

**ORDINANCE NO. 2283**

AN ORDINANCE VACATING REAL PROPERTY HERETOFORE DEDICATED TO THE PUBLIC FOR STREET PURPOSES EFFECTIVE THIRTY DAYS AFTER ENACTMENT.

THE CITY OF HERMISTON ORDAINS AS FOLLOWS:

**SECTION 1.** The City Council of the City of Hermiston approved an agenda setting a public hearing to be held at 7:00 p.m. on October 28, 2019, for the purpose of hearing protests and remonstrances to the proposed vacation of the following described right-of-way:

All of that portion of SE 10<sup>th</sup> Street lying between the south right-of-way line of East Penney Avenue & the north right-of-way line of East Feedville Road, the centerline of the 66.00 foot width right of way being more particularly described as: Beginning at the East Quarter corner of Section 23, Township 4 North, Range 28, E.W.M.; Thence South 0° 09' 38" West a distance of 2612.47 feet, more or less, to a point on the North right-of-way of East Feedville Road, said point also being North 33.00 feet, more or less, from the Southeast corner of said Section 23, all being located in the City of Hermiston, County of Umatilla, and State of Oregon.

**SECTION 2.** The City Council of the City of Hermiston received testimony in opposition to and support of the proposed right-of-way vacation, and closed the public hearing.

**SECTION 3.** Following the conclusion of the public hearing on October 28, 2019, the City Council of the City of Hermiston made a decision to vacate SE 10<sup>th</sup> Street as described above in Section 1.

**SECTION 4.** The City of Hermiston vacates SE 10<sup>th</sup> Street as described above in Section 1 and the property shall revert to the adjacent property owners in accordance with ORS 271.140.

**SECTION 5.** The findings of fact adopted by the City Council of the City of Hermiston in support of this ordinance at the meeting on October 28, 2019 are attached as Exhibit A and incorporated herein by reference.

**SECTION 8.** The effective date of this ordinance shall be November 27, 2019, thirty days after its enactment.

PASSED by the Common Council this 28th day of October, 2019.

SIGNED by the Mayor this 28th day of October, 2019.

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DR. DAVID DROTZMANN, MAYOR

ATTEST:

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LILLY ALARCON-STRONG, CMC, CITY RECORDER

**EXHIBIT A**  
**FINDINGS OF FACT**  
**HERMISTON CITY COUNCIL**  
**VACATION OF A PORTION OF SE 10<sup>TH</sup> STREET**  
**OCTOBER 28, 2019**

**Introduction**

In this matter, the City Council of the City of Hermiston (“City Council) approved the vacation of a portion of the right-of-way for SE 10<sup>th</sup> Street, an unimproved street. In support of this approval, the City Council adopts the following findings of fact and conclusions of law.

**Procedural Findings**

*A. Initiation of Street Vacation*

The City Council finds that the City properly initiated the street vacation. ORS 271.130(1) authorizes the City governing body, the City Council, to initiate a street vacation proceeding authorized by ORS 271.080 and to make such vacation without a petition or consent of property owners. On October 14, 2019, the City Council adopted Resolution 2136, which initiated vacation proceedings for a portion of SE 10<sup>th</sup> Street between E Penney Ave on the north and E Feedville Road on the south. Said resolution set the matter for a public hearing on October 28, 2019. The City Council adopted said resolution at a duly noticed public meeting at which a quorum of the City Council was present and voting. On the basis of these facts, the City Council finds that it has properly initiated the street vacation.

*B. Public Notice*

The City Council finds that the City properly noticed the proposed street vacation hearing. ORS 271.110(1) requires the City to publish notice of the public hearing in the City’s official newspaper once each week for two consecutive weeks before the hearing. The City caused the *East Oregonian* to public notice of the hearing on October 15, 2019 and again on October 22, 2019. ORS 271.110(2) requires the City to post notice of the street vacation at or near each end of the proposed vacation area at least 14 days before the hearing. The record includes an affidavit and photos demonstrating that the City posted each end of the proposed vacation area on October 15, 2019, which was 14 days before the first hearing in this matter. On the basis of these facts, the City Council finds that the City properly noticed the street vacation hearing in this matter.

*C. City Council Proceedings*

The City Council finds that its hearing procedures in this matter complied with applicable law. On October 28, 2019, the City Council conducted a public hearing on this matter. At the commencement of the hearing, the mayor introduced the item and summarized the procedural history and applicable approval criteria. The mayor inquired whether any City Council members needed to disclose any *ex parte* communications. No members of the City Council declared any *ex parte* communications, conflicts of interest, or bias. Following these disclosures, the City Council accepted oral and written testimony on the matter. City staff answered questions and addressed issues presented during the public testimony. Then, the City Council closed the public hearing and deliberated. At the conclusion of the deliberations, the City Council approved a motion to approve the findings of fact and to approve vacation of SE 10<sup>th</sup> Street from E Penney Ave south to E Feedville Road subject to adoption of Ordinance No. 2283.

**Substantive Findings**

*A. Incorporation*

As findings in support of approval of the street vacation, the City Council adopts and incorporates by reference the following:

1. City staff report to the City Council of October 14, 2019
2. City staff report to the City Council of October 28, 2019

*B. Standards for Right-Of-Way Vacation*

The City Council finds that it has the authority under ORS 271.130(1) to approve a City-initiated street vacation when: (1) it has given notice in accordance with ORS 271.110; (2) the owners of a majority of the affected area do not have continuing written objections to the street vacation; and (3) either: (a) the owners of abutting properties have consented to the street vacation; or (b) if an owner(s) of abutting property has not consented, the vacation will not substantially affect the market value of that owner's abutting property.

1. The City Council finds that the City gave timely notice through posting and publication in this matter as required by ORS 271.110 per procedural finding B above. The City Council finds that the street vacation satisfies this standard.
2. ORS 271.080(2) defines the affected area as the land lying on either side of the street or portion thereof proposed to be vacated and extending laterally to the next street that serves as a parallel street, not to exceed 200 feet, and the land for a like lateral distance on either side of the street for 400 feet along its course beyond each terminus of the part to be vacated. The City Council finds that the City properly identified the affected area in the record. Further, the City Council finds that no owners of the property in the affected area objected. Therefore, the City Council finds that a majority of the owners of the affected area have not objected to the street vacation. The City Council finds that the street vacation satisfies this standard.
3. The City Council may not approve the street vacation without the consent of the owners of the abutting property if the vacation will substantially affect the market value of such abutting property unless the city Council provides for paying damages. The City Council finds that no abutting owners have objections to the street vacation. Therefore, the City Council finds that it is not required to determine whether the street vacation will substantially affect the market value of any abutting properties. The City Council finds that the street vacation satisfies this standard.

**Conclusion**

Based upon the evidence and argument identified above, the City Council finds that the street vacation satisfies all applicable approval criteria and should be approved.