parking an EV or plug-in hybrid vehicle in an EV stall or for leaving such a vehicle parked without actively charging, and (b) shall charge to recoup costs to the property manager and not generate profit for the property manager. (This does not preclude the property manager contracting with a for-profit company to manage EV charging stations).
 - (3) Regardless of whether tenant demand is less than, meets, or exceeds the sitewide supply of EV stalls, may – whether or not the manager expands supply – institute a permit system, including a waiting list and assigning a tenant EV to a particular delineated group or zone of stalls, and as part of doing so shall not charge any fee that discriminates among particular EV parking stalls based on the perception of some stalls being more convenient or otherwise desirable than others. “Sitewide” shall mean the combined supplies of Phases 1 and 2, regardless of any division of property management between the two phases.

Expiration: Per Woodburn Development Ordinance (WDO) 4.02.04B., a final decision expires within three years of the date of the final decision unless:

- 1. A building permit to exercise the right granted by the decision has been issued;
- 2. The activity approved in the decision has commenced; or
- 3. A time extension, Section 4.02.05, has been approved.

Notes to the Applicant: The following are not planning / land use / zoning conditions of approval, but are notes for the applicant to be aware of and follow:

1. Records: Staff recommends that the applicant retain a copy of the subject approval.
2. Fences, fencing, & free-standing walls: The approval excludes any fences, fencing, & free-standing walls, which are subject to WDO 2.06 and the permit process of 5.01.03.
3. Signage: The approval excludes any private signage, which is subject to WDO 3.10 and the permit process of 5.01.10.
4. PLA Time Limit: WDO 4.02.04B. specifies that, “A final decision on any application shall expire within three years of the date of the final decision unless: 1. a building permit to exercise the right granted by the decision has been issued; 2. the activity approved in the decision has commenced; or 3. a time extension, Section 4.02.05, has been approved. Because unrecorded re-plats lingering indefinitely have burdened staff, a condition sets sooner time limits for subsection 2. to begin and finish recordation.
5. Mylar signature: The Community Development Director is the authority that signs plat Mylars and not any of the mayor, City Administrator, Public Works Director, or City Engineer. Only one City signature title block is necessary.
6. PLA Plat Tracker: Marion County maintains a plat tracking tool at <http://apps.co.marion.or.us/plattracker/>. Use it to check on the status of a recordation request to the County. City staff does not track County plat recordation.
7. Technical standards:
 - a. Context: A reader shall not construe a land use condition of approval that reiterates a City technical standard, such as a PW standard, to exclude remaining standards or to assert that conditions of approval should have reiterated every standard the City has in order for those standards to be met.
 - b. Utilities: A condition involving altered or additional sidewalk or other frontage/street improvement that would in the field result in displacement or relocation of any of utility boxes, cabinets, vaults, or vault covers does not exempt the developer from having to move or pay to move any of these as directed by the City Engineer and with guidance from franchise utilities.
8. Other Agencies: The applicant, not the City, is responsible for obtaining permits from any county, state and/or federal agencies, which may require approval or permit, and must obtain all applicable City and County permits for work prior to the start of work and that the work meets the satisfaction of the permit-issuing jurisdiction. The Oregon Department of Transportation (ODOT) might require highway access, storm drainage, and other right-of-way (ROW) permits. All work within the public ROW or easements within City jurisdiction must conform to plans approved by the Public Works Department and must comply with a Public Works Right-of-Way permit issued by said department. Marion County plumbing permits must be issued for all waterline, sanitary sewer, and storm sewer work installed beyond the Public Right-of-Way, on private property.

9. Inspection: The applicant shall construct, install, or plant all improvements, including landscaping, prior to City staff verification. Contact Planning Division staff at least three (3) City business days prior to a desired date of planning and zoning inspection of site improvements. This is required and separate from and in addition to the usual building code and fire and life safety inspections. Note that Planning staff are not primarily inspectors, do not have the nearly immediate availability of building inspectors, and are not bound by any building inspector's schedule or general contractor convenience.
10. Stormwater management: The storm sewer system and any required on-site detention for the development must comply with the City Storm Water Management Plan, Public Works storm water practices and the Storm Drainage Master Plan.
11. Public Works Review: Staff performs final review of the civil plans during the building permit stage. Public infrastructure must be constructed in accordance with plans approved by the City, as well as current [Public Works construction specifications, Standard Drawings, Standard Details](#), and general conditions of a permit type issued by the Public Works Department.
12. ROW:
 - a. Dedication: The Public Works Department Engineering Division has document templates for ROW and easement dedications that applicants are to use.

ROW – and public utility easement (PUE) – dedications are due prior to building permit issuance per Public Works policy.
 - b. Work: All work within the public ROWs or easements within City jurisdiction must require plan approval and permit issuance from the Public Works Department. All public improvements construction work must be performed in accordance with the plans stamped “approved” by the City, and comply with the City's Standard Specifications and Standard drawings.
13. Franchises: The applicant provides for the installation of all franchised utilities in any required easements.
14. Water: All water mains and appurtenances must comply with Public Works, Building Division, and Woodburn Fire District requirements. Existing water services lines that are not going to be use with this new development must be abandoned at the main line. The City performs required abandonment of existing water facilities at the water main with payment by the property owner. All taps to existing water mains must be done by a “Hot Tap” method and by approved City of Woodburn Contractors. The applicant shall install the proper type of backflow preventer for all domestic, lawn irrigation and fire sprinkler services. The backflow devices and meters shall be located near the city water main within an easement, unless approved otherwise by Public Works. Contact Byron Brooks, City of Woodburn Water Superintendent, for proper type and installation requirements of the backflow device at (503) 982-5380.
15. Grease Interceptor/Trap: If applicable, a grease trap would need to be installed on the sanitary service, either as a central unit or in the communal kitchen/food preparation area. Contact Marion County Plumbing Department for permit and installation requirements, (503) 588-5147.
16. Fire: Fire protection requirements must comply with Woodburn Fire District standards and requirements, including how the District interprets and applies Oregon Fire Code (OFC). Place fire hydrants within the public ROW or public utility easement and construct them in accordance with

Public Works Department requirements, specifications, standards, and permit requirements. Fire protection access, fire hydrant locations and fire protection issues must comply with current fire codes and Woodburn Fire District standards. See City of Woodburn Standard Detail No. 5070-2 Fire Vault. The fire vault must be placed within the public right-of-way or public utility easement.

17. SDCs: The developer pays System Development Charges prior to building permit issuance. Staff will determine the water, sewer, storm and parks SDCs after the developer provides a complete Public Works Commercial/Industrial Development information sheet.

Appeals: Per WDO 4.01.11E., the decision is final unless appealed pursuant to Oregon Revised Statutes (ORS), state administrative rules, and WDO [4.02.01](#). The appeal to City Council due date is twelve (12) days from the mailing date of this final decision notice per 4.02.01B.1. A valid appeal must meet the requirements of 4.02.01.

A copy of the decision is available for inspection at no cost, and the City would provide a copy at reasonable cost at the Community Development Department, City Hall, 270 Montgomery Street, Woodburn, OR 97071. For questions or additional information, contact Vicki Spitznogle, Administrative Assistant, at (503) 982-5246 or vicki.spitznogle@ci.woodburn.or.us.

Attachments:

- Planning Commission May 28, 2020 Staff Report Attachment 101. Tax Maps Marked (2 sheets)
- 101A. Town Center at Woodburn Subdivision Plat, Sheet 1 (2004)
- 102A. Public Works Comments May 21, 2020 (2 pages)
- 104. Transportation System Plan (TSP) Figure 7-1 (2005)
- 105. Site plans excerpted (submitted Mar. 25, 2020; 16 sheets)
- 105A. Site plans revised (submitted Sept. 1, 2020; 3 sheets; new attachment)
- 106. Applicant's narrative page 12 (submitted Mar. 25, 2020)
- 107. Applicant's letter (submitted Sept. 1, 2020; 4 pages; new attachment)

Sincerely,



Colin Cortes, AICP, CNU-A

Senior Planner

As authorized by the City Council on October 12, 2020

Eric Swenson, Mayor

Date

CP/cmc

cc: Chris Kerr, Community Development Director

Dago Garcia, P.E., City Engineer

Ted Cuno, Building Official

Jason Space, GIS Technician

Robert Leeb, Principal in Charge, Leeb Architects (applicant)

Doug Hamilton, Leeb Architects (project manager)

Eugene Labunsky, West Coast Real Estate Holdings (landowner)

Testifiers (1):

Stephen D. Rippeteau (562 Prairie St, Woodburn, OR 97071-4496)

Casey Knecht, P.E., Development Review Coordinator, Oregon Dept. of Transportation (ODOT) Region 2
Marion County Assessor's Office
Marion County Public Works Dept.



308 SW First Avenue
Suite 200
Portland Or 97204
Phone 503.228.2840
leebarc.com

01 September 2020

Mayor Swenson & Woodburn City Council
c/o Chris Kerr, Community Development Director
City of Woodburn Community Development Department
970 N. Cascade Drive
Woodburn, OR 97071

Reference: DR 2019-05, PLA 2019-04, PP 2019-01 & VAR 2019-04 "Allison Way Apartments" for Tax Lots 052W14 020000, 2100, & 2300 (three undeveloped, unaddressed lots along Stacy Allison Way); Accela record no. 971-19-000094-PLNG
Subject: Proposed Land Use Review Revisions

Dear Mayor Swenson and Councilors,

In response to comments received during the 7/13/20 Woodburn City Council Meeting, please find the attached revisions to the Allison Way Apartments land use review narrative, exhibits and additional supporting documents for your consideration. The proposal has been revised as follows:

1. The five main courtyards were narrowed to provide as much parking as possible. Ground floor patios are now located 2' into the 5' Hooper Street setbacks as permitted by WDO 3.03.03E. Because these setbacks also serve as 5' public utility easements, the City Engineer has provided conditions of approval for the 8 patio encroachments.
2. The ratios of compact spaces and parking spaces per unit were revised to meet zoning code requirements as closely as possible. Parking was increased from 1.77 to 1.9 spaces per unit and compact spaces were reduced from 53.5% overall to 25%.
3. Drive aisles are 24 feet minimum at all locations except 20 feet as indicated at the three main parking lots facing Stacy Allison Way (see new Exhibit 61).
4. The southernmost driveway on Stacy Allison Way was removed to reduce traffic conflicts and to increase on-site parking.
5. The unit mix of a few building types were changed slightly (more 1-bedroom units) but the total unit count is unchanged.
6. Although the landscape plans are not included in this resubmittal, staff will review all applicable landscaping requirements of the zoning code and Condition of Approval V4-6 Architectural Wall during the plan review process.



Three parking variances were the subject of the most discussion at the last Council meeting. The revised proposal still requests the three variances, but now provides parking much closer to what is required by the zoning code:

PARKING VARIANCES:

1. Parking Ratio (WDO Table 3.05A)

Required: 2 spaces per unit.

Proposed: 1.9 spaces per unit.

2. Compact Parking (WDO Table 3.05.03C)

Required: 20% maximum.

Proposed: 25% maximum.

3. Drive Aisle Width (WDO Table 3.05C)

Required: 24 feet minimum.

Proposed: 24 feet minimum except 20 feet at 25% of stalls maximum.

Staff attached the following Conditions of Approval to mitigate the parking variance requests. Because these conditions are above and beyond what is required by the zoning code, we feel they justify granting the requested variances:

PARKING CONDITIONS OF APPROVAL:

1. Bike Parking (WDO Section 3.05.03E)

Required: One space per ten vehicle parking spaces, with a maximum of 20 rack spaces: $1117 \text{ vehicle spaces} / 10 = 112 \text{ spaces minimum required}$.

Condition of Approval (V6-3-2a & b): $1.2 \text{ spaces per unit} = 704 \text{ spaces minimum}$.

Proposed: 758 spaces.

2. Electric Vehicle Ready Parking (OAR 918-020-0380)

Required: Not adopted by the City of Woodburn. Requires the installation of an electrical conduit system and electrical service for the future installation of electric vehicle charging stations at 5% of parking spaces. The installation of the electric vehicle charging stations is not required.

Condition of Approval (V6-3-2e): Full installation of 36 electric vehicle charging stations.

Proposed: As conditioned.



3. Public Plaza

Required: Not required.

Condition of Approval (V7-3-3): An approximately 3,000 sf public access easement and public park is to be provided in Phase 1 with landscaping, signage, pavement, seat walls, benches, drinking fountains, bicycle racks, trash receptacles and an ornamental fountain as requested and specified by staff.

Proposed: As conditioned. To address Woodburn's lack of parks in the southwestern area of the city, the applicant has voluntarily agreed to provide an access easement and a public plaza with amenities benefitting the neighborhood on a portion of the site that would otherwise be dedicated to required vehicle parking.

4. Parking Management

Required: Not required.

Condition of Approval (V8-3-4): The applicant is to collect data regarding off-street parking usage and provide half-yearly reports to the City of Woodburn through July 1, 2031.

Proposed: As conditioned. The applicant has voluntarily agreed to provide these reports to aid the City in its analysis of how parking is used in conventional large apartment complexes.

Condition of Approval D7 for railings or fencing at ground floor patios is also requested to be removed. The condition is not a zoning code requirement and does not support any of requested variances.

GROUND FLOOR PATIO CONDITION OF APPROVAL

Private Open Space (WDO Section 3.07.05B1a.2)

Required: Ground level private open space should/shall* be visually and physically separated from common open space, through the use of perimeter landscaping or fencing.

*For Type III reviews, these requirements are to be read as "should" and are applied as guidelines only:

Condition of Approval (D7):

- a. Pavement: As proposed, patios shall be paved with brick, concrete pavers, or poured concrete.
- b. Railings/fencing & gate: The outermost edges of patio concrete slabs that do not abut building walls shall have either metal or wood railings or cedar wood fencing at least three (3) ft high. If the latter, then opacity shall be full, but if fencing is higher than the minimum height, it shall be no more than ninety



percent (90%) opaque, such as by being fully opaque from grade but from the top having a lattice pattern. The railings or fencing shall have a gated opening at least two (2) ft and four (4) inches wide.

- c. Height maximum: the railings or fencing maximum height shall be either five (5) ft or, where a patio faces a courtyard, three and a half (3½) ft.
- d. Shrubbery: Evergreen shrubbery shall line fully the outermost edges of patio concrete slabs, except along the gated opening.

Proposed: Perimeter landscaping at ground floor patios as suggested by the zoning code guideline. The developer would prefer to avoid the management and maintenance issues associated with ground floor railings and gates.

The applicant and design team have worked closely with planning and engineering staff to follow their direction and provide everything that has been requested. West Coast Home Solutions is dedicated to making this a successful project that will benefit residents, the neighborhood and the City of Woodburn.

We hope the revisions to our proposal address your concerns and you agree that the conditions of approval justify the requested variances. We thank you for pushing us to create a better project and look forward to making it happen!

Sincerely,
Leeb Architects

Doug Hamilton

October 12, 2020

To: Honorable Mayor and City Council through City Administrator

From: Chris Kerr, Community Development Director *CK*

Subject: **Call-Up Briefing: Planning Commission Approval of a Variance for Eric & Charmaine Cottrell at 1311 E. Lincoln Street (VAR 2020-04)**

RECOMMENDATION:

Staff recommends no action and briefs the Council on this item pursuant to Woodburn Development Ordinance (WDO) Section [4.02.02](#). The Council may call up this item for review if desired and, by majority vote, initiate a review of this decision.

BACKGROUND:

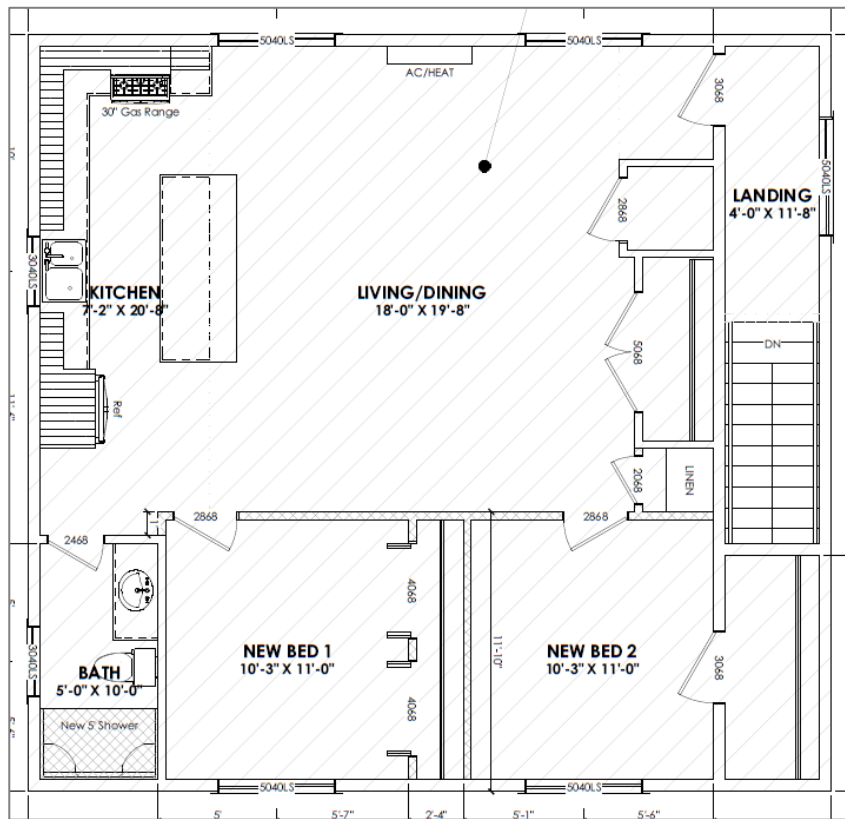
The Woodburn Planning Commission held a public hearing via the GoToMeeting virtual meeting platform on September 10, 2020 and approved by 4-1 vote the application with the conditions recommended by staff. No parties testified in opposition to the proposal.

The subject property, 1311 E. Lincoln Street, is within the Medium Density Residential (RM) zoning district and developed with a single-family dwelling and detached garage. The garage has an existing second floor living area, which the applicant sought to convert into a legal accessory dwelling unit (ADU).

The second floor living area exceeds the maximum square footage allowed for an ADU (per WDO 2.07.20E) therefore the applicant requested a Variance from this ADU floor area standard.



1311 E. Lincoln Street as seen from the street (Google Maps Street View, May 2019)



ADU floorplan drawing