

# EUGENE CITY COUNCIL

## AGENDA ITEM SUMMARY



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Public Hearing: Ordinance Vacating the Portion of West 4<sup>th</sup> Alley Located between 4<sup>th</sup> and 5<sup>th</sup> Avenues and Lincoln and Charnelton Streets (VRI 13-1)

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Meeting Date: December 9, 2013  
Department: Planning and Development  
[www.eugene-or.gov](http://www.eugene-or.gov)

Agenda Item Number: 5  
Staff Contact: Steve Ochs  
Contact Telephone Number: (541) 682-5453

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### ISSUE STATEMENT

The City Council will hold a public hearing on an alley vacation request submitted by CB Simons on behalf of Simons Properties and CSA Oregon LLC. The property affected by this proposed action is the east/west right-of-way of West 4th Alley, between Lincoln Street and Charnelton Street. A map is included as Attachment A which shows the proposed street right-of-way to be vacated. This item is scheduled for public hearing only; action is currently scheduled for January 13, 2013.

### BACKGROUND

The applicant is requesting the City of Eugene to vacate the West 4th Alley right-of-way from Charnelton Street to Lincoln Street while retaining a Public Utility Easement over the alley. The area of the request is 4,669 square feet. The applicant is requesting the vacation to allow for new commercial development on the property and to create a better business environment on the property.

The applicant previously requested the vacation of this same alley in 2012 (VRI 12-3). That request was denied by the City Council. The applicant has re-applied to vacate the same area and has included additional information regarding the owners' future plan for the site. The applicant is asking the City Council to reconsider its prior decision by providing a more complete explanation of how the alley would be used and how this vacation will be in the public's interest.

The owners' future plans include converting indoor parking areas to small commercial space and facade improvements along the alley, in the event that the request for right-of-way vacation is approved. A conceptual future development plan for the property, including elevations and a site plan are included in the application materials (see Attachment B.) The applicant believes this vacation will create a more pedestrian-friendly feel and vibrant use of the alley and surrounding area by allowing the establishment of new storefronts to accommodate new tenants and businesses on the site.

Public Works and other affected City departments and utility providers confirm that if the alley is vacated, adequate public rights-of-way exist to satisfy access and traffic circulation needs in the vicinity. As the alley dead-ends at Charnelton Street, it provides minimal benefit for east-west bike and pedestrian travel, as well as access for nearby properties. The provision of necessary public services can be maintained with the retention of a public utility easement over the alley, as proposed by the

applicant.

### **Public Hearing Notice**

In accordance with Eugene Code (EC) 9.7440 and Oregon Revised Statutes (ORS) 271.110, notice of public hearing for the requested alley vacation has been provided in the following manner:

- On November 22, 2013, notice was mailed to property owners within a 300-foot radius of the alley, interested parties and the Downtown Neighbors, the officially recognized neighborhood group;
- On November 19, 2013, the property was posted in the immediate vicinity of the requested alley vacation; and,
- On November 25, 2013, and December 2, 2013, legal notice was published in The Register-Guard newspaper.

Any written testimony received in response to public notice will be forwarded to the City Council for consideration.

### **Consent of Abutting and Affected Property Owners**

In accordance with ORS 271.080, the applicant has provided evidence of consent to the right-of-way vacation from all abutting property owners and from property owners of at least two-thirds of the property within the affected area. The applicant owns all of the properties abutting the alley right-of-way. Application materials submitted with the alley vacation include consent forms signed by Carlton B. Simons for all abutting properties. The application materials also include consent forms signed by Sid Leiken on behalf of Lane County Board of Commissioners (for the Lane County Jail property) and additional surrounding property owners for more than two-thirds of the affected (required consent) area. (The affected area is 200 feet on either side of the street and 400 feet beyond each end of the right-of-way to be vacated.)

### **Applicable Criteria**

The vacation request process serves as a means to evaluate the need for public ways as land develops and uses change over time. Requests for vacation of public streets are considered in accordance with EC 9.8700-9.8725 and ORS 271.080-271.230, and processed pursuant to EC 9.7445-9.7455. The public hearing is subject to quasi-judicial procedures in State law and as set forth in EC 9.7065 through EC 9.7095.

The City Council will address the relevant approval criteria from EC 9.8725 in making a decision on the proposed street vacation, as listed below:

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

Additionally, ORS 271.120 is relevant as listed below:

*At the time fixed by the governing body for hearing the petition and any objections filed thereto or at any postponement or continuance of such matter, the governing body shall hear the petition and*

*objections and shall determine whether the consent of the owners of the requisite area has been obtained, whether notice has been duly given and whether the public interest will be prejudiced by the vacation of such plat or street or parts thereof. If such matters are determined in favor of the petition the governing body shall by ordinance make such determination a matter of record and vacate such plat or street; otherwise it shall deny the petition. The governing body may, upon hearing, grant the petition in part and deny it in part, and make such reservations, or either, as appear to be for the public interest.*

As noted above, consent of the required area has been obtained and public notice has been given in accordance with statutory and local code requirements. It is the council's purview to decide if the request is in the public interest and what additional requirements, if any, must be made to find that the proposal supports the public interest in order for the City to release ownership of the right-of-way.

If the council approves the request, findings in regards to the approval criteria are included in Exhibit C to the Ordinance (see Attachment C). A complete copy of the application along with other documents and information related to the vacation request including a written statement, site plans and consent forms, are also contained in a binder that has been placed in the Council Office for reference.

#### **Determination of Assessment**

Pursuant to EC 9.8710(4), the applicant is required to pay a deposit equal to the assessment of special benefit resulting from the vacation and the disposition of the property to the benefited property owners. The assessed value of special benefit is to be determined by the City Manager. In this instance, the value of the real property for the alley right-of-way was determined to be \$36,450 as detailed in the attached Notice of Assessment of Benefits Memorandum (see Attachment D). The applicant has deposited that sum with the City in advance of the public hearing, as required. If the application is approved, the deposit shall be retained by the City, or if the application is denied the money shall be returned.

#### **RELATED CITY POLICIES**

Approval criteria for vacation requests (the full text is included above) are located at EC 9.8725, and corresponding statutory provisions at ORS 271.120, which require the council to find that approval of the vacation request is in the public interest.

Findings supporting this request are included in Exhibit C to the Ordinance (see Attachment B).

#### **COUNCIL OPTIONS**

These items are scheduled for public hearing only, however, council action is required within 30 days of the close of the record following the public hearing to:

1. Approve the vacation request by ordinance;
2. Modify and approve the vacation request by ordinance; or,
3. Deny the vacation request.

This action is currently scheduled for January 13, 2014.

**CITY MANAGER’S RECOMMENDATION**

The City Manager recommends that the City Council hold and close the public hearing on the vacation request, and take action within 30 days of close of record in order to comply with statutory and local code requirements.

**SUGGESTED MOTION**

This item is set for deliberations and action on January 13, 2014.

**ATTACHMENTS**

- A. Map of Alley Vacation Request
- B. Applicant’s Site Plan and Proposed Elevations
- C. Draft Ordinance (with Exhibits A – C) for Alley Vacation
- D. Notice of Assessment of Benefits
- E. Public Testimony

**FOR MORE INFORMATION**

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