

**MEMORANDUM**

TO: Mayor and City Council

FROM: Faye Stewart, Public Works & Development Director

SUBJECT: SECOND VOTE FOR ORDINANCE NO. 3168 VACATING 198 SQUARE FEET OF RIGHT-OF-WAY LOCATED AT THE SOUTHEAST CORNER OF THE INTERSECTION OF SOUTH 7TH STREET AND EAST FILLMORE

DATE: January 4, 2023

Background


The Public Works and Development Department brings before the City Council Ordinance No. 3168 for a second vote and adoption. The first vote on Ordinance No. 3168 occurred on December 12, 2022 following a Public Hearing during, which no public comments were received.

Recommendation

That the Council consider Ordinance No. 3168 for a second vote and adoption.

Cost

Staff time and recording fees at Lane County Deeds and Records.

  
Richard Meyers, City Manager

  
Faye Stewart, Public Works & Development Director

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE VACATING 198 SQUARE FEET OF RIGHT-OF-WAY LOCATED AT THE SOUTHEAST CORNER OF THE INTERSECTION OF SOUTH 7<sup>TH</sup> STREET AND EAST FILLMORE AVENUE

WHEREAS, the City Council for the City of Cottage Grove, determined to initiate vacation of as 198 square feet of right-of-way located at the southeast corner of the intersection of South 7th Street and East Fillmore Avenue, as more particularly described in the legal description and map attached as Exhibit A; and

WHEREAS, the Council initiated the vacation to exchange the vacated right of way for the dedication of property to be used for sidewalk, street and road right of way, as more particularly described in the attached Exhibit B (Dedication); and

WHEREAS, it has been determined that, at the present time, no City liens are existing or unpaid against said property and, by virtue of the fact that it is a dedicated right-of-way, no taxes are unpaid thereon; and

WHEREAS, the City Council fixed December 12, 2022, at 7 p.m. at the Cottage Grove City Hall, 400 E. Main Street, Cottage Grove, as the time and place for a formal public hearing regarding the vacation; and

WHEREAS, the City Recorder gave notice of the public hearing by publishing a notice in the *Cottage Grove Sentinel* once each week for two (2) consecutive weeks on December 2, 2022, and December 9, 2022, which notice described the ground subject to the vacation, the date of the public hearing, and that written objections or remonstrances must be filed with the Cottage Grove City Recorder prior to the time of the hearing, in accordance with ORS 271.110(1); and

WHEREAS, within five (5) days after the first day of publication of said notice in the newspaper and not less than fourteen (14) days before the hearing date, the City Recorder caused a copy of the notice to be posted in at least two (2) conspicuous places at or near each end of the proposed vacation, in accordance with ORS 271.110(2); and

WHEREAS, at 7 p.m. on December 12, 2022, at the Cottage Grove City Hall, the City Council held a public hearing in the Council Chambers on the vacation of the area described above, considered any written objections filed thereto, and heard oral testimony from members of the public in favor of and/or in opposition to said vacation; and

WHEREAS, the owners of the majority of the area affected, computed on the basis provided in ORS 271.080, have not objected in writing to the proposed vacation; and

WHEREAS, the Council finds that the consent of abutting property owners is not required, as the proposed vacation will not substantially affect the market value of abutting properties; and

WHEREAS, the Cottage Grove City Council finds that the public interest will not be prejudiced by the proposed vacation.

THE CITY OF COTTAGE GROVE ORDAINS AS FOLLOWS:

Section 1. The right of way over of as 198 square feet of right-of-way located at the southeast corner of the intersection of South 7th Street and East Fillmore Avenue as identified on Exhibit A, is hereby vacated, and title shall vest in the owners of the land bordering the vacated right-of-way, in accordance with ORS 271.140.

Section 2. The City Recorder is directed to file certified copies of this ordinance for recording with the Lane County Clerk, the County Assessor, and the County Surveyor.

Section 3. Effective Date. This Ordinance shall go into full force and effect upon recordation of a Dedication in the form attached as Exhibit B.

PASSED BY THE COUNCIL AND APPROVED BY THE MAYOR THIS \_\_\_ DAY  
OF \_\_\_\_\_, 2023.

\_\_\_\_\_  
Candace Solesbee, Mayor  
Dated: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Richard Meyers, City Manager  
Dated: \_\_\_\_\_

EXHIBIT A  
CITY OF COTTAGE GROVE  
VACATION TO  
RESURRECTION LIFE EVANGELISTIC ASSOCIATION  
LEGAL DESCRIPTION

A tract of land located in the Southwest Quarter of the Northeast Quarter of Section 33, Township 20 South, Range 3 West, Willamette Meridian, Lane County, Oregon and more particularly described as follows:

Beginning at the Southwest corner of the William Shields Donation Land Claim No. 56, said corner is also the Northerly Northwest corner of the William Small Donation Land Claim No. 62; thence North  $89^{\circ} 50' 00''$  East 822.00 feet to an iron rod and the TRUE POINT OF BEGINNING; thence South  $00^{\circ} 11' 00''$  East, 25.00 feet to a point; thence South  $89^{\circ} 50' 00''$  West 19.28 feet to a point, thence following a 62.30 foot radius curve to the left (Chord bears North  $37^{\circ} 27' 57''$  East, chord distance is 31.57 feet) 31.92 feet to the TRUE POINT OF BEGINNING.

The area encompassed by this description is 198 square feet.

Bearings and distances used from Lane County Survey File No. 45489 filed September 01, 2021.

# EXHIBIT B

**AFTER RECORDING RETURN TO:**

City of Cottage Grove  
400 E Main Street  
Cottage Grove, OR 97424

**Until a Change is Requested, Tax  
Statements Shall Be Sent to the Following Address:**  
No Change

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## **RIGHT-OF-WAY DEDICATION**

The undersigned, \_\_\_\_\_ (“Grantor”) hereby grants a perpetual right-of-way to the City of Cottage Grove, an Oregon Municipal Corporation (“Grantee”) to be used and held by Grantee, its successors and assigns in interest, for public street, road, sidewalk, right-of-way, and public utility purposes on, over, and under the following described real property situated in Lane County, Oregon.

### **Subject Property**

A tract of land located in the Southwest Quarter of the Northeast Quarter of Section 33, Township 20 South, Range 3 West, Willamette Meridian, Lane County, Oregon and more particularly described in the legal description attached and incorporated herein as “Exhibit A” and as depicted as parcel “A-1” on the map attached and incorporated herein as “Exhibit B” (hereinafter referred to as “Right-of-Way”).

### **Consideration**

The true and actual consideration for this transfer is other than monetary, the receipt of which is hereby acknowledged by GRANTOR.

### **Rights, Restrictions, and Obligations**

Grantee shall have the right to open, construct, improve, and maintain public roads and streets of its design upon the Right-of-Way and shall have the right to place or permit to be placed public streets, sidewalks, sewers, utilities, cables, pipes, and all such other public improvements as Grantee shall deem necessary and convenient upon, above, or below the surface of the Right-of-Way. Nothing in this dedication or elsewhere shall be construed as requiring Grantee to install any street or other public improvement or utility in the future.

Grantor further covenants and agrees not to plant any tree, shrub, or plant within the Right-of-Way, nor build any structure or place any fence in the Right-of-Way without first obtaining a written permit from Grantee. Balm, poplar, locust, cottonwood, or willow trees should not be planted near the Right-of-Way. It is understood that Grantee may remove any physical obstructions including buildings, fences, trees, or shrubbery, and abate any use of the Right-of-Way if Grantee finds that the physical obstruction or use will interfere with the Right-of-Way or Grantee's ability to maintain or repair the Right-of-Way, and such obstruction or abatement may be removed without recompense to Grantor.

Grantor hereby covenants to Grantee, and Grantee's successors in interest and assigns, that Grantor is lawfully seized in fee simple of the above-named premises, free from all encumbrances (no exceptions) and that Grantor and Grantor's heirs and personal representatives shall warrant and forever defend Right-of-Way against the lawful claims and demands of all persons claiming by, through, or under the GRANTOR.

The Right-of-Way will not be considered abandoned until Grantee has declared the Right-of-Way abandoned and no longer in use by Grantee, and has undertaken vacation procedures as set forth in ORS 271.080, *et seq.*

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

GRANTOR:

\_\_\_\_\_  
Resurrection Life Evangelistic Association

STATE OF OREGON            )  
  ) ss.  
County of Lane             )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2023, this instrument was acknowledged before me by \_\_\_\_\_.

\_\_\_\_\_  
Notary Public for Oregon  
My Commission Expires: \_\_\_\_\_

**ACCEPTANCE OF DEDICATION**

The City of Cottage Grove, Oregon, does hereby accept this right-of-way dedication this \_\_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
Candace Solesbee, Mayor

STATE OF OREGON        )  
                                  ) ss.  
County of Lane         )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2023, this instrument was acknowledged before me by Candace Solesbee, Mayor, City of Cottage Grove.

\_\_\_\_\_  
Notary Public for Oregon  
My Commission Expires: \_\_\_\_\_

## EXHIBIT A

A tract of land located in the Southwest Quarter of the Northeast Quarter of Section 33, Township 20 South, Range 3 West, Willamette Meridian, Lane County, Oregon and more particularly described as follows:

Beginning at the Southwest corner of the William Shields Donation Land Claim No. 56, said corner is also the Northerly Northwest corner of the William Small Donation Land Claim No. 62; thence North  $89^{\circ} 50' 00''$  East 822.00 feet to an iron rod; thence following a 62.30 foot radius curve to the right (Chord bears South  $37^{\circ} 27' 57''$  West, chord distance is 31.57 feet) a distance of 31.92 feet to a point, said point is the TRUE POINT OF BEGINNING; thence continuing along a 62.30 foot radius curve to the right (Chord bears South  $70^{\circ} 59' 17''$  West, chord distance is 40.25 feet) a distance of 40.98 feet to a point; thence South  $89^{\circ} 50' 00''$  West 12.63 feet to an iron rod; thence North  $00^{\circ} 11' 00''$  West 13.00 feet to an iron rod; thence North  $89^{\circ} 50' 00''$  East 50.72 feet to the TRUE POINT OF BEGINNING.

The area encompassed by this description is 502 square feet.

Bearings and distances used from Lane County Survey File No. 45489 filed September 01, 2021.