

**BURNS CITY COUNCIL
DECEMBER 13, 2023**

The Burns City Council met in regular session on November 13, 2023, at 6:00 p.m. Members present were as follows:

Mayor: Jerry Woodfin- Excused
Councilors: Jen Keady
Jen Hoke
Heather Smith
Tod Gahley

Also, in attendance were City Manager Judy Erwin, Fire Chief Scott Williamson, Public Works Director Ty Richardson, Matt Renfo, Wayne Delange, Hilbert Presley, Gordon Modey, and City Clerk Tiffany Leffler.

PUBLIC COMMENT

There was no public comment given.

AGENDA APPROVAL AND ADDED ITEMS

Councilor Keady made a motion to approve the agenda as presented. Councilor Gahley seconded the motion. All ayes.

CONSENT AGENDA

1. Regular Meeting Minutes – November 8, 2023

Councilor Keady made a motion to approve the Consent Agenda. Councilor Gahley seconded the motion. All ayes.

PUBLIC HEARING

The City of Burns proposed to vacate the portion of the 14-foot-wide alley between East Jackson and East Van Buren Street, and between South Fir Avenue and South Gordonia Avenue.

Councilor Hoke opened the hearing at 6:15 p.m. She then asked if anyone had any conflicts of interest.

There were no conflicts of interest.

Land Use Planner Jay Harland gave the Staff Report as such:

CITY COUNCIL REPORT

OWNER: City of Burns

APPLICANT: City of Burns

PLANNING FILE: LPAF-001-2023

NATURE OF APPLICATION: The City of Burns proposes to vacate the portion of the 14-foot-wide public alley between East Jackson Street and East Van Buren Street, and between South Fir Avenue and South Gordonia Avenue.

I. BACKGROUND INFORMATION

The proposed vacation of public right-of-way was initiated by the City Council on October 11, 2023, through Resolution No. 23-768. Sec, Exhibit A. In accordance with said Resolution, a public hearing on the proposed vacation has been scheduled to be held on December 13, 2023. Over the course of time there have been physical improvements constructed and placed within the alley right-of-way (e.g., sheds, fences, etc.) that now prevent travel along the full length of the alley between S. Fir Avenue on the west and S. Gordonia Avenue on the east. See, Exhibit E.

II. APPLICABLE STANDARDS

In order to approve the vacation of public right-of-way, the City Council must determine that the proposed vacation is in conformance with the standards and guidelines of Section 12.35.040 of the Burns Municipal Code, which are set forth below.

III. FINDINGS OF CONFORMANCE WITH THE MUNICIPAL CODE

Section 12.35.040 Review standards and guidelines. The standards and guidelines in this section are not intended to be exclusive. The city council, in its sole discretion, on consideration of any factor it determines relevant, must determine whether or not a proposed vacation would be in the public interest.

(1) Right-of-way will not be vacated if it is in use for right-of-way purposes unless the vacation involves a trade of property and the creation of an alternate right-of-way that will be used in place of the existing right-of-way.

IV. FINDINGS: There are various improvements that have been constructed and placed over time within the alley right-of-way and now prevent travel along the full length of the alley which connects S. Fir Avenue and S. Gordonia Avenue; however, all abutting properties along both sides of the alley have direct vehicular access to and from the surrounding streets. As such, none of the abutting properties lack access to a public right-of-way and the land within the alley would be transferred to the abutting properties. Based upon the evidence 242 S. Broadway Street, Burns, Oregon 97720 | (541) 573-5255 | (541) 573-5622 Fax cityofburnsor.gov and information staff has gathered to-date, it is unclear the extent to which the right-of-way is being used for access by any of the abutting properties.

(2) Right-of-way will not be vacated if there is a reasonable possibility it will be used for right-of-way purposes at any time in the future, unless the potential future use can be preserved by an easement or other means.

FINDINGS: The subject alley is obstructed for use as right-of-way purposes between S. Fir Avenue and S. Gordonia Avenue, such that one cannot travel the full length between said streets. The extent to which the alley is usable for right-of-way purposes is not entirely clear from the photographic evidence, nor is the level of use for the portions of the alley that are not obstructed. As noted above, all the abutting properties have direct access to the surrounding street network and therefore the City Council could conclude that the subject alley is not needed for right-of-way in the future.

(3) Right-of-way purposes include:

- (a) Streets;
- (b) Bike paths;
- (c) Trails, paths or sidewalks;
- (d) Public utilities.

FINDINGS: All properties that abut the subject alley have direct access to one or more of the surrounding public streets, and said properties have well-established use of those public street access points. Additionally, the surrounding public streets have right-of-way widths of 60 to 80 feet and thus contain adequate space for bicycle travel and public sidewalks. There are no logical destinations in any proximity that would warrant the provision of public use trails or paths. It is unclear as to what extent the unobstructed portions of the subject alley are used for right-of-way purposes, but if the alley were to be vacated a blanket easement covering the alley would be established to ensure any existing utilities that may be located within the alley will be able to maintain access thereto.

(4) The city may consider the current use, if any, of the right-of-way in determining whether it should be vacated.

FINDINGS: The subject alley right-of-way is obstructed by physical improvements that have been constructed or placed within portions of the alley by the abutting property owners. As a result, it is not possible to travel from one end of the alley to the other. It is unclear as to the extent to which the unobstructed portions of the alley are used for access purposes to the abutting properties.

(5) The city may consider the history of the property proposed to be vacated, how it was acquired by the public, the cost of acquisition, current value, and the benefit to any adjacent property to which the vacated property will be attached.

FINDINGS: The subject alley and the surrounding street rights-of-way appear to have all been created many years ago as part of the Hansen's First Addition subdivision, meaning that there was little to no public cost of acquisition for said rights-of-way. It does not appear that the city has expended much, if any, money or other resources on the maintenance of the alley as a public right-of-way in recent years. Private improvements have been constructed and placed within the subject right-of-way and resulted in it being obstructed to the point where one cannot travel between the two ends of the alley. Vacating the subject alley would relieve the City from being responsible for any related maintenance of the alley, and the land that will revert back to the abutting lots will become assessable in future tax years, thus benefitting the City and Harney County while providing the abutting property owners the legal right to use the land area that each will gain as a result of the vacation.

(6) Unless there is a strong public interest otherwise, the city shall obtain fair value for any vacated right-of-way, which may be financial payment, dedication of right-of-way of comparable value, or other consideration.

FINDINGS: The extent to which the subject alley is used for right-of-way purposes is unknown; however, vacating the subject alley would relieve the City of any legal or financial obligations for its maintenance. Additionally, the vacated land will become assessable as real property and therefore contribute to the City's financial base.

V. CONCLUSION: The proposed right-of-way vacation was initiated by the City Council in accordance with the provisions of the Burns Municipal Code and notice of the proposed right-of-way vacation was provided as required by law. Based on the above findings, and depending upon the public testimony that may be presented at the hearing, the Council will need to determine whether the subject alley should be vacated, or conversely, if after considering the evidence and hearing public testimony, the Council determines that the alley should not be vacated, then it should also determine if there are any actions that the City needs to take with respect to ensuring the alley can be used as intended for public right-of-way. In the alternative, if this is a matter that the Council believes warrants additional research and consideration, the Council could continue the matter to a future hearing date.



CITY OF BURNS PLANNING & ZONING DEPARTMENT

By: Jay Harland
Contract City Planner
Date: December 1, 2023

- Exhibits**
- A. City Council Resolution No. 23-768
 - B. Vacation Legal Description and Survey Map
 - C. Affected Area Tax Maps
 - D. Assessment Records for Affected Properties
 - E. Photos of Subject Alley

Councilor Gabley had questioned the exhibits and how they didn't seem to match what was listed.

LUP Jay Harland informed him, the ones they were pertaining to in the staff report were from the Planning Commission meeting packet and not the current ones that were listed on the agenda. Exhibit A was just documenting that on the 11th day of October 2023, the Burns City Council voted to initiate the vacation process. He then said this evening's proceeding is when the council would actually vacate or not, and if elected, staff would come back with a vacation order.

There were no further questions from the council.

Councilor Hoke asked if there was any public testimony along this vacation matter.

There was no public testimony given.

Councilor Hoke then asked if anyone would like to speak in favor or against the vacation.

There was no one to speak in favor or against.

LUP Jay Harland asked if there was any written testimony in favor of against the vacation.

City Clerk Tiffany Leffler informed them that there was not any written testimony in favor or against that had been turned into her.

There was no further discussion.

Councilor Hoke closed the public hearing at 6:26 p.m.

Councilor Keady made a motion to direct staff to prepare an order of vacation to vacate the alley that separates the North and South Lots, Block 6, Hansen's First Addition to Burns. Councilor Smith seconded the motion. All ayes.

NEW BUSINESS

- 1. Donation request – Burns Elk Lodge No. 1680** – The Burns Elks Lodge thanked the City of Burns for their generosity and were also requesting that the City of Burns make a donation for their local Christmas basket.

Councilor Keady made a motion to donate \$200.00 to the Burns Elks Lodge for their Christmas basket. Councilor Smith seconded the motion. All ayes.

- 2. 2023 OSFM Engine Program – Intergovernmental Agreement – Fire Chief Scott Williamson** - informed the council that the IGA was for the city was going to receive a new type 3 engine from the State Fire Marshalls office. The truck will still belong to them, but it will be placed in the Burns Fire Department, and it can be used for what ever the Fire Department sees it fit for. He also informed them that the new engine wasn't here yet.

Councilor Smith made a motion to approve the 2023 OSFM Engine Program Intergovernmental Agreement. Councilor Keady seconded the motion. All ayes.

OLD BUSINESS

- 1. There was no old business.**

RESOLUTIONS/ORDINANCES

1. **Resolution No. 23-770** – A resolution declaring certain city equipment owned by the City of Burns to be surplus property and indicating the intent and method for the disposal of such surplus property.

Burns Police Chief informed Council that they had seized two Dodge Chargers, and to replace or repair them, it would be very costly. They still have value though and they wanted to try and recover funds by auctioning them off.

Public Works Director Ty Richardson said he also had a Belly Dump Truck and trailer, that they have not been able to utilize since he has been with the city. Public Works Wayne Delange, one of the longest employees at the City of Burns, had only used it four or five times in his time with the city. They have no future plans to use it either and would like to try and sell it to recover the funds and put them back into the street fund so that they may possibly get a new Plow Truck.

Councilor Keady made a motion to read Resolution No. 23-770 by title only. Councilor Smith seconded the motion. All ayes.

Councilor Smith made a motion to approve Resolution No. 23-770. Councilor Gahley seconded the motion. All ayes.

2. **Resolution No. 23-771** – A resolution of the City of Burns to authorize an Intergovernmental Agreement.

Councilor Smith made a motion to read Resolution 23-771 by title only. Councilor Gahley seconded the motion. All ayes.

Councilor Keady made a motion to approve Resolution 23-771. Councilor Gahley seconded the motion. All ayes.

CITY MANAGER REPORT/DEPARTMENT REPORT

Interim City Manager Judy Erwin reported the following:

She wanted to take a few minutes to talk about the crew that does a lot of heavy lifting for the City of Burns. On those cold and snowy mornings, they are up plowing snow after there's been a big snow fall and making sure to sand all the slick spots that come with this time of year, even if there is not a lot of snow. The Police Department and Fire Departments are plowed and sanded so the emergency services can respond safely to calls that come in. If there is a water main break, whether it is 10 degrees or 110 degrees, they are down in a hole repairing that break as fast as they can. She said she could never imagine working in water with 10-degree weather, but if they have ever complained she had never heard them. There are plugged sewer lines, or pumps that need to be cleaned. When the lagoon is in danger of overflowing, they work diligently to make sure that doesn't happen. She said many of us don't give too much thought to what Public Works really does, but even for the Christmas Parade, they had to start preparations two weeks prior to this meeting to make sure everything was ready. They made arrangements to obtain wood for the bon fire, dug and planted the new city Christmas tree, made arrangements to get electricity to the tree for the lighting, decorated the tree, and made a plan for the street closures in order to make it work and safe. They placed the signs for the night of the parade and cleaned everything up after it was over. In the Summer they mow and water the City Parks, repair park equipment, and clean and repair the park bathrooms. They patch potholes and generally do anything the office staff may need done such as, moving or assembling furniture, or mowing and watering grass at City Hall. Most of the equipment at the city is pretty old, yet they seem to keep it running. She said there were probably 100 things or more they take care of daily that she is unaware of or doesn't understand. They are truly the backbone of the city, and all the departments depend on them in one way or another in order to keep this city running. She feels everyone is guilty of taking them for granted, and she just wanted to take a few mins to tell them and everyone just how much we all appreciate them and all that they do. She then presented them with gifts she had purchased for each of the guys on the Public Works crew. She hoped that every time they used them, they would remember how much their co-workers appreciate them.

COMMITTEE REPORTS

Airport Committee – Councilor Smith said the Airport Committee met the previous week and they had just reviewed a lot of the things that they have in the works. She informed them that Apron Project was complete, but there may be some touch up projects in the Spring. They applied for the continued certificate of authorization of the air space for the drone program they are working on. They also applied for the Core Grant for the Water Project.

Safety Committee – Councilor Smith said the committee had met after the last City Council meeting. They had met with the State fire Marshal to review the tank location for the Kid’s Club. She informed them that they had approved it and it looked as though they had it set in place and were setting up electrical that day.

Burns Fire Chief Scott Williamson said that the city was waiting for a letter to be drafted by the city attorney with the legal description of where it needs to be placed and that the city if allowing it to be placed there with rights to move if needed.

Event Committee – Councilor Smith said they had a fantastic weekend, and the Christmas Parade went very smooth. She gave a shout out to Councilor Hoke for the amazing job announcing the parade that evening. She felt Police and Fire were happy and everything went successful and the way they wanted. She also gave a big thank you to the Town Santa and all the businesses downtown that put the events on all day.

Cit Manager Judy Erwin wanted to mention that she felt the council needed to take a few things off of Councilor Smiths shoulders because she was taking on a lot of things for the city. She thought maybe the Event Committee could be taken over by another council member.

Councilor Hoke said she wouldn’t mind taking on the Safety Committee.

Councilor Hoke said she would inform Mayor Woodfin that he could head the Event Committee.

URA – There would be a meeting to following the current City Council meeting.

Planning Commission- City Manager Judy Erwin said there was a lot going on in planning and informed them that someone was always coming through the door with a new project and there was a lot of building going on.

City Clerk Tiffany Leffler informed the council of a few things the Planning Commission was working on. One of the resent approvals was a Sweat Lodge for OYA. They are also currently working on an office addition for Robbins Equipment, and an office addition and shower remodel for the public swimming pool. There were others such as, a remodel of a duplex to a single family residential and the remodel of the old Whittier building. She said she would start compiling a little report once a month for council.

Councilor Hoke asked if R3 should be added to the list of Committee Reports as well and asked if anyone had an update there.

City Clerk Tiffany Leffler said she would add it to the agenda.

R3 - Councilor Smith said as of that moment the money had not been received or deposited yet. She informed them that billing went out to all the other cities involved in R3 for services already paid by Burns up to date.

COUNCILOR COMMENTS

Councilor Gahley informed everyone that we were still in need of City Councilors.

Councilor Keady wanted to recognize Councilor Smith for all that she brought to the community for this year holiday festivities. She pretty much figured out how to get the new Christmas tree here and now the City of Burns has a live Christmas tree for years to come. She also thanked both Fire Chief Scott Williamson and Police Chief Steve Macartney, a long with Public Works Ty Richardson and the crew for all they do and have done this last year.

Councilor Smith wanted to express her appreciation to all the department heads for all the hard work that went into the community event and wanted them to know it couldn't be possible without everyone.

Councilor Hoke said she wanted to also thank everyone but wanted to thank City Manager Judy Erwin for doing the roll she is doing. She knew 2023 started out ruff, but felt they were getting back to a better place and hopefully the new year would bring more good things.

There was no further discussion.

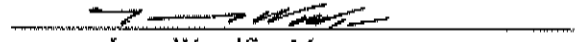
The next meeting will be January 10, 2024, at 6:00 p.m.

ADJOURN

Jen Keady moved to adjourn at 7:18 p.m. Heather Smith seconded the motion. All ayes.



Tiffany Leffler, City Clerk



Jerry Woodfin, Mayor