

**CITY OF FLORENCE
ORDINANCE NO. 4, SERIES 2019**

AN ORDINANCE APPROVING THE REQUEST FOR VACATION OF A PORTION OF THE PINE STREET RIGHT-OF-WAY WHERE THAT RIGHT-OF-WAY LIES BETWEEN LOTS 10 OF BLOCK 27 AND 1 OF BLOCK 28 OF THE PLAT OF FRASIER AND BERRY'S PART OF THE CITY OF FLORENCE, AND WHICH DOES NOT EXTEND SOUTH ACROSS ALLEY RIGHT-OF-WAY, AS APPLIED FOR BY MR. DAVID BIELENBERG IN LANE COUNTY, OREGON

RECITALS:

1. The City of Florence was petitioned by the abutting property owner, David Bielenberg, on January 24, 2019, for vacation of the 60-foot wide Pine Street right-of-way extending south from the southern edge of the 32nd Street right-of-way the full lengths of Lot 10 of Block 27 and Lot 1 of Block 28 of the Plat of Frasier and Berry's Part of the City of Florence, as platted and recorded in Book 2, Page 1, Lane County, Oregon Plat Records.
2. David Bielenberg owns personally all properties abutting the right-of-way.
3. The Florence City Council initiated the vacation of the right-of-way at a public hearing held on February 4, 2019.
4. Proper notice per FCC 8-3-5-1 was sent to all abutting and affected property owners prior to the Florence Planning Commission meeting on February 19, 2019.
5. The Florence Planning Commission held a duly noticed public hearing on February 26, 2019.
6. The Florence Planning Commission approved Resolution PC 19 01 VAC 01, recommending approval of the vacation to the Florence City Council with conditions of approval for the applicant to meet prior to a City Council meeting approving the vacation.
7. The applicant provided the Planning Department with proof of the met conditions of approval as requested by the Planning Commission prior to the City Council meeting approving the vacation.
8. The applicant has received the consent of the owners of more than two-thirds of affected property and has provided those signatures as part of their application.
9. Notice was sent to all abutting and affected property owners prior to the Florence City Council meeting on March 14, 2019.
10. The City Council met on April 1, 2019, to consider the proposal, evidence in the record, and testimony received.

11. The City Council deliberated on April 1, 2019, and found that the request met the applicable criteria and it appeared the public interest would be best served through the vacation of the right-of-way.

Based on these findings,

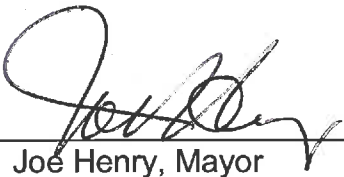
THE CITY COUNCIL OF THE CITY OF FLORENCE ORDAINS AS FOLLOWS:

1. The City of Florence approves the vacation of the Pine Street public right-of-way located between 32nd Street and the alleys midway between 31st and 32nd Streets, west of Highway 101 and east of Oak Street and described above.
2. The City of Florence maintains easement areas necessary for protection and maintenance of water and sewer utility infrastructure as well as public access for non-automotive traffic as described in Exhibit "B."
3. The street described above and shown on the map attached as Exhibit "B" will be inured to and divided equally and among the adjacent properties.
4. The Findings of Fact as shown in Exhibit "A" and the above recitals are hereby adopted.
5. Per FCC 8-3-4-4, the applicant is directed to pay the agreed-upon amount assessed for the loss of the property to public use, \$30,795.42, within 30 days of approval per FCC 8-3-6-3.
6. This Ordinance and associated applicable Exhibits will be filed with Lane County Deeds and Records by the City of Florence upon receipt of payment for the right-of-way. Recording costs have been paid by the applicant as part of their application fee of \$3,155.00.

ADOPTION:

First Reading on the 1st day of April, 2019.
Second Reading on the 1st day of April, 2019.
This Ordinance is passed and adopted on the 1st day of April, 2019.

AYES	5	Councilors Woodbury, Preisler, Greene, Lucio & Mayor Henry
NAYS	0	
ABSTAIN	0	
ABSENT	0	



Joe Henry, Mayor

Attest:



Kelli Weese, City Recorder

FINDINGS OF FACT
Ordinance No. 4, Series 2019
Exhibit "A"

Public Hearing Date: April 1, 2019
Date of Report: March 25, 2019
Application: CC 19 01 VAC 01

Planner:
Dylan Huber-Heidorn

I. PROPOSAL DESCRIPTION

Proposal: An application by David Bielenberg for vacation of a portion of the Pine Street right-of-way (ROW) between Block 27 and Block 28 of the Plat of Frasier and Berry's Part of the City of Florence, between 31st Street and 32nd Street.

Applicant: David Bielenberg

Property Owner: City of Florence

Location: Roughly the northern half of the portion of Pine Street between Block 27 and Block 28 of the Plat of Frasier and Berry's Part of the City of Florence

South of the 32nd Street right-of-way and north of the points of intersection where Pine Street meets the alley rights-of-way which bisect Block 27 and Block 28 (see Figure 1)

West of Highway 101, east of Oak Street
Map 18-12-23-23

Comprehensive Plan Map Designation: High Density Residential, Highway (split)

Zone Map Classification: Multi-Family Residential, Highway (split)

Surrounding Land Use / Zoning:

Site: Undeveloped ROW / Multi-Family Residential, Highway
North: Concrete Batch Plant, Lumber Yard / Highway
South: Undeveloped ROW, Residences / Multi-Family Residential, Highway
West: Undeveloped Lot; Lane Community College / Multi-Family Residential
East: Undeveloped Lot, Residences, Highway 101 / Highway

Streets / Classification:

West – Oak Street / Collector; North – 32nd Street / Local; East – Highway 101 / Major Arterial; South – 31st Street / Local

II. NARRATIVE:

Dave Bielenberg, owner of the two properties which abut the ROW proposed for vacation, has petitioned the City of Florence to vacate 7,200 square feet of Pine Street. Those two tax lots are identified as Map 18-12-23-23 Tax Lots 02200 & 02800. The subject ROW extends from the southern edge of the 32nd Street ROW to the northern corners of the alley rights-of-way which bisect the blocks between 31st and 32nd Streets. The length of the subject ROW matches the depth of the abutting tax lots, and therefore does not extend beyond the southern bounds of those tax lots and does not impede those alleys from connecting Oak Street to Pine Street to Highway 101.

The Pine Street ROW between 31st and 32nd Streets, including the portion proposed for vacation, is undeveloped and vegetated. Part of the southern portion of this area, which is not proposed for vacation, is being used as informal gravel driveway access and parking.

The applicant has expressed a desire to develop townhome residential units on the aforementioned tax lots. Vacation of this portion of the Pine Street ROW would add flexibility to development plans.

The Pine Street ROW was previously vacated where it passed through the blocks to both the north and south of the subject ROW. Pine Street no longer connects 30th Street to 31st Street, and that segment is predominantly included in residential lots. Pine Street also no longer connects 32nd Street to 33rd Street or 33rd Street to 34th Street; those segments are part of lots being used as the Knife River concrete plant, undeveloped land, an apartment building, and a commercial building. Currently, the subject portion of Pine Street would not likely be of importance to vehicular traffic patterns even if it were developed.

The petition was received on January 24, 2019. On February 4, 2019, the Florence City Council initiated vacation procedures following a preliminary determination that vacation of the right-of-way appears to be in the public interest.

On February 26, 2019, the Planning Commission held a public hearing and voted unanimously to recommend approval of the vacation to the City Council, stating that the vacation would serve the public interest.

Figure 1.



III. NOTICES & REFERRALS:

Notice: On March 14, 2019, notice was mailed to owners of property within 200 feet east and west of the area to be vacated and 400 feet north and south of the area to be vacated. The ROW of posted with notice of the proposed vacation at its northern and southern ends on March 14, 2019.

Notice was published in the Siuslaw News for three consecutive weeks, on March 16th, 20th, and 30th, as per FCC 10-8-3.

At the time of this report, the City had received no written comments on the application.

IV. APPLICABLE REVIEW CRITERIA

Florence City Code, Title 8:

Chapter 3: Property Vacations, Sections 4-1 through 6-3

Florence City Code, Title 10:

Chapter 36: Public Facilities, Section 2-1-A

Oregon Revised Statutes:

ORS 271: Use and Disposition of Public Lands Generally, Easements; ORS 271.005 - ORS 271.230

V. PROPOSED FINDINGS

FLORENCE CITY CODE

TITLE 8: CHAPTER 3: PROPERTY VACATIONS

8-3-3: INITIATION: Proceedings for the vacation of a public way or part thereof, may be initiated upon petition of the abutting owner(s) or upon the majority vote of the Council. The petition of the abutting owner(s) shall be accompanied by an application fee set by resolution. The fee is to cover administrative costs and the costs of publication and notice, and is not refundable.

The applicant applied for vacation of the ROW on January 24, 2019. At their February 4, 2019 meeting, the Florence City Council initiated the vacation of the ROW based on a petition by the abutting property owner. The applicant has paid the application fee.

8-3-4: DETERMINATION OF VALUE:

8-3-4-1: COUNCIL HEARING ON INITIATION: Upon receiving the petition for vacation the City Manager shall set a public hearing before the Council to make a preliminary determination of the public interest in the vacation, if any, and to determine the value of the public way to be vacated if the vacation appears to be in the public interest. Not less than five days prior written notice of the hearing shall be given to the petitioners and the owner(s) of affected property. Such notice shall be by first class U.S. Mail to such property owners as shown in the latest Lane County tax assessment roll or upon the City's utility records.

Notice was not mailed to affected property owners prior to the initiation hearing by City Council. Affected property owners have received mailed notice on two other occasions, only one of which as required by ORS.

8-3-4-2: CRITERIA: In determining the value of the public way to be vacated, the Council shall consider any relevant appraisals the City possesses and the public information in the files of the Lane County Assessment and Taxation Department or its successor agency. Except for direct uses by a public body supported by local property taxes, in the absence of more relevant information the Council shall calculate the value based on the square foot value of abutting real property as shown on the current Lane County assessment roll, less a percentage for easements retained for public use. The abutting owner(s) may request the Council to obtain other evidence of value from a licensed real estate appraiser hired by the City. All such appraisal costs shall be borne by the requesting abutting property owner(s). The Council may consider this evidence and adjust its determination of value as the Council may find to be just and equitable. The basis for any such adjustment shall be stated on the record at the time the Council takes action.

A determination of value shall be made and assessed to abutting property owners for all public ways being vacated.

The values calculated by staff for the loss of the public right-of-way was determined in accordance with the criteria available in FCC 8-3-4-2. An average price per square foot based on Real Market Land value was determined for abutting tax lots 02200 and 02800. This value was multiplied by the number of square feet requested for vacation. The value determined through this method is \$5.03 per square foot, or a total of \$36,215.24 for the 7,200 square feet of right-of-way.

To estimate the value of the aforementioned easements, which were subtracted from the total estimated land value to determine the final estimated value, staff calculated the value of the easements at 25% of the underlying land value, or \$1.26 per square foot. The total value of the 4,310 square feet of easements is \$5,419.83.

The total value of the public loss of the subject right-of-way was estimated at \$30,795.42 (see Attachment 3 to Agenda Item 3 for the February 4, 2019, meeting of the Florence City Council).

8-3-4-3: ACTION: After the hearing is closed, the Council may deny the petition or may forward the petition to the Planning Commission for its recommendation and shall set the amount of the assessment.

The City Council initiated vacation of the ROW on February 4, 2019, and forwarded the petition to the Planning Commission for recommendations.

8-3-5-1: PLANNING COMMISSION HEARING: Upon referral of vacation proceedings from the Council, the City Manager shall set a public hearing before the Planning Commission. Notice shall be given at least seven days before the public hearing by mailing the notice to the petitioner(s), affected property owners and others appearing on the matter before the Council in its hearing under subsection 8-3-4-1.

Notice was mailed to the applicant and affected property owners on February 19, 2019, seven days prior to the Planning Commission public hearing.

8-3-5-2: ACTION: After the hearing is closed, the Planning Commission shall determine whether the public interest will be served or prejudiced by the vacation of the public way or part thereof. In determining whether the public interest will be served or prejudiced, the Planning Commission shall consider the goals of the Florence Comprehensive Plan and Section 10-1-1-3 of this Code. The Planning Commission's decision shall be in the form of a recommendation to the Council.

On February 26, 2019, the Planning Commission voted unanimously in favor of Resolution PC 19 01 VAC 01. The resolution recommends approval to the City Council, finding that the vacation would serve the public interest, is compatible with the goals of the Florence Realization 2020 Comprehensive Plan, and meets the requirements of FCC 10-1-1-3.

8-3-6-1: COUNCIL HEARING: Following the Planning Commission's recommendation, the City Manager shall set a public hearing before the Council.

A. Commencing at least 20 days before the hearing the notice required by this subsection shall be:

- 1. Published for three consecutive weeks in a newspaper of general circulation in the City;**
- 2. Posted at each end of the public way proposed for vacation and if the length of the public way exceeds 150 feet, within the area to be vacated in a conspicuous place at least once every 150 feet of length;**
- 3. Mailed to the petitioner(s), the owners of affected property and any other person appearing before the Council and Planning Commission in the earlier hearings.**

Notice was published in the Siuslaw News on March 16th, 20th, and 30th, meeting the requirement for newspaper publication. Notice was posted at two locations—once at each end of the subject ROW. The ROW is 120' long, so no additional posting was required.

Notice of the Council hearing was mailed to the petitioners, the owners of affected properties, and all other persons appearing in earlier hearings on March 14, 2019. This was only 18 days prior to the hearing. However, due to the additional Planning Commission hearing and public comment period called for by Florence City Code, affected property owners were first notified of the vacation proceedings 41 days prior to the City Council hearing.

B. The notice required by this subsection shall:

- 1. Describe the public way proposed to be vacated;**
- 2. Identify the name of at least one petitioner;**
- 3. Identify the date the Council initiated the proceedings and, if appropriate, the cost to be assessed abutting property;**
- 4. The date, time and place by which any written remonstrance must be filed;**
- 5. The date, time and place of the public hearing before the Council; and**
- 6. Where people may telephone or write for additional information.**

The notice distributed to property owners and on-site contained a description of the public way to be vacated; named the petitioner; identified the date Council initiated the proceedings and the cost to be assessed to the abutting property owners; the date, time, and place by which any written remonstrance could be filed; the date, time, and

place of the public hearing before the City Council; and where people could telephone or write for additional information.

8-3-6-2:COUNCIL ACTION:

- A. After the hearing is closed, the Council shall determine whether the consent of the abutting owners has been obtained, whether notice has been duly given, and whether the public interest will be served or prejudiced by the vacation of the public way or part thereof. In determining whether the public interest will be served or prejudiced, the Council shall consider the goals of the Florence Comprehensive Plan, Section 10-1-1-3 of this Code, and whether the public way to be vacated may be needed for future public use. The Council may grant the petition in whole or in part, with such reservations as would appear to be for the public interest, including reservations pertaining to the public use of any easements retained by the City in the portion vacated.**

The City Council is tasked by FCC 8-3-6-2 with determining whether property consent and notice has been duly given and whether the public interest will be served or prejudiced by the vacation of the public way.

The current Parks Master Plan adopts the 1986 Parks Master Plan as reference. The 1986 plan designates the Pine Street ROW from 29th Street to 33rd Street as an area of potential importance for the development of Florence's park system. Specifically, these four blocks were identified for potential use as neighborhood or linear park types. Of these four blocks of Pine Street, two have previously been vacated as discussed. In the spirit of the earlier designation of recreation potential, staff discussed the possibility of including pedestrian access in the easement area protecting public utility infrastructure, which runs the full length of the subject ROW.

Water and sewer utility lines run beneath this segment of Pine Street. Florence Public Works Director Mike Miller determined that easements would be needed for protection and maintenance of the utility lines and that easements for the two lines would overlap. The dimensions of the necessary easements would be 33 feet wide by 120 feet long (the full length of the subject ROW). This easement would also accommodate public access for non-automotive traffic.

Additional easements would be required for an existing fire hydrant in the ROW, which would measure at 10 feet by 15 feet, and two sewer and water access points, which would each measure 10 feet by 10 feet

These easement areas would contain a total of 4,310 square feet.

The subject portion of the Pine Street ROW is not included in the Transportation System Plan.

- B. If such matters are determined in favor of the petition, the Council shall direct that an ordinance be prepared that would make such determination a matter of record and vacate the public way or part thereof. After the**

abutting owner(s) has paid or agreed to pay the value of the public way to be vacated, as provided in Section 8-3-6-3 of this chapter, the Council may take final action on the ordinance. If the abutting owner(s) has not done so or taken reasonable steps to do so within 30 days after the Council has directed that an ordinance be prepared, the petition shall be deemed withdrawn and the Council shall take no further action.

In the interest of the applicant, Ordinance No. 4, Series 2019 has been drafted for the review of the City Council at their April 1, 2019 hearing. The petitioner has agreed to pay the \$30,795.42 requested by the City in full. Payment has been arranged in advance of the hearing and awaits only the final action of the City Council. If the applicant has not paid or taken reasonable steps to do so with 30 days after preparation of an Ordinance, the petition shall be deemed withdrawn.

C. Denial of the petition shall be by resolution setting forth the reasons for the denial.

Should the City Council choose to deny the petition for vacation of the alley, that denial should be by resolution with reasons for the denial listed in the resolution.

8-3-6-3:PAYMENT OF COSTS OF VACATION:

A. The abutting owner(s) shall, within 30 days after the Council has directed that a vacation ordinance be prepared, either pay the amount of the assessment in full, or, where the assessment is to be one hundred dollars (\$100.00) or more, apply, upon forms provided by the City Manager, for the voluntary imposition upon the parcel for a lien for the full amount of the assessment and the payment of that lien in twenty (20) semi-annual installments plus interest at the rate of ten percent (10%) per annum. Upon receipt of such an application, and following adoption of the vacation ordinance in the manner described in Section 8-3-6-2-B. Of this chapter, the City Manager shall compute the amount of the assessment and shall report to the City Recorder the amount of the assessment, the date upon which that assessment is due, the name of the owner of record or the purchaser of record, and the description of the property, and upon receiving that report the City Recorder shall docket the lien in her docket of liens, and from the time that docketing is completed, the City shall have a lien upon that described land for the amount of the charge and interest upon that charge at the rate of ten percent (10%) per annum, which interest shall be the full and only compensation to the City for its administrative costs. That lien shall be enforced in the manner provided in ORS chapter 223.

The applicant has agreed to pay the assessed value of the lost right-of-way as required by Florence City Code and state statute.

B. If the proposed vacation is wholly denied, only the actual costs of preparing and giving the notice occasioned by the proceedings shall be retained by the City.

- C. Any money retained, and any sum assessed and collected as benefits, shall be paid into the City treasury.**

The applicant has paid a \$3,155.00 application fee for the vacation petition. Should the proposal be denied, the applicant will be assessed the actual costs of preparing and giving the notice occasioned by the proceedings from this application fee.

TITLE 10: CHAPTER 36: PUBLIC FACILITIES

10-36-2-1: Development Standards. The following standards shall be met for all new uses and developments:

- A. All new lots created, consolidated, or modified through a land division, lot line adjustment, lot consolidation, or street vacation must have street frontage and approved access to a street.**

The subject ROW abuts 32nd Street. Pedestrian and vehicular access details would be reviewed along with development. The easement areas previously discussed would provide opportunities for pedestrian access.

OREGON REVISED STATUTES

CHAPTER 271 – USE AND DISPOSITION OF PUBLIC LANDS GENERALLY; EASEMENTS

271.005 Definitions for ORS 271.005 to 271.540. As used in ORS 271.005 to 271.540:

- (1) “Governing body” means the board or body in which the general legislative power of a political subdivision is vested.**
- (2) “Governmental body” means the State of Oregon, a political subdivision, the United States of America or an agency thereof.**
- (3) “Political subdivision” means any local government unit, including, but not limited to, a county, city, town, port, dock commission or district, that exists under the laws of Oregon and has power to levy and collect taxes. [1981 c.787 §2]**

271.010 [Amended by 1965 c.25 §1; 1971 c.287 §1; repealed by 1981 c.153 §79]

271.020 [Amended by 1953 c.283 §3; 1977 c.275 §1; repealed by 1981 c.153 §79]

271.030 [Amended by 1953 c.283 §3; repealed by 1981 c.153 §79]

271.040 [Repealed by 1981 c.153 §79]

271.050 [Repealed by 1981 c.153 §79]

271.060 [Repealed by 1981 c.153 §79]

271.070 [Repealed by 1981 c.153 §79]

VACATION

271.080 Vacation in incorporated cities; petition; consent of property owners.

- (1) Whenever any person interested in any real property in an incorporated city in this state desires to vacate all or part of any street, avenue, boulevard, alley, plat, public square or other public place, such person may file a**

petition therefor setting forth a description of the ground proposed to be vacated, the purpose for which the ground is proposed to be used and the reason for such vacation.

- (2) There shall be appended to such petition, as a part thereof and as a basis for granting the same, the consent of the owners of all abutting property and of not less than two-thirds in area of the real property affected thereby. The real property affected thereby shall be deemed to be 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, but in any case 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 proposed to be vacated. Where a street is proposed to be vacated to its termini, the land embraced in an extension of the street for a distance of 400 feet beyond each terminus shall also be counted. In the vacation of any plat or part thereof the consent of the owner or owners of two-thirds in area of the property embraced within such plat or part thereof proposed to be vacated shall be sufficient, except where such vacation embraces street area, when, as to such street area the above requirements shall also apply. The consent of the owners of the required amount of property shall be in writing. [Amended by 1999 c.866 §2]

271.090 Filing of petition; notice. The petition shall be presented to the city recorder or other recording officer of the city. If found by the recorder to be sufficient, the recorder shall file it and inform at least one of the petitioners when the petition will come before the city governing body. A failure to give such information shall not be in any respect a lack of jurisdiction for the governing body to proceed on the petition.

271.100 Action by city governing body. The city governing body may deny the petition after notice to the petitioners of such proposed action, but if there appears to be no reason why the petition should not be allowed in whole or in part, the governing body shall fix a time for a formal hearing upon the petition.

The applicant has obtained consent of 100% of abutting property owners. As of the time of this report, consent had been obtained from the owners of 68.69% of affected property, which is sufficient to meet the two-thirds requirement.

The remaining requirements have been incorporated into Florence City Code with matching criteria or, in some cases, more stringent criteria. These criteria have been discussed and have been met.

271.110 Notice of hearing.

- (1) The city recorder or other recording officer of the city shall give notice of the petition and hearing by publishing a notice in the city official newspaper once each week for two consecutive weeks prior to the hearing. If no newspaper is published in such city, written notice of the petition and hearing shall be posted in three of the most public places in the city. The notices shall describe the ground covered by the petition, give the date it was filed, the name of at least one of the petitioners and the date when the

petition, and any objection or remonstrance, which may be made in writing and filed with the recording officer of the city prior to the time of hearing, will be heard and considered.

- (2) Within five days after the first day of publication of the notice, the city recording officer shall cause to be posted at or near each end of the proposed vacation a copy of the notice, which shall be headed, "Notice of Street Vacation," "Notice of Plat Vacation" or "Notice of Plat and Street Vacation," as the case may be. The notice shall be posted in at least two conspicuous places in the proposed vacation area. The posting and first day of publication of such notice shall be at least 14 days before the hearing.
- (3) The city recording officer shall, before publishing such notice, obtain from the petitioners a sum sufficient to cover the cost of publication, posting and other anticipated expenses. The city recording officer shall hold the sum so obtained until the actual cost has been ascertained, when the amount of the cost shall be paid into the city treasury and any surplus refunded to the depositor. [Amended by 1991 c.629 §1; 2005 c.22 §196]

Florence City Code calls for public notice and public input procedures that go beyond the minimum requirements of state law. Notice was published in the Siuslaw News for three consecutive weeks rather than two. The site was posted with notice prior to newspaper publication. State noticing requirements for this hearing before the City Council have been met. The applicant's application fee covers expenses related to processing and public notice. These criteria are met.

271.130 Vacation on city governing body's own motion; appeal.

- (1) The city governing body may initiate vacation proceedings authorized by ORS 271.080 and make such vacation without a petition or consent of property owners. Notice shall be given as provided by ORS 271.110, but such vacation shall not be made before the date set for hearing, nor if the owners of a majority of the area affected, computed on the basis provided in ORS 271.080, object in writing thereto, nor shall any street area be vacated without the consent of the owners of the abutting property if the vacation will substantially affect the market value of such property, unless the city governing body provides for paying damages. Provision for paying such damages may be made by a local assessment, or in such other manner as the city charter may provide.
- (2) Two or more streets, alleys, avenues and boulevards, or parts thereof, may be joined in one proceeding, provided they intersect or are adjacent and parallel to each other.
- (3) No ordinance for the vacation of all or part of a plat shall be passed by the governing body until the city recording officer has filed in the office of the city recording officer or indorsed on the petition for such vacation a certificate showing that all city liens and all taxes have been paid on the lands covered by the plat or portion thereof to be vacated.
- (4) Any property owner affected by the order of vacation or the order awarding damages or benefits in such vacation proceedings may appeal to the circuit court of the county where such city is situated in the manner provided by the city charter. If the charter does not provide for such appeal, the appeal shall be taken within the time and in substantially the manner provided for taking an appeal from justice court in civil cases. [Amended by 1995 c.658 §101]

The applicant, a private citizen, has requested vacation through petition.

271.140 Title to vacated areas. The title to the street or other public area vacated shall attach to the lands bordering on such area in equal portions; except that where the area has been originally dedicated by different persons and the fee title to such area has not been otherwise disposed of, original boundary lines shall be adhered to and the street area which lies on each side of such boundary line shall attach to the abutting property on such side. If a public square is vacated the title thereto shall vest in the city. [Amended by 1981 c.153 §58]

The area proposed for vacation would be joined to the abutting lots, which are each owned by the applicant, in equal portions.

271.150 Vacation records to be filed; costs. A certified copy of the ordinance vacating any street or plat area and any map, plat or other record in regard thereto which may be required or provided for by law, shall be filed for record with the county clerk. The petitioner for such vacation shall bear the recording cost and the cost of preparing and filing the certified copy of the ordinance and map. A certified copy of any such ordinance shall be filed with the county assessor and county surveyor.

271.160 Vacations for purposes of rededication. No street shall be vacated upon the petition of any person when it is proposed to replat or rededicate all or part of any street in lieu of the original unless such petition is accompanied by a plat showing the proposed manner of replatting or rededicating. If the proposed manner of replatting or rededicating or any modification thereof which may subsequently be made meets with the approval of the city governing body, it shall require a suitable guarantee to be given for the carrying out of such replatting or rededication or may make any vacation conditional or to take effect only upon the consummation of such replatting or rededication.

271.170 Nature and operation of statutes. The provisions of ORS 271.080 to 271.160 are alternative to the provisions of the charter of any incorporated city and nothing contained in those statutes shall in anywise affect or impair the charter or other provisions of such cities for the preservation of public access to and from transportation terminals and navigable waters.

Applicable criteria have been incorporated into Florence City Code. Recording requirements will be carried out according to applicable statutes. The applicant has not proposed replatting or rededication.

271.180 Vacations in municipalities included in port districts; petition; power of common council; vacating street along railroad easement. To the end that adequate facilities for terminal trackage, structures and the instrumentalities of commerce and transportation may be provided in cities and towns located within or forming a part of any port district organized as a municipal corporation in this state, the governing body of such cities and towns, upon

the petition of any such port, or corporation empowered to own or operate a railroad, steamship or other transportation terminal, or railroad company entering or operating within such city or town, or owner of property abutting any such terminal, may:

- (1) Authorize any port commission, dock commission, common carrier, railroad company or terminal company to occupy, by any structure, trackage or machinery facilitating or necessary to travel, transportation or distribution, any street or public property, or parts thereof, within such city or town, upon such reasonable terms and conditions as the city or town may impose.
- (2) Vacate the whole or any part of any street, alley, common or public place, with such restrictions and upon such conditions as the city governing body may deem reasonable and for the public good.
- (3) If any railroad company owns or has an exclusive easement upon a definite strip within or along any public street, alley, common or public place, and if the city governing body determines such action to be to the advantage of the public, vacate the street area between the strip so occupied by the railroad company and one property line opposite thereto, condition that the railroad company dedicates for street purposes such portion of such exclusive strip occupied by it as the city governing body may determine upon, and moves its tracks and facilities therefrom onto the street area so vacated. The right and title of the railroad company in the vacated area shall be of the same character as previously owned by it in the exclusive strip which it is required by the city governing body to surrender and dedicate to street purposes.

271.190 Consent of owners of adjoining property; other required approval. No vacation of all or part of a street, alley, common or public place shall take place under ORS 271.180 unless the consent of the persons owning the property immediately adjoining that part of the street or alley to be vacated is obtained thereto in writing and filed with the auditor or clerk of the city or town. No vacation shall be made of any street, alley, public place or part thereof, if within 5,000 feet of the harbor or pierhead line of the port, unless the port commission, or other bodies having jurisdiction over docks and wharves in the port district involved, approves the proposed vacation in writing.

These criteria do not apply to this petition for vacation.

271.200 Petition; notice.

- (1) Before any street, alley, common or public place or any part thereof is vacated, or other right granted by any city governing body under ORS 271.180 to 271.210 the applicant must petition the governing body of the city or town involved, setting forth the particular circumstances of the case, giving a definite description of the property sought to be vacated, or of the right, use or occupancy sought to be obtained, and the names of the persons to be particularly affected thereby. The petition shall be filed with the auditor or clerk of the city or town involved 30 days previous to the taking of any action thereon by the city governing body.
- (2) Notice of the pendency of the petition, containing a description of the area sought to be vacated or right, use or occupancy sought to be obtained, shall be published at least once each week for three successive weeks prior to

expiration of such 30-day period in a newspaper of general circulation in the county wherein the city or town is located.

The petition and other application materials for the proposed vacation are complete. Newspaper publication will be completed as required by this statute by the time of the Council hearing. These criteria have been met.

271.210 Hearing; grant of petition. Hearing upon the petition shall be had by the city governing body at its next regular meeting following the expiration of 30 days from the filing of the petition. At that time objections to the granting of the whole or any part of the petition shall be duly heard and considered by the governing body, which shall thereupon, or at any later time to which the hearing is postponed or adjourned, pass by a majority vote an ordinance setting forth the property to be vacated, or other rights, occupancy or use to be thereby granted. Upon the expiration of 30 days from the passage of the ordinance and the approval thereof by the mayor of the city or town, the ordinance shall be in full force and effect.

271.220 Filing of objections; waiver. All objections to the petition shall be filed with the clerk or auditor of the city or town within 30 days from the filing of the petition, and if not so filed shall be conclusively presumed to have been waived. The regularity, validity and correctness of the proceedings of the city governing body pursuant to ORS 271.180 to 271.210, shall be conclusive in all things on all parties, and cannot in any manner be contested in any proceeding whatsoever by any person not filing written objections within the time provided in this section.

271.230 Records of vacations; fees.

- (1) If any town or plat of any city or town is vacated by a county court or municipal authority of any city or town, the vacation order or ordinance shall be recorded in the deed records of the county. Whenever a vacation order or ordinance is so recorded, the county surveyor of such county shall, upon a copy of the plat that is certified by the county clerk, trace or shade with permanent ink in such manner as to denote that portion so vacated, and shall make the notation "Vacated" upon such copy of the plat, giving the book and page of the deed record in which the order or ordinance is recorded. Corrections or changes shall not be allowed on the original plat once it is recorded with the county clerk.**
- (2) For recording in the county deed records, the county clerk shall collect the same fee as for recording a deed. For the services of the county surveyor for marking the record upon the copy of the plat, the county clerk shall collect a fee as set by ordinance of the county governing body to be paid by the county clerk to the county surveyor. [Amended by 1971 c.621 §31; 1975 c.607 §31; 1977 c.488 §2; 1979 c.833 §30; 1999 c.710 §12; 2001 c.173 §5]**

Requirements for hearings, objections, recording, and fees will be observed as required by these statutes and Florence City Code.

VI. ALTERNATIVES

- 1. Approve the vacation based on the findings of compliance with City regulations and the Florence Realization 2020 Comprehensive Plan.**
 - 2. Modify the findings and approve the request as modified.**
 - 3. Deny approval of the vacation based on the Council's findings and provide reason for the denial through a Resolution.**
 - 4. Continue the Public Hearing to a date certain if more information is needed.**
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VII. CONCLUSIONS AND RECOMMENDATIONS

Staff recommends that the City Council approve an ordinance for the vacation of the subject portion of the Pine Street right-of-way and finds that the proposed vacation is in the public interest and meets the Comprehensive Plan goals and the requirements of City Code.



Exhibit B