

**ASHLAND CITY COUNCIL
BUSINESS MEETING AGENDA
Tuesday, January 3, 2023**

**View on Channel 9 or Channels 180 and 181 (Charter Communications) or live stream via
rvtv.sou.edu select RVTV Prime.**

**HELD HYBRID (Limited In-Person Social Distancing Seating and Zoom Meeting Access)
The Business Meeting will be held in Council Chambers, 1175 E. Main Street.**

**Written and oral testimony will be accepted for public input. For written testimony, email
public-testimony@ashland.or.us using the subject line: Ashland City Council Public Testimony.
For oral testimony, fill out a Speaker Request Form at ashland.or.us/speakerrequest and return
to the City Recorder.**

6:00 PM Regular Business Meeting*

- I. CALL TO ORDER**
- II. NEWLY ELECTED OFFICIALS' OATH OF OFFICE**
- III. PLEDGE OF ALLEGIANCE**
- IV. ROLL CALL**
- V. MAYOR'S ANNOUNCEMENTS**

Land Acknowledgement**

- VI. APPROVAL OF MINUTES**
 - 1. Minutes of the December 19, 2022 Study Session Meeting**
 - 2. Minutes of the December 20, 2022 Business Meeting**
 - 3. Minutes of November 14, 2022 Study Session**

Minutes of Boards, Commissions and Committees***

- VII. SPECIAL PRESENTATIONS**
 - 1. City Council Orientation / Training**
- VIII. CITY MANAGER REPORT**
- IX. PUBLIC FORUM**
- X. CONSENT AGENDA**
 - 1. East Main Street Banner Request for the Ashland Little League**
- XI. PUBLIC HEARINGS**
 - 1. Land Use Appeal for Mixed Use Development at 165 Water Street, 160 Helman Street and 95 Van Ness Avenue**

2. First Reading of Ordinance 3217 - Middle Housing Land Division Ordinance
3. Public Hearing and First Reading of Ordinance 3205 - Housing in Employment Lands Code Amendments

- XII. **UNFINISHED BUSINESS**
- XIII. **NEW AND MISCELLANEOUS BUSINESS**
- XIV. **ORDINANCES, RESOLUTIONS AND CONTRACTS**
 - 1. Professional Services Contract with RH2 Engineering for the design of Talent-Ashland-Phoenix (TAP) Intertie System Improvements
- XV. **OTHER BUSINESS FROM COUNCIL MEMBERS/REPORTS FROM COUNCIL LIAISONS**
- XVI. **ADJOURNMENT OF BUSINESS MEETING**

* Items on the Agenda not considered due to time constraints are automatically continued to the next regularly scheduled Council meeting [AMC 2.04.030.(D)(3)]

**** LAND ACKNOWLEDGEMENT**

We acknowledge and honor the aboriginal people on whose ancestral homelands we work—the Ikirakutsum Band of the Shasta Nation, as well as the diverse and vibrant Native communities who make their home here today. We honor the first stewards in the Rogue Valley and the lands we love and depend on: Tribes with ancestral lands in and surrounding the geography of the Ashland Watershed include the original past, present and future indigenous inhabitants of the Shasta, Takelma, and Athabaskan people. We also recognize and acknowledge the Shasta village of K'wakhakha - "Where the Crow Lights" - that is now the Ashland City Plaza.

***Agendas and minutes for City of Ashland's Boards and Commissions meetings may be found at the City's website, <https://www.ashland.or.us/Agendas.asp> . Use the View By box to select the Board or Commission information you are seeking.

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the City Manager's office at (541) 488-6002 (TTY phone number 1-800-735-2900). Notification 72 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to the meeting (28 CFR 35.102-35.104 ADA Title I).



CITY COUNCIL STUDY SESSION DRAFT MINUTES
Monday, November 14, 2022

HELD HYBRID - Council and some City Staff will be live in the Council Chambers, 1175 E. Main Street. Citizens and presenters can join via zoom

View on Channel 9 or Channels 180 and 181 (for Charter Communications customers) or live stream via rytv.sou.edu select RVTV Prime.

Written and oral testimony will be accepted for public input. For written testimony, email public-testimony@ashland.or.us using the subject line: Ashland City Council Public Testimony.

For oral testimony, fill out a Speaker Request Form at ashland.or.us/speakerrequest and return to the City Recorder. The deadline for submitting written testimony or speaker request forms will be at 10 a.m. on the day of the Study Session meeting and must comply with Council Rules to be accepted.

5:30 PM Study Session

Council President Tonya Graham called the Study Session to order at 5:30 PM

She announced that we need to adjourn at 6:55 PM for the School Board to start their Meeting at 7 PM.

Joe Lessard explained the railroad item will be moved.

1. Public Input (15 minutes, maximum)

Linda Peterson-Adams – Ashland – comment period extension about railroad. Thanked Staff.

2. Community Center and Pioneer - Preliminary Schematic Design

Scott Fleury introduced ZCS Engineer Lead Designer Stephen Chase.

Stephen Chase gave a presentation (*see attached*).

Items discussed were:

- Priority 1
 - Structural repairs
- Priority 2
 - Accessibility
- Priority 3
 - Structural Code Deficiencies
- Priority 4
 - Mechanical System Upgrades
- Priority 5
 - Thermal Performance

Hyatt thanked Fleury and Chase for the presentation.

Council discussed the priorities.

Council discussed cost & design.

3. Emergency Shelter Location – Next Steps

Lessard gave a Staff Report.

Housing Program Specialist Linda Reid gave a brief Staff Report.

Council discussed options.

Council thanked Staff and Housing & Human Resources Commission.

4. Look Ahead

Lessard went over the Look Ahead.

5. Adjournment

Hyatt/Jensen moved to adjourn the Study Session. Discussion: None. All Ayes.

The Study Session was adjourned at 6:50 PM

Respectfully submitted by:

City Recorder Melissa Huhtala

Attest:

Mayor Akins

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the City Administrator's office at (541) 488-6002 (TTY phone number 1-800-735-2900). Notification 72 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to the meeting (28 CFR 35.102-35.104 ADA Title I).

ASHLAND COMMUNITY CENTER FACILITIES ASSESSMENT

PRIORITY ONE: STRUCTURAL REPAIRS

1. STRENGTHEN EXISTING MAIN WALL TRUSSES:
 - A. DEMOLISH EXISTING FINISHES AND WALL FINISHES
 - B. NECESSARY TO ADD NEW STRUCTURAL MEMBERS
 - C. INSTALL A NEW BOTTOM TRUSS WITH JOISTS AND WEBS, NEW BEAMS AND SUPPORT WEBS
 - D. TO BE GLUED OR WELDED, STAIN TO MATCH THE EXISTING MAIN WALL
2. PROVIDE NEW HEADERS ABOVE THE OPENINGS ABOVE MAIN WALL TO SUPPORT STRENGTHENED WINDOW:
 - A. DEMOLISH THE FINISH AROUND WINDOW AND PASS THROUGH OPENINGS NECESSARY TO ADD NEW STRUCTURAL HEADERS.
 - B. REPAIR AND REPLACE THE INTERIOR FINISH AND TRIM TO MATCH EXISTING
 - C. PAINT THE INTERIOR OF MAIN WALL.
3. REPAIR CEILING FRAMING IN ATTIC NEAR PROSCENIUM:
 - A. THE WORK WILL REQUIRE REMOVAL OF CEILING FINISHES AND NORTH EAVE TRUSS
 - B. SISTER NEW CEILING FRAMING TO EXISTING FROM TRUSS TO PROSCENIUM WALL PROVIDE ADEQUATE BEARING.
 - C. PROVIDE NEW HEADERS ABOVE THE EXISTING POSTS AT PROSCENIUM OPENING (STAGE).
4. REPLACE THE NORTH CONCRETE STEM WALL ALONG GRID LINE A:
 - A. DEMOLISH THE EXISTING CONCRETE POST AND RE FOUNDATIONS. PROVIDE TEMPORARY SHORING FOR RETENTION.
 - B. INSTALL NEW CONCRETE STEM WALL AND FOOTING WITH NEW CONNECTION HARDWARE TO WALL ABOVE.
 - C. PROVIDE TUGGOS ISOLATION TO MATCH EXISTING FINISH
5. NEW CEILING FRAMING TO SUPPORT THE RESTROOM AND HALLWAY RECONFIGURATION:
 - A. RECONFIGURE AND INSTALL NEW CEILING FRAMING TO SUPPORT THE RESTROOM AND HALLWAY RECONFIGURATION.
 - B. PROVIDE NEW HEADERS AND CEILING FRAMING AT RE MOVED STAIRWAY TO SUPPORT NEW FOLD-DOWN ACCESS LADDER.
6. REPLACE REAR EXIT PORCH FRAMING INSTALL RETAIN WALL TO ACCOMMODATE NEW EXIT PATH:
 - A. REMOVE EXISTING REAR PORCH FRAMING.
 - B. INSTALL RETAIN WALL.
 - C. INSTALL NEW COMPLAINT EXIT STAIRS.



CITY OF ASHLAND
74 WINDBURN WAY
ASHLAND, OR 97520

**COMMUNITY
CENTER &
PIONEER HALL
RENOVATION**



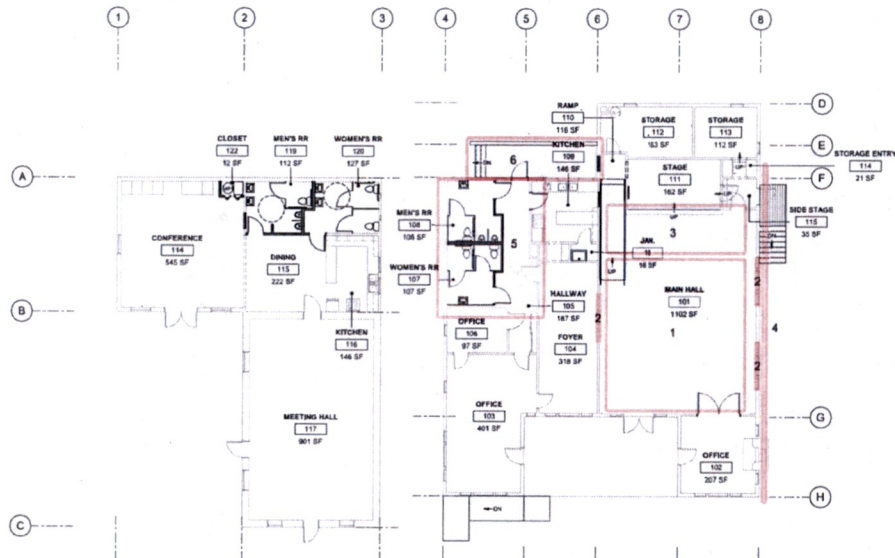
Stop

[illegible]

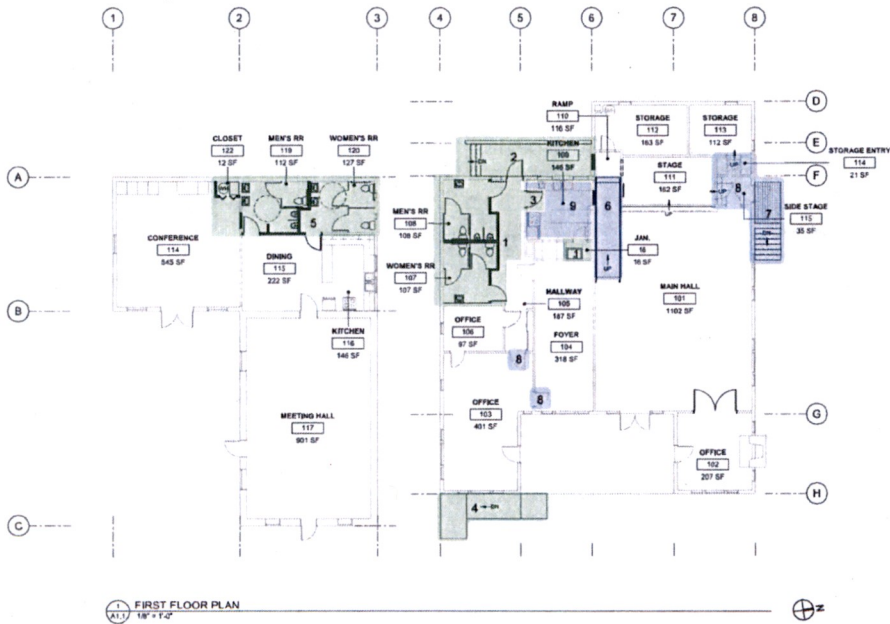
FIRST FLOOR PLAN

A1.1

SCHEMATIC DESIGN | NOT FOR CONSTRUCTION



1 FIRST FLOOR PLAN
A1.1 18' x 14'



1 FIRST FLOOR PLAN
1/8" = 1'-0"

ASHLAND COMMUNITY CENTER FACILITIES ASSESSMENT

PRIORITY ONE: CODE DEFICIENCIES

1. DEMOLISH THE EXISTING ATTIC STAIRS. RENOVATE THE EXISTING RESTROOMS TO BE FULLY ACCESSIBLE.
 - A. NEW PLUMBING FIXTURES IN RESTROOMS.
 - I. RECONFIGURATION OF EXISTING PLUMBING IN CRAWL SPACE TO ACCOMMODATE NEW FLOOR PLAN.
 - B. NEW FINISHES THROUGHOUT RESTROOMS.
 - C. NEW TOILET PARTITIONS.
 - D. NEW LIGHT FIXTURES AND CEILING EXHAUST FANS.
 - E. NEW ATTIC LADDER ACCESS IN HALLWAY 105.
 - F. NEW JANITOR'S CLOSET INTO EXISTING PANTRY IN KITCHEN.

2. PROVIDE AN ADEQUATE EXIT PATH OUT OF THE WEST SIDE OF THE BUILDING.
 - A. DEMOLISH THE EXISTING ENCLOSED PATIO AND ROOF.
 - B. PROVIDE A NEW CONCRETE RETAINING WALL.
 - C. NEW CODE COMPLIANT STAIRS.
 - D. NEW 3'-0" WIDE EXTERIOR DOOR.
 - E. PATCH EXTERIOR SIDING.
 - F. PROVIDE EXTERIOR PATIO LIGHT.

3. PROVIDE A NEW 7'-0" DOOR INTO THE KITCHEN. REVERSE THE SWING OF THE DOOR.
 - A. DEMOLISH EXISTING DOOR AND FRAME.
 - B. PROVIDE NEW DOOR AND FRAME.

4. PROVIDE NEW ACCESSIBLE RAMP AT THE ENTRANCE OF THE COMMUNITY CENTER.
 - A. REMOVE LANDSCAPING AND NEEDED.
 - B. PROVIDE NEW CONCRETE ACCESSIBLE RAMP AT THE SOUTH-EAST CORNER OF THE BUILDING.

5. RENOVATE THE EXISTING RESTROOMS TO BE FULLY ACCESSIBLE.
 - A. REMOVE EXISTING OFFICE TO ACCOMMODATE NEW RESTROOMS.
 - B. NEW PLUMBING FIXTURES IN RESTROOMS.
 - I. RECONFIGURATION OF EXISTING PLUMBING IN CRAWL SPACE TO ACCOMMODATE NEW FLOOR PLAN.
 - B. NEW FINISHES THROUGHOUT RESTROOMS.
 - C. NEW TOILET PARTITIONS.
 - D. NEW LIGHT FIXTURES AND CEILING EXHAUST FANS.

PRIORITY TWO: ACCESSIBILITY

6. PROVIDE RAMP ACCESS TO THE EXISTING STAGE.
 - A. DEMOLISH THE EXISTING WALL, DOOR, AND STAIR.
 - B. RELOCATE EXISTING ELECTRICAL PANEL TO OTHER SIDE OF WALL ON GRID LINE 6.
 - C. NEW ACCESSIBLE RAMP WITH HAND RAILS.
 - D. WIDEN THE STAGE ACCESS OPENING TO 3'-0". PROVIDE NEW WOOD TRIM TO MATCH THE EXISTING.

7. REBUILD THE WOOD STAIRS AND LANDING ON THE NORTH SIDE OF THE BUILDING TO BE FULLY ACCESSIBLE.

8. WIDEN THE OPENINGS IN THESE AREAS TO BE A MINIMUM OF 3'-0" WIDE.

9. RENOVATE THE KITCHEN TO BE FULLY ACCESSIBLE.
 - A. DEMOLISH EXISTING CASEWORK TO RELOCATE THE EXISTING RANGE AND REFRIGERATOR.
 - PROVIDE A 5' DIAMETER TURNING RADIUS AND REPLACE THE CASEWORK TO HAVE A 34" TALL COUNTER TOP.
 - I. RECONFIGURATION OF EXISTING PLUMBING AND ELECTRICAL.



CITY OF ASHLAND
1000 BURNING WAT
ASHLAND, OR 97520

COMMUNITY
CENTER &
PIONEER HALL
RENOVATION



DATE	DATE
DESIGNED BY	DATE
CHECKED BY	DATE
APPROVED BY	DATE
PROJECT NO.	NO. 0000-10
CLIENT	PROJECT
DRAWN	DATE
DATE	NO. 0000-10

FIRST FLOOR PLAN

A1.1

SCHEMATIC DESIGN (NOT FOR CONSTRUCTION)



LEGAL DEPARTMENT

Douglas M. McGeary, Acting City Attorney
Carmel Stout Zahran, Assistant City Attorney
Dana Smith, Administrative Analyst

August 30, 2023

Re: Council Meeting Minutes from 2021 and 2022 not signed

Minutes from council meetings during 2021 and all of 2022 were not signed by former Mayor Akins and therefore could not be signed by the Recorder as required by ordinance. All minutes listed below were approved by council, although the original minutes for 2021 are not available. The city attorney determined a cover letter with a list of the meeting dates missing signatures could be signed by the present mayor and recorder to meet the signature requirements in AMC 2.04.040(B.).

2021 Meetings

04/05/2021	07/06/2021	11/16/2021
04/06/2021	07/19/2021	11/23/2021
04/19/2021	07/20/2021	12/10/2021
04/20/2021	08/02/2021	12/21/2021
05/03/2021	08/03/2021	
05/04/2021	08/16/2021	
05/13/2021	08/17/2021	
05/17/2021	09/07/2021	
05/18/2021	09/20/2021	
06/01/2021	11/01/2021	
06/14/2021	11/02/2021	
06/15/2021	11/11/2021	
06/29/2021	11/15/2021	

2022 Meetings

01/03/2022	04/05/2022	08/01/2022	12/05/2022
01/04/2022	04/19/2022	08/15/2022	12/06/2022
01/18/2022	05/02/2022	09/06/2022	12/19/2022
01/31/2022	05/03/2022	09/19/2022	12/20/2022
02/01/2022	05/16/2022	10/03/2022	
02/14/2022	05-17-2022	10/04/2022	
02/15/2022	06-06-2022	10/17/2022	
02/28/2022	06/07/2022	10/18/2022	
03/01/2022	06/21/2022	10/31/2022	
03/14/2022	07/05/2022	11/01/2022	
03/15/2022	07/18/2022	11/14/2022	

City Recorder Melissa Huhtala

Mayor Tonya Graham

LEGAL DEPARTMENT

20 East Main Street
Ashland, Oregon 97520
ashland.or.us

Tel: 541.488.5350
Fax: 541.552.2092
TTY: 800.735.2900

doug.mcgeary@ashland.or.us
carmel.zahran@ashland.or.us
dana.smith@ashland.or.us





CITY COUNCIL STUDY SESSION DRAFT MINUTES
Monday, December 19, 2022

HELD HYBRID - Council and some City Staff will be live in the Council Chambers, 1175 E. Main Street. Citizens and presenters will be joining via zoom

View on Channel 9 or Channels 180 and 181 (for Charter Communications customers) or live stream via rvtv.sou.edu select RVTV Prime.

Written and oral testimony will be accepted for public input. For written testimony, email public-testimony@ashland.or.us using the subject line: Ashland City Council Public Testimony. For oral testimony, fill out a Speaker Request Form at ashland.or.us/speakerrequest and return to the City Recorder. The deadline for submitting written testimony or speaker request forms will be at 10 a.m. on the day of the Study Session meeting and must comply with Council Rules to be accepted.

Mayor Akins called the Meeting to order at 5:30 PM.

Councilors' present were Hyatt, Graham and DuQuenne. Councilors' absent were Moran, Seffinger and Jensen.

1. Public Input (15 minutes, maximum)
None.
2. Year End Informal Session – Coffee & Discussion with City Management Team

Mayor Akins spoke that this was an informal meeting to have dialog.

Council discussed the dot voting priority list and the upcoming Town Hall Meeting.

City Manager Joe Lessard spoke that this is a long list but wanted to give all information.

Council suggested options to the dot voting list. Graham suggested to separate the list to essential and values.

Council discussed categorizing the list of items and have Staff send a new priority list.

Council discussed the dot voting process.

Lessard went over the Staff Accomplishments

Lessard spoke that this was a successful year and thanked Staff and Council.

Hyatt questioned how the stability of 2023 looks. Lessard spoke that the organizational structure is base level and that it is important to fill positions.

Council spoke to the importance to the stability of the organization.

3. City Commissions/ Standing Advisory Committee Appreciation

Appreciation for the Commissions and Committees took place to thank the Commissions and Committees.

4. Adjournment

The Study Session was adjourned at 6:12 PM

Respectfully Submitted by:

City Recorder Melissa Huhtala

Attest:

Mayor Akins

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the City Administrator's office at (541) 488-6002 (TTY phone number 1-800-735-2900). Notification 72 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to the meeting (28 CFR 35.102-35.104 ADA Title I).



LEGAL DEPARTMENT

Douglas M. McGeary, Acting City Attorney
Carmel Stout Zahran, Assistant City Attorney
Dana Smith, Administrative Analyst

August 30, 2023

Re: Council Meeting Minutes from 2021 and 2022 not signed

Minutes from council meetings during 2021 and all of 2022 were not signed by former Mayor Akins and therefore could not be signed by the Recorder as required by ordinance. All minutes listed below were approved by council, although the original minutes for 2021 are not available. The city attorney determined a cover letter with a list of the meeting dates missing signatures could be signed by the present mayor and recorder to meet the signature requirements in AMC 2.04.040(B.).

2021 Meetings

04/05/2021	07/06/2021	11/16/2021
04/06/2021	07/19/2021	11/23/2021
04/19/2021	07/20/2021	12/10/2021
04/20/2021	08/02/2021	12/21/2021
05/03/2021	08/03/2021	
05/04/2021	08/16/2021	
05/13/2021	08/17/2021	
05/17/2021	09/07/2021	
05/18/2021	09/20/2021	
06/01/2021	11/01/2021	
06/14/2021	11/02/2021	
06/15/2021	11/11/2021	
06/29/2021	11/15/2021	

2022 Meetings

01/03/2022	04/05/2022	08/01/2022	12/05/2022
01/04/2022	04/19/2022	08/15/2022	12/06/2022
01/18/2022	05/02/2022	09/06/2022	12/19/2022
01/31/2022	05/03/2022	09/19/2022	12/20/2022
02/01/2022	05/16/2022	10/03/2022	
02/14/2022	05-17-2022	10/04/2022	
02/15/2022	06-06-2022	10/17/2022	
02/28/2022	06/07/2022	10/18/2022	
03/01/2022	06/21/2022	10/31/2022	
03/14/2022	07/05/2022	11/01/2022	
03/15/2022	07/18/2022	11/14/2022	

City Recorder Melissa Huhtala

Mayor Tonya Graham

LEGAL DEPARTMENT

20 East Main Street
Ashland, Oregon 97520
ashland.or.us

Tel: 541.488.5350
Fax: 541.552.2092
TTY: 800.735.2900

doug.mcgeary@ashland.or.us
carmel.zahran@ashland.or.us
dana.smith@ashland.or.us



**ASHLAND CITY COUNCIL
BUSINESS MEETING DRAFT MINUTES
Tuesday, December 20, 2022**

View on Channel 9 or Channels 180 and 181 (Charter Communications) or live stream via rvtv.sou.edu select RVTV Prime.

HELD HYBRID (Limited In-Person Social Distancing Seating and Zoom Meeting Access)
The Special Business Meeting will be held in Council Chambers, 1175 E. Main Street.

Written and oral testimony will be accepted for public input. For written testimony, email public-testimony@ashland.or.us using the subject line: Ashland City Council Public Testimony. For oral testimony, fill out a Speaker Request Form at ashland.or.us/speakerrequest and return to the City Recorder.

5:30 PM Executive Session - CANCELLED

The Ashland City Council will hold an Executive Session and may conduct the following:

1. To conduct deliberation with persons you have designated to negotiate real property transaction pursuant to ORS 192.660(2)(e)

6:00 PM Regular Business Meeting*

I. CALL TO ORDER

Mayor Akins called the Business Meeting to Order at 6:00 PM

II. PLEDGE OF ALLEGIANCE

Councilor Jensen led the Pledge of Allegiance.

III. ROLL CALL

Councilors' Hyatt, Graham, Seffinger, DuQuenne and Jensen were present. Councilor Moran was absent.

IV. MAYOR'S ANNOUNCEMENTS

Land Acknowledgement**

Hyatt read the Land Acknowledgment into the record.

Mayor Akins presented plaques to Councilor Stefani Seffinger and Councilor Stephen Jensen for their service.

Public Input:

Former City Councilors Dennis Slattery and Rich Rosenthal spoke thanking Seffinger and Jensen for their service to the Community.

Seffinger thanked all and spoke regarding all accomplishments since she has been on Council. She spoke to the hope for the future of Council and to work together.

Jensen spoke that it has been a busy year. He read a statement into the record (*see attached*).

V. APPROVAL OF MINUTES

1. Minutes of the December 5, 2022, Study Session Meeting
2. Minutes of the December 6, 2022, Business Meeting

Hyatt/Jensen moved to approve the minutes. Discussion: None. All Ayes. Motion passed unanimously.

Minutes of Boards, Commissions and Committees***

VI. SPECIAL PRESENTATIONS

VII. CITY MANAGER REPORT

Lessard gave a brief Manager report. Items discussed were:

- Look Ahead
- Special Meeting
- General Budget Process

Council discussed 5G.

Acting City Attorney Doug McGearry gave an overview of the Ordinance and a timeline.

VIII. PUBLIC FORUM

Miriam Reed- Ashland – Spoke against 5G. She suggested to amend the current Ordinance.

Ian Cropper – Ashland – Spoke regarding technology progressiveness in Ashland. He gave statistics of the wireless technology. He spoke to the benefits of 5G.

Kelly Marcotulli – Ashland - Spoke against 5G. She spoke regarding headaches and the harm of 5G. She spoke to the danger of radiation.

IX. **CONSENT AGENDA**

1. FY 2020-2021 Annual Financial Report and FY 2022-20223 Budget Amendments
2. Adoption of Revisions to Miscellaneous Fees & Charges for FY 2023

DuQuenne pulled Item 1 & 2.

DuQuenne spoke regarding Item 1 & 2. She spoke that both items number 1 & 2 need more time. She suggested that these items be put on a Study Session.

Graham and Hyatt agreed with DuQuenne.

Council discussed the timeline.

Mayor Akins discussed the importance of deadlines.

It was decided to remove Item 1 & 2 and bring to the Auditors to get more information and further discuss.

X. **PUBLIC HEARINGS**

XI. **UNFINISHED BUSINESS**

XII. **NEW AND MISCELLANEOUS BUSINESS**

XIII. **ORDINANCES, RESOLUTIONS AND CONTRACTS**

1. Ashland Airport Taxiway Reconstruction and Rehabilitation
 - a) Construction Contract with Knife River Materials for the Ashland Airport Taxiway Reconstruction and Rehabilitation Project; and
 - b) Professional Services Contract with Century West Engineering for Construction Administration of the Ashland Airport

Public Works Director gave a Staff report.

Jensen/ Hyatt moved to approve a Public Works Improvement contract with LTM dba, Knife River Materials for the Airport Taxiway Reconstruction and Rehabilitation Project for a contract amount not to exceed \$2,604,807.75. Discussion: Jensen complimented the Public Works Department particularly Chance Metcalf. Hyatt spoke in agreement with Jensen. Seffinger spoke to the importance of emergency services. **Roll Call Vote: Hyatt, Graham, Seffinger, DuQuenne and Jensen: YES. Motion passed unanimously.**

Jensen/Hyatt moved to approve a Professional Services contract with Century West Engineering for the Airport Taxiway Reconstruction and Rehabilitation Project for a

contract amount not to exceed \$348,577.64. Discussion: None. Roll Call Vote: Hyatt, Graham, Seffinger, DuQuenne and Jensen: YES. Motion passed unanimously

2. Findings and Second Reading of Annexation and site Review: 1511 HWY 99: T3-2022-0004

Mayor Akins asked Council if they had any ex-parte contacts since the last meeting.

Hyatt announced that as liaison to the Planning Commission she had sat through all meetings but can sit through this meeting and be non-bias.

Brandon Goldman Interim Community Development Director gave a Staff Report.

Jensen/Graham moved approval of the second reading by title only of ‘An Ordinance Annexing Property and Withdrawing an Annexed Area from Jackson County Fire District No. 5 (Grand Terrace Annexation – Planning Action #PA-T3-2022-00004. Discussion: Jensen spoke that this has been a long road and the work has been done and time to move forward. Graham spoke that she is excited to move forward with this. Roll Call Vote: DuQuenne, Seffinger, Hyatt, Jensen and Graham: YES. Motion passed unanimously.

Jensen/Graham moved to adopt the written findings provided for approval of Planning Action #PA-T3- 2022-00004. Discussion: None. Roll Call Vote: DuQuenne, Seffinger, Hyatt, Jensen and Graham: YES. Motion passed unanimously.

Consent Agenda Continued:

1. Adoption of Revisions to Miscellaneous Fees & Charges for FY 2023

Deputy City Manager Sabrina Cotta gave a Staff Report.

Council discussed the fee schedule.

Hyatt/Seffinger moved to approve of the resolution titled A Resolution Adopting a Miscellaneous Fees & Charges Document and Repealing Prior Fee Resolution 2022-13. Discussion: Hyatt spoke that looking at these items are important to look at. Roll Call Vote: Graham, Seffinger, DuQuenne, Hyatt and Jensen: YES. Motion passed unanimously.

1. FY 2020-2021 Annual Financial Report and FY 2022-20223 Budget Amendments

Cotta gave a brief Staff Report.

CPA Amanda McLeary-Moore went over a PowerPoint Presentation (*see attached*)

Items discussed were:

- Nature of services Provided
- Critical Audit Areas
- Audit Opinion/Reports
- Communications to Those Charged with Governance
- New Standards

Council discussed options.

Jensen/Hyatt moved to accept the City of Ashland FY2022 Annual Comprehensive Financial Report. Discussion: Jensen complemented Staff for this report. Hyatt thanked Staff. Graham agreed with Hyatt she spoke to the importance to have a larger conversation regarding budget with the Community. **Roll Call Vote: Hyatt, Graham, Seffinger, Jensen: YES. DuQuenne: NO. Motion passed 4-1.**

II. OTHER BUSINESS FROM COUNCIL MEMBERS/REPORTS FROM COUNCIL LIAISONS

III. ADJOURNMENT OF BUSINESS MEETING

Seffinger/Jensen moved to adjourn the meeting. All Ayes. Motion passed unanimously.

The Study Session was adjourned at 8:18 PM

Respectfully Submitted by:

City Recorder Melissa Huhtala

Attest:

Mayor Akins

* Items on the Agenda not considered due to time constraints are automatically continued to the next regularly scheduled Council meeting [AMC 2.04.030.(D)(3)]

**** LAND ACKNOWLEDGEMENT**

It has been a busy four and a half years on Council. We've seen:

- a. Major senior administration turnover
- b. An unprecedented pandemic with all the shutdowns and travail
- c. The ruinous Alameda fire
- d. Budget challenges
- e. Smokey hot summers
- f. Winters with little rain and snow

Here is the good news:

- a. We have put a solid administrative team in place
- b. We weathered COVID unafraid of robust safety protocols
- c. We stepped up strong for Alameda fire victims in the region
- d. The predicted budget sky has not fallen
- e. The smoke and wildfire dangers will be with us and our city will be resilient and resourceful as a matter of course.
- f. And finally, the recent election demonstrated that positive and forward-looking values will continue with our newly electeds.

It has been an honor and a privilege to have served our city. I want to take just a few minutes to leave you with some advice gleaned from almost 74 years and four and a half years on this Council. This won't take long.

1. If someone is bleeding, apply direct, sustained pressure, ideally with something clean. You will get over the squeamish part. Direct pressure and hold until relieved.
2. Go to funerals and visit people in the hospital. It's easy to go to weddings and birthday parties and graduations. It's hard to go to funerals and to the hospital. But nothing builds connection, kinship, and life-long gratitude more than when people attend funerals and visit folks in the hospital.
3. Get crummy people out of your life; and hold tight to the people you know you can count on. Anyone who makes you feel bad about yourself or who consistently isn't there when you need them or have proven to be untrustworthy....wash them right out of your hair and hold on tight to those you know you can count on.

4. Regard social media like a coiled rattlesnake and mostly avoid this reptile. Engagement with social media is dangerous, mostly unproductive and an enormous timewaster.
5. Having been elected as a community elder brings great honor and great responsibility. Cast your votes with the long look down the valley of time, not to gain an immediate political expediency or splash.
6. Read your packets thoroughly before the meeting. Many questions can be answered therein. Cuts down on tedious meetings.
7. Value our city staff....repeatedly, publicly and honestly. Refrain from complimenting them on the one hand and then turning around and backhanding them with the other.
8. Push hard to budget for the following items to improve immediate community connection:
 - a. Improve the technology right here in this room so that all monitors show everything all the time to everybody
 - b. Continue to improve the COA www site to be more friendly and intuitive.
 - c. Budget for some new and improved microphones where speakers don't have to gobble the device to be heard.

Lastly,

9. Stand with the powerless. Here's the CliffsNotes version of human history: the traditionally powerful have continuously oppressed, exploited, marginalized, and silenced those who traditionally have not held power. We are living in unprecedented times. Oppression takes different forms: sexism, racism, homophobia, transphobia, xenophobia, classism -- but they all come down to the powerful vs. the powerless. Whenever you find yourself a part of the traditionally powerful, center yourself and stand with those who have less power. I promise, you will be on the right side of history....whether it be out in the larger world or right here in our little town.

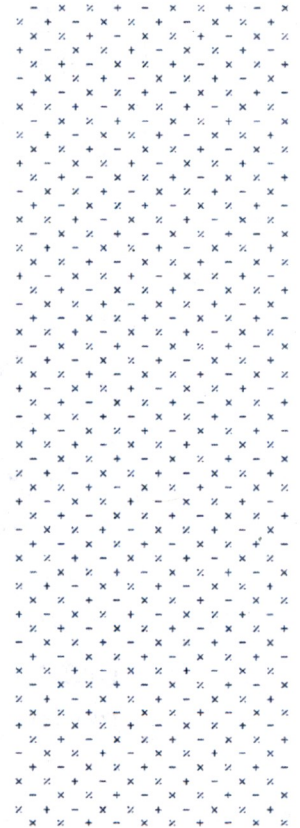
Thank you and vaya con dios.



City of Ashland, Oregon Audit Results

COMMUNICATION WITH THE AUDIT COMMITTEE

December 20, 2022



© 2006 Blackwell Publishing Ltd *Journal of Internal Medicine* 260: 395–403

-

Nature of Services Provided

1 Audit the City financial statements in accordance with Generally Accepted Auditing Standards (GAAS) and Governmental Standards (GAGAS)

2 Assistance with, and technical review of each respective Annual Comprehensive Financial Report (ACFR) for compliance with Generally Accepted Accounting Principles (GAAP) as well as Government Finance Officers Association (GFOA) Certificate of Excellence requirements

3 Compliance testing/reporting under Oregon Minimum Audit Standards (OMS)

4 Single Audit of federal grant programs under Uniform Guidance

5 Reporting – Overall audit plan, audit results, communicating internal controls findings and noncompliance

Critical Audit Areas

- Internal Controls / IT Environment
- Cash & Investments
- Revenues & Receivables
- Capital Assets
- Long Term Debt
- Accrued Liabilities – PERS, Other Post Employment Benefits (OPEB)
- Grants
- Financial Close & Reporting
- Oregon Minimum Standards



Audit Opinion / Reports

Financial
Statements

Unmodified
(clean) opinion
on financial
statement

Oregon
Minimum
Standards

No reportable
findings

Government
Auditing
Standards
Report

No reportable
findings

Uniform
guidance

City was found
in compliance

Communications to Those Charged with Governance

- Planned scope and timing
- Significant accounting policies
- Management judgments & accounting estimates
- Audit adjustments made and passed
 - None in current year
- Management's consultation with other accountants
- No disagreements with management
- No difficulties in performing the audit

Downloaded from <http://ajphaphysoc.org/> at University of California, San Diego on May 12, 2015

adopted in the current year

of a Construction Period – effective for June 30, 2022 fiscal year

Audit standards



The material appearing in this presentation is for informational purposes only and should not be construed as advice of any kind, including, without limitation, legal, accounting, or investment advice. This information is not intended to create, and receipt does not constitute, a legal relationship, including, but not limited to, an accountant-client relationship. Although this information may have been prepared by professionals, it should not be used as a substitute for professional services. If legal, accounting, investment, or other professional advice is required, the services of a professional should be sought. Assurance, tax, and consulting offered through Moss Adams LLP. Wealth management offered through Moss Adams Wealth Advisors LLC. Investment banking offered through Moss Adams Capital LLC.



THANK YOU



LEGAL DEPARTMENT

Douglas M. McGeary, Acting City Attorney
Carmel Stout Zahran, Assistant City Attorney
Dana Smith, Administrative Analyst

August 30, 2023

Re: Council Meeting Minutes from 2021 and 2022 not signed

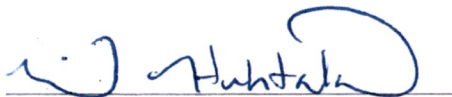
Minutes from council meetings during 2021 and all of 2022 were not signed by former Mayor Akins and therefore could not be signed by the Recorder as required by ordinance. All minutes listed below were approved by council, although the original minutes for 2021 are not available. The city attorney determined a cover letter with a list of the meeting dates missing signatures could be signed by the present mayor and recorder to meet the signature requirements in AMC 2.04.040(B.).

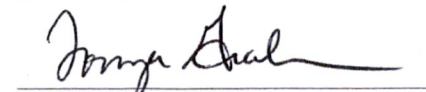
2021 Meetings

04/05/2021	07/06/2021	11/16/2021
04/06/2021	07/19/2021	11/23/2021
04/19/2021	07/20/2021	12/10/2021
04/20/2021	08/02/2021	12/21/2021
05/03/2021	08/03/2021	
05/04/2021	08/16/2021	
05/13/2021	08/17/2021	
05/17/2021	09/07/2021	
05/18/2021	09/20/2021	
06/01/2021	11/01/2021	
06/14/2021	11/02/2021	
06/15/2021	11/11/2021	
06/29/2021	11/15/2021	

2022 Meetings

01/03/2022	04/05/2022	08/01/2022	12/05/2022
01/04/2022	04/19/2022	08/15/2022	12/06/2022
01/18/2022	05/02/2022	09/06/2022	12/19/2022
01/31/2022	05/03/2022	09/19/2022	12/20/2022
02/01/2022	05/16/2022	10/03/2022	
02/14/2022	05-17-2022	10/04/2022	
02/15/2022	06-06-2022	10/17/2022	
02/28/2022	06/07/2022	10/18/2022	
03/01/2022	06/21/2022	10/31/2022	
03/14/2022	07/05/2022	11/01/2022	
03/15/2022	07/18/2022	11/14/2022	


City Recorder Melissa Huhtala


Mayor Tonya Graham

LEGAL DEPARTMENT

20 East Main Street
Ashland, Oregon 97520
ashland.or.us

Tel: 541.488.5350
Fax: 541.552.2092
TTY: 800.735.2900

doug.mcgeary@ashland.or.us
carmel.zahran@ashland.or.us
dana.smith@ashland.or.us



Council Business Meeting

January 3, 2023

Agenda Item	East Main Street Banner Request for the Ashland Little League	
From	Joseph Lessard	City Manager
Contact	joe.lessard@ashland.or.us	541-552-2103

SUMMARY

The Ashland Little League is seeking approval to hang a banner over East Main Street for their registration event. As the Ashland Little League has not received grant funding from the City or is associated with a City sponsored event the organizers are asking for approval from the City Council to install a banner over East Main Street from January 14-21, 2022.

POLICIES, PLANS & GOALS SUPPORTED

N/A

PREVIOUS COUNCIL ACTION

N/A

BACKGROUND AND ADDITIONAL INFORMATION

The City allows banners to be hung across East Main Street for events sponsored or endorsed by the City of Ashland only. The most common endorsements are for an organization to receive grant funding from the City through the Economic, Cultural, Tourism, and Sustainability (ECTS) grant program. As the Ashland Little League has not been a recipient of the ECTS grants, they instead are requesting direct approval from the City Council to hang a banner across East Main Street. Due to the timing of the request and banner placement date, staff will need to coordinate the permit approval required by the Oregon Department of Transportation as part of the process.

FISCAL IMPACTS

Approval of the endorsement will not cost the City any money. The banner permit fee of \$125 per week will be paid (to the Electric department) by the applicant once the permit application is allowed to be submitted.

STAFF RECOMMENDATION

Staff recommends approving the endorsement of the Ashland Little League banner request.

ACTIONS, OPTIONS & POTENTIAL MOTIONS

1. I move to confirm the endorsement of the Ashland Little League banner request.
2. I move to deny the endorsement of the Ashland Little League banner request.

REFERENCES & ATTACHMENTS

Attachment #1: City of Ashland Banner Application



APPLICATION AND PERMIT TO OCCUPY OR PERFORM OPERATIONS UPON A STATE HIGHWAY

See Oregon Administrative Rule, Chapter 734, Division 55

PERMIT NUMBER

08M 42755

CLASS:

KEY#

GENERAL LOCATION			PURPOSE OF APPLICATION (TO CONSTRUCT/OPERATE/MAINTAIN)		
HIGHWAY NAME AND ROUTE NUMBER OR-99/63/Rogue Valley			☐ POLE LINE	TYPE	MIN. VERT. CLEARANCE
HIGHWAY NUMBER Hwy 99 (E. Main Street)	COUNTY Jackson		☐ BURIED CABLE	TYPE	
BETWEEN OR NEAR LANDMARKS On Hwy. 99, (East Main Street) between 1st and 2nd Streets, in Ashland			☐ PIPE LINE	TYPE	
HWY. REFERENCE MAP	DESIGNATED FREEWAY ☐ YES ☐ NO	IN U.S. FOREST ☐ YES ☐ NO	☐ NON-COMMERCIAL SIGN AS DESCRIBED BELOW		
APPLICANT NAME AND ADDRESS City of Ashland/Banner Program 20 East Main Street Ashland, OR 97520 Tami De Mille-Campos 541-552-2420			☒ MISCELLANEOUS OPERATIONS AND/OR FACILITIES AS DESCRIBED BELOW FOR ODOT USE ONLY BOND REQUIRED REFERENCE: AMOUNT OF BOND ☐ YES ☒ NO OAR 734-055-0035(2) INSURANCE REQUIRED REFERENCE: SPECIFIED COMP. DATE ☒ YES ☐ NO OAR 734-055-0035(1) 1/24/2022		

DETAIL LOCATION OF FACILITY (For more space attach additional sheets)

MILE POINT	MILE TO POINT	ENGINEERS STATION TO	ENGINEERS STATION	SIDE OF HWY OR ANGLE OF CROSSING	DISTANCE FROM CENTER OF PMT	R/W LINE	BURIED CABLE OR PIPE DEPTH/VERT.	SIZE AND KIND	SPAN LENGTH
19.35		156+65		Crossing		within			

DESCRIPTION OF DESIRED USE

Ashland Oregon Little League. The City of Ashland, shall manage the "Banner Program", at the above location on Hwy 99 (East Main St.) in Ashland.

SPECIAL PROVISIONS (FOR ODOT USE ONLY)

TRAFFIC CONTROL REQUIRED

☒ YES [OAR 734-055-0025(6)] ☐ NO

OPEN CUTTING OF PAVED OR SURFACED AREAS ALLOWED

☐ YES [OAR 734-055-0100(2)] ☒ NO [OAR 734-055-0100(1)]

♦ AT LEAST 48 HOURS BEFORE BEGINNING WORK, THE APPLICANT OR HIS CONTRACTOR SHALL NOTIFY THE DISTRICT REPRESENTATIVE Cathy Harshman AT PHONE NO.: 541-890-0304 OR EMAIL OR FAX THIS PAGE TO THE DISTRICT OFFICE AT: cathy.harshman@odot.oregon.gov. SPECIFY TIME AND DATE WORK IS TO OCCUR.

♦ A COPY OF THIS PERMIT AND ALL ATTACHMENTS SHALL BE AVAILABLE AT THE WORK AREA DURING CONSTRUCTION.

♦ ATTENTION: Oregon Law requires you to follow rules adopted by the Oregon Utility Notification Center. Those rules are set forth in OAR 952-001-0001 through OAR 952-001-0090. You may obtain copies of the rules by calling the center at (503) 232-1987.

CALL BEFORE YOU DIG 1-800-332-2344

COMMENTS (FOR ODOT USE ONLY)

Permit holder to manage the above described program. Traffic control must meet MUTCD and state standards including a TPAR for ped/bicyclist.

IF THE PROPOSED APPLICATION WILL AFFECT THE LOCAL GOVERNMENT, THE APPLICANT SHALL ACQUIRE THE LOCAL GOVERNMENT OFFICIAL'S SIGNATURE BEFORE ACQUIRING THE DISTRICT MANAGER'S SIGNATURE.

LOCAL GOVERNMENT OFFICIAL SIGNATURE X <i>Tami De Mille-Campos</i>		TITLE Administrative Analyst	DATE 12/20/2021
APPLICANT SIGNATURE X	APPLICATION DATE	TITLE	TELEPHONE NO.
When this application is approved by the Department, the applicant is subject to, accepts and approves the terms and provisions contained and attached: and the terms of Oregon Administrative Rules, Chapter 734, Division 55, which is by this reference made a part of this permit.		DISTRICT MANAGER OR REPRESENTATIVE X <i>Cathy Harshman</i>	APPROVAL DATE 12/23/21

Email Completed Form

CITY OF ASHLAND

BANNER APPLICATION

Please fill in the information requested below and submit this form to the Public Works Department, 51 Winburn Way, Ashland, OR 97520. Upon approval of your application by the City Manager, the City of Ashland will obtain approval from ODOT, and then collect the \$125 fee.

Please write below exactly what will be printed on the banner. All banners will be reviewed for any offensive or inappropriate message content by the City of Ashland and ODOT. *Please note: No Advertising of any kind, no phone numbers, and no web or e-mail addresses are permitted on the banner.*

Little League Registration Open Now

NAME OF ORGANIZATION/: Ashland Oregon Little League

CONTACT PERSON: Alan Peterson

ADDRESS OF ORGANIZATION/CONTACT: [REDACTED]

WEEK REQUESTED FOR BANNER: January 18th-25th

(FOR CITY USE ONLY)

THIS APPLICATION IS:

- ☐ APPROVED FOR A CITY OF ASHLAND SPONSORED OR ENDORSED EVENT.
☐ NOT APPROVED.

DATE: 12/20/21

[Signature]
CITY MANAGER

Date Fee Paid to City of Ashland: _____

(FOR ODOT USE ONLY)

THE ABOVE APPLICATION IS:

- ☐ APPROVED
☐ NOT APPROVED.

DATE: _____

ODOT

BANNER APPLICATION

Please fill in the information requested below and submit this form to the City Manager Designee (Public Works Department), 51 Winburn Way, Ashland, OR 97520. Upon approval of your application, the City of Ashland will obtain approval from ODOT, and then collect the \$125 fee.

Please write below exactly what will be printed on the banner. All banners will be reviewed for any offensive or inappropriate message content by the City of Ashland and ODOT. *Please note: No Advertising of any kind, No phone numbers, and No web or e-mail addresses are permitted on the banner.*

LITTLE LEAGUE REGISTRATION NOW OPEN

NAME OF ORGANIZATION: ASHLAND OREGON LITTLE LEAGUE

CONTACT PERSON: ALAN PETERSON PHONE 

ADDRESS OF ORGANIZATION/CONTACT 

WEEK REQUESTED FOR BANNER: JAN 14th - 21st

(FOR CITY USE ONLY)

THIS APPLICATION IS: Pending City Council approval.

☐ APPROVED FOR A CITY OF ASHLAND SPONSORED OR ENDORSED EVENT.

☐ NOT APPROVED.

☒ Pending City Council approval:

DATE: Dec. 29, 2022

Joseph Howard
CITY MANAGER OR DESIGNEE

Date Fee Paid to City of Ashland: _____

(FOR ODOT USE ONLY)

THE ABOVE APPLICATION IS:

☐ APPROVED

☐ NOT APPROVED.

DATE: _____

ODOT

Council Business Meeting

January 3, 2023

Agenda Item	Land Use Appeal for Mixed Use Development at 165 Water Street, 160 Helman Street and 95 Van Ness Avenue	
From	Brandon Goldman Derek Severson	Interim Director of Community Development Senior Planner
Contact	Brandon.goldman@ashland.or.us Derek.severson@ashland.or.us	(541) 552-2076 (541) 552-2040

SUMMARY

Consideration of an appeal of the Planning Commission's May 10, 2022 denial of a request for a six-lot commercial subdivision to accommodate a phased mixed-use development for the three properties at 165 Water Street, 160 Helman Street and 95 Van Ness Avenue, and Site Design Review for five mixed-use buildings.

POLICIES, PLANS & GOALS SUPPORTED

Comprehensive Plan, Policy 1.31.2. The Historic Commission shall offer recommendations to the City Council and Planning Commission concerning the alteration or disposition of structures, sites, or neighborhoods within the historic interest areas in Ashland.

Comprehensive Plan, Policy 1.31.7. The City shall develop and implement through law design guidelines for new development as well as for alteration of existing structures within the historic interest areas for structures and areas that are historically significant.

PREVIOUS COUNCIL ACTION

N/A.

BACKGROUND AND ADDITIONAL INFORMATION

Original Request

The original application was a request for a six-lot commercial subdivision to accommodate a phased mixed-use development for the three properties at 165 Water Street, 160 Helman Street and 95 Van Ness Street. The requested first phase Site Design Review approval included five mixed-use buildings and associated surface parking, utility infrastructure and street improvements. The three remaining lots would have initial site work completed with Phase I, but building construction would occur only after Site Design Review approvals in a future Phase II. The application also included a request for a Physical & Environmental Constraints Review Permit because the proposal includes development on severe constraints lands with slopes greater than 35 percent and on floodplain corridor lands; a request for an Exception to the Development Standards for Hillside Lands; and a request for a Tree Removal Permit to remove 20 trees on the three properties and within the adjacent rights-of-way.

Planning Commission Decision

The Planning Commission concluded that the application as presented had not sufficiently addressed the Historic District Development Standards, and as such could not be found to have fully satisfied the approval criteria for Site Design Review. The Planning Commission denied the application without prejudice.

Appeal Request

Subsequent to the mailing of the Planning Commission's adopted findings, an appeal was timely filed by applicant Gil Livni and his agent Eric Bonetti, both of whom had participated in the Planning Commission hearing. This appeal will be processed on the record according to AMC 18.5.1.060.I. The grounds for the appeal as identified in the notice of appeal are:

- 1) That the staff report was not received seven days prior to the hearing.
- 2) That staff presented new information during the public hearing.
- 3) That a member of the Historic Commission had *ex parte* contact with a member of the public outside of the public hearing.
- 4) That the standard in AMC 18.4.2.050.B.1 addressing Transitional Areas (*"For projects located at the boundary between zones or overlays, appropriate adjustments to building form, massing, height, scale, placement, or architectural and material treatment may be considered to address compatibility with the transitional area while not losing sight of the underlying standards or requirements applicable to the subject property."*) was misapplied by the Planning Commission

This appeal on the record is limited to these four grounds for appeal which were clearly and distinctly identified in the appeal request. As provided in AMC 18.5.1.060.I.5.b., in their review *"the Council shall not re-examine issues of fact and shall limit its review to determining whether there is substantial evidence to support the findings of the Planning Commission, or to determining if errors in law were committed by the Commission. Review shall in any event be limited to those issues clearly and distinctly set forth in the notice of appeal."*

This appeal hearing was originally scheduled for June 21, 2022 however the applicant/appellant requested that the hearing be postponed and provided the maximum allowed 245-day extension under the state's "120-Day Rule." Under that rule, the Council must make a decision on the appeal no later than February 10, 2023.

Considering the Grounds for Appeal

- 1) **That the staff report was not received seven days prior to the hearing.**

The appellants note that, *"The staff report recommending denial of the application was not received seven days before the Historic Commission Hearing nor the Planning Commission Hearing. This is an error because the applicable criteria or procedure in the Ashland Municipal Code 18.5.1.060.C.3.g or other law in ORS 197.763 (3)(i) requires that a copy of the City's staff report and recommendations to the hearings body will be available for review at no cost at least seven days before the hearing."*

In considering this ground for appeal, staff would note that both AMC 18.5.1.060.C.3.g and ORS 197.763(3)(i) require that public notices include a clear statement that the staff report will be available seven days prior to the Planning Commission hearing, and AMC 18.5.1.060.C.3.g indicates that a copy will be provided on request. Specifically, ORS 197.763(3)(i) requires that the notice provided by the jurisdiction, *"State that a copy of the staff report will be available for inspection at no cost at least seven days prior to the hearing and will be provided at reasonable cost."* Similarly, AMC 18.5.1.060.C.3.g requires that the Notice of Public Hearing contain, *"A statement that a copy of the City's staff report and recommendation to the hearings body will be available for review at no cost at least seven days before the hearing, and that a copy will be*

provided on request at a reasonable cost.” The public notice for the application (See https://www.ashland.or.us/SIB/files/00_Water_165_PA-T2-2022-00037_NOC.pdf) indicated that, “*A copy of the application, including all documents, evidence and applicable criteria relied upon by the applicant, and a copy of the staff report will be available on-line at www.ashland.or.us/PCpackets seven days prior to the hearing. Copies of application materials will be provided at reasonable cost, if requested.*” There is no indication in the applicants’ appeal notice or within the record that the applicant requested the staff report. The staff report was provided to the applicant six days prior to the Planning Commission hearing via e-mail and was posted on-line at that time. Given that the staff report was provided six days prior to the hearing without being requested, staff does not believe there was a procedural error which adversely impact the applicant/appellant. Any error with the one-day delay in posting the staff report on-line would be remedied by the applicant’s ability to appeal, which they have taken advantage of here. As such, staff recommends that the Council reject this first appeal issue and uphold the Planning Commission’s decision.

2) **That staff presented new information during the public hearing.**

Here, the appellants note that, “*New information was presented by staff during the hearing that had never been discussed previously with the applicant, the project team or during the previous hearing. The project team believes this new information regarding the Transit Triangle standards created confusion and obscures the relevant criteria Site Design and Use Standards and Historic District Design Standards through the introduction of irrelevant municipal code sections.*”

In considering this ground for appeal, staff would note that the new information consisted of pointing out how building massing is addressed in terms of compatibility with adjacent residential elsewhere in the code (in the Transit Triangle at AMC 18.3.14.060 and in the Croman Mill District at AMC 18.3.2.060.B.7.c). This was presented by staff while both the public hearing and the public hearing record were open to the submittal of any new information. See page 5 of 8 of the April 12, 2022 Minutes at https://www.ashland.or.us/SIB/files/2022-04-12_Planning_MIN.pdf. Staff explained clearly during the hearing that this information was not applicable to the subject property specifically and was instead being provided for reference to show how adjustments for compatibility between commercial and residential development were dealt with elsewhere in the land use ordinance as the Planning Commission was considering what might constitute “appropriate adjustments.” See page 7 of 8 of the April 12, 2022 Minutes at https://www.ashland.or.us/SIB/files/2022-04-12_Planning_MIN.pdf.

New information may be presented during an open public hearing. In this instance, the new information was directly from the adopted land use ordinance and it was explained that it was not directly applicable to the current application and was instead being presented for reference. On that basis, staff recommends that the Council reject this second appeal issue and uphold the original decision of the Planning Commission.

3) **That a member of the Historic Commission had *ex parte* contact with a member of the public outside of the public hearing.**

The appellants’ Notice of Appeal explains, “*The public is entitled to an impartial hearing body as free from potential conflicts of interest and pre-hearing ex parte (outside the hearing) contacts as reasonably possible. One of the co-chairs of the Historic Commission had*

communications with a member of the public outside the hearing process. Though unclear to the applicant team during the Historic Commission meeting at 4.6.2022 what the substance of the ex parte comments were, the process is flawed when it is clear that conversation(s) occurred outside the hearing. This interaction taints the integrity of the hearing process. This is an error because the applicable criteria or procedure in the Ashland Municipal Code 18.5.1.060.D.2 requires that the hearing body be impartial and free from potential conflicts of interests and pre-hearing and outside of the hearing contacts. It is unclear what exactly occurred between the co-chair of the Historic Commission and a member of the public but there was a declaration of ex parte”.

On this issue, staff note that the Historic Commission is not a decision making body, and serves in an advisory role to the Planning Commission. In this instance, the *ex parte* contact in question occurred after the Historic Commission had conducted its March meeting and made its initial advisory recommendation to the Planning Commission. When the application came back to the Historic Commission for further consideration in April of 2022, the *ex parte* contact in question was declared by Historic Commission Chair Beverly Hovenkamp. The minutes for the April 6, 2022 meeting note, “Hovenkamp disclosed that she had *ex-parte* contact with Mr. Brouillard, a neighbor who submitted his comments to the Commission via email. Hovenkamp expressed that this would have no impact on her decision moving forward.”

In a February 24, 2022 e-mail, Mark Brouillard - who is a neighbor of the project site and who had attended a Historic Commission meeting in 2018 to comment on a previous development proposal for the site - expressed concerns that during the 2018 meeting, a presenter from Rogue Planning had commented that “*now that there aren’t any pesky home owners here we might get something accomplished.*” Mr. Brouillard’s email indicated that he was present as a home owner at that 2018 meeting and made objection to the comment at the time. He further suggested that the Historic Commissioners at the time had laughed and seemed entertained, and he took their response as an expression of bias. Mr. Brouillard’s e-mail is on pages 1-2 of 18 at https://www.ashland.or.us/SIB/files/Water_165_PA-T2-2022-00037_Public_Comment_Record.pdf).

As reflected between 44:45 and 47:15 of the Historic Commission’s April meeting recording, Chair Hovenkamp stated that the concerns over bias expressed by neighbor Mark Brouillard had not been addressed at the March hearing, so she had called him subsequent to the March meeting as a courtesy, after the Commission had made its initial recommendation. She indicated that she told him it was unfortunate that a disrespectful comment had been made at the 2018 meeting and that the Historic Commission was working hard to be impartial. She noted that this was why he had raised the importance of *ex parte* contact conversations and being careful about recusals. She indicated that she was unsure if this call made him feel any better, but felt it was important as a courtesy to respond on behalf of the Commission to the concerns he had raised.

During that April Historic Commission meeting, planning staff directly asked Chair Hovenkamp if any aspect discussed relating to the project during that call would bias her; she said that when Mr. Brouillard raised issues he had raised previously during the hearing, she pointed out to him that it seemed the Commission had heard his concerns at the meeting and they were reflected in the Commission’s initial recommendations. She confirmed that nothing said during the conversation would have the effect of biasing her moving forward. Neither the other Commissioners present, the applicant or his agent challenged Ms. Hovenkamp’s *ex parte* contact

declaration at the meeting, although the applicant did raise the issue of *ex parte* contact during testimony at the April Planning Commission hearing. See page 6 of 8 in the April 12, 2022 minutes at https://www.ashland.or.us/SIB/files/2022-04-12_Planning_MIN.pdf.

Procedurally speaking, Chair Hovenkamp declared the *ex parte* contact prior to the Historic Commission's April meeting, as recognized in the appellants' appeal notice, and explained both the substance of the contact and that it would not bias her moving forward. Her declaration went unchallenged and on that basis staff recommends that the Council reject this fourth appeal issue and uphold the Planning Commission's decision with regard to this third appeal issue.

- 4) **That the standard in AMC 18.4.2.050.B.1 addressing Transitional Areas (“*For projects located at the boundary between zones or overlays, appropriate adjustments to building form, massing, height, scale, placement, or architectural and material treatment may be considered to address compatibility with the transitional area while not losing sight of the underlying standards or requirements applicable to the subject property.*”) was misapplied by the Planning Commission.**

The appellants cite Overlay Development Standards (AMC 18.5.2.050.B) and Historic District Development Standards (AMC 18.4.2.050) and specifically reference the ‘Transitional Areas’ standard in AMC 18.4.2.050.B.1 which reads:

For projects located at the boundary between zones or overlays, appropriate adjustments to building form, massing, height, scale, placement or architectural and material treatment may be considered to address compatibility with the transitional area while not losing sight of the underlying standards or requirements applicable to the subject property.

The appellants go on to indicate that denial on this basis is an error because the applicable criteria or procedure in the Ashland Municipal Code 18.4.2.050 requires that projects at the boundary between zones or overlays may have appropriate adjustments considered but the underlying zoning standards and requirements applicable to the subject property must be kept in sight.

In considering this final appeal issue, staff would first note that within the adopted findings for their decision, under 2.7 the Planning Commission noted that “... Site Design Review approval requires a demonstration that “*The proposal complies with the applicable Site Development and Design Standards of part 18.4, except as provided by subsection E, below.*” The Planning Commission further noted that the subject properties were located within the Skidmore Academy Historic District and as such were subject to the Historic District Development Standards in AMC 18.4.2.050. As explained in AMC 18.4.2.050.A.2:

The City of Ashland has adopted ordinances to assure that all development in the Historic District overlay remains compatible with the existing integrity of the Historic District...If a development requires a Type I, II, or III review procedure (e.g., Site Design Review, Conditional Use Permit) and involves new construction, or restoration and rehabilitation, or any use greater than a single-family use, the authority exists in the law for the Staff Advisor and the Planning Commission to require modifications in the design to match these standards. In this case the Historic Commission advises both the applicant and the Staff Advisor or other City decision maker.

As provided in AMC 18.2.4.040.D, the Historic Commission is charged *“To review and make recommendations concerning the improvement of designated historic properties in connection with the issuance of building permits, zone changes, conditional use permits, variances, sign permits, and site reviews.”* Here, the Historic Commission reviewed the initial proposal at its March 2, 2022 meeting. During that review, the Historic Commission found that there was no historical precedent in Ashland for three nearly identical, large buildings being constructed side by side in a historic district. The Historic Commission recognized that both the building designs and landscaping here were excellent, and that the high quality of the proposal helped to mitigate the large, identical buildings to a degree, however the Historic Commission ultimately determined that the initial designs were too repetitious, and that this repetition emphasized the significant difference in height and character relative to the residences on the other side of Helman Street. The Historic Commission specifically expressed concerns that in terms of the Historic District Development Standards, the height, scale and massing of the three buildings **(AMC 18.4.2.050.B.2-4)** as initially proposed along Helman Street for Buildings #1, #3 and #4 were out of scale with the one- to one-and-a-half-story historic residential buildings across Helman Street. The Historic Commission recommended that the designs be revisited to look at changing the height of the individual stories, noting that 11-foot ceiling heights seemed excessive where building height was at issue, and also recommended potentially reducing the number of stories on at least the two end buildings (Buildings #1 and #4). The Historic Commissioners explained that if the buildings on Helman were lower, the remaining buildings could cascade around the Van Ness corner as taller buildings there would be mitigated by the grade change and the fact that there was not a single-story, historic residential streetscape across Van Ness Avenue. The Historic Commission concluded their March recommendations noting that the designs would benefit from a greater variety of material treatment and finishes, and greater variations in height and/or number of stories to relieve the monotony as they present to the historic Helman Street streetscape.

At its April 6, 2022 meeting, the Historic Commission reviewed design revisions which had been provided in response to their March 2, 2022 comments. These revisions included stepping the center bay in the façade of Buildings 3 & 4 back three feet from the wall plane of the second floor and adding a shed roof to emphasize this step back; cutting back the roofline to reduce the massing of the overhang; changing some surface and material treatments including adding a brick base, using white and lighter materials to de-emphasize the third story, and using open wire or mesh railings where solid railings were previously proposed; and increasing the length of the pedestrian overhang on the ground floor to add shadow lines and emphasize the pedestrian scale of the building at the sidewalk. After reviewing these revisions, the Historic Commission found that while the incremental changes were effective in addressing some issues with regard to the building façades and pedestrian amenities, the revisions fell short in addressing the larger issues identified in the March meeting, which had to do with the height, scale, and massing of the buildings as they relate to the Historic District Design Standards **(AMC 18.4.2.050.B.2-B.4.)**

The Historic Commission noted that the three buildings facing Helman Street with heights near 40 feet and three stories would overwhelm the mostly single-story historic residences across the street, and that these proposed buildings failed to achieve an appropriate scale and façade compatibility to the adjacent historic streetscape. Additionally, the Historic Commission further noted that the zero setback to the sidewalk exacerbated the building mass and scale and would overwhelm the adjacent pedestrian traffic. The Historic Commission pointed out that by comparison, the Plaza Inn & Suites hotel on the same side of Helman Street, nearer to

downtown, has 15- to 20-foot setbacks and is only two-stories in height at the street. The Historic Commission concluded that while the building architecture and landscape design on this project were very attractive and high quality, the buildings were just not compatible with the scale of the historic district residences in the impact area, directly across Helman Street, and for these reasons, the Historic Commission noted that they could not support the application and recommended that it be denied by the Planning Commission.

In considering the proposal as it relates to the Historic District Development Standards and in light of the Historic Commission's recommendation, the Planning Commission found that the standard addressing "Transitional Areas" in AMC 18.4.2.050.B.1 was of particular importance here. This standard provides that:

For projects located at the boundary between zones or overlays, appropriate adjustments to building form, massing, height, scale, placement, or architectural and material treatment may be considered to address compatibility with the transitional area while not losing sight of the underlying standards or requirements applicable to the subject property.

In this instance, the subject properties are located at the boundary between E-1 (Employment) and R-3 (High Density Multi-Family Residential), and there is M-1 (Industrial), C-1 (Commercial), and R-2 (Low Density Multi-Family Residential) zoning a short distance away. Similarly, the property is at the outer edge of the Skidmore Academy historic district, with district boundary to the north, the Railroad Addition historic district immediately across Water Street, and the Downtown historic district a half-block to the south. The Planning Commission found that the subject properties were located within a transitional area, and that to address the transitional area standard, the building designs needed to incorporate appropriate adjustments to building form, massing, height, scale, placement, or architectural and material treatment to address compatibility with the transitional area which includes the existing historic residential block across Helman Street, while not losing sight of the underlying standards and requirements applicable to the subject properties which are zoned E-1 (Employment).

The Planning Commission noted that the applicant had provided a number of examples of more commercial scale buildings in the vicinity, many of which were historical buildings which were no longer standing, to demonstrate compatibility and the applicant also emphasized that the designs proposed were within the maximum allowances of the E-1 zone. The Planning Commission found that the transitional area standard was intended to address compatibility with the transitional area as it exists, rather than with historic buildings which are no longer standing. AMC 18.4.2.050 explains "... sensitivity to surrounding buildings and the existing land use patterns is essential to the successful development (AMC 18.4.2.050.A.1, emphasis added)" and "The City of Ashland has adopted ordinances to assure that all development in the Historic District overlay remains compatible with the existing integrity of the Historic District (AMC 18.4.2.050.A.2, emphasis added)." The drawings illustrating each design standard are described as applying to historic buildings "on and across the street (AMC 18.4.2.050.B.2)" or "in the immediate vicinity (AMC 18.4.2.050.B.3 & B.4)."

The Planning Commission further found that considerations of compatibility were not limited to a simple comparison of the allowances of the zoning district (i.e. the E-1 zone allowing a 40-foot height and 85 percent lot coverage where the R-3 zone allows a 35-foot height and 75 percent lot coverage does not mean that any building complying with the allowances of the E-1 zone is

automatically compatible with historic buildings in an immediately adjacent R-3 zone), but for transitional areas require “*appropriate adjustments to building form, massing, height, scale, placement, or architectural and material treatment*” which address compatibility with the immediate vicinity while still considering the allowances of the underlying zone.

The Planning Commission ultimately concurred with the Historic Commission in finding that the three very similarly designed three-story buildings facing Helman Street with heights of nearly 40 feet failed to achieve an appropriate scale and have heights and massing which, as designed, were not compatible with the adjacent historic streetscape. The Planning Commission noted that these issues were exacerbated by the buildings’ very similar architectural and material treatments. The Planning Commission found that here, measures such as setting the buildings back further and placing plaza space between the buildings and the sidewalk; providing a greater step back of the third-story from the second-story façade to better mitigate the height, mass and scale; providing greater variation in the architectural and material treatments; or placing lower buildings along Helman and taller buildings along Water and Van Ness could constitute “appropriate adjustments” to address compatibility with the transitional area by mitigating the buildings height, mass and scale, and could be accomplished without losing sight of the standards and requirements of the underlying E-1 zone. The Planning Commission further found that the designs as revised failed to address the recommendations provided in March; did not incorporate appropriate adjustments to building form, massing, height, scale, placement, or architectural and material treatment to address compatibility; and failed to satisfy the Historic Development Design Standards for height, scale and massing (AMC 18.4.2.050.B.2-B.4). The Planning Commission concluded that the application as presented had not sufficiently addressed the Historic District Development Standards, and as such could not be found to have fully satisfied the approval criteria for Site Design Review. The application was thus denied without prejudice, which allows the applicant to make a revised application for the same property immediately where they would otherwise be required to wait at least 12 months.

As provided in AMC 18.5.1.060.I.5.b., for appeals on the record “*the Council shall not re-examine issues of fact and shall limit its review to determining whether there is substantial evidence to support the findings of the Planning Commission, or to determining if errors in law were committed by the Commission. Review shall in any event be limited to those issues clearly and distinctly set forth in the notice of appeal.*” In this instance, the Planning Commission considered the application materials and information presented by the applicant during the hearings as well as testimony by neighbors and the recommendations of the Historic Commission. In their decision, the Planning Commission noted specific measures such as setting the buildings back further and placing plaza space between the buildings and the sidewalk; providing a greater step back of the third-story from the second-story façade to better mitigate the height, mass and scale; providing greater variation in the architectural and material treatments; or placing lower buildings along Helman and taller buildings along Water and Van Ness which the Commission indicated constituted “appropriate adjustments” to address compatibility with the transitional area by mitigating the buildings’ height, mass and scale, and which could be accomplished without losing sight of the standards and requirements of the underlying E-1 zone. In staff’s assessment there was ample evidence contained within the record to support the Planning Commission’s decision and staff recommends that the Council reject this fourth and final appeal issue and uphold the Planning Commission’s decision with regard to the application of the transitional area standard.

FISCAL IMPACTS

There are no direct fiscal impacts related to the land use appeal of the planning action for 165 Water Street, 160 Helman Street and 95 Van Ness Street.

STAFF RECOMMENDATION

Planning staff recommends that the Council affirm the decision of the Planning Commission to deny the application without prejudice, reject the appeal and direct staff to prepare findings for adoption by Council. Staff have discussed the project with the applicant and believe that there are acceptable design revisions which can be reached to resolve the issues. A denial without prejudice allows the applicant to redesign the project with amendments to better address compatibility with the transitional area here and reapply immediately.

ACTIONS, OPTIONS & POTENTIAL MOTIONS

Alternative actions:

- 1) I move to affirm the decision of the Planning Commission to deny the application without prejudice, reject the appeal and direct staff to prepare written findings for approval reflecting the original Planning Commission decision from May 10, 2022 for adoption by Council.
- 2) I move to reverse the decision of the Planning Commission and support the written appeal, and direct staff to prepare written findings for adoption by Council (*include specific direction as to where the original decision was found to be in error relative to the four identified appeal issues*).

**Please note that as a quasi-judicial land use application, this project is subject to the '120-Day Rule' under Oregon land use law and has been extended as far as allowed by law by the applicant. A final decision of the City is required by February 10, 2023 with findings to be adopted within 14-days thereafter, and as such remanding the decision back to the Planning Commission is not an option.*

REFERENCES & ATTACHMENTS

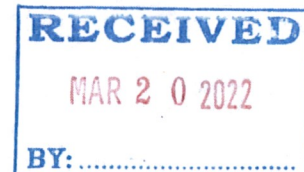
The full public record for the 165 Water Street application is posted on-line at:

<http://www.ashland.or.us/165Water>. This webpage includes a list of each of the meetings where the project was discussed with links to meeting packet materials, minutes and audio/video recordings of the meetings which are all included in the record for this appeal review.

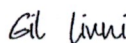
Links to select documents including the application submittal, the Planning Staff Reports, Planning Commission Findings, and the appeal request are provided below:

- [Application Submittal](#)
- [Planning Staff Report](#)
- [Planning Staff Report Addendum](#)
- [April 6, 2022 Historic Commission Meeting Recommendation](#)
- [Planning Commission Findings and Orders dated May 10, 2022](#)
- [Appeal Submittal](#)
- [Public Testimony Record](#)

Notice of Land Use Appeal (Ashland Municipal Code §18.5.1.060.I)		
A. Name(s) of Person Filing Appeal:		B. Address(es):
1. Gil Livni, Magnolia Investments		441 Talent Avenue, Unit 60 Talent OR 97540
2. Eric Bonetti		
Attach additional pages of names and addresses if other persons are joining the appeal.		
C. Planning Commission Decision Being Appealed		
Date of Decision: May 13, 2022	Planning Action #: PA-T2-2022-00037	Title of planning action: Six-lot commercial subdivision for phased mixed use development including Site Review for five of the total eight future buildings. Physical & Constraints review permit for Floodplain Development, Exception Hillside Design Standards to develop slopes that exceed 35 percent, and a Tree Removal Permit to remove 20 trees.
D. How Person(s) Filing Appeal Qualifies as a Party (For each person listed above in Box A, check the appropriate box below.)		
The person named in Box A.1. above qualifies as a party because:	☐ I am the applicant. ☐ I participated in the public hearing before the planning commission, either orally or in writing. ☐ I was entitled to receive notice of the action but did not receive notice due to error.	
The person named in Box A.2. above qualifies as a party because:	☐ I am the applicant. ☐ I participated in the public hearing before the planning commission, either orally or in writing. ☐ I was entitled to receive notice of the action but did not receive notice due to error.	
Attach additional pages if others have joined in the appeal and describe how each qualifies as a party.		
E. Specific Grounds for Appeal		



C:\ProgramData\activePDF\Temp\DocConverter\API\Input\28572c1f9170\$E131C4171D
2542AFA105184CA2FC1785.docx

DocuSigned by:

 59E24CF4D96A42E...

5/20/2022 | 3:18 PM PDT

1. The first specific ground for which the decision should be reversed or modified is (attach additional pages if necessary):

The staff report recommending denial of the application was not received seven days before the Historic Commission Hearing nor the Planning Commission Hearing.

This is an error because the applicable criteria or procedure in the Ashland Municipal Code 18.5.1.060.C.3.g. or other law in ORS 197.763 (3)(i)

Requires that a copy of the City's staff report and recommendation to the hearings body will be available for review at no cost at least seven days before the hearing.

2. The second specific ground for which the decision should be reversed or modified is (attach additional pages if necessary):

Ex Parte Contacts and Conflict of Interest. The public is entitled to an impartial hearing body as free from potential conflicts of interest and pre-hearing ex parte (outside the hearing) contacts as reasonably possible.

This is an error because the applicable criteria or procedure in the Ashland Municipal Code 18.5.1.060.D.2 requires that the hearing body be impartial and free from potential conflicts of interest and pre-hearing and outside of the hearing contacts. It is unclear what exactly occurred between the co-chair of the Historic Commission and a member of the public but there was a declaration of ex parte.

3. The third specific ground for which the decision should be reversed or modified is (attach additional pages if necessary):

Application of the Historic District Development Standards in Transitional Areas

Denial on this grounds is an error because the applicable criteria or procedure in the Ashland Municipal Code 18.4.2.050 requires that projects at the boundary between zones or overlays may have appropriate adjustments considered but the underlying zoning standards and requirements applicable to the subject property must be kept in sight.

4. (On attached pages, list other grounds, in a manner similar to the above, that exist. For each ground list the applicable criteria or procedures in the Ashland Municipal Code or other law that were violated.)



C:\ProgramData\activePDF\Temp\DocConverter\API\Input\28572c1f9170\$E131C4171D
2542AFA105184CA2FC1785.docx

DocuSigned by:

Gil Linni

59E24CF4D96A42E...

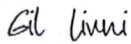
5/20/2022 | 3:18 PM PDT

Appeal Fee

With this notice of appeal we submit the sum of **\$325.00** which is the appeal fee required by §18.5.1.060.I of the Ashland Municipal Code.

Date: 5.20.2022

Signature(s) of person(s) filing appeal (attach additional pages if necessary):

DocuSigned by:

59E24CF4D96A42E...

5/20/2022 | 3:18 PM PDT

Note: This completed Notice of Land Use Appeal together with the appeal fee must be filed with the City Administrator, City Hall, 20 East Main Street, Ashland, OR 97520, telephone 541-488-6002, prior to the effective date of the decision sought to be reviewed. Effective dates of decisions are set forth in Ashland Municipal Code Section 18.5.1.060.



May 20, 2022

Notice of Land Use Appeal – Type II
Ashland Municipal Code 18.5.1.060.I.

I. Appeal of Type II Decision. The City Council may call up a Type II decision pursuant to section 18.5.1.060.J. A Type II decision may also be appealed to the Council as follows.

1. Who May Appeal. Appeals may only be filed by parties to the planning action.
"Parties" shall be defined as the following.

- a. The applicant.
Gil Livni, Magnolia Investments
441 Talent Avenue, Unit 60
Talent, OR 97540

2. Appeal Filing Procedure.

- a. Notice of Appeal. Any person with standing to appeal, as provided in subsection 18.5.1.060.I.1 above, may appeal a Type II decision by filing a notice of appeal and paying the appeal fee according to the procedures of this subsection.

A Notice of Appeal by a person with standing as noted in 18.5.1.060.I.1 above is appealing the decision of the Planning Commission by filing this notice of appeal and paying the appeal fee.

- b. Time for Filing. The notice of appeal shall be filed with the City Manager within ten days of the date the notice of decision is mailed.

This notice of appeal has been filed on May 20, 2022, with the City Manager within ten days of the date of the notice of decision was mailed, mailed May 13, 2022.

- c. Content of Notice of Appeal. The notice shall include the appellant's name, address, a reference to the decision sought to be reviewed, a statement as to how the appellant qualifies as a party, the date of the decision being appealed, and a clear and distinct identification of the specific grounds for which the decision should be reversed or modified, based on identified applicable criteria or procedural irregularity.

This notice includes the appellant's name, address. The appellant is the property owner and their agent. The decision sought to be reviewed is PA2022-00037. A request for a six-lot commercial subdivision to accommodate a phased mixed-use development for the three properties at 95 Van Ness Street, 165 Water Street and 160 Helman Street. The applicant's Phase I requests Site Design Review approval for five mixed-use commercial buildings with ground floor commercial spaces and two residential units above in each building, as well as associated surface parking, utility infrastructure and street improvements. The three remaining lots would have initial site work

DocuSigned by:

Gil Livni

59E24CF4D96A42E...

5/20/2022 | 3:17 PM PDT



completed with Phase I, but building construction would occur only after Site Design Review approvals in a future Phase II. The application also includes a request for a Physical & Environmental Constraints Review Permit because the proposal includes development on severe constraints lands with slopes greater than 35 percent and on floodplain corridor lands; a request for an Exception to the Development Standards for Hillside Lands; a request for a Tree Removal Permit to remove 20 trees on the three properties and within the adjacent rights-of-way; and a request for an Exception to Street Standards to allow parking bays with street trees in bump-outs along Van Ness Avenue rather than standard park-row planting strips.

The first specific ground for which the decision should be reversed or modified is:
AMC 18.5.1.060.D. - Conduct of Hearing.

New information was presented by staff during the hearing that had never been discussed previously with the applicant, the project team or during the previous hearing. The project team believes this new information regarding the Transit Triangle standards created confusion and obscures the relevant criteria Site Design and Use Standards and Historic District Design Standards through the introduction of irrelevant municipal code sections.

The second specific ground for appeal:

AMC 18.5.1.060.D.2. 2. - Ex Parte Contacts and Conflict of Interest. The public is entitled to an impartial hearing body as free from potential conflicts of interest and pre-hearing ex parte (outside the hearing) contacts as reasonably possible.

One of the co-chairs of the Historic Commission had communications with a member of the public outside of the hearing process. Though unclear to the applicant team during the Historic Commission meeting of 4.6.2022 what the substance of the ex parte comments were, the process is flawed when it is clear that conversation(s) occurred outside of the hearing. This interaction taints the integrity of the hearing process.

The third specific ground for appeal:

AMC 18.5.2.050. B. Overlay Development Standards

AMC 18.4.2.050 - Historic District Development

AMC 18.4.2.050.B. 1. Transitional Areas. For projects located at the boundary between zones or overlays, appropriate adjustments to building form, massing, height, scale, placement, or architectural and material treatment may be considered to address compatibility with the transitional area while not losing sight of the underlying standards or requirements applicable to the subject property.

Sincerely,

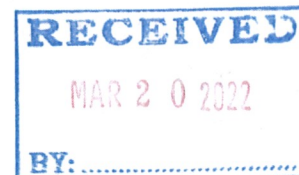
DocuSigned by:

Gil Livni

59E24CF4D98A42E...

Gil Livni, Magnolia Investment, LLC

5/20/2022 | 3:17 PM PDT



May 20, 2022

Notice of Land Use Appeal – Type II
Ashland Municipal Code 18.5.1.060.I.

I. Appeal of Type II Decision. The City Council may call up a Type II decision pursuant to section 18.5.1.060.J. A Type II decision may also be appealed to the Council as follows.

1. Who May Appeal. Appeals may only be filed by parties to the planning action. "Parties" shall be defined as the following.

- a. The applicant.
Gil Livni, Magnolia Investments
441 Talent Avenue, Unit 60
Talent, OR 97540

2. Appeal Filing Procedure.

- a. Notice of Appeal. Any person with standing to appeal, as provided in subsection 18.5.1.060.I.1 above, may appeal a Type II decision by filing a notice of appeal and paying the appeal fee according to the procedures of this subsection.

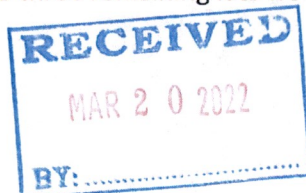
A Notice of Appeal by a person with standing as noted in 18.5.1.060.I.1 above is appealing the decision of the Planning Commission by filing this notice of appeal and paying the appeal fee.

- b. Time for Filing. The notice of appeal shall be filed with the City Manager within ten days of the date the notice of decision is mailed.

This notice of appeal has been filed on May 20, 2022, with the City Manager within ten days of the date of the notice of decision was mailed, mailed May 13, 2022.

- c. Content of Notice of Appeal. The notice shall include the appellant's name, address, a reference to the decision sought to be reviewed, a statement as to how the appellant qualifies as a party, the date of the decision being appealed, and a clear and distinct identification of the specific grounds for which the decision should be reversed or modified, based on identified applicable criteria or procedural irregularity.

This notice includes the appellant's name, address. The appellant is the property owner and their agent. The decision sought to be reviewed is PA2022-00037. A request for a six-lot commercial subdivision to accommodate a phased mixed-use development for the three properties at 95 Van Ness Street, 165 Water Street and 160 Helman Street. The applicant's Phase I requests Site Design Review approval for five mixed-use commercial buildings with ground floor commercial spaces and two residential units above in each building, as well as associated surface parking, utility infrastructure and street improvements. The three remaining lots would have initial site work



DocuSigned by:
Gil Livni
59E24CF4D96A42E...

5/20/2022 | 3:20 PM

completed with Phase I, but building construction would occur only after Site Design Review approvals in a future Phase II. The application also includes a request for a Physical & Environmental Constraints Review Permit because the proposal includes development on severe constraints lands with slopes greater than 35 percent and on floodplain corridor lands; a request for an Exception to the Development Standards for Hillside Lands; a request for a Tree Removal Permit to remove 20 trees on the three properties and within the adjacent rights-of-way; and a request for an Exception to Street Standards to allow parking bays with street trees in bump-outs along Van Ness Avenue rather than standard park-row planting strips.

The first specific ground for which the decision should be reversed or modified is:
AMC 18.5.1.060.D. - Conduct of Hearing.

New information was presented by staff during the hearing that had never been discussed previously with the applicant, the project team or during the previous hearing. The project team believes this new information regarding the Transit Triangle standards created confusion and obscures the relevant criteria Site Design and Use Standards and Historic District Design Standards through the introduction of irrelevant municipal code sections.

The second specific ground for appeal:

AMC 18.5.1.060.D.2. 2. - Ex Parte Contacts and Conflict of Interest. The public is entitled to an impartial hearing body as free from potential conflicts of interest and pre-hearing ex parte (outside the hearing) contacts as reasonably possible.

One of the co-chairs of the Historic Commission had communications with a member of the public outside of the hearing process. Though unclear to the applicant team during the Historic Commission meeting of 4.6.2022 what the substance of the ex parte comments were, the process is flawed when it is clear that conversation(s) occurred outside of the hearing. This interaction taints the integrity of the hearing process.

The third specific ground for appeal:

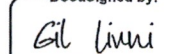
AMC 18.5.2.050. B. Overlay Development Standards

AMC 18.4.2.050 - Historic District Development

AMC 18.4.2.050.B. 1. Transitional Areas. For projects located at the boundary between zones or overlays, appropriate adjustments to building form, massing, height, scale, placement, or architectural and material treatment may be considered to address compatibility with the transitional area while not losing sight of the underlying standards or requirements applicable to the subject property.

Sincerely,

DocuSigned by:



GIL LIVNI, Magnolia Investment, LLC

5/20/2022 | 3:20 PM PDT



Council Business Meeting

January 3, 2023

Agenda Item	First Reading of Ordinance 3217 - Middle Housing Land Division Ordinance	
From	Brandon Goldman Derek Severson	Interim Director of Community Development Senior Planner
Contact	Brandon.goldman@ashland.or.us Derek.severson@ashland.or.us	(541) 552-2076 (541) 552-2040

SUMMARY

The proposed ordinance would amend the Ashland Land Use Ordinance to implement the requirements of Oregon Senate Bill 458 by adding section 18.5.1.075 “Middle Housing Land Divisions” and section 18.5.3.140 “Middle Housing Land Divisions.” Senate Bill 458 became effective on June 30, 2022, and under the Senate Bill cities are required implement directly from the bill until local code modifications are put in place.

POLICIES, PLANS & GOALS SUPPORTED

Comprehensive Plan, Housing Element (6.10.01.1 & .3, and 6.10.02)
Climate Energy Action Plan (CEAP ULT-4-2)
City Council Biennial Goals 2019-2021

PREVIOUS COUNCIL ACTION

House Bill 2001 took effect on August 8, 2019 and required cities of Ashland’s size to allow duplexes on residentially-zoned lots that allow development of detached single-family dwellings, and to have approval processes and standards for duplexes that are no more restrictive than those applied to detached single-family dwellings.

The Council adopted these required code changes as Ordinance #3199 on June 15, 2021. With these code changes adopted in response to House Bill 2001, duplexes are defined as two units on one lot in any configuration, two off-street parking spaces are required, and the required parking cannot be addressed through on-street parking credits. Duplexes satisfying these requirements are approved with a building permit and do not require a separate land use action.

BACKGROUND AND ADDITIONAL INFORMATION

Oregon Senate Bill 458 provides a process for lot divisions to allow home ownership opportunities for middle housing units built under the middle housing allowances of House Bill 2001 which for cities of Ashland’s size were limited to duplexes. Senate Bill 458 does not apply to accessory residential units, and the ordinance here is limited to duplexes.

A Middle Housing Land Division (MHL D) allows a lot with a duplex in place or proposed to be split so that there would be one duplex unit per lot, except that common areas may be located on a separate lot or a shared tract. Separate utilities are required for each unit, and easements are required to be provided for pedestrian access; any common areas; driveways and parking areas, if shared; and utilities. An MHL D proposal must demonstrate that it meets the requirements of the Oregon Residential Specialty Code. For example, if an attached duplex is being divided, there must be firewall construction between the two units. In a typical land division, the land division is approved, infrastructure installed and plat signed prior to building permits being

reviewed and issued for construction. A Middle Housing Land Division may occur prior to submission of an application for building permits, after a middle housing development is approved for development, or after it is constructed. Senate Bill 458 gives cities the option of allowing concurrent review of building permits and the land division, but in any case, Middle Housing Land Division applications must include a middle housing development (*either proposed or already built*) that complies with the building code and the City's middle housing development code.

Under Senate Bill 458, cities may require the submittal of tentative & final plats for approval, review for Oregon Residential Specialty Code compliance, and require right-of-way dedications and city-standard street frontage improvements. Cities may not apply *any* approval criteria other than the approval criteria specified in Senate Bill 458 to applications for an MHL D — i.e. the allowable criteria include the City's standards for middle housing development, separate utilities, easements, one dwelling on each lot, and building code compliance.

Senate Bill 458 provides for these Middle Housing Land Divisions to be processed through the Expedited Land Divisions (ELD) procedure established in the Oregon Revised Statutes. Expedited Land Divisions are not considered to be land use actions and as such cannot be appealed to the Planning Commission. Instead, an initial administrative decision by the Staff Advisor (Community Development Director or their designee) could be appealed to a referee/hearings officer, and would not be subject to appeal to the Oregon Land Use Board of Appeals (LUBA).

The Planning Commission has previously discussed these code amendments in response to Senate Bill 458 at two public meetings on May 10, 2022 and June 14, 2022, and conducted a public hearing on November 22, 2022. The Planning Commission recommended approval of the attached ordinance.

FISCAL IMPACTS

The Senate Bill requires appeals to be handled by a referee or hearings officer who cannot be a city staff person or member of the Planning Commission. As such, the city will need to keep a hearings officer on retainer. The actual per appeal cost of a hearing officer will not be known until the City solicits for this support but a cost of approximately \$150-\$200 per hour is normal for the region. Assuming hearing plus document preparation time will be between 4-5 hours, a hearing may cost the city between \$600-\$1000. Community Development staff believes that the number of applications under the Senate Bill is likely be limited, and that there will be few appeals, because approval equates to the division of units that are already built or which could be built without notice to neighbors, independent of the approval of the middle housing land division. Staff estimate the City would not exceed three (3) appeals in FY 2023-2024 for an estimated annual hearing expense of \$1,800-\$3,000 for the hearing officer costs.

The hearings officer will assess costs of the appeal, up to a maximum of \$500, against appellants who do not materially improve their position through the appeal hearing, and the city will be responsible for remaining costs of each hearing. Appeal application fees will be established based on hearing officer and corresponding administration support costs. The application fees will be reviewed annually.

STAFF RECOMMENDATION

Staff concurs with the Planning Commission and recommends that the Council approve the proposed ordinance.

ACTIONS, OPTIONS & POTENTIAL MOTIONS

The Council can choose to conduct the first reading and to approve the proposed ordinance as recommended by the Planning Commission or with modifications and move the ordinance to second reading, or choose not to adopt the ordinance. However, Senate Bill requires the city to implement directly from the bill until local code modifications are in place. Adopting the proposed City ordinance will enable a smoother implementation for Ashland citizens and City staff of SB 458's requirements. The Council will also need to adopt written findings formalizing tonight's decision. Recommended motion:

- ☐ I move approval of first reading of Ordinance 3217 and scheduling of its second reading and adoption of written findings for January 17, 2023.

REFERENCES & ATTACHMENTS

Attachment 1: Draft Ordinance 3217- An Ordinance Amending The Ashland Land Use Ordinance to Implement The Requirements of Oregon Senate Bill 458 By Adding Section 18.5.1.075 "Middle Housing Land Divisions" And Section 18.5.3.140 "Middle Housing Land Divisions."

Attachment 2: November 22, 2022 Planning Commission minutes

Attachment 3: Staff Report to the Planning Commission

Attachment 4: Senate Bill 458

1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0

2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0

7
8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0

8
9
0
1
2
3
4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0

4
5
6
7
8
9
0
1
2
3
4
5
6
7
8
9
0

9
0
1
2
3
4
5
6
7
8
9
0

1 **WHEREAS**, the City of Ashland Planning Commission considered the above-referenced
2 recommended amendments to the Ashland Land Use Ordinance at a duly advertised public
3 hearings on November 22, 2022, and following deliberations, unanimously recommended
4 approval of the amendments; and

5
6 **WHEREAS**, the City Council of the City of Ashland conducted a duly advertised public hearing
7 on the above-referenced amendments on January 3, 2023; and

8
9 **WHEREAS**, the City Council of the City of Ashland, following the close of the public hearing
10 and record, deliberated and conducted first and second readings approving adoption of the
11 Ordinance in accordance with Article 10 of the Ashland City Charter; and

12
13 **WHEREAS**, the City Council of the City of Ashland has determined that in order to meet the
14 requirements of state law and protect and benefit the health, safety and welfare of existing and
15 future residents of the City, it is necessary to amend the Ashland Land Use Ordinance in the
16 manner proposed, that an adequate factual base exists for the amendments, the amendments are
17 consistent with the Ashland Comprehensive Plan and that such amendments are fully supported
18 by the record of this proceeding.

19
20 **THE PEOPLE OF THE CITY OF ASHLAND DO ORDAIN AS FOLLOWS:**

21 **SECTION 1.** Ashland Municipal Code Title 18 Land Use is hereby amended as follows.

22
23 **SECTION 2.** Section 18.5.1.0750 [Middle Housing Land Divisions] is hereby added to the
24 Ashland Land Use Ordinance to read as follows:

25
26 **Section 18.5.1.075 Middle Housing Land Divisions (MHL D)**

27 Middle Housing Land Division decisions are made by the Staff Advisor using the Expedited
28 Land Division procedure detailed below. Middle Housing Land Divisions may be appealed to a
29 referee/hearings officer. Middle Housing Land Divisions are not a land use or limited land use
30 decision.

A. **Procedural Handling.** Unless the applicant requests to use the land partition procedures in
ALUO 18.5.3.030, Middle Housing Land Divisions shall be processed under the Expedited
Land Divisions procedure from ORS 197.360 to 197.380 as detailed below:

1. **Pre-Application Conference.** A pre-application conference is voluntary for a Middle Housing Land Division.
2. **Application Requirements.** Applications for development permits shall be submitted upon forms established by the Staff Advisor. Applications will not be accepted in partial submittals, and all of the following items must be submitted to initiate completeness review:
 - a. Application Form and Fee. Applications for Middle Housing Land Divisions shall be made on forms provided by the Staff Advisor. One or more property owners of the property for which the planning action is requested, and their authorized agent, as applicable, must sign the application. The application shall not be considered complete unless the appropriate application fee accompanies it.
 - b. Submittal Information. The application shall include all of the following information.
 - i. The information requested on the application form.
 - ii. Drawings and supplementary materials for Preliminary Plat as required in ALUO 18.5.3.040.B.
 - iii. A narrative explanation of how the application satisfies each and all of the relevant criteria and standards in ALUO 18.5.3.140.C.1.
 - iv. Additional materials necessary to demonstrate compliance with the Oregon residential specialty code.
 - v. Information demonstrating compliance with all prior approvals and conditions of approval for the parent lot or parcel, as applicable.
3. **Completeness review.** The Staff Advisor shall review the application submittal and advise the applicant in writing whether the application is complete or incomplete within twenty-one (21) calendar days after the city receives the application submittal.
 - a. Incompleteness shall be based solely on failure to pay required fees, failure of the applicant's narrative to address the relevant criteria or development standards, or failure to supply the required submittal information and shall not be based on differences of opinion as to the quality or accuracy of the information provided. Determination that an application is complete indicates only that the application contains the information necessary for a qualitative review of compliance with the applicable criteria and standards.
 - b. If the application was complete when first submitted or the applicant submits the additional information within 180 days of the date the application was first submitted, approval or denial of the application shall be based upon the applicable criteria and standards that were in effect at the time the application was first submitted.
 - c. If an application is incomplete, the completeness notice shall list what information is missing and allow the applicant to submit the missing information. The completeness notice shall include a form, designed to be returned to the Staff Advisor by the applicant, indicating whether or not the applicant intends to amend or supplement the application. For purposes of computation of time under this section, the application shall be deemed complete on the date the applicant submits the requested information or refuses in writing to submit it.
4. **Notification.**

- 1 a. Mailing of Notice of Complete Application. The Staff Advisor shall provide written
2 notice of the receipt of the completed application for a Middle Housing Land division
3 to:
- 4 i. The applicant and/or authorized representative.
 - 5 ii. The owner(s) of record of the subject property.
 - 6 iii. Neighborhood group(s) or community organization(s) officially recognized by the
7 City whose boundaries include or are within one hundred (100) feet of the subject
8 property.
 - 9 iv. Owners of record for properties located within one hundred (100) feet of the
10 perimeter of the subject property.
 - 11 v. Affected city departments, governmental agencies or special districts responsible
12 for providing public facilities or services which is entitled to notice under an
13 intergovernmental agreement with the City which includes provision for such
14 notice or is otherwise entitled to such notice.
- 15 b. Content of Notice of Complete Application. The notice of the receipt of the
16 completed application shall include all of the following:
- 17 i. The street address or other easily understood geographical reference to the
18 subject property.
 - 19 ii. A summary of the proposal.
 - 20 iii. The time and place where copies of all evidence submitted by the applicant will
21 be available for review.
 - 22 iv. The applicable criteria for the decision, listed by commonly used citation.
 - 23 v. The name and telephone number of a local government contact person.
 - 24 vi. A brief summary of the local decision-making process for the Middle Housing
25 Land Division.
 - 26 vii. A statement that issues that may provide the basis for an appeal to the hearings
27 officer must be raised in writing prior to the expiration of the comment period;
 - 28 viii. A statement that issues must be raised with sufficient specificity to enable the
29 local government to respond to the issue.
 - 30 ix. The place, date and time that comments are due.
- 31 c. Certification of Notices. The City shall prepare an affidavit or other certification
stating the date(s) the notices were mailed and posted, which shall be made a part of
the file.
- 32 d. Comment Period. After notification according to the procedure set out above, the
Staff Advisor shall provide a 14-day period for submission of written comments prior
to the decision.
- 33 5. **Decision:** The Staff Advisor shall make a decision to approve or deny the application
within 63 days of receiving a completed application, based on whether the application
satisfies the substantive requirements of ALUO 18.5.3.140.C.
- 34 a. Approval may include conditions to ensure that the application complies with the
applicable criteria and standards for Middle Housing Land Divisions.
 - 35 b. For Middle Housing Land Divisions, the Staff Advisor:
 - 36 i. Shall not hold a hearing on the application; and

- 1 ii. Shall issue a written determination of compliance or noncompliance with
2 applicable criteria and standards for Middle Housing Land Divisions that
3 includes a summary statement explaining the determination.
- 4 c. The decision shall include a statement of the facts the Staff Advisor relied upon to
5 determine whether the application satisfied or failed to satisfy each applicable
6 approval criteria.
- 7 d. Notice of the decision shall be provided to the applicant and to those who received
8 notice under subsection (4) of this section within sixty-three (63) days of the date of a
9 completed application. The notice of decision shall include:
- 10 i. The summary statement described in (5)(b) of this subsection; and
11 ii. An explanation of appeal rights under ORS 197.375 ('Appeal of decision
12 on application for expedited land division').
- 13 6. **Appeals:** An appeal of the Staff Advisor's decision made under this section shall be
14 made as follows:
- 15 a. An appeal must be filed within fourteen (14) days of mailing of the notice of the
16 decision and be accompanied by a \$300 deposit toward the cost of an appeal
17 hearing. This deposit shall be refunded if the appellant materially improves his or her
18 position from the Staff Advisor's decision. The referee shall assess the cost of the
19 appeal in excess of the deposit for costs, up to a maximum of \$500, against an
20 appellant who does not materially improve his or her position from the decision of the
21 Staff Advisor.
- 22 b. A decision may be appealed by:
- 23 i. The applicant.
- 24 ii. Any person or organization who filed written comments within the 14-day
25 comment period.
- 26 c. An appeal shall be based solely on allegations:
- 27 i. Of violation of the substantive provisions of the applicable criteria and standards;
- 28 ii. Of the unconstitutionality of the decision;
- 29 iii. That the application is not eligible for review as a Middle Housing Land Division
30 under ALUO 18.5.3.140 or as an Expedited Land Division under ORS 197.360 to
 197.380 and should instead be reviewed as a land use decision or limited land
 use decision; or
- iv. That the parties' substantive rights have been substantially prejudiced by an error
 in procedure.
- d. The City of Ashland's hearings officer is designated as the referee for appeals of a
 decision made under this section and ORS 197.360 and 197.365.
- e. Within seven days of receiving the appeal, the City, on behalf of the hearings officer,
 shall notify the applicant, the appellant if other than the applicant, any person or
 organization entitled to notice under ALUO 18.5.1.075.D.4.a that provided written
 comments to the local government and all providers of public facilities and services
 entitled to notice under ALUO 18.5.1.075.D.4.a and advise them of the manner in
 which they may participate in the appeal. A person or organization that provided
 written comments to the local government but did not file an appeal under subsection

(6) of this section may participate only with respect to the issues raised in the written comments submitted by that person or organization. The hearings officer may use any procedure for decision-making consistent with the interests of the parties to ensure a fair opportunity to present information and argument. The hearings officer shall provide the local government an opportunity to explain its decision but is not limited to reviewing the local government decision and may consider information not presented to the local government.

- f. The hearings officer shall apply the substantive requirements of ALUO 18.5.3.140.C and ORS 197.360. If the hearings officer determines that the application does not qualify as an Expedited Land Division under ORS 197.360 or a Middle Housing Land Division under ALUO 18.5.3.140, the hearings officer shall remand the application for consideration as a land use decision or limited land use decision. In all other cases, the hearings officer shall seek to identify means by which the application can satisfy the applicable requirements.
- g. The hearings officer shall not reduce the density of the land division application.
- h. The hearings officer shall make a written decision approving or denying the application or approving it with conditions designed to ensure that the application satisfies the applicable criteria and standards, within 42 days of the filing of an appeal. The hearings officer shall not remand the application to the local government for any reason other than as set forth in this subsection.
- i. Unless the City Council finds exigent circumstances, a hearings officer who fails to issue a written decision within 42 days of the filing of an appeal shall receive no compensation for service as hearings officer in the appeal.
- j. Notwithstanding any other provision of law, the hearings officer shall order the local government to refund the deposit for costs to an appellant who materially improves his or her position from the decision of the local government. The hearings officer shall assess the cost of the appeal, up to a maximum of \$500, against an appellant who does not materially improve his or her position from the decision of the local government. The local government shall pay the portion of the costs of the appeal not assessed against the appellant. The costs of the appeal include the compensation paid the hearings officer and costs incurred by the local government, but not the costs of other parties.
- k. The Land Use Board of Appeals (LUBA) does not have jurisdiction to consider any decisions, aspects of decisions or actions made for Middle Housing Land Divisions under ALUO 18.5.3.140 or Expedited Land Divisions under ORS 197.360 to 197.380.
- l. Any party to a proceeding before a hearings officer under this section may seek judicial review of the hearings officer's decision in the manner provided for review of final orders of the Land Use Board of Appeals (LUBA) under ORS 197.850 and 197.855. The Court of Appeals shall review decisions of the hearings officer in the same manner as provided for review of final orders of the Land Use Board of Appeals (LUBA) in those statutes. However, notwithstanding ORS 197.850(9) or any other provision of law, the court shall reverse or remand the decision only if the court finds:
 - i. That the decision does not concern Middle Housing Land Divisions under ALUO 18.5.3.140 or Expedited Land Divisions under ORS 197.360 and the appellant raised this issue in proceedings before the hearings officer;
 - ii. That there is a basis to vacate the decision as described in ORS 36.705(1)(a) to (d), or a basis for modification or correction of an award as described in ORS 36.710; or

- 1 iii. That the decision is unconstitutional.

2
3 **SECTION 3.** Section 18.5.3.140 [Middle Housing Land Divisions] is hereby added to the
4 Ashland Land Use Ordinance to read as follows:

5 **Section 18.5.3.140 Middle Housing Land Divisions (MHL D)**

6 A. **Purpose.** The Middle Housing Land Divisions (MHL D) process seeks to provide home
7 ownership opportunities by allowing lots with middle housing to be divided so that each
8 middle housing dwelling unit is on its own lot. As used in this section, a "Middle Housing
9 Land Division" is the division of a lot or parcel on which the development of middle housing
10 has been is allowed under ORS 197.758(3). For cities with populations of between 10,000
11 and 25,000 such as Ashland, the middle housing types allowed under ORS 197.758(3) is
limited to duplexes. A Middle Housing Land Division includes both a preliminary plat
approval and a final plat and is not considered a land use decision or a limited land use
decision under ORS 197.015.

12 **B. Applicability and General Requirements.**

- 13 1. Lots in residential zones including R-1, R-1-3.5, RR, WR, R-2, R-3, NN, and NM zones
14 containing duplexes permitted on or after July 1, 2022 may be divided using the Middle
15 Housing Land Divisions process outlined in this section.
16 2. The Middle Housing Land Divisions process in ALUO 18.5.3.140 shall be used unless
the applicant requests to use the standard partition procedures in ALUO 18.5.3.030.
17 3. The Middle Housing Land Divisions process in ALUO 18.5.3.140 may not be used to
create separate lots for Accessory Residential Units.

18 **C. Middle Housing Land Divisions Preliminary Plat Approval Process**

- 19 1. **Approval Criteria.** The Staff Advisor shall approve a Middle Housing Land Division
20 preliminary plat upon finding:
21 a. The parent parcel is developed with middle housing allowed under ORS 197.758(3)
22 or the application for a Middle Housing Land Division is being made concurrently with
a building permit application for construction of middle housing under ORS
23 197.758(3) on the parcel.
24 b. Each resulting middle housing lot or parcel shall contain no more than one middle
housing dwelling unit except for lots, parcels, or tracts proposed as common area.
25 c. Accessory Residential Units (ARU) are not permitted on middle housing lots or
parcels created under this section.
26 d. Each lot is served with its own separate utilities.
27 e. All easements necessary for each middle housing dwelling unit shall be identified on
the plat. Easements shall be provided to ensure:
28 i. Provision of and access for maintenance and replacement of all utilities;
29 ii. Pedestrian access from each dwelling unit to a public or private street;
30 iii. All dedicated driveways, parking, common use areas or shared building elements
and dedicated common areas can be accessed and used.
f. Evidence submitted by the applicant demonstrates how buildings or structures on the
resulting lots or parcels will comply with applicable building codes provisions relating

1 to new property lines and, notwithstanding the creation of new lots or parcels, how
2 structures or buildings located on the newly created lots or parcels will comply with
3 the Oregon Residential Specialty Code.

- 4 2. The Staff Advisor shall apply additional conditions to the approval of a tentative plat for a
5 Middle Housing Land Division to:
- 6 a. Prohibit the further division of the resulting middle housing lots or parcels.
 - 7 b. Require that a notation appear on the final plat indicating that approval was given
8 under ALUO 18.5.3.140 Middle Housing Land Divisions.
- 9 3. The type of middle housing developed on the original parent parcel is not altered by a
10 Middle Housing Land Division. The newly created middle housing lots are created within
11 a legal parent lot solely for the purpose of providing ownership opportunities, and these
12 new middle housing lots are not granted additional development rights and must be
13 maintained to meet the criteria applicable to the "parent lot" (height, lot coverage, open
14 space, etc.). A duplex divided into two middle housing lots is still considered part of the
15 original duplex and subject to all conditions of the original duplex approval.
- 16 4. Where the parent lot or parcel abuts a public street and dedication or frontage
17 improvements consistent with ALUO 18.4.6.040.F were not provided when the lot or
18 parcel was created, necessary right-of-way and street frontage improvements shall be
19 provided to meet the Street Design Standards.
- 20 5. The access and minimum street frontage standards in ALUO 18.2.4.010 shall not apply
21 to Middle Housing Land Divisions.
- 22 6. There shall be no minimum area or dimensional requirements for lots resulting from a
23 MHL.
- 24 7. The Staff Advisor shall not require a final plat before building permits are issued.

25
26
27
28
29
30
D. Middle Housing Land Divisions Final Plat

- 1 The final plat shall comply with the Middle Housing Land Division preliminary plat
2 conditions of approval.
- 3 2. The following data requirements, if applicable, shall also be shown on the final plat.
- 4 a. All tracts of land intended to be deeded or dedicated for public use;
 - 5 b. Street names as approved by the Public Works Director in accordance with the
6 'Criteria for Naming or Renaming a Street' in AMC 13.24.010.
 - 7 c. Any non-access strips.
 - 8 d. A notation indicating that approval was given under ALUO 18.5.3.140 Middle
9 Housing Land Divisions.
- 10 3. **Approval Criteria.** The Staff Advisor shall approve or deny the final plat for the Middle
11 housing land division based upon the following criteria:
- 12 a. All conditions of the Middle Housing Land Division preliminary plat approval have
13 been satisfied and the final plat substantially conforms to the approved Middle
14 Housing Land Division preliminary plat approval.
 - 15 b. Approved construction drawings for required public improvements have been
16 provided, including grading and drainage plans as applicable, and the applicant has

- 1 provided verification by the City that electric, water and sanitary sewer services are
2 available to every lot depicted on the plat.
- 3 c. An approved security instrument is provided to guarantee completion of any required
4 public improvements that have not been completed and accepted by the City.
- 5 d. The plat contains a dedication to the public of all required public improvements,
6 including but not limited to public streets and any public utility easements, and all
7 required streets, accessways, easements, and other dedications or reservations are
8 shown on the plat.
- 9 e. The applicant has furnished acceptable copies of any applicable Covenants,
10 Conditions and Restrictions (CC&R's), easements, maintenance agreements (e.g.,
11 landscaping, utilities, tree preservation, common areas, access, parking, etc.), and
12 other documents pertaining to common improvements recorded and referenced on
13 the plat.
- 14 f. The format of the plat shall conform to ORS 92, and shall incorporate the preliminary
plat information in ALUO 18.5.3.040.B.
- 15 g. The plat contains an affidavit by the surveyor who surveyed the land, represented on
the plat to the effect the land was correctly surveyed and marked with proper
monuments as provided by ORS 92, indicating the initial point of the survey, and
giving the dimensions and kind of such monument and its reference to some corner
approved by the Jackson County Surveyor for purposes of identifying its location.
- 16 h. A copy of any deed restrictions applicable to the partition or subdivision or the title
report.

15 E. Filing and Records

- 16 1. **Recordation.** Following review and the Staff Advisor's approval of a Middle Housing
17 Land Division Final Plat, the applicant shall take the following actions:
- 18 a. Obtain the approval signature on the Middle Housing Land Division final plat by the
19 Jackson County Surveyor certifying that the final plat complies with all applicable
20 survey laws. Before certifying, the County Surveyor may make any necessary field
21 investigations to verify that the plat survey is sufficiently accurate. If the County
22 Surveyor determines that the plat does not comply, the applicant shall make
corrections. When the County Surveyor determines that the plat conforms, the
County Surveyor shall sign and date the final plat.
- 23 b. A Notice of Middle Housing Land Division for each middle housing lot shall be
recorded with the County Recorder that states:
- 24 i. The middle housing lot may not be further divided.
- 25 ii. No more than one unit of middle housing may be developed on each
middle housing lot.
- 26 iii. The dwelling developed on the middle housing lot is a unit of middle
27 housing and is not a single attached or detached dwelling, or any other
housing type.
- 28 c. File a statement of water right and, if a water right is appurtenant, a copy of the
29 acknowledgment from the Water Resources Department.
- 30 d. Deliver the approved final plat and accompanying documents to the County
Recorder for recording.
- e. Return a copy of the recorded final plat and Notices of Middle Housing Land Division
to the City for filing.

1 F. **Expiration and Extensions.** The final plat for a Middle Housing Land Division shall be
2 approved within three years of the approval of the preliminary plat, except when extension of
3 the preliminary plat approval is granted pursuant to ALUO 18.1.6.040

4
5 The foregoing ordinance was first read by title only in accordance with Article X, Section
6 2(C) of the City Charter on the ____ day of _____, 2023, and duly PASSED and
7 ADOPTED this ____ day of _____, 2023.
8

9 ATTEST:
10
11
12
13

14 _____
Melissa Huhtala, City Recorder

15 SIGNED and APPROVED this ____ day of _____, 2023.
16
17

18 _____
19 Julie Akins, Mayor

20 Reviewed as to form:
21
22
23

24 _____
Douglas M. McGeary, Acting City Attorney
25
26
27
28
29
30

ORDINANCE NO. ____

**CITY OF
ASHLAND**
ASHLAND PLANNING COMMISSION
REGULAR MEETING
Minutes
November 22, 2022

I. CALL TO ORDER: 7:00 PM

Chair Haywood Norton called the meeting to order at 7:00 p.m. in the Civic Center Council Chambers, 1175 East Main Street.

Commissioners Present:

Michael Dawkins
Haywood Norton
Lynn Thompson
Eric Herron
Doug Knauer

Staff Present:

Brandon Goldman, Acting Community Development Director
Derek Severson, Senior Planner
Aaron Anderson, Senior Planner
Michael Sullivan, Executive Assistant

Absent Members:

Kerry KenCairn
Lisa Verner

Council Liaison:

Paula Hyatt

II. ANNOUNCEMENTS

Acting Community Development Director Brandon Goldman made the following announcements:

- The November 15, 2022 City Council meeting was cancelled. The discussion regarding PA-T3-2022,00004, the annexation of 1511 Highway 99 N, was rescheduled for December 6, 2022.
- The Planning Commission annual update to Council, and the first reading of PA-L-2021-00013 regarding housing in E-1 and C-1 zones, have both been rescheduled for January 3, 2023.
- An appeal of the Commission's decision to deny PA-T2-2022-00159, 165 Water Street will be heard by the Council on January 17, 2023. The applicant submitted the appeal on May 20, 2022, but subsequently requested a postponement. The Council is required to render a decision by February 10, 2023. Commissioner Thompson asked who would be representing the Commission during the appeal process. Senior Planner Derek Severson responded that it will be incumbent on the appellant to successfully contest the Commission's decision to deny the project, and that staff will be present to provide clarification and defend the decision. Chair Norton inquired if the minutes of the relevant meetings would be sent to the Council, to which Mr. Severson said that they would.

III. PUBLIC FORUM – None

IV. LEGISLATIVE HEARING:

A. PLANNING ACTION: #PA-L-2022-00014

APPLICANT: City of Ashland

ORDINANCE REFERENCES:

AMC 18.5.1	General Review Procedures
AMC 18.5.3	Land Divisions and Property Line Adjustments
AMC 18.5.9	Comprehensive Plan, Zoning and Land Use Ordinance Amendments

REQUEST: The proposal would amend the Ashland Land Use Ordinance to implement the requirements of Oregon Senate Bill 458 by adding section 18.5.1.075 "Middle Housing Land Divisions" and section 18.5.3.140 "Middle Housing Land Divisions."

Staff Presentation

Mr. Goldman noted that staff felt that it was important to import the state's language into the City's ordinance to provide clarity for citizens reviewing the code.

Mr. Severson stated that there had been no significant changes to the ordinance since it was first presented at the June 14, 2022 Commission meeting. He gave a brief presentation on Senate Bill 458, which include changes to Middle Housing Lot Divisions (MHL) and Expedited Land Division codes, and also provided a timeline for the changes to be implemented. Under SB 458 Expedited Land Divisions would not be considered land use actions, and any appeals of staff decisions would be decided by a hearings officer or referee instead of being brought to the Commission. The noticing area for Expedited Land Divisions will also be reduced to 100ft from 200ft, and the City would be required to make a final determination within 63 days of submittal.

House Bill 2001 will also institute code changes to the duplex and Accessory Residential Unit (ARU) approval criteria. Mr. Severson outlined how duplexes would constitute two units on one lot, as attached or detached structures, and that two on-site parking spaces would be required. ARUs would need to meet size guidelines, but that no on-site parking would be required. Both duplexes and ARUs would be permitted with approval of a building permit.

Mr. Severson described previously noted issues with the draft ordinance, the first being whether the MHL procedure would apply to duplexes permitted prior to HB 2001. The state has indicated that any middle housing lot division proposal would need to demonstrate compliance with both applicable state building code and local middle housing code in order to be eligible under SB 458, and that it is unlikely but not impossible that a pre-HB 2001 housing type would meet those criteria. The second issue was whether MHL procedure should apply to ARUs in addition to duplexes. Mr. Severson noted that SB 458 itself does not directly address its applicability to ARUs, but that the Department of Land Conservation and Development (DLCD) has explicitly stated that the MHL procedure would not apply to ARUs.

Mr. Severson concluded by briefly detailing two staff-recommended additions to the ordinance (see attachment #1).

Questions of Staff

Commissioner Verner inquired if the City had a hearings officer or referee, and Mr. Severson responded that one would need to be hired specifically for this role. Chair Norton asked if they would be a fulltime staffer of the City, and Mr. Severson responded that they would be contracted. He added that the appellant would be required to pay \$300 of the officer's contract fee, with the possibility of levying an additional \$500. Any further funding would be paid by the City. Mr. Severson stated that he is in contact with other communities in the Rogue Valley to see who they are hiring for this position and to review copies of their contracts.

Commissioner Thompson asked how the division of a lot would be determined and if it would be at the discretion of the property owner. Mr. Severson responded that it would be up to the property owner, likely with a surveyor's assistance. They would have great latitude to divide the property as there would no longer be setback, street-frontage, or lot size zone requirements. It would be based on what worked best for the building configuration on the property, but would largely be limited to one dwelling per lot.

Commissioner Dawkins inquired if the new state guidelines would conflict with the current code. Mr. Severson responded that the Commission would be required to approve a MHL proposal if it came before them, but that if it was a land use action under the flag drive partition regulations then the review process would not change. Mr. Goldman clarified that MHL proposals are not land use decisions, and would not go before the Commission except under rare circumstances.

Commissioner Thompson asked whether the first of staff's recommended additions to the guidelines would supplant cottage housing codes. Mr. Severson commented that cottage housing is exempt from these rules. Mr. Goldman added that it would be more expedient for an applicant to go through the performance standards review process to create a cottage housing development, rather than dividing up a property in an incremental fashion. Commissioner Thompson inquired if her property in an

R-2 zone with two dwelling units would be able to be subdivided and sold separately under the new guidelines. Mr. Goldman responded that she could, but that the secondary unit would need to meet building and setback requirements in relation to the parent lot. He noted that both buildings would still be considered a duplex, and that the owners would not be permitted to develop an ARU in either property. Commissioner Thompson asked if both properties would be fully transferable. Mr. Severson responded that neither property would have full development rights, but that they could both be sold and resold.

Commissioner Herron asked whether ARUs need separate utilities from the parent property, and Mr. Severson responded that they would only require separate electrical service. Commissioner Herron commented that the parent property would then be required to provide all other utilities in order to be legally divided, and asked if that was explicitly stated in the Ashland Municipal Code. Mr. Severson responded that it is part of the building code requirements, and that separate utilities are required by state law.

Chair Norton noted that divided duplexes could now develop their own Covenants, Conditions, and Restrictions (CC&Rs) under the new guidelines. Mr. Severson stated that the duplex would still be subject to the original division approval, which would include building design and placement of a landscape plan. Commissioner Thompson noted that the state bill contains a clause regarding planned communities, and that the properties within such a division would be subject to the governing documents of the planned community, and would be allocated assessments and voting rights on the same basis as existing units. Commissioner Verner requested clarification on when this situation would apply. Mr. Goldman responded that a duplex in an existing planned community that went through a middle housing land division would have voting rights under the existing CC&Rs. The other scenario would be if a single-family home, outside of an existing planned community, added a second unit to their property and then went through the MHL process. These two properties could then develop their own CC&Rs for maintenance of any common areas. Chair Norton expressed concern that the conditions for the division could become confused after the properties are sold and resold, which could result in conflicts arising between two future property owners. Commissioner Thompson pointed out that the City would not get involved in such a civil matter.

Commissioner Knauer inquired if the City actively observed mandates coming from the state, and whether the City had an advocate at the state level. Councilor Hyatt detailed how the League of Oregon Cities (LOC) will annually send out a list of priority issues to a variety of committees, which are then placed into relevant categories. One of those categories are land actions, and the City votes on which it deems to be the top six highest priority items. The LOC then leverages lobbyists at the league on behalf of those cities. However, those lower priority items are not overlooked, as environments and circumstances change rapidly. Land use, affordability, and infrastructure are currently a high priority for the LOC and are being advocated for on behalf of Oregon cities. A lobbyist within the LOC can also be approached if there is an issue that would be counter to the interests of a city.

Commissioner Thompson commented that there was a consortium of Oregon cities that is currently suing the DLCD over the removal of parking mandates within the state's new Climate Friendly and Equitable Communities guidelines. Chair Norton inquired if the City was approached about joining the lawsuit. Councilor Hyatt responded that Medford and Grants Pass had joined the lawsuit, but to her knowledge the City had not entertained the notion of joining.

Commissioners Thompson/Dawkins m/s to recommend that the City Council adopt the draft ordinance with staff's additional recommendations. Voice Vote: All AYES. Motion Passed. 6-0.

V. OPEN DISCUSSION

Mr. Goldman stated that the open discussion item had been added in order to address topics not on the agenda that Commissioners would like to discuss, as well provide an opportunity for Commissioners to put forth topics for discussion at future Study Sessions. He noted that no new items could be added to the current agenda during an Open Discussion, nor could a decision be made on such an item.

Chair Norton inquired if the Midtown Lofts project at 188 Garfield was progressing. Mr. Goldman responded that a site visit had recently been conducted to look for tree protection fencing in advance of the permit being issued, and the developers would soon begin work on the common areas. The Commission discussed a variety of projects that have yet to begin development. Mr. Severson announced that the Columbia Care facility and Plaza North on First Street both recently obtained their occupancy

permits.

Chair Norton informed the Commission that Governor-Elect Tina Kotek had expressed the belief that the Urban Growth Boundary (UGB) was having a detrimental effect on affordable housing in the state, and had shown interest in modifying State Bill 100 to address this issue. Commissioner Dawkins commented that one of the incoming City Councilors appeared open to expanding the UGB.

Councilor Hyatt expressed her gratitude to the Commissioners for their dedication and willingness to delve into difficult issues, and that she always appreciated recommendations that come from them. She also expressed her appreciation to staff.

VI. ADJOURNMENT

Meeting adjourned at 7:52 p.m.

*Submitted by,
Michael Sullivan, Executive Assistant*

Enrolled Senate Bill 458

Sponsored by Senators FREDERICK, KNOPP; Senators GOLDEN, HANSELL, KENNEMER, PATTERSON, Representatives DEXTER, FAHEY, HUDSON, KROPF, LEIF, MEEK, MOORE-GREEN, NOBLE, SMITH DB, WRIGHT, ZIKA (at the request of Habitat for Humanity) (Presession filed.)

CHAPTER

AN ACT

Relating to land division for residential development; creating new provisions; and amending ORS 93.277, 94.775, 94.776, 197.365, 197.370, 197.375 and 197.380.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Section 2 of this 2021 Act is added to and made a part of ORS 92.010 to 92.192.

SECTION 2. (1) As used in this section, “middle housing land division” means a partition or subdivision of a lot or parcel on which the development of middle housing is allowed under ORS 197.758 (2) or (3).

(2) A city or county shall approve a tentative plan for a middle housing land division if the application includes:

(a) A proposal for development of middle housing in compliance with the Oregon residential specialty code and land use regulations applicable to the original lot or parcel allowed under ORS 197.758 (5);

(b) Separate utilities for each dwelling unit;

(c) Proposed easements necessary for each dwelling unit on the plan for:

(A) Locating, accessing, replacing and servicing all utilities;

(B) Pedestrian access from each dwelling unit to a private or public road;

(C) Any common use areas or shared building elements;

(D) Any dedicated driveways or parking; and

(E) Any dedicated common area;

(d) Exactly one dwelling unit on each resulting lot or parcel, except for lots, parcels or tracts used as common areas; and

(e) Evidence demonstrating how buildings or structures on a resulting lot or parcel will comply with applicable building codes provisions relating to new property lines and, notwithstanding the creation of new lots or parcels, how structures or buildings located on the newly created lots or parcels will comply with the Oregon residential specialty code.

(3) A city or county may add conditions to the approval of a tentative plan for a middle housing land division to:

(a) Prohibit the further division of the resulting lots or parcels.

(b) Require that a notation appear on the final plat indicating that the approval was given under this section.

- (4) In reviewing an application for a middle housing land division, a city or county:
- (a) Shall apply the procedures under ORS 197.360 to 197.380.
 - (b) May require street frontage improvements where a resulting lot or parcel abuts the street consistent with land use regulations implementing ORS 197.758.
 - (c) May not subject an application to approval criteria except as provided in this section, including that a lot or parcel require driveways, vehicle access, parking or minimum or maximum street frontage.
 - (d) May not subject the application to procedures, ordinances or regulations adopted under ORS 92.044 or 92.046 that are inconsistent with this section or ORS 197.360 to 197.380.
 - (e) May allow the submission of an application for a middle housing land division at the same time as the submission of an application for building permits for the middle housing.
 - (f) May require the dedication of right of way if the original parcel did not previously provide a dedication.
- (5) The type of middle housing developed on the original parcel is not altered by a middle housing land division.
- (6) Notwithstanding ORS 197.312 (5), a city or county is not required to allow an accessory dwelling unit on a lot or parcel resulting from a middle housing land division.
- (7) The tentative approval of a middle housing land division is void if and only if a final subdivision or partition plat is not approved within three years of the tentative approval. Nothing in this section or ORS 197.360 to 197.380 prohibits a city or county from requiring a final plat before issuing building permits.

SECTION 2a. Section 2 of this 2021 Act applies only to a middle housing land division permitted on or after July 1, 2022.

SECTION 3. ORS 93.277 is amended to read:

93.277. A provision in a recorded instrument affecting real property is not enforceable if:

- (1) The provision would allow the development of a single-family dwelling on the real property but would prohibit the development of, **or the partitioning or subdividing of lands under section 2 of this 2021 Act for:**

- (a) Middle housing, as defined in ORS 197.758; or
 - (b) An accessory dwelling unit allowed under ORS 197.312 (5); and
- (2) The instrument was executed on or after ~~[August 8, 2019]~~ **January 1, 2021.**

SECTION 4. ORS 94.776 is amended to read:

94.776. (1) A provision in a governing document that is adopted or amended on or after ~~[August 8, 2019]~~ **January 1, 2020**, is void and unenforceable to the extent that the provision would prohibit or have the effect of unreasonably restricting the development of, **or the dividing of lands under section 2 of this 2021 Act for**, housing that is otherwise allowable under the maximum density of the zoning for the land.

(2) **Lots or parcels resulting from the division of land in a planned community are subject to the governing documents of the planned community and are allocated assessments and voting right on the same basis as existing units.**

SECTION 5. ORS 94.775 is amended to read:

94.775. (1) ~~[Unless the declaration expressly allows the division of lots in a planned community,]~~ Judicial partition by division of a lot in a planned community is not allowed under ORS 105.205[,], **unless:**

- (a) **The declaration expressly allows the division of lots in a planned community; or**
- (b) **The lot may be divided under ORS 94.776.**

(2) The lot may be partitioned by sale and division of the proceeds under ORS 105.245.

~~[(2)]~~ (3) The restriction specified in subsection (1) of this section does not apply if the homeowners association has removed the property from the provisions of the declaration.

SECTION 6. ORS 197.365 is amended to read:

197.365. Unless the applicant requests to use the procedure set forth in a comprehensive plan and land use regulations, a local government shall use the following procedure for an expedited land

division, as described in ORS 197.360, **or a middle housing land division under section 2 of this 2021 Act:**

(1)(a) If the application for *[expedited]* a land division is incomplete, the local government shall notify the applicant of exactly what information is missing within 21 days of receipt of the application and allow the applicant to submit the missing information. For purposes of computation of time under this section, the application shall be deemed complete on the date the applicant submits the requested information or refuses in writing to submit it.

(b) If the application was complete when first submitted or the applicant submits the requested additional information within 180 days of the date the application was first submitted, approval or denial of the application shall be based upon the standards and criteria that were applicable at the time the application was first submitted.

(2) The local government shall provide written notice of the receipt of the completed application for *[an expedited]* a land division to any state agency, local government or special district responsible for providing public facilities or services to the development and to owners of property within 100 feet of the entire contiguous site for which the application is made. The notification list shall be compiled from the most recent property tax assessment roll. For purposes of appeal to the referee under ORS 197.375, this requirement shall be deemed met when the local government can provide an affidavit or other certification that such notice was given. Notice shall also be provided to any neighborhood or community planning organization recognized by the governing body and whose boundaries include the site.

(3) The notice required under subsection (2) of this section shall:

(a) State:

(A) The deadline for submitting written comments;

(B) That issues that may provide the basis for an appeal to the referee must be raised in writing prior to the expiration of the comment period; and

(C) That issues must be raised with sufficient specificity to enable the local government to respond to the issue.

(b) Set forth, by commonly used citation, the applicable criteria for the decision.

(c) Set forth the street address or other easily understood geographical reference to the subject property.

(d) State the place, date and time that comments are due.

(e) State a time and place where copies of all evidence submitted by the applicant will be available for review.

(f) Include the name and telephone number of a local government contact person.

(g) Briefly summarize the local decision-making process for the *[expedited]* land division decision being made.

(4) After notice under subsections (2) and (3) of this section, the local government shall:

(a) Provide a 14-day period for submission of written comments prior to the decision.

(b) Make a decision to approve or deny the application within 63 days of receiving a completed application, based on whether it satisfies the substantive requirements of the *[local government's]* **applicable** land use regulations. An approval may include conditions to ensure that the application meets the applicable land use regulations. For applications subject to this section, the local government:

(A) Shall not hold a hearing on the application; and

(B) Shall issue a written determination of compliance or noncompliance with applicable land use regulations that includes a summary statement explaining the determination. The summary statement may be in any form reasonably intended to communicate the local government's basis for the determination.

(c) Provide notice of the decision to the applicant and to those who received notice under subsection (2) of this section within 63 days of the date of a completed application. The notice of decision shall include:

(A) The summary statement described in paragraph (b)(B) of this subsection; and

(B) An explanation of appeal rights under ORS 197.375.

SECTION 7. ORS 197.370 is amended to read:

197.370. (1) Except as provided in subsection (2) of this section, if the local government does not make a decision on an expedited land division **or a middle housing land division, as defined in section 2 of this 2021 Act**, within 63 days after the application is deemed complete, the applicant may apply in the circuit court for the county in which the application was filed for a writ of mandamus to compel the local government to issue the approval. The writ shall be issued unless the local government shows that the approval would violate a substantive provision of the applicable land use regulations or the requirements of ORS 197.360 **or section 2 of this 2021 Act**. A decision of the circuit court under this section may be appealed only to the Court of Appeals.

(2) After seven days' notice to the applicant, the governing body of the local government may, at a regularly scheduled public meeting, take action to extend the 63-day time period to a date certain for one or more applications for an expedited land division **or a middle housing land division** prior to the expiration of the 63-day period, based on a determination that an unexpected or extraordinary increase in applications makes action within 63 days impracticable. In no case shall an extension be to a date more than 120 days after the application was deemed complete. Upon approval of an extension, the provisions of ORS 197.360 to 197.380 **and section 2 of this 2021 Act**, including the mandamus remedy provided by subsection (1) of this section, shall remain applicable to the [expedited] land division, except that the extended period shall be substituted for the 63-day period wherever applicable.

(3) The decision to approve or not approve an extension under subsection (2) of this section is not a land use decision or limited land use decision.

SECTION 8. ORS 197.375 is amended to read:

197.375. (1) An appeal of a decision made under ORS 197.360 and 197.365 **or under ORS 197.365 and section 2 of this 2021 Act** shall be made as follows:

(a) An appeal must be filed with the local government within 14 days of mailing of the notice of the decision under ORS 197.365 (4)[,] and shall be accompanied by a \$300 deposit for costs.

(b) A decision may be appealed by:

(A) The applicant; or

(B) Any person or organization who files written comments in the time period established under ORS 197.365.

(c) An appeal shall be based solely on allegations:

(A) Of violation of the substantive provisions of the applicable land use regulations;

(B) Of unconstitutionality of the decision;

(C) That the application is not eligible for review under ORS 197.360 to 197.380 **or section 2 of this 2021 Act** and should be reviewed as a land use decision or limited land use decision; or

(D) That the parties' substantive rights have been substantially prejudiced by an error in procedure by the local government.

(2) The local government shall appoint a referee to decide the appeal of a decision made under [ORS 197.360 and 197.365] **this section**. The referee [shall] **may** not be an employee or official of the local government. However, a local government that has designated a hearings officer under ORS 215.406 or 227.165 may designate the hearings officer as the referee for appeals of a decision made under ORS 197.360 and 197.365.

(3) Within seven days of being appointed to decide the appeal, the referee shall notify the applicant, the local government, the appellant if other than the applicant, any person or organization entitled to notice under ORS 197.365 (2) that provided written comments to the local government and all providers of public facilities and services entitled to notice under ORS 197.365 (2) and advise them of the manner in which they may participate in the appeal. A person or organization that provided written comments to the local government but did not file an appeal under subsection (1) of this section may participate only with respect to the issues raised in the written comments submitted by that person or organization. The referee may use any procedure for decision-making consistent with the interests of the parties to ensure a fair opportunity to present information and

argument. The referee shall provide the local government an opportunity to explain its decision, but is not limited to reviewing the local government decision and may consider information not presented to the local government.

(4)(a) The referee shall apply the substantive requirements of the [local government's] **applicable** land use regulations and ORS 197.360 **or section 2 of this 2021 Act**. If the referee determines that the application does not qualify as an expedited land division [as described in ORS 197.360] **or a middle housing land division, as defined in section 2 of this 2021 Act**, the referee shall remand the application for consideration as a land use decision or limited land use decision. In all other cases, the referee shall seek to identify means by which the application can satisfy the applicable requirements.

(b) **For an expedited land use division**, the referee may not reduce the density of the land division application.

(c) The referee shall make a written decision approving or denying the application or approving it with conditions designed to ensure that the application satisfies the land use regulations, within 42 days of the filing of an appeal. The referee may not remand the application to the local government for any reason other than as set forth in this subsection.

(5) Unless the governing body of the local government finds exigent circumstances, a referee who fails to issue a written decision within 42 days of the filing of an appeal shall receive no compensation for service as referee in the appeal.

(6) Notwithstanding any other provision of law, the referee shall order the local government to refund the deposit for costs to an appellant who materially improves his or her position from the decision of the local government. The referee shall assess the cost of the appeal in excess of the deposit for costs, up to a maximum of \$500, including the deposit paid under subsection (1) of this section, against an appellant who does not materially improve his or her position from the decision of the local government. The local government shall pay the portion of the costs of the appeal not assessed against the appellant. The costs of the appeal include the compensation paid the referee and costs incurred by the local government, but not the costs of other parties.

(7) The Land Use Board of Appeals does not have jurisdiction to consider any decisions, aspects of decisions or actions made under ORS 197.360 to 197.380 **or section 2 of this 2021 Act**.

(8) Any party to a proceeding before a referee under this section may seek judicial review of the referee's decision in the manner provided for review of final orders of the Land Use Board of Appeals under ORS 197.850 and 197.855. The Court of Appeals shall review decisions of the referee in the same manner as provided for review of final orders of the Land Use Board of Appeals in those statutes. However, notwithstanding ORS 197.850 (9) or any other provision of law, the court shall reverse or remand the decision only if the court finds:

(a) That the decision does not concern an expedited land division as described in ORS 197.360 **or middle housing land division as defined in section 2 of this 2021 Act** and the appellant raised this issue in proceedings before the referee;

(b) That there is a basis to vacate the decision as described in ORS 36.705 (1)(a) to (d), or a basis for modification or correction of an award as described in ORS 36.710; or

(c) That the decision is unconstitutional.

SECTION 9. ORS 197.380 is amended to read:

197.380. Each city and county shall establish [an application fee] **application fees** for an expedited land division **and a middle housing land division, as defined in section 2 of this 2021 Act**. The [fee shall] **fees must** be set at a level calculated to recover the estimated full cost of processing an application, including the cost of appeals to the referee under ORS 197.375, based on the estimated average cost of such applications. Within one year of establishing [the fee required] **a fee** under this section, the city or county shall review and revise the fee, if necessary, to reflect actual experience in processing applications under ORS 197.360 to 197.380 **and section 2 of this 2021 Act**.

Passed by Senate April 15, 2021

.....
Lori L. Brocker, Secretary of Senate

.....
Peter Courtney, President of Senate

Passed by House May 17, 2021

.....
Tina Kotek, Speaker of House

Received by Governor:

.....M.,....., 2021

Approved:

.....M.,....., 2021

.....
Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2021

.....
Shemia Fagan, Secretary of State

ASHLAND PLANNING DIVISION

STAFF REPORT

November 22, 2022

PLANNING ACTION: PA-L-2022-00014

APPLICANT: City of Ashland

ORDINANCE REFERENCES:

- AMC 18.5.1** General Review Procedures
- AMC 18.5.3** Land Divisions and
Property Line Adjustments
- AMC 18.5.9** Comprehensive Plan, Zoning and
Land Use Ordinance Amendments

REQUEST: The proposal would amend the Ashland Land Use Ordinance to implement the requirements of Oregon Senate Bill 458 by adding section 18.5.1.075 “Middle Housing Land Divisions” and section 18.5.3.140 “Middle Housing Land Divisions.”

I. Ordinance Amendments

A. Project Background

Oregon Senate Bill 458 provides a process for lot divisions to allow home ownership opportunities for middle housing units built under the middle housing allowances of House Bill 2001. For cities with populations between 10,000 and 25,000 such as Ashland, the middle housing required to be allowed under House Bill 2001 was limited to duplexes, and Senate Bill 458 intentionally does not apply to accessory residential units. As such, the draft code language proposed is limited to duplexes.

House Bill 2001 took effect on August 8, 2019 and required cities to allow duplexes on residentially-zoned lots that allow development of detached single-family dwellings, and to have approval processes and standards for duplexes that are no more restrictive than those applied to detached single-family dwellings. With the code changes adopted in response to House Bill 2001, duplexes are defined as two units on one lot in attached or detached structures. Two off-street parking spaces are required, and the required parking cannot be addressed through on-street parking credits. Duplexes satisfying these requirements are approved with a building permit and do not require a separate land use action.

Senate Bill 458 provides for these Middle Housing Land Divisions to be processed through the Expedited Land Divisions (ELD) procedure established in the Oregon Revised Statutes. Expedited Land Divisions are not considered to be land use actions and as such cannot be appealed to the Planning Commission. Instead, an initial administrative decision by the Staff

Advisor could be appealed to a referee/hearings officer, and would not be subject to appeal to the Oregon Land Use Board of Appeals (LUBA).

The Planning Commission has previously discussed code amendments to respond to Senate Bill 458 at two public meetings on May 10, 2022 and June 14, 2022. Senate Bill 458 became effective on June 30, 2022, and cities are required under the Senate Bill to implement directly from the bill until local code modifications are implemented.

B. Summary of Proposed Amendments

The proposal includes the addition of two new sections to the Ashland Land Use Ordinance (ALUO) to implement the requirements of Senate Bill 458, which include:

- House Bill 458 applies to any lot that allows Middle Housing under House Bill 2001 (i.e. ORS 197.758).
- A Middle Housing Land Division (MHL D) must result in exactly one dwelling per lot, except that common areas may be located on a separate lot or a shared tract.
- Separate utilities are required for each dwelling unit.
- Easements are required to be provided for:
 - **Pedestrian access**
 - **Common areas**
 - **Driveways and parking areas, if shared**
 - **Utilities**
- An MHL D proposal must demonstrate that it meets the requirements of the Oregon Residential Specialty Code. For example, if an attached duplex is being divided, there must be firewall construction between the two units.
- In a typical land division, the land division is approved, infrastructure installed and plat signed prior to building permits being reviewed and issued for construction. A Middle Housing Land Division may occur prior to submission of an application for building permits, after a middle housing development is approved for development, or after it is constructed.
- Senate Bill 458 gives cities the option of allowing concurrent review of building permits and the land division, but in any case, Middle Housing Land Division applications must include a middle housing development (*either proposed or already built*) that complies with the building code and the City's middle housing development code.

Under Senate Bill 458, cities may require the submittal of tentative & final plats for approval, review for Oregon Residential Specialty Code compliance, and right-of-way dedications and city-standard street frontage improvements. Cities may not apply *any* approval criteria other than the approval criteria specified in Senate Bill 458 to applications for an MHL D — i.e. the allowable criteria include the City's standards for middle housing development, separate utilities, easements, one dwelling on each lot, and building code compliance.

Cities are required to process Middle Housing Land Divisions under the Expedited Land Division (ELD) process from ORS 197.360 to 197.380 in order to streamline review. The ELD process is outlined below:

- Submittal requirements are to be consistent with typical land divisions.
- Completeness review must occur by the City within **21 days** of application submittal.

- Notice is given to properties **within 100 feet of the site**, to utility providers and to applicable neighborhood association(s).
- There is a 14-day comment period.
- A decision must be made by the city within **63 days** after a complete application is submitted, unless extended by the Council under limited circumstances. *This is in contrast to the 120 days typically allowed for land use actions.*
- An ELD is not considered to be a land use decision, and would never be heard by the Planning Commission.
- The Staff Advisor makes the initial administrative decision, and any appeals go to a referee who cannot be a city employee or city official, but could be a hearings officer.
- Only the applicant and any person or organization who files written comments in the time period specified in the bill may appeal. An appeal must be filed within 14 days of mailing the Notice of Decision. A \$300 deposit to cover costs must be paid with the appeal submittal, and the referee may levy additional fees to cover hearing costs up to \$500.
- The city-appointed “*referee*” decides any appeal decision—often this is a city’s Hearings Officer - who must issue a decision within **42 days of the appeal being filed**. The decision of the referee is the final local decision on the MHLA application. Any appeals of the referee’s decision go to the Oregon Court of Appeals rather than to the Land Use Board of Appeals (LUBA).

II. Procedural

Applications for Type III (i.e. Legislative) Plan Amendments and Zone Changes are described in the Ashland Land Use Ordinance section 18.5.9.020 as follows:

B. Type III. It may be necessary from time to time to make legislative amendments in order to conform with the Comprehensive Plan or to meet other changes in circumstances or conditions. The Type III procedure applies to the creation, revision, or large-scale implementation of public policy requiring City Council approval and enactment of an ordinance; this includes adoption of regulations, zone changes for large areas, zone changes requiring comprehensive plan amendment, comprehensive plan map or text amendment, annexations (see chapter 18.5.8 for annexation information), and urban growth boundary amendments. The following planning actions shall be subject to the Type III procedure.

1. Zone changes or amendments to the Zoning Map or other official maps, except where minor amendments or corrections may be processed through the Type II procedure pursuant to subsection 18.5.9.020.A, above.
2. Comprehensive Plan changes, including text and map changes or changes to other official maps.
3. Land Use Ordinance amendments.
4. Urban Growth Boundary amendments.

III. Conclusions and Recommendations

If the Planning Commission recommends approval of the attached ordinances, staff will forward the Commission’s recommendation to the City Council to proceed with a public hearing before the Council.

Attachments

Senate Bill 458
Draft Ordinance

Council Business Meeting

January 3, 2022

Agenda Item	Public Hearing and First Reading of Ordinance 3205 - Housing in Employment Lands Code Amendments	
From	Brandon Goldman	Planning Manager, Interim Community Development Director
Contact	Brandon.goldman@ashland.or.us , 541-552-2076	

SUMMARY

The City Council is being asked to review draft Ordinance 3205 which presents land use code amendments to the residential standards for mixed-use development in the Commercial (C-1) and Employment (E-1) zones.

The proposed ordinance includes a series of amendments to AMC Title 18 Land Use relating to the residential standards for mixed-use development located in the Commercial (C-1) and Employment (E-1) zones. Specifically, the proposed code amendments increase the allowance for residential uses from 35 to 65 percent of the ground floor in multi-story, mixed-use buildings and developments located in the C-1 and E-1 zones and outside of the Downtown Design Standards overlay. Additionally, the development of flexible Commercial Ready Residential Space would allow residential uses within the 35% commercially designated floor area provided an agreement is executed with the City, or deed restriction is recorded on the property, demonstrating that the residential use will be in conformance with the Ashland Affordable Housing Program as affordable rental housing for households earning 80% AMI or less.

POLICIES, PLANS & GOALS SUPPORTED

The *Ashland Comprehensive Plan* includes a goal in the Housing Element to “ensure a range of different dwelling types that provide living opportunities for the total cross section of Ashland’s population (6.10.01).” Included with this goal are the following applicable policies:

Policy 1: Provide for a mix of housing types that are attractive and affordable to a diversity of ages, incomes, household sizes, and household types.

Policy 3: Integrate housing with other compatible land uses through flexible zoning provisions.

The *Ashland Comprehensive Plan* includes a goal in the Economy Element “to ensure that the local economy increases in its health, and diversifies in the number, type, and size of businesses consistent with the local social needs, public service capabilities, and the retention of a high-quality environment (7.07.03).” Included with this goal is the following applicable policy:

Policy 1: The City shall zone and designate within the Plan Map sufficient quantity of lands for commercial and industrial uses to provide for the employment needs of its residents and a portion of rural residents consistent with the population projection for the urban area.

The 2021-2041 Housing Capacity Analysis (HCA) is a technical study required by state law and was adopted by the City Council on [August 17, 2021](#) as a technical report and supporting document to the *Ashland Comprehensive Plan*. The HCA provides a number of recommended policy changes to address Ashland’s unmet housing needs that are related to the proposed code amendments. The HCA’s recommended policy changes or strategies are presented as guidance for the upcoming Housing Production Strategy.

Strategy 1: Ensure an adequate supply of land is available and serviced

- *Strategy 1.3: Identify opportunities to increase allowances for residential uses on the ground floor of buildings within commercial and employment zones.*
- *Strategy 1.4: Evaluate decreasing multifamily parking requirements.*

Strategy 2: Provide opportunities for housing development to meet the City's identified housing needs

- *Strategy 2.2: Evaluate opportunities incentivize smaller units through amendments to allowable densities.*
- *Strategy 2.4: Evaluate increasing allowances for residential dwellings in commercial and employment zones, such as allowing an increased amount of residential uses in ground floor commercial spaces.*

Strategy 5: Align housing planning with the Climate and Energy Action Plan

Strategy 5.4: Evaluate opportunities to develop new housing closer to downtown and commercial centers to reduce dependence on automobiles for transportation.

The *Climate and Energy Action Plan* (CEAP) includes an action to “Revise community development plans to favor walkable neighborhoods and infill density. Ashland has a series of long-range planning documents that guide development across Ashland districts, neighborhoods, and natural areas. Revisiting these plans to ensure that they support climate-ready development needs, such as walking, biking, transit, parking management, and climate adaptation features, will ensure that Ashland development is consistent with the City’s climate goals and commitments. It will be important to ensure that these activities do not come at the expense of higher housing costs, which could disadvantage low-income populations (CEAP ULT-4-2).”

PREVIOUS COUNCIL ACTION

The City Council reviewed the proposed land use code amendments at a public hearing on [February 1, 2022](#) and did not approve first reading of the ordinance at that time. The City Council remanded the draft ordinance to the Planning Commission with a request that amendments be considered which would allow the entirety of the first floor of developments on E-1 and C-1 lands to be residential provided certain housing affordability conditions were met.

The Council provided two separate motions relating to this item on February 1, 2022 as follows:

Graham/DuQuenne moved that we postpone this item until the end of May 2022 to give staff time to analyze the economic information that comes forward from the Chamber Study. Motion passed unanimously.

Hyatt/Jensen moved that revert this item back to the Planning Commission to specifically have a conditional use permit on the 35% that would be commercial to be used as residential rental only between 80-100% AMI revertible upon expiration of lease between 5–10-year period. Motion passed unanimously.

BACKGROUND AND ADDITIONAL INFORMATION

The primary goal of this ordinance amendment process has been to provide more flexibility in the employment zones to respond to fluctuations and changes in the economy and demand for housing. The project objectives are to:

- 1) maintain an inventory of employment parcels in a variety of sizes and locations to encourage new business development.
- 2) increase the supply of moderately-priced rental and for-purchase housing; and

- 3) jumpstart redevelopment in areas that have trouble attracting projects and/or are in proximity to public transit and walking distance to daily service needs, such as groceries, shops, parks, etc.
- 4) provide opportunities to utilize vacant commercial floor area as regulated affordable rental housing restricted to households earning 80% AMI or less.

The draft amendments to the residential standards for mixed-use development are attached and summarized below.

- 18.2.3.130.B.1.a – limits new provisions for residential uses (i.e., up to 65 percent of the ground floor) in the C-1 and E-1 zones to locations outside of the Downtown Design Standards overlay. In addition, to be eligible for the new provisions, the lot size must be less than 10 acres in size and the mixed-use building must be multi-story (i.e., two or more stories in height).
- 18.2.3.B.1.b - increases the allowance for residential uses in multi-story, mixed-use buildings and developments from 35 to 65 percent of the ground floor. Again, this allowance is for locations outside of the Downtown Design Standards overlay. Additionally, the provision is limited to multi-story mixed-use buildings and lots that are less than 10 acres in size.
- 18.2.3.B.1.c.i-iii – Creates a designation for Commercial Ready Residential Space which is developed to accommodate commercial occupancies but may be used flexibly as either a commercial use or as regulated affordable rental housing for households earning 80%AMI or less.
- 18.2.3.130.B.2.a – retains existing standard which allows up to 35 percent of the ground floor to be used for residential uses. The existing standard applies to three situations – properties located inside of the Downtown Design Standards overlay, for lots 10 acres and greater in size and for single-story buildings.
- 18.2.3.130.B.2.b.i – this is the exiting standard allowing up to 35 percent of the ground floor in residential uses, it is simply moved from the existing code section 18.2.3.130. B.1.
- 18.2.3.130.B.1.b.ii – revises the code for situations where a mixed-use development includes more than one building. It requires the equivalent of 65 percent of the ground floor of all the buildings to be provided in permitted or special permitted non-residential uses. This retains the ability in mixed-use developments with more than one building to construct a building that is entirely residential uses as long as the equivalent square footage of 65 percent of the ground floor of the residential building is transferred to another building in the development and is used for permitted and special permitted non-residential uses.
- Table 18.2.6.030 – deletes residential densities in the C-1, C-1-D and E-1 zones.
- 18.3.13.010.C – removes existing language that duplicates the standards in 18.2.3.130 Dwellings in Non-Residential Zones and instead references the requirements in 18.2.3.130 for the Residential overlay or in 18.3.14.040 for the Transit Triangle (TT) overlay. The Residential overlay applies to a portion but not all of the E-1 zone.
- 18.6.1.030 [Definition] - amended to include definition of Commercial Ready Residential Space.

To address the City Council's February 1, 2022 motion to amend the ordinance draft to accommodate opportunities for affordable rental housing, the attached Ordinance 3205 newly incorporates a designation of Commercial Ready Residential Space. The Planning Commission considered evaluation of proposals to incorporate affordable rental housing on the ground floor and determined it could be incorporated into the ordinance as an allowed use, without the need for a discretionary Conditional Use Permit process, provided the parameters for its inclusion were clearly articulated in the ordinance. As proposed in the draft ordinance,

at least 35% of the ground floor must be used as a permitted or special permitted (commercial) uses, or alternatively as Commercial Ready Residential Space that could be used as income restricted affordable rental housing. In 2021 the Oregon Legislature approved [Senate Bill 8](#) which restricts local governments from denying or limiting the approval of affordable housing applications in a number of circumstances including when affordable housing is to be developed on property which is zoned for commercial uses. By providing an option for the development of Commercial Ready Residential Space on the ground floor of mixed-use buildings, that can be used as affordable rental housing restricted to households with incomes at 80%AMI, the amendments proposed create a path for the city to approve of the use of vacant commercial floor area as needed affordable housing within the C-1 and E-1 zones.

In order to ensure that Ashland's inventory of commercial and employment lands could accommodate future business development, the city contracted with Fregonese and Associates to assist in analyzing the buildable lands data, building permits issued, and Ashland's employment data over the last 10 years. This analysis found there is sufficient C-1 and E-1 land for future employment needs. The findings of this analysis were outlined in the Staff Report dated December 14, 2021 which was initially presented to the City Council on February 2, 2022 and are attached to this communication. The Ashland Chamber of Commerce and ECONorthwest Economic Diversification Study presented to the City Council on October 3, 2022 does not contain an employment land inventory or needs assessment, and as such does not address whether Ashland's inventory of commercial and employment lands can accommodate future business development.

The residential densities established in 1992 for E-1 and C-1 zones, 15 and 30 dwelling units per acre respectively, were recently evaluated as part of the Transit Triangle planning effort. These density limitations were found to discourage the development of studios, one-bedroom, and two-bedroom rental units as the relatively low-density allowance effectively promoted the development of large residential units. Removing this density cap in the E-1, C-1, and C-1-D zones would enable the development of a greater number of dwelling units within the same sized building. In the ordinance amendments proposed, the Planning Commission and Staff have recommend removing these density caps to support the development of a greater variety of housing types and promote creation of rental housing in the E-1, C-1, and C-1-D zones. Additionally, the recent Climate Friendly and Equitable Communities rulemaking efforts by the State of Oregon established that for designated Climate Friendly Areas (CFA) the removal of density caps would address the rule requirements intended to promote transit supportive housing densities within urban areas. Ashland has not yet gone through the process to designate the CFAs for our community, however the adoption of the ordinance amendment currently proposed may preemptively address this future requirement in E-1 and C-1 zones. Community Development staff will prepare a future presentation on CFAs.

The Planning Commission reviewed and discussed the proposed code amendment project at the [June 22, 2021](#), [August 24, 2021](#), [October 26, 2021](#) and [November 23, 2021](#) study session meetings. The Planning Commission held a public hearing on [December 14, 2021](#), and recommended approval of the prior draft of the ordinance amending AMC Title 18 Land Use. The Planning Commission discussed options for amending the proposed ordinance to allow for flexible use of the ground floor commercial area on [June 14, 2022](#), and on [September 27, 2022](#) The Planning Commission held a public hearing to review the revisions to the proposed Ordinance and have forwarded a recommendation to the City Council for approval.

1. Public Meetings

The City Council initiated the legislative amendment to amend the standards housing mixed-use developments on [March 16, 2021](#). The Ashland Municipal Code (AMC) allows the Council to initiate a Type III legislative action (see code excerpt below).

18.5.1.070 Type III (Legislative Decision)

Type III actions are reviewed by the Planning Commission, which makes a recommendation to City Council. The Council makes final decisions on legislative proposals through enactment of an ordinance.

- A. Initiation of Requests.** The City Council, Planning Commission, or any property owner or resident of the city may initiate an application for a legislative decision under this ordinance. Legislative requests are not subject to the 120-day review period under subsection 18.5.1.090.B (ORS 227.178).

The City Council is scheduled to review a draft findings document at second reading of the ordinance, scheduled for the December 20, 2022 Council meeting. The findings document will reflect the decision of the City Council at First Reading, and will address the City's approval criteria for a legislative amendment as well as the Statewide Planning Goals, and applicable Oregon Administrative Rules.

2. Proposed Amendments

The proposed ordinance amends Chapters 18.2.3, 18.2.6, 18.3.13 and 18.6.1 of the Ashland Land Use Ordinance regarding allowances for residential uses in mixed-use buildings and developments in the commercial and employment zones. The amendments specifically apply to allowances for residential dwellings within multi-story mixed-use buildings developed within C-1 (Commercial) and E-1 (Employment) zoned properties with a Residential Overlay. Properties zoned C-1 within the Downtown Overlay, and E-1 zoned properties that are not within the Residential Overlay, are excluded from the code amendments as proposed.

3. Review Procedure

AMC 18.5.9.020.B permits legislative amendments to meet changes in circumstances and conditions.

Applications for Plan Amendments and Zone Changes are as follows:

- B. Type III.** It may be necessary from time to time to make legislative amendments in order to conform with the Comprehensive Plan or to meet other changes in circumstances or conditions. The Type III procedure applies to the creation, revision, or large-scale implementation of public policy requiring City Council approval and enactment of an ordinance; this includes adoption of regulations, zone changes for large areas, zone changes requiring comprehensive plan amendment, comprehensive plan map or text amendment, annexations (see chapter 18.5.8 for annexation information), and urban growth boundary amendments. The following planning actions shall be subject to the Type III procedure.
1. Zone changes or amendments to the Zoning Map or other official maps, except where minor amendments or corrections may be processed through the Type II procedure pursuant to subsection 18.5.9.020.A, above.
 2. Comprehensive Plan changes, including text and map changes or changes to other official maps.
 3. Land Use Ordinance amendments.
 4. Urban Growth Boundary amendments.

FISCAL IMPACTS

Adoption of the proposed ordinance will not have a direct fiscal impact upon the City's general fund. The review of development proposals and building permits for mixed use projects containing housing on the ground floor of multi-story commercial buildings is currently part of the work-flow for Community Development Department staff. The amendments to the percentage of the floor area which can be used as residential, and amendments to the density allowance for residential units, are not expected to impact existing workload.

STAFF RECOMMENDATION

Staff recommends adoption of the amendments to Chapters 18.2.3, 18.2.6, 18.3.13, and 18.6 of the Ashland Land Use Ordinance regarding allowances for residential uses in mixed-use buildings and developments in

the commercial and employment zones as recommended by the Planning Commission. The attached ordinance reflects the Planning Commission recommendation.

ACTIONS, OPTIONS & POTENTIAL MOTIONS

A motion for approval of first reading of the ordinances is included below should the Council decide to approve first reading as presented.

1. Motion for Approval

- I move to approve first reading of Ordinance 3205, which is titled, “Chapters 18.2.3, 18.2.6 18.3.13, and 18.61 of the Ashland Land Use Ordinance regarding allowances for residential uses in mixed-use buildings and developments in the commercial and employment zones, and schedule second reading for December 20, 2022.

REFERENCES & ATTACHMENTS

1. **Ordinance 3205:** An Ordinance Amending Chapters 18.2.3, 18.2.6 18.3.13 of the Ashland Land Use Ordinance regarding allowances for residential uses in mixed-use buildings and developments in the commercial and employment zones
2. Planning Staff Report Addendum PA-L-2021-00013 dated 9/27/2022
3. Planning Staff Report PA-L-2021-00013 dated 12/14/2021
3. Written Public Comments (previously presented to Council on February 1, 2022)
 - Eric Navickus letter dated 1/30/2022
 - Amy Gunter letter dated 12/14/2021
 - Mark Knox letter dated 12-16-2020
 - Laz Ayala letter dated 12-10-2020

Draft 01/03/2023

ORDINANCE NO. 3205

AN ORDINANCE AMENDING CHAPTERS 18.2.3, 18.2.6, 18.3.13 AND 18.6.1 OF THE
ASHLAND LAND USE ORDINANCE REGARDING ALLOWANCES FOR
RESIDENTIAL USES IN MIXED-USE BUILDINGS AND DEVELOPMENTS IN THE
COMMERCIAL AND EMPLOYMENT ZONES.

Annotated to show **deletions** and **additions** to the code sections being modified. Deletions are **bold lined-through** and additions are in **bold underline**.

WHEREAS, Article 2. Section 1 of the Ashland City Charter provides:

Powers of the City The City shall have all powers which the constitutions, statutes, and common law of the United States and of this State expressly or impliedly grant or allow municipalities, as fully as though this Charter specifically enumerated each of those powers, as well as all powers not inconsistent with the foregoing; and, in addition thereto, shall possess all powers hereinafter specifically granted. All the authority thereof shall have perpetual succession.; and

WHEREAS, the above referenced grant of power has been interpreted as affording all legislative powers home rule constitutional provisions reserved to Oregon Cities. City of Beaverton v. International Ass'n of Firefighters, Local 1660, Beaverton Shop 20 Or. App. 293; 531 P 2d 730, 734 (1975).; and

WHEREAS, beginning in early 2020, the COVID-19 pandemic resulted in the closure of businesses throughout the United States and a shift to conducting operations remotely and electronically, thereby temporarily resulting in a decreased need for office and commercial space; and

1 **WHEREAS**, less demand for office space is expected to continue as some companies move to
2 smaller offices and use work from home and hybrid arrangements.; and
3

4 **WHEREAS**, prior to 2020, there was a decline in construction of large retail buildings in the
5 U.S. and the e-commerce share of the retail market was increasing nationally. The COVID-19
6 pandemic resulted in an even greater shift to online retail purchases.; and
7

8 **WHEREAS**, the City of Ashland is required to perform a housing capacity analysis every eight
9 years as required by ORS 197.296 and OAR 660-0008-0045. House Bill 2003 passed in the 2019
10 Oregon legislative session and amended the previously mentioned state laws and rules to require
11 cities in Oregon to perform the housing capacity analysis and housing production strategy.; and
12

13 **WHEREAS**, the Ashland City Council adopted the 2021-2041 Housing Capacity Analysis
14 (HCA) on August 17, 2021 as a technical report and supporting document to the Ashland
15 Comprehensive Plan. The HCA provides a number of recommended policy changes to address
16 Ashland's unmet housing needs including increasing the allowance for residential dwellings in
17 commercial and employment zones and developing new housing closer to downtown and
18 commercial centers to reduce dependency on automobiles for transportation.; and
19

20 **WHEREAS**, the Almeda wildfire increased the regional need for affordable housing by
21 destroying about 2,549 dwellings in September 2020. The Almeda fire burned from north
22 Ashland to just south of Medford, with the cities of Phoenix and Talent losing the majority of
23 housing. The HCA recognized that the losses due to the Almeda fire increased regional need for
24 affordable housing and overall pressure on the Ashland housing market.; and
25

26 **WHEREAS**, amendments to the allowances for housing in the commercial and employment
27 zones are needed to provide more flexibility in the commercial and employment zones to
28 respond to fluctuations and changes in the economy and demand for housing.; and
29
30

1 **WHEREAS**, the City of Ashland Planning Commission conducted on December 14, 2021 and
2 September 27, 2022, duly advertised public hearings on amendments to the Ashland Land Use
3 Ordinance concerning the standards relating to annexations, and following deliberations
4 recommended approval of the amendments.; and
5

6 **WHEREAS**, the City Council of the City of Ashland conducted duly advertised public hearings
7 on the above-referenced amendments February 1, 2021 and November 15, 2022.; and
8

9 **WHEREAS**, the City Council of the City of Ashland, following the close of the public hearing
10 and record, deliberated and conducted first and second readings approving adoption of the
11 Ordinance in accordance with Article 10 of the Ashland City Charter.; and
12

13 **WHEREAS**, the City Council of the City of Ashland has determined that in order to protect and
14 benefit the health, safety and welfare of existing and future residents of the City, it is necessary to
15 amend the Ashland Municipal Code and Land Use Ordinance in manner proposed, that an adequate
16 factual base exists for the amendments, the amendments are consistent with the comprehensive
17 plan and that such amendments are fully supported by the record of this proceeding.
18

19 **THE PEOPLE OF THE CITY OF ASHLAND DO ORDAIN AS FOLLOWS:**
20

21 **SECTION 1.** The above recitations are true and correct and are incorporated herein by this
22 reference.
23

24 **SECTION 2.** Section 18.2.3.130 [Dwellings in Non-Residential Zones – Special Use Standards]
25 of the Ashland Land Use Ordinance is hereby amended to read as follows:
26

27 **18.2.3.130 Dwellings in Non-Residential Zones**

28 Where dwellings are allowed in non-residential zones, they are subject to all of the following
29 requirements.
30

- A. Dwellings in the E-1 zone are limited to the R-overlay zone. See chapter 18.3.13 Residential Overlay.

1 B. Dwellings in the E-1 and C-1 zones shall meet all of the following standards, except that
2 dwellings developed under the Transit Triangle (TT) overlay option are not subject to
3 subsection 18.2.3.130.B, below. See section 18.3.14.040 for the allowed uses in the TT
4 overlay.

- 5 1. Mixed-Use Developments Outside of the Downtown Design Standards Overlay. ~~If~~
6 ~~there is one building on a site, ground floor residential uses shall occupy not~~
7 ~~more than 35 percent of the gross floor area of the ground floor. Where more than~~
8 ~~one building is located on a site, not more than 50 percent of the total lot area~~
9 ~~shall be designated for residential uses. At least 65 percent of the gross floor~~
10 ~~area of the ground floor shall be designated for permitted uses and uses~~
11 ~~permitted with special use standards, not including residential uses.~~

12 a. Applicability. This subsection, 18.2.3.130.B.1, applies to mixed-use
13 buildings or developments that meet all of the following requirements.

14 i. Location. The mixed-use building or development shall be located outside
15 of the Downtown Design Standards overlay.

16 ii. Lot Size. The mixed-use building or development shall be located on a lot
17 that is less than 10 acres in size. Mixed-use developments located on lots
18 10 acres in size and greater shall be subject to the requirements of
19 subsection 18.2.3.130.B.2, below.

20 ii. Building Height. The mixed-use building shall be two or more stories in
21 height. Mixed-use buildings that are one story in height are subject to the
22 requirements of subsection 18.2.3.130.B.2, below.

23 b. Gross Floor Area.

24 i. One Building. When a planning application is limited to one building,
25 residential uses may occupy up to 65 percent of the gross floor area of the
26 ground floor. At least 35 percent of the gross floor area of the ground floor
27 shall be designated for permitted uses and uses permitted with special use
28 standards not including residential uses, or as Commercial Ready
29 Residential Space consistent with 18.2.3.130.B.1.c below.

30 ii. More Than One Building. When a planning application includes more than
one building, the equivalent of at least 35 percent of the gross floor area of
the ground floor shall be designated for permitted uses and uses permitted
with special use standards not including residential uses, or as
Commercial Ready Residential Space consistent with 18.2.3.130.B.1.c
below.

c. Commercial Ready Residential Space. Gross floor area designated as
commercial ready residential space shall be in compliance with the following:

i. Residential uses provided within the designated commercial ready
residential space shall be limited to rental units affordable to households
earning 80% Area Median Income consistent with the requirements of the
Ashland Affordable Housing Program including household income
verification and maximum rental amounts.

1 ii. An Agreement shall be executed with the City, or a deed restriction shall be
2 recorded on the property, which stipulates that the Commercial Ready
3 Residential Space shall not be used as market rate rental housing or sold
4 as a residential unit.

5 iii. If residential uses are provided immediately above the ground floor level
6 (i.e., second floor residential), horizontal occupancy separation must be
7 provided to accommodate future commercial occupancies as required by
8 the building code at the time of construction.

9 d. Residential uses shall be subject to the same setback, landscaping, and
10 design standards as for permitted uses in the underlying zone.

11 2. Mixed Use Developments Inside the Downtown Design Standards Overlay, Large
12 Lots and One-Story Mixed-Use Buildings. Residential densities shall not exceed 15
13 dwelling units per acre in the E-1 zone, 30 dwelling units per acre in the C-1 zone,
14 and 60 dwelling units per acre in the C-1-D zone. For the purpose of density
15 calculations, units of less than 500 square feet of gross habitable floor area shall
16 count as 0.75 of a unit.

17 a. Applicability. This subsection, 18.2.3.130.B.2, applies to mixed-use buildings
18 and developments located in the Downtown Design Standards Overlay. In
19 addition, this subsection applies to mixed-use buildings and developments
20 located on lots that are 10 acres and greater in size and to one-story mixed-use
21 buildings, whether the lot or building is located inside or outside the
22 Downtown Design Standards overlay.

23 i. Location. Mixed-use buildings and developments located in the Downtown
24 Design Standard overlay shall be subject to the requirements of this
25 subsection.

26 ii. Lot Size. Mixed-use buildings and developments located on lots 10 acres
27 and greater in size shall be subject to the requirements of this subsection.

28 iii. Building Height. Mixed-use buildings that are one story in height shall be
29 subject to this subsection.

30 b. Gross Floor Area.

 i. One Building. When a planning application is limited to one building,
 residential uses may occupy up to 35 percent of the gross floor area of the
 ground floor. At least 65 percent of the gross floor area of the ground floor
 shall be designated for permitted uses and uses permitted with special use
 standards, not including residential uses.

 ii. More Than One Building. When a planning application includes more than
 one building, the equivalent of at least 65 percent of the gross floor area of
 the ground floor for all buildings shall be designated for permitted uses and
 uses permitted with special use standards, not including residential uses.

3. Residential uses shall be subject to the same setback, landscaping, and design
standards as for permitted uses in the underlying zone.

4. Off-street parking is not required for residential uses in the C-1-D zone.

5. For the purpose of density calculations, units of less than 500 square feet of gross habitable floor area shall count as 0.75 of a unit.

SECTION 3. Section 18.2.6.030 [Unified Standards for Non-Residential Zones – Standards for Non-Residential Zones] of the Ashland Land Use Ordinance is hereby amended to read as follows:

Table 18.2.6.030 – Standards for Non-Residential Zones
(Except as modified under chapter 18.5.5 Variances.)

<i>Standard</i>	<i>C-1</i>	<i>C-1-D</i>	<i>E-1</i>	<i>M-1</i>
Residential Density ¹ (dwelling units/acre)	30 du/ac No Density Maximum	60 du/ac No Density Maximum	15 du/ac No Density Maximum	NA
¹ where allowed per section 18.2.3.130; within E-1 zone, per R-Overlay (see chapter 18.3.13 Residential Overlay). <u>For calculation of the affordable housing requirements provided in 18.5.8.050 the base residential density of C-1 shall be considered 30du/ac, and E-1 shall be considered 15 du/acre.</u>				
Lot Area, Width, Depth Lot Coverage	There is no minimum lot area, width or depth, or maximum lot coverage; or minimum front, side or rear yard, except as required to comply with the special district and overlay zone provisions of part 18.3 or the site development and design standards of part 18.4.			
Setback Yards (feet)	There is no minimum front, side, or rear yard required, except where buildings on the subject site abut a residential zone, in which case a side of not less than 10 ft and a rear yard of not less than 10 ft per story is required. The solar setback standards of chapter 18.4.8 do not apply to structures in the C-1-D zone. Except for buildings within 100 feet of a residential zone, the solar setback standards of chapter 18.4.8 do not apply to structures in the C-1 zone. See also section 18.2.4.030 Arterial Street Setback.			There is no minimum front, side, or rear yard, except 20 ft where adjoining a residential zone.
Building Height ^{28-31 & 2} – Maximum (feet)	40 ft, except: - Buildings greater than 40 ft and less than 55 ft are permitted in C-1-D zone with approval of a Conditional Use Permit. -Where located more than 100 feet from a residential zone, buildings greater than 40 ft and less than 55 ft are permitted in C-1 zone with approval of a Conditional Use Permit.			40 ft

Table 18.2.6.030 – Standards for Non-Residential Zones
(Except as modified under chapter 18.5.5 Variances.)

Standard	C-1	C-1-D	E-1	M-1
²¹ See definition of "height of building" in section 18.6.1.030 . ³² Parapets may be erected up to five feet above the maximum building height; see also, 18.4.4.030 G.4 for mechanical equipment screening requirements, and 18.5.2.020 for Site Design Review for mechanical equipment review process.				
Landscape Area – Minimum (% of developed lot area)	15%	None, except parking areas and service stations shall meet the standards of chapters 18.4.3 Parking, Access, and Circulation, and 18.4.4 Landscaping, Lighting, and Screening.	15%	10%

SECTION 4. Section 18.3.13.010 [Residential Overlay Regulations – Residential Overlay] of the Ashland Land Use Ordinance is hereby amended to read as follows:

18.3.13.010 Residential Overlay Regulations

- A. Purpose.** The Residential overlay is intended to encourage a concentration and mix of businesses and housing that provides a variety of housing types, supports resource and energy conservation, and promotes walking, bicycling, and transit use.
- B. Applicability.** The Residential overlay applies to all property where 'Residential Overlay' (R) is indicated on the Zoning map.
- C. Requirements.** ~~The Dwellings in the Residential overlay requirements are as followsshall meet the applicable standards in section 18.2.3.130, except that dwellings developed under the Transit Triangle (TT) overlay option are not subject to subsection 18.3.13.010 C, below. See section 18.3.14.040 for the allowed uses in the TT overlay or 18.3.14.040 for the TT overlay.~~
- ~~1. Mixed-Use Developments. If there is one building on a site, ground floor residential uses shall occupy not more than 35 percent of the gross floor area of the ground floor. Where more than one building is located on a site, not more than 50 percent of the total lot area shall be designated for residential uses. At least 65 percent of the gross floor area of the ground floor shall be designated for permitted uses and uses permitted with special use standards, not including residential uses.~~
 - ~~2. Residential densities shall not exceed 15 dwelling units per acre. For the purpose of density calculations, units of less than 500 square feet of gross habitable floor~~

1 ~~area shall count as 0.75 of a unit.~~

2 ~~3. Residential uses shall be subject to the same setback, landscaping, and design~~
3 ~~standards as for permitted uses in the E-1 District.~~

4
5 **SECTION 5.** Section 18.6.1 [Definitions] of the Ashland Land Use Ordinance is hereby
6 amended to include the following definition which reads as follows:

7 **18.6.1.030 - Definitions**

8 Commercial Ready Residential Space. Ground floor area within a mixed-use building
9 that is designed to accommodate commercial uses in compliance with applicable
10 design and building code standards. Commercial Ready Residential Space provides
11 the flexibility of occupying a space with commercial uses and allowing the use in
12 such space to change to affordable rental housing in accordance with the Ashland
13 Affordable Housing Program.

14 **SECTION 6. Codification.** In preparing this ordinance for publication and distribution, the City
15 Recorder shall not alter the sense, meaning, effect, or substance of the ordinance, but within such
16 limitations, may:

- 17 (a) Renumber sections and parts of sections of the ordinance;
18 (b) Rearrange sections;
19 (c) Change reference numbers to agree with renumbered chapters, sections or other parts;
20 (d) Delete references to repealed sections;
21 (e) Substitute the proper subsection, section, or chapter numbers;
22 (f) Change capitalization and spelling for the purpose of uniformity;
23 (g) Add headings for purposes of grouping like sections together for ease of reference; and
24 (h) Correct manifest clerical, grammatical, or typographical errors.

25
26 **SECTION 7. Severability.** Each section of this ordinance, and any part thereof, is severable,
27 and if any part of this ordinance is held invalid by a court of competent jurisdiction, the
28 remainder of this ordinance shall remain in full force and effect.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

The foregoing ordinance was first read by title only in accordance with Article X,
Section 2(C) of the City Charter on the ____th day of _____, 2022,
and duly PASSED and ADOPTED this ____th day of _____, 2022,

Melissa Huhtala, City Recorder

SIGNED and APPROVED this ____ day of _____, 2022.

Julie Akins, Mayor

Reviewed as to form:

Douglas McGeary, Acting City Attorney

ASHLAND PLANNING DIVISION
STAFF REPORT
ADDENDUM
September 27, 2022

PLANNING ACTION: PA-L-2021-00013

APPLICANT: City of Ashland

ORDINANCE REFERENCES: **AMC 18.2.3** Special Use Standards
 AMC 18.2.6 Standards for Non-Residential Zones
 AMC 18.3.13 Residential Overlay
 AMC 18.6.1 Definitions

REQUEST: The proposal includes a series of amendments to the Ashland Municipal Code (AMC) Title 18 Land Use to the residential standards for mixed-use development in the Commercial (C-1) and Employment (E-1) zones. The draft code amendments are attached.

LEGISLATIVE HISTORY:

The Planning Commission held a public hearing on December 14, 2021, and recommended approval of the prior draft of the ordinance amending AMC Title 18 Land Use. The City Council reviewed the proposed land use code amendments at a public hearing on February 1, 2022 and did not approve first reading of the ordinance at that time. The Council requested potential amendments be considered to allow the entirety of the first floor of developments on E-1 and C-1 lands to be residential provided certain housing affordability conditions were met.

The amended draft ordinance presented for consideration newly incorporates allowances for affordable rental housing within *Commercial Ready Space* within the ground floor area. Commercial Ready Space could be utilized in a flexible manner as either permitted and special permitted commercial uses, or as affordable rental housing restricted to households earning 80% the Area Median Income (AMI) consistent with the Ashland Affordable Housing Program.

The ordinance amendments originally presented to the Planning Commission on December 14, 2021, and to the Council on February 1, 2022, are provided as bold underlined black text or as black strikeouts in draft Ordinance 3205 as attached. The amendments made subsequent to the Commission's prior review are presented as bold red underlined text.

I. Ordinance Amendments

A. Summary of Proposed Code Amendments

The proposal includes a series of amendments to AMC Title 18 Land Use to the residential standards for mixed-use development located in the Commercial (C-1) and Employment (E-1) zones. Specifically, the proposed code amendments increase the allowance for residential uses from 35 to 65 percent of the ground floor in multi-story, mixed-use buildings and developments located in the C-1 and E-1 zones and outside of the Downtown Design Standards overlay. Additionally, the development of flexible Commercial Ready Space would allow residential uses within the 35% commercially designated floor area provided an agreement is executed with the City, or deed restriction is recorded on the property, demonstrating that the residential use will be in conformance with the Ashland Affordable Housing Program as affordable rental housing for households earning 80% AMI or less.

Buildings located within the Downtown Design Standards overlay, buildings that are one story in height, and properties that are 10 acres in size or larger would be subject to the current code requirement of 35 percent of the ground floor is permitted in residential uses.

Residential development in the E-1 zone is limited to E-1 properties in the Residential overlay (R-overlay). Approximately 42 percent of the E-1 zoned land in the city limits is in the Residential overlay and 58 percent is not in the Residential overlay. Areas such as Washington Street, Jefferson Avenue, Benson Way and Clover Lane are not located in the Residential overlay. Additionally, the Croman Mill District has its own unique zones based on the master plan and does not include any C-1 or E-1 zoned land.

The amendments are intended to provide more flexibility in the employment zones to respond to fluctuations and changes in the economy and demand for housing. The project objectives are to:

- 1) maintain an inventory of employment parcels in a variety of sizes and locations to encourage new business development.
- 2) increase the supply of moderately-priced rental and for-purchase housing; and
- 3) jumpstart redevelopment in areas that have trouble attracting projects and/or are in proximity to public transit and walking distance to daily service needs, such as groceries, shops, parks, etc.
- 4) provide opportunities to utilize vacant commercial floor area as regulated affordable rental housing restricted to households earning 80% AMI or less.

The draft amendments to the residential standards for mixed-use development are attached and summarized below.

- 18.2.3.130.B.1.a – limits new provisions for residential uses (i.e., up to 65 percent of the ground floor) in the C-1 and E-1 zones to locations outside of the Downtown Design Standards overlay. In addition, to be eligible for the new provisions, the lot size must be less than 10 acres in size and the mixed-use building must be multi-story (i.e., two or more stories in height).

- 18.2.3.B.1.b - increases the allowance for residential uses in multi-story, mixed-use buildings and developments from 35 to 65 percent of the ground floor. Again, this allowance is for locations outside of the Downtown Design Standards overlay. Additionally, the provision is limited to multi-story mixed-use buildings and lots that are less than 10 acres in size.
- 18.2.3.B.1.c.i-iii – Creates a designation for Commercial Ready Space which is developed to accommodate commercial occupancies but may be used flexibly as either a commercial use or as regulated affordable rental housing for households earning 80%AMI or less.
- 18.2.3.130.B.2.a – retains existing standard which allows up to 35 percent of the ground floor to be used for residential uses. The existing standard applies to three situations – properties located inside of the Downtown Design Standards overlay, for lots 10 acres and greater in size and for single-story buildings.
- 18.2.3.130.B.2.b.i – this is the exiting standard allowing up to 35 percent of the ground floor in residential uses, it is simply moved from the existing code section 18.2.3.130. B.1.
- 18.2.3.130.B.1.b.ii – revises the code for situations where a mixed-use development includes more than one building. It requires the equivalent of 65 percent of the ground floor of all the buildings to be provided in permitted or special permitted non-residential uses. This retains the ability in mixed-use developments with more than one building to construct a building that is entirely residential uses as long as the equivalent square footage of 65 percent of the ground floor of the residential building is transferred to another building in the development and is used for permitted and special permitted non-residential uses.
- Table 18.2.6.030 – deletes residential densities in the C-1, C-1-D and E-1 zones.
- 18.3.13.010.C – removes existing language that duplicates the standards in 18.2.3.130 Dwellings in Non-Residential Zones and instead references the requirements in 18.2.3.130 for the Residential overlay or in 18.3.14.040 for the Transit Triangle (TT) overlay. The Residential overlay applies to a portion but not all of the E-1 zone.
- 18.6.1.030 [Definition] - amended to include definition of Commercial Ready Space.

B. Discussion

The 2021-2041 Housing Capacity Analysis (HCA) is a technical study required by state law and was adopted by the City Council on August 17, 2021 as a technical report and supporting document to the *Ashland Comprehensive Plan*. The HCA provides a number of recommended policy changes to address Ashland's unmet housing needs that are related to the proposed code amendments. The HCA's recommended policy changes or strategies are presented as guidance for the upcoming Housing Production Strategy.

Strategy 1: Ensure an adequate supply of land is available and serviced

- Strategy 1.3: Identify opportunities to increase allowances for residential uses on the ground floor of buildings within commercial and employment zones.
- Strategy 1.4: Evaluate decreasing multifamily parking requirements.

Strategy 2: Provide opportunities for housing development to meet the City's identified housing needs

- Strategy 2.2: Evaluate opportunities incentivize smaller units through amendments to allowable densities.

- Strategy 2.4: Evaluate increasing allowances for residential dwellings in commercial and employment zones, such as allowing an increased amount of residential uses in ground floor commercial spaces.

Strategy 5: Align housing planning with the Climate and Energy Action Plan

Strategy 5.4: Evaluate opportunities to develop new housing closer to downtown and commercial centers to reduce dependence on automobiles for transportation.

The Oregon Statewide Planning System requires all cities and counties in Oregon to address Statewide Planning Goal 9 Economic Development. Goal 9 requires cities and counties to provide an adequate land supply for economic development and employment growth. Chapter VII Economy of the *Ashland Comprehensive Plan* and the 2007 Economic Opportunity Analysis (EOA) address the Goal 9 requirements.

Oregon Administrative Rule (OAR) 660 Division 9 implements Goal 9 and provides two options for land use code and comprehensive plan amendments. The first option in OAR 660-009-0010(3) allows local jurisdictions to make amendments by relying on existing plans if findings can be made that there are no significant changes in economic development opportunities based on new information about national, state, regional, count and local trends.

The second option in OAR 660-009-0010(4) requires changes to the designation of land in excess of two acres from an employment use designation to any other use designation. Under this provision, a city or county must show the amendment is consistent with the comprehensive plan and existing EOA. If the proposed amendment can't be supported by the adopted comprehensive plan and EOA, OAR 660-009-0010(4) requires an update the comprehensive plan and/or EOA.

After researching the Goal 9 requirements and speaking to the Oregon Department of Land Conservation (DLCD), staff believes the analysis performed by Fregonese Associates can be used to address OAR 660-009-0010(3) for the proposed code amendments to increase the allowance for residential uses from 35 to 65 percent of the ground floor in multi-story, mixed-use buildings and developments located in the C-1 and E-1 zones and outside of the Downtown Design Standards overlay.

With assistance from Fregonese Associates, staff researched and assessed the rate of employment land consumption and the growth rate in number of jobs in Ashland since the adoption of the 2007 EOA. Fregonese and Associates analyzed the buildable lands data, building permits issued, and Ashland's employment data in the last 10 years and found there is sufficient C-1 and E-1 land for future employment needs. Specific items in the data analysis include the following.

- The land consumption rate in the C-1 and E-1 zones is relatively low with an average of 2 acres per year used for the last 8 years.
- Of the 50 building permits that were issued for commercial development in the last 10 years, 26 permits were in located in the C-1 and E-1 zones and the other 24 permits were located in the C-1-D zone (Downtown) or were public projects such as SOU and Ashland School District projects.

- The 2007 Economic Opportunity Analysis (EOA) forecasted more employment growth than has occurred over the last 14 years. The EOA projected 15,220 jobs by 2027, including 10,654 jobs in retail and services. State employment data shows a total of 10,237 jobs in the Ashland Urban Growth Boundary in 2019.
- The EOA determined that 30% of the employment growth would not require consumption of vacant land.
- Currently, approximately 20% of the jobs are in residential zones.

As proposed in the ordinance amendments, at least 35% of the ground floor must be used as a permitted or special permitted (commercial) use, or alternatively as Commercial Ready Space that could be used as income restricted affordable rental housing. In 2021 the Oregon Legislature approved Senate Bill 8 which restricts local governments from denying or limiting the approval of affordable housing applications in a number of circumstances including when the property is zoned for commercial uses. By providing an option for the development of Commercial Ready Space on the ground floor of mixed-use buildings, that can be used as affordable rental housing restricted to households with incomes at 80%AMI, the amendments proposed create a path for the city to approve of the use of vacant commercial floor area as needed affordable housing within the C-1 and E-1 zones.

C. Project Background

The Planning Commission, at the study session meeting on December 22, 2020 evaluated a proposal from members of the private development community that suggested that there is a surplus of commercial space that could be used to provide housing units. The concerns raised included the decreased demand for commercial space due to ecommerce and the pandemic while housing demand continues to increase, particularly after the Alameda fire. The private development representatives suggested amending the land use code to allow the temporary use of ground floor commercial space to be used for housing units and requiring the buildings to be constructed to commercial building code standards so the space could be converted in the future should demand for commercial space return.

The City Council initiated the project at the March 16, 2021 business meeting. Specifically, the Council directed staff to work with the Planning Commission to evaluate the draft code language prepared by private development representatives (KDA Homes), and propose amendments to the land use ordinance which would provide the flexibility to temporarily use the ground floor of commercial buildings for housing.

The Planning Commission reviewed and discussed the proposed code amendment project at the June 22, 2021, August 24, 2021, October 26, 2021 and November 23, 2021 study session meetings. The Planning Commission held a public hearing on December 14, 2021, and recommended approval of the prior draft of the ordinance amending AMC Title 18 Land Use. The City Council reviewed the proposed land use code amendments at a public hearing on February 1, 2022 and did not approve first reading of the ordinance at that time.

Currently, at least 65 percent of the ground floor of buildings in the commercial (C-1) and employment (E-1) zones is required to be commercial and light industrial uses. The remaining 35 percent of the ground floor can be used for residential dwellings as well 100 percent of the upper stories in multi-story buildings. The exceptions are:

- 1) in the Transit Triangle (TT) overlay, a minimum of 35 percent of the ground floor is required to be used for commercial and light industrial uses and
- 2) in the commercial area of the North Mountain Neighborhood District, the ground floor can be used entirely for housing but must be built to commercial building code standards so that the space can be converted to commercial uses in the future.

In 1992, the land use code was amended to eliminate entirely residential buildings as an allowed use in the C-1 and E-1 zones (Ord. 2688). The current standard of requiring 65 percent of the ground floor in commercial or light industrial uses was put in place at that time, as well as residential densities for each of the zones. Prior to 1992, residential buildings comprised entirely of housing units could be built in the C-1 and E-1 zones with the approval of a conditional use permit. The 1992 code update was in part due to concern about construction of residential buildings near the downtown and loss of future commercial space.

II. Procedural

18.5.9.020 Applicability and Review Procedure

Applications for Plan Amendments and Zone Changes are as follows:

B. Type III. It may be necessary from time to time to make legislative amendments in order to conform with the Comprehensive Plan or to meet other changes in circumstances or conditions. The Type III procedure applies to the creation, revision, or large-scale implementation of public policy requiring City Council approval and enactment of an ordinance; this includes adoption of regulations, zone changes for large areas, zone changes requiring comprehensive plan amendment, comprehensive plan map or text amendment, annexations (see chapter 18.5.8 for annexation information), and urban growth boundary amendments. The following planning actions shall be subject to the Type III procedure.

1. Zone changes or amendments to the Zoning Map or other official maps, except where minor amendments or corrections may be processed through the Type II procedure pursuant to subsection 18.5.9.020.A, above.
2. Comprehensive Plan changes, including text and map changes or changes to other official maps.
3. Land Use Ordinance amendments.
4. Urban Growth Boundary amendments.

III. Conclusions and Recommendations

Staff recommends the Planning Commission recommend approval of the proposed amendments to the City Council.

The proposed amendments are scheduled for a public hearing and first reading at the City Council on November 15th, and for second reading on December 6, 2022.

ASHLAND PLANNING DIVISION

STAFF REPORT

December 14, 2021

PLANNING ACTION: PA-L-2021-00013

APPLICANT: City of Ashland

ORDINANCE REFERENCES: **AMC 18.2.3** Special Use Standards
 AMC 18.2.6 Standards for Non-Residential Zones
 AMC 18.3.13 Residential Overlay

REQUEST: The proposal includes a series of amendments to the Ashland Municipal Code (AMC) Title 18 Land Use to the residential standards for mixed-use development in the Commercial (C-1) and Employment (E-1) zones. The draft code amendments are attached.

I. Ordinance Amendments

A. Summary of Proposed Code Amendments

The proposal includes a series of amendments to AMC Title 18 Land Use to the residential standards for mixed-use development located in the Commercial (C-1) and Employment (E-1) zones. Specifically, the proposed code amendments increase the allowance for residential uses from 35 to 65 percent of the ground floor in multi-story, mixed-use buildings and developments located in the C-1 and E-1 zones and outside of the Downtown Design Standards overlay. Buildings located within the Downtown Designs Standards overlay, buildings that are one story in height, and properties that are 10 acres in size are larger would be subject to the current code requirement of 35 percent of the ground floor is permitted in residential uses.

Residential development in the E-1 zone is limited to E-1 properties in the Residential overlay (R-overlay). Approximately 42 percent of the E-1 zoned land in the city limits is in the Residential overlay and 58 percent is not in the Residential overlay. Areas such as Washington Street, Jefferson Avenue, Benson Way and Clover Lane are not located in the Residential overlay. Additionally, the Croman Mill District has its own unique zones based on the master plan and does not include any C-1 or E-1 zoned land.

The amendments are intended to provide more flexibility in the employment zones to respond to fluctuations and changes in the economy and demand for housing. The project objectives are to: 1) maintain an inventory of employment parcels in a variety of sizes and locations to encourage new business development; 2) increase the supply of moderately-priced rental and for-purchase housing; and 3) jumpstart redevelopment in areas that have trouble attracting projects and/or are in proximity to public transit and walking distance to daily service needs, such as groceries, shops, parks, etc.

The draft amendments to the residential standards for mixed-use development are attached and summarized below.

- 18.2.3.130.B.1.a – limits new provisions for residential uses (i.e., up to 65 percent of the ground floor) in the C-1 and E-1 zones to locations outside of the Downtown Design Standards overlay. In addition, to be eligible for the new provisions, the lot size must be less than 10 acres in size and the mixed-use building must be multi-story (i.e., two or more stories in height).
- 18.2.3.B.1.b - increases the allowance for residential uses in multi-story, mixed-use buildings and developments from 35 to 65 percent of the ground floor. Again, this allowance is for locations outside of the Downtown Design Standards overlay. Additionally, the provision is limited to multi-story mixed-use buildings and lots that are less than 10 acres in size.
- 18.2.3.130.B.2.a – retains existing standard which allows up to 35 percent of the ground floor to be used for residential uses. The existing standard applies to three situations – properties located inside of the Downtown Design Standards overlay, for lots 10 acres and greater in size and for single-story buildings.
- 18.2.3.130.B.2.b.i – this is the existing standard allowing up to 35 percent of the ground floor in residential uses, it is simply moved from the existing code section 18.2.3.130. B.1.
- 18.2.3.130.B.1.b.ii – revises the code for situations where a mixed-use development includes more than one building. It requires the equivalent of 65 percent of the ground floor of all the buildings to be provided in permitted or special permitted non-residential uses. This retains the ability in mixed-use developments with more than one building to construct a building that is entirely residential uses as long as the equivalent square footage of 65 percent of the ground floor of the residential building is transferred to another building in the development and is used for permitted and special permitted non-residential uses.
- Table 18.2.6.030 – deletes residential densities in the C-1, C-1-D and E-1 zones and adds a minimum floor area ratio (FAR) of .50.
- 18.3.13.010.C – removes existing language that duplicates the standards in 18.2.3.130 Dwellings in Non-Residential Zones and instead references the requirements in 18.2.3.130 for the Residential overlay or in 18.3.14.040 for the Transit Triangle (TT) overlay. The Residential overlay applies to a portion but not all of the E-1 zone.

B. Discussion

The 2021-2041 Housing Capacity Analysis (HCA) is a technical study required by state law and was adopted by the City Council on August 17, 2021 as a technical report and supporting document to the *Ashland Comprehensive Plan*. The HCA provides a number of recommended policy changes to address Ashland's unmet housing needs that are related to the proposed code amendments. The HCA's recommended policy changes or strategies are presented as guidance for the upcoming Housing Production Strategy.

Strategy 1: Ensure an adequate supply of land is available and serviced

- Strategy 1.3: Identify opportunities to increase allowances for residential uses on the ground floor of buildings within commercial and employment zones.
- Strategy 1.4: Evaluate decreasing multifamily parking requirements.

Strategy 2: Provide opportunities for housing development to meet the City's identified housing needs

- Strategy 2.2: Evaluate opportunities incentivize smaller units through amendments to allowable densities.
- Strategy 2.4: Evaluate increasing allowances for residential dwellings in commercial and employment zones, such as allowing an increased amount of residential uses in ground floor commercial spaces.

Strategy 5: Align housing planning with the Climate and Energy Action Plan

Strategy 5.4: Evaluate opportunities to develop new housing closer to downtown and commercial centers to reduce dependence on automobiles for transportation.

The Oregon Statewide Planning System requires all cities and counties in Oregon to address Statewide Planning Goal 9 Economic Development. Goal 9 requires cities and counties to provide an adequate land supply for economic development and employment growth. Chapter VII Economy of the *Ashland Comprehensive Plan* and the 2007 Economic Opportunity Analysis (EOA) address the Goal 9 requirements.

Oregon Administrative Rule (OAR) 660 Division 9 implements Goal 9 and provides two options for land use code and comprehensive plan amendments. The first option in OAR 660-009-0010(3) allows local jurisdictions to make amendments by relying on existing plans if findings can be made that there are no significant changes in economic development opportunities based on new information about national, state, regional, count and local trends.

The second option in OAR 660-009-0010(4) requires changes to the designation of land in excess of two acres from an employment use designation to any other use designation. Under this provision, a city or county must show the amendment is consistent with the comprehensive plan and existing EOA. If the proposed amendment can't be supported by the adopted comprehensive plan and EOA, OAR 660-009-0010(4) requires an update the comprehensive plan and/or EOA.

After researching the Goal 9 requirements and speaking to the Oregon Department of Land Conservation (DLCD), staff believes the analysis performed by Fregonese Associates can be used to address OAR 660-009-0010(3) for the proposed code amendments to increase the allowance for residential uses from 35 to 65 percent of the ground floor in multi-story, mixed-use buildings and developments located in the C-1 and E-1 zones and outside of the Downtown Design Standards overlay.

With assistance from Fregonese Associates, staff researched and assessed the rate of employment land consumption and the growth rate in number of jobs in Ashland since the adoption of the 2007 EOA. Fregonese and Associates analyzed the buildable lands data, building permits issued, and Ashland's employment data in the last 10 years and found there is sufficient C-1 and E-1 land for future employment needs. Specific items in the data analysis include the following.

- The land consumption rate in the C-1 and E-1 zones is relatively low with an average of 2 acres per year used for the last 8 years.
- Of the 50 building permits that were issued for commercial development in the last 10 years, 26 permits were in located in the C-1 and E-1 zones and the other 24 permits

were located in the C-1-D zone (Downtown) or were public projects such as SOU and Ashland School District projects.

- The 2007 Economic Opportunity Analysis (EOA) forecasted more employment growth than has occurred over the last 14 years. The EOA projected 15,220 project jobs by 2027, including 10,654 jobs in retail and services. State employment data shows a total of 10,237 jobs in the Ashland Urban Growth Boundary in 2019.
- The EOA determined that 30% of the employment growth would not require consumption of vacant land.
- Currently, approximately 20% of the jobs are in residential zones.

As originally suggested by KDA, one of the options that the Planning Commission discussed included revising the land use code to allow 100 percent of the ground floor of newly constructed buildings in the C-1 and E-1 zones to be used for residential uses.

According to staff's research, an amendment allowing 100 percent of the ground floor of mixed-use buildings in the C-1 and E-1 zones to be used for housing will likely be considered a significant change and possibly a change from an employment land use designation under OAR 660-009-0010(4). As a result, it is staff's understanding that the 2007 EOA would need to be updated to show that there will be an adequate supply of employment lands to address Ashland's future economic and job needs.

In staff's opinion, the options are to move forward with the attached amendments, consider the 100 percent residential ground floor as one of the options in the housing production strategy, or both amend the code as proposed and identify the 100 percent residential ground floor amendment in the housing production strategy. Potential future actions could involve rezoning employment lands for residential purposes, creating a mixed-use zone with greater flexibility and residential allowances similar to the North Mountain Neighborhood Commercial Zone, or simply retaining existing C-1 and E-1 zoning with the options to build 100 percent residential projects.

C. Project Background

Laz Ayala and Mark Knox from KDA Homes introduced the issue to the Planning Commission at the study session meeting on December 22, 2020. The KDA representatives suggested that there is a surplus of commercial space that could be used to provide housing units. The concerns raised included the decreased demand for commercial space due to ecommerce and the pandemic while housing demand continues to increase, particularly after the Alameda fire. The KDA representatives suggested amending the land use code to allow the temporary use of ground floor commercial space to be used for housing units and requiring the buildings to be constructed to commercial building code standards so the space could be converted in the future should demand for commercial space return.

The City Council initiated the project at the March 16, 2021 business meeting. Specifically, the Council directed staff to work with the Planning Commission to evaluate the draft code language prepared by representatives of KDA Homes and propose amendments to the land use ordinance which would provide the flexibility to temporarily use the ground floor of commercial buildings for housing.

The Planning Commission reviewed and discussed the proposed code amendment project at the June 22, 2021, August 24, 2021, October 26, 2021 and November 23, 2021 study session meetings.

Currently, at least 65 percent of the ground floor of buildings in the commercial (C-1) and employment (E-1) zones is required to be commercial and light industrial uses. The remaining 35 percent of the ground floor can be used for residential dwellings as well 100 percent of the upper stories in multi-story buildings. The exceptions are: 1) in the Transit Triangle (TT) overlay, a minimum of 35 percent of the ground floor is required to be used for commercial and light industrial uses and 2) in the commercial area of the North Mountain Neighborhood District, the ground floor can be used entirely for housing but must be built to commercial building code standards so that the space can be converted to commercial uses in the future.

In 1992, the land use code was amended to eliminate entirely residential buildings as an allowed use in the C-1 and E-1 zones (Ord. 2688). The current standard of requiring 65 percent of the ground floor in commercial or light industrial uses was put in place at that time, as well as residential densities for each of the zones. Prior to 1992, residential buildings comprised entirely of housing units could be built in the C-1 and E-1 zones with the approval of a conditional use permit. The 1992 code update was in part due to concern about construction of residential buildings near the downtown and loss of future commercial space.

II. Procedural

18.5.9.020 Applicability and Review Procedure

Applications for Plan Amendments and Zone Changes are as follows:

B. Type III. It may be necessary from time to time to make legislative amendments in order to conform with the Comprehensive Plan or to meet other changes in circumstances or conditions. The Type III procedure applies to the creation, revision, or large-scale implementation of public policy requiring City Council approval and enactment of an ordinance; this includes adoption of regulations, zone changes for large areas, zone changes requiring comprehensive plan amendment, comprehensive plan map or text amendment, annexations (see chapter 18.5.8 for annexation information), and urban growth boundary amendments. The following planning actions shall be subject to the Type III procedure.

1. Zone changes or amendments to the Zoning Map or other official maps, except where minor amendments or corrections may be processed through the Type II procedure pursuant to subsection 18.5.9.020.A, above.
2. Comprehensive Plan changes, including text and map changes or changes to other official maps.
3. Land Use Ordinance amendments.
4. Urban Growth Boundary amendments.

III. Conclusions and Recommendations

Staff recommends the Planning Commission recommend approval of the proposed amendments to the City Council. The proposed amendments are scheduled for a public hearing and first reading at the City Council on January 4 and for second reading on January 18.

Ashland Economic Sustainability Assessment

Laz Ayala, KDA Homes, LLC

12/11/2020

Ashland Planning Commission,

For many years, our community has been experiencing a housing supply problem involving market rate and subsidized housing, particularly 1- and 2-bedroom units often referred to as workforce housing. Workforce housing is essential in attracting businesses to our community as we look to diversify our local economy. Forrester fires, Covid-19 and E-commerce have caused serious short- and long-term damage to Ashland's economy. These phenomena are not likely to disappear and in fact, experts warn to expect more in the years ahead. While these phenomena have created economic devastation and accelerated shifts in how we live, work, shop, and play they also bring opportunities we must embrace if Ashland is to remain the thriving community it still is today. We have two choices: embrace these opportunities or become collateral damage.

We have time to assess what may or may not work in Ashland's future economy and make the necessary changes to adapt to the fast-changing world we live in. If we agree that our tourist economy is in peril, we must respond with the changes needed to adapt to a more diverse and sustainable economy. As earlier mentioned, an adequate supply of workforce housing is fundamental in this effort and as such we must explore ways, we can provide much needed workforce housing that will not only address our housing needs, but provide revenue to fund City services such as fire, police, water, sewer, roads, parks, schools, affordable housing and other public funded programs.

If we agree that demand for office and retail commercial space is in decline and recognize the need for more workforce housing, council should consider a minor amendment to the commercial and employment zones (C-1/ E-1) allowing for 100% residential uses at ground level (with conditions for future commercial conversion) such as in the Transit Triangle and North Mountain neighborhoods. Except for these two neighborhoods, 100% residential is not permitted at ground level in other commercial zone districts in Ashland. We believe Downtown should not be part of this amendment, but rather commercial properties located within the fringe of Downtown, such as the commercial and employment district between "A" and Hersey extending west to Laurel and east to Mountain. Why 100% residential at ground level? There is no demand for retail or office space and

banks will not finance these projects nor will developers take a risk building commercial space for which there is no market.

Amending the commercial code to allow for 100% residential use makes projects like Meadowbrook Apartments along Fair Oaks Avenue within the North Mountain Master Plan area feasible. Below is a summary of the economic benefit to the City in terms of revenue in addition to the workforce housing opportunities provided:

The Meadowbrook Apartments project which is currently under construction has contributed approximately \$148,575.75 in permit fees and \$206,253.19 system development fees (CDCs) for a total of \$358,000. Upon completion it is estimated to provide \$72,333.57 in annual tax revenue, \$52,000 of which will go directly to the City of Ashland.

It is conceivable that amending the commercial zone requirements to allow for 100% residential would generate enough interest in similar projects and it is conceivable to see several of these projects get built every year thereby providing revenue for the City and its agencies and much needed workforce housing to attract investment and businesses to diversify our economy.

Sincerely,

Laz Ayala

[Submitted by Amy Gunter]

Good evening planning commissioners,

I would like to add to the discussion on changes to the housing and employment zones codes. Now is the opportunity for the city to make a meaningful, substantive impact on the present restrictions regarding provision of housing in the commercial and employment zones and parking requirements.

This discussion shouldn't be relegated to the existing residential overlay. This discussion should be regarding all commercial and employment zone lands. There are areas that do not have residential overlay but directly abut residential lands. The industrial zone does not allow for residential use. I would wager a bet that there are a number of 'residences' in the Employment zone.

Additionally, the existing uses of a site shouldn't determine that residential isn't allowed for example properties that have a conditional use permit such as a hotel cannot be converted to the 65/35 ratio as the code prevents residential development when the commercial property is occupied by a conditional use. The irony of this is that hotels have similar if not more fire life safety protections for their guests as an apartment complex requires. Additionally, generally the parking for a hotel is similar to the parking for a studio or small one bedroom so the physical changes to the property to accommodate the change of use are limited.

The code appears to eliminate the allowance for multiple buildings that would allow for a building that was entirely residential in conjunction with a commercial development. This should be allowed so that there can be stand-alone apartments. Possibly require the commercial building to be fronting upon the street like the projects we are doing in Talent on North Pacific Highway.

I suggest that it be considered that commercial property is allowed to develop at 100% residential when developed to the high-density multi-family residential standards. Medford has had successful residential development adjacent to large scale commercial developments in their commercial zones and the numbers of pedestrians and foot traffic to the businesses is increased due to the increase in housing on directly adjacent properties. For all intents and purposes, multi-family residential functions like and has similar traffic impacts as many permitted commercial uses. The traffic impacts are similar except that there is the ability to functionally reduce trips because people can walk to the nearby businesses. You'll find projects like this on West Main/Ross in Medford.

Parking:

The parking is not part of the discussion this evening I would like to comment that in all of the Rogue Valley jurisdictions where I have done planning and development projects Ashland has the highest parking requirements. This includes not only the number of parking spaces, the sizes of the parking spaces, the required buffering for said parking, most communities allow for stacking of residential parking. So in the event that a garage has a 20 foot front yard setback that garage space provides one parking space and the space behind that provides a second this way acknowledging that is how much of the historic area, the area around Harmony Lane, Ross Lane, Linda Ave., Ray lane, Parker St, Garfield St, you get my drift, there's a lot of single width driveways around town that only count as one parking space regardless of the how many vehicles can stack in the same driveway.

In conclusion,

Nobody wants to build vacant commercial structures but there is a lot of interest in building, expanding residential structures. I did suggest that my clients that own commercial and employment zoned property participate in this discussion because there are many that feel stuck. The folks on A Street and Hersey Street in the houses that are nearly impossible to convert to commercial are stuck in non-conforming developments.

I thank you for looking into making changes. I suggest you look deeper and consider broader, more impactful changes some of the suggestions include.

- Allow for 100 percent residential in the C-1 zones when developed to high density, multi-family residential standards.
- Retain the mix in the employment zones
- Retain the mixed-use component that allows for 50 percent of the site area (or some other number) to be residential in conjunction with commercial development when in separate structures.
- Allow for residential use when there is a conditional use on the property and do not restrict to permitted or special permitted uses.
- Allow for single story, mixed use construction of buildings
- Consider taller buildings (3 and 4 story buildings in the E-1)
- Revise the Economic Opportunity Analysis due to substantial changes to Ashland's economy that may not have been captured in 2007. This would provide avenue to allow more E-1 with R overlay in the areas that I note above.
- By all means reduce the parking requirements.

Thank you for your time.

KDAHomes

plan. develop. build

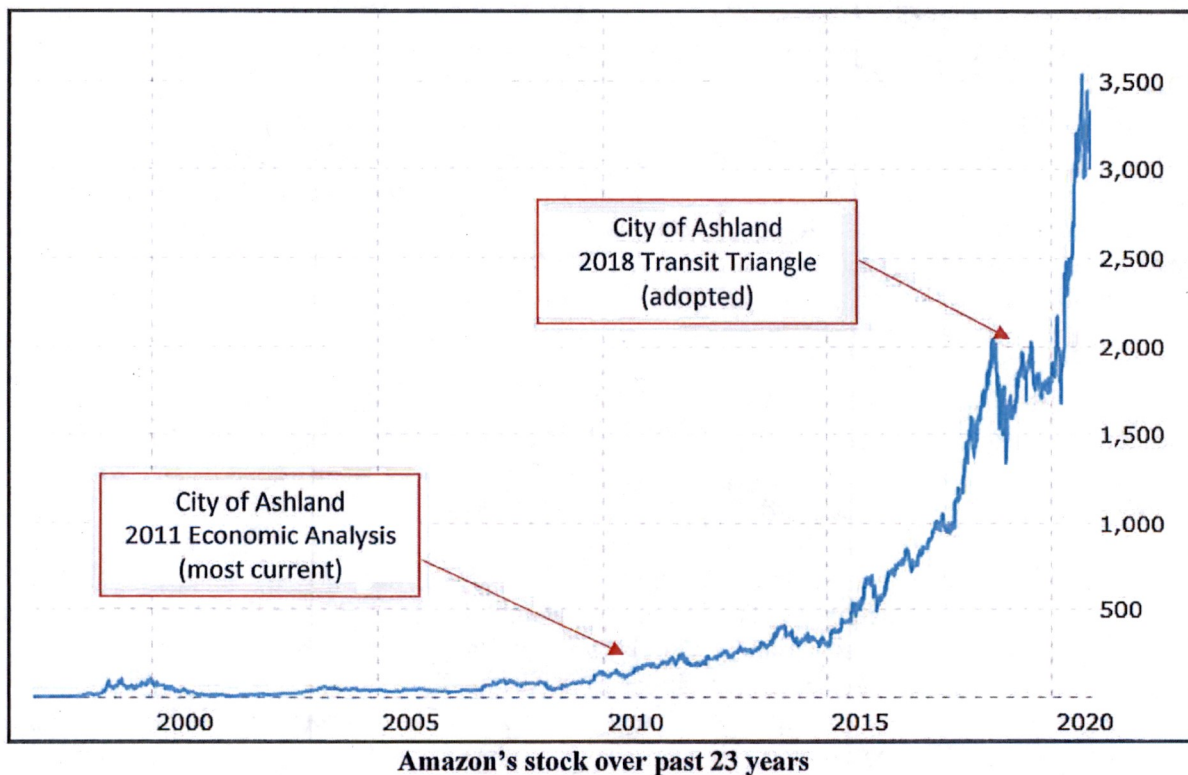
December 16th, 2020

TO: Ashland Planning Commission & Planning Staff

FROM: Mark Knox, KDA Homes, LLC

SUBJECT: Ashland Economic Sustainability

Background: As the Planning Commission and Planning Staff are aware, over the last few years I have spoken publically about concerns relating to e-commerce and how quickly technology is effecting Main Street's across the country. Main Streets have always been under attack with the innovation of the automobile, invention of malls or most recently big box retailers. But, today's rapid technological advancements relating to e-commerce, automation and overnight shipping, compounded by low-cost goods sourced from other countries is far different and likely to have the most devastating impact.



After experiencing the phenomenon first hand in the summer of 2017 while visiting the Main Street section in Tiburon California, reading multiple articles on the subject and closely monitoring our own Downtown Main Street, the problem is real. I've also talked with numerous professionals

Planning Commission's hearings and discussion of the Transit Triangle Infill Strategy, I submitted testimony relating to this issue and suggested the Planning Commission consider "swapping" the ground floor commercial code "requirement" from a minimum 65% required ground floor commercial use and maximum 35% ground floor residential use and the Planning Commission unanimously concurred, as did the City Council. The general idea being commercial space demand is in decline whereas residential demand continues to remain strong.

Unfortunately, since 2018, the issue has only worsened for a variety of reasons and so I'm again speaking out, talking with the Chamber of Commerce, City Council, Planning Staff, Southern Oregon University, Planning Staff, colleagues and anyone else who will listen.

Problem: The problems facing Ashland's Main Street are not just tied to e-commerce, big box or auto centric competition, but now it's facing the impacts and/or implications of forest fires, fear of travel from the pandemic, declining lease projections for professional office space due to the pandemic and a decline in Shakespeare or theatre enthusiasts. Further, in what should be considered a warning alarm, lending institutions have either stopped or significantly increased their lending demands for commercial developments, including mixed-use developments.

Unlike many other small towns across the country, Ashland has numerous attributes and livability components that draw visitors and locals to its fine dining establishments, pubs and bookstores, but it is not immune to real world issues and a slow erosion can quickly occur if we do not try to address it. And, because of the speed at which it is occurring, it needs immediate attention.

Solution: As most people know, I was a City Planner for the City of Ashland in what seems like yesterday but is now "years ago". I'm now a local Developer who does land use planning for a small development company. Over the last eight years, I've had the opportunity to work on various land use projects from small subdivisions (Garden Cottages – Ashland's first Cottage Housing Development) to large scale commercial developments (First Place along Lithia Way). I've also had the opportunity to work with a variety of professionals and obtain a better understanding of complex financial matters and market trends.

To this point, I've reached out to the Ashland Planning Department to discuss a possible amendment to the Ashland Municipal Code that could not only help stabilize the issues noted above, but also provide additional housing opportunities that have realistically never been resolved since I moved to Ashland 28 years ago.

In simple terms, the request is for the Planning Commission and Staff to consider a relatively simple code amendment that looks similar to the ground floor code amendments recently adopted in 2018 for the Transit Triangle Overlay or code language within the adopted 1995 North Mountain Neighborhood Plan that allows 100% ground floor residential until there is commercial demand. The suggested code language would apply in certain employment and commercial zones (not Downtown, Croman, or Airport areas) with code stipulations that ground floor spaces are to be: 1) Designed and built following Commercial Building Codes, 2) Designed to comply with all commercial Site Design & Use Standards 3) Permitted to be converted to commercial use at any time and 4) Only applicable to qualifying buildings that are at least two stories measured from adjacent street grade.

Benefits: The suggested amendment should be beneficial for a number of reasons, including the following:

- 1) It provides much needed small unit affordable rental housing in areas that are generally close to essential services;
- 2) It provides much needed housing that hopefully creates a surplus and thus helps stabilize market rental housing prices;
- 3) It provides the financial incentive for property owners to invest and construct mixed-use buildings;
- 4) It encourages financial institutions to finance mixed-use buildings. This is critical as without the financing, the building does not get built nor do “any” permissible residential units;
- 5) It helps maintain the City’s tax base and related construction impact fees for streets, roads, schools, etc. A perfect example is the now under construction Meadowbrook Square Apartment Building (see picture insert below) that would NOT have been possible without the suggested exception language built into the North Mountain Master Plan in 1995. In this case, the related construction fees are approximately \$148,575 and SDC fees \$206,253. Upon completion, the annual tax revenue will be roughly \$72,333 of which \$52,000 will go to the City of Ashland and Ashland School District. *Note:* The Meadowbrook Square Condominiums (across the street) are currently contributing \$30,229.06 in tax revenue annually of which approximately \$22,000 goes directly to the City of Ashland and Ashland School District. Permit and SDC’s paid to City of Ashland totaled \$95,751.26. This building’s ground floor unit is also “interim” and used as a residence;



Meadowbrook Apartments (12.16.2020) Three-story Mixed-Use Building with “24” 500 sq. ft. apartments on 2nd and 3rd floors and “5” interim residential apartments on ground floor to eventually be converted to commercial office/retail use pending market demand.

- 6) It still requires the appearance of typical commercial mixed-use facades as envisioned in the City's Site Design & Use Standards;
- 7) It provides an opportunity for an expeditious conversion from residential to commercial when the market demands. In the vast majority of cases, commercial business cannot "wait" the typical 1 to 2 year timeframe for land use planning and construction and thus under the suggested code provision, the commercial spaces are already in existence and only have to "wait" 6 to 9 months to complete tenant improvements;
- 8) It helps stimulate construction employment and any related employment;
- 9) It can help provide for an added customer base for local businesses during what appears to be a long slow trend of declining tourism due to a variety of real or perceived factors related to climate change conditions, tourism preferences, etc.

Negative Implications: At the present time, I do not believe there are any negative implications with this proposal, but also understand the idea needs to be vetted with the public, staff, Planning Commission and City Council. Further, I do not believe there are any State land use limitations as the proposal does not eliminate or reduce available commercial or employment lands, it simply provides for a more efficient use of those lands until the market demand exists.

Overall, I appreciate the opportunity to voice my opinion on this important matter and look forward to discussing it with the Planning Commission. As mentioned, I've discussed the suggested amendment proposal with a number of City leaders and local business owners and all agree the idea is sound and timing appropriate. In that regard, the starting point for official consideration is the Ashland Planning Commission via a public Study Session.

Sincerely,



Mark Knox
276 W. Nevada Street
Ashland, OR 97520

Related Articles:

- 1) *Mounting commercial real estate losses threaten banks, recovery* (The Washington Post, 11/11/20)
<https://www.washingtonpost.com/business/2020/11/11/commercial-real-estate-economy/>
- 2) *Amazon is now a drug store.* (CNN Business, 11/17/20)
<https://www.cnn.com/2020/11/17/business/amazon-pharmacy-launch/index.html>
- 3) *Can Governments Save Main Street?* (The Salem News, 11/30/20).
https://www.salemnews.com/opinion/columns/column-can-governments-help-save-main-street/article_000a1e23-cadd-54ca-b9f1-651b11cbdb3a.html

- 4) *Small Town Kept Walmart Out. Now It Faces Amazon.* (The Atlantic, 3/3/18)
<https://www.theatlantic.com/business/archive/2018/03/amazon-local-retail/554681/>
- 5) *Downtowns Matter* (State of Main, Edward T. McMahon Fall 2016)
<https://www.mainstreet.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=32bde503-eeb9-3bd4-0ff5-0a525562b1b8&forceDialog=0>

From: [Melissa Huhtala](#)
To: [Brandon Goldman](#)
Subject: FW: Ashland City Council Public Testimony
Date: Tuesday, February 01, 2022 11:45:14 AM

FYI

From: Eric Navickas <navickasdesign@gmail.com>
Sent: Sunday, January 30, 2022 3:20 PM
To: Public Testimony <public-testimony@ashland.or.us>
Subject: Ashland City Council Public Testimony

[EXTERNAL SENDER]

Agenda Item X.1. **Public Hearing and First Reading of Housing in Employment Lands Code Amendments**

Council,

The proposal before you is a land use decision subject to appeal to LUBA pursuant to ORS 197.825(1), stating, "the Land Use Board of Appeals shall have exclusive jurisdiction to review any land use decision or limited land use decision of a local government".

The ordinance changes propose to shift the use of employment zones and commercial zones to allow more residential uses. Under OAR 600-009-0010(4) a plan amendment "that changes the plan designation of land in excess of two acres within an existing urban growth boundary from an industrial use designation to a non-industrial use designation, or an other employment use designation to any other use designation, a city or county must address all applicable planning requirements, and; (a) Demonstrate that the proposed amendment is consistent with its most recent economic opportunities analysis and the parts of its acknowledged comprehensive plan which address the requirements of this division".

OAR 600-090-0010(1) states that cities "subject to this division must adopt plan and ordinance amendments necessary to comply with this division." The outdated 2007 Economic Opportunities Analysis and related Comprehensive Plan need to be amended to meet this requisite demand.

The staff report relies on exceptions allowed under OAR 600-009-0010(5), stating, "[a] jurisdiction's planning effort is adequate if it uses the best available or readily collectable information to respond to the requirements of this division." To fulfill this exception the staff offers a limited study by Fergonese's and Associates, stating, "[i]n order to ensure that Ashland's inventory of commercial and employment lands could accommodate future business development, the city contracted with Fergonese and Associates to assist in

analyzing the buildable lands data, building permits issued, and Ashland's employment data over the last 10 years."

The inadequacy of the Fergonese and Associates study is obvious when compared with the requirement of the Economic Opportunity Analysis as defined under OAR 600-009-0015(1), stating, "[t]he economic opportunities analysis must identify the major categories of industrial or other employment uses that could reasonably be expected to locate or expand in the planning area based on information about national, state, regional, county or local trends." A specifically local analysis fails to meet this requirement especially as the national trend of "onshoring" or "reshoring" manufacturing as a result of supply chain disruptions continues to make headline news.

OAR 600-009-0015(2) requires consideration of site characteristics, stating, "[t]he economic opportunities analysis must identify the number of sites by type reasonably expected to be needed to accommodate the expected employment growth based on the site characteristics typical of expected uses." With the subsequent proposal to convert much of the Croman Mill Site to residential uses, the prerequisite of an Economic Opportunities Analysis that considers existing land in relation to site characteristics is imperative to maintaining the types of land where employment activities can realistically be realized. This concept is continued in OAR 600-009-0015(4)(a)-(h), stating that the estimate of employment growth "must consider the planning area's economic advantages and disadvantages" with a long list of factors to consider. The Fergonese and Associates study fails to address these important elements.

Finally, ORS 600-900-0015(5) states, "[c]ities and counties are strongly encouraged to assess community economic development potential through a visioning or some other public input based process in conjunction with state agencies." It is discouraging to see this effort to move forward in changing employment zones that are intended to maintain the economic health of our city through avoiding the requirement of updating the Economic Opportunities Analysis that encourages a visioning process that includes public input. In this case, the city staff has been very transparent about the fact that these proposed changes were initiated by a private development firm with obvious special interests. A proposal from KDA Homes cannot meet the need for "public input based process in conjunction with state agencies".

In conclusion, the State of Oregon has developed a land use regulatory program that establishes requisite procedures that demand statewide compliance. The City of Ashland is attempting to circumvent these procedures through failing to update the Economic Opportunities Analysis prior to making changes to lands zoned for employment uses. Further, the proposed changes are significant enough to bring into question whether or not they continue to fulfill the desired use as defined within the Comprehensive Plan.

Respectfully,
Eric Navickas
27 1/2 N. Main St.
Ashland OR.

Draft 01/03/2023

ORDINANCE NO. 3205

**AN ORDINANCE AMENDING CHAPTERS 18.2.3, 18.2.6, 18.3.13 AND 18.6.1 OF THE
ASHLAND LAND USE ORDINANCE REGARDING ALLOWANCES FOR
RESIDENTIAL USES IN MIXED-USE BUILDINGS AND DEVELOPMENTS IN THE
COMMERCIAL AND EMPLOYMENT ZONES.**

Annotated to show **deletions** and **additions** to the code sections being modified. Deletions are **bold lined-through** and additions are in **bold underline**.

WHEREAS, Article 2. Section 1 of the Ashland City Charter provides:

Powers of the City The City shall have all powers which the constitutions, statutes, and common law of the United States and of this State expressly or impliedly grant or allow municipalities, as fully as though this Charter specifically enumerated each of those powers, as well as all powers not inconsistent with the foregoing; and, in addition thereto, shall possess all powers hereinafter specifically granted. All the authority thereof shall have perpetual succession.; and

WHEREAS, the above referenced grant of power has been interpreted as affording all legislative powers home rule constitutional provisions reserved to Oregon Cities. City of Beaverton v. International Ass'n of Firefighters, Local 1660, Beaverton Shop 20 Or. App. 293; 531 P 2d 730, 734 (1975).; and

WHEREAS, beginning in early 2020, the COVID-19 pandemic resulted in the closure of businesses throughout the United States and a shift to conducting operations remotely and electronically, thereby temporarily resulting in a decreased need for office and commercial space; and

1 **WHEREAS**, less demand for office space is expected to continue as some companies move to
2 smaller offices and use work from home and hybrid arrangements.; and
3

4 **WHEREAS**, prior to 2020, there was a decline in construction of large retail buildings in the
5 U.S. and the e-commerce share of the retail market was increasing nationally. The COVID-19
6 pandemic resulted in an even greater shift to online retail purchases.; and
7

8 **WHEREAS**, the City of Ashland is required to perform a housing capacity analysis every eight
9 years as required by ORS 197.296 and OAR 660-0008-0045. House Bill 2003 passed in the 2019
10 Oregon legislative session and amended the previously mentioned state laws and rules to require
11 cities in Oregon to perform the housing capacity analysis and housing production strategy.; and
12

13 **WHEREAS**, the Ashland City Council adopted the 2021-2041 Housing Capacity Analysis
14 (HCA) on August 17, 2021 as a technical report and supporting document to the Ashland
15 Comprehensive Plan. The HCA provides a number of recommended policy changes to address
16 Ashland's unmet housing needs including increasing the allowance for residential dwellings in
17 commercial and employment zones and developing new housing closer to downtown and
18 commercial centers to reduce dependency on automobiles for transportation.; and
19

20 **WHEREAS**, the Almeda wildfire increased the regional need for affordable housing by
21 destroying about 2,549 dwellings in September 2020. The Almeda fire burned from north
22 Ashland to just south of Medford, with the cities of Phoenix and Talent losing the majority of
23 housing. The HCA recognized that the losses due to the Almeda fire increased regional need for
24 affordable housing and overall pressure on the Ashland housing market.; and
25

26 **WHEREAS**, amendments to the allowances for housing in the commercial and employment
27 zones are needed to provide more flexibility in the commercial and employment zones to
28 respond to fluctuations and changes in the economy and demand for housing.; and
29
30

1 **WHEREAS**, the City of Ashland Planning Commission conducted on December 14, 2021 and
2 September 27, 2022, duly advertised public hearings on amendments to the Ashland Land Use
3 Ordinance concerning the standards relating to annexations, and following deliberations
4 recommended approval of the amendments.; and
5

6 **WHEREAS**, the City Council of the City of Ashland conducted duly advertised public hearings
7 on the above-referenced amendments February 1, 2021 and November 15, 2022.; and
8

9 **WHEREAS**, the City Council of the City of Ashland, following the close of the public hearing
10 and record, deliberated and conducted first and second readings approving adoption of the
11 Ordinance in accordance with Article 10 of the Ashland City Charter.; and
12

13 **WHEREAS**, the City Council of the City of Ashland has determined that in order to protect and
14 benefit the health, safety and welfare of existing and future residents of the City, it is necessary to
15 amend the Ashland Municipal Code and Land Use Ordinance in manner proposed, that an adequate
16 factual base exists for the amendments, the amendments are consistent with the comprehensive
17 plan and that such amendments are fully supported by the record of this proceeding.
18

19 **THE PEOPLE OF THE CITY OF ASHLAND DO ORDAIN AS FOLLOWS:**
20

21 **SECTION 1.** The above recitations are true and correct and are incorporated herein by this
22 reference.
23

24 **SECTION 2.** Section 18.2.3.130 [Dwellings in Non-Residential Zones – Special Use Standards]
25 of the Ashland Land Use Ordinance is hereby amended to read as follows:
26

27 **18.2.3.130 Dwellings in Non-Residential Zones**

28 Where dwellings are allowed in non-residential zones, they are subject to all of the following
29 requirements.
30

- A. Dwellings in the E-1 zone are limited to the R-overlay zone. See chapter 18.3.13 Residential
Overlay.

1 B. Dwellings in the E-1 and C-1 zones shall meet all of the following standards, except that
2 dwellings developed under the Transit Triangle (TT) overlay option are not subject to
3 subsection 18.2.3.130.B, below. See section 18.3.14.040 for the allowed uses in the TT
4 overlay.

- 5 1. Mixed-Use Developments Outside of the Downtown Design Standards Overlay. ~~If~~
6 ~~there is one building on a site, ground floor residential uses shall occupy not~~
7 ~~more than 35 percent of the gross floor area of the ground floor. Where more than~~
8 ~~one building is located on a site, not more than 50 percent of the total lot area~~
9 ~~shall be designated for residential uses. At least 65 percent of the gross floor~~
10 ~~area of the ground floor shall be designated for permitted uses and uses~~
11 ~~permitted with special use standards, not including residential uses.~~

12 a. Applicability. This subsection, 18.2.3.130.B.1, applies to mixed-use
13 buildings or developments that meet all of the following requirements.

- 14 i. Location. The mixed-use building or development shall be located outside
15 of the Downtown Design Standards overlay.
16 ii. Lot Size. The mixed-use building or development shall be located on a lot
17 that is less than 10 acres in size. Mixed-use developments located on lots
18 10 acres in size and greater shall be subject to the requirements of
19 subsection 18.2.3.130.B.2, below.
20 ii. Building Height. The mixed-use building shall be two or more stories in
21 height. Mixed-use buildings that are one story in height are subject to the
22 requirements of subsection 18.2.3.130.B.2, below.

23 b. Gross Floor Area.

- 24 i. One Building. When a planning application is limited to one building,
25 residential uses may occupy up to 65 percent of the gross floor area of the
26 ground floor. At least 35 percent of the gross floor area of the ground floor
27 shall be designated for permitted uses and uses permitted with special use
28 standards not including residential uses, or as Commercial Ready
29 Residential Space consistent with 18.2.3.130.B.1.c below.
30 ii. More Than One Building. When a planning application includes more than
one building, the equivalent of at least 35 percent of the gross floor area of
the ground floor shall be designated for permitted uses and uses permitted
with special use standards not including residential uses, or as
Commercial Ready Residential Space consistent with 18.2.3.130.B.1.c
below.

c. Commercial Ready Residential Space. Gross floor area designated as
commercial ready residential space shall be in compliance with the following:

- i. Residential uses provided within the designated commercial ready
residential space shall be limited to rental units affordable to households
earning 80% Area Median Income consistent with the requirements of the
Ashland Affordable Housing Program including household income
verification and maximum rental amounts.

- 1 ii. An Agreement shall be executed with the City, or a deed restriction shall be
2 recorded on the property, which stipulates that the Commercial Ready
3 Residential Space shall not be used as market rate rental housing or sold
4 as a residential unit.
5 iii. If residential uses are provided immediately above the ground floor level
6 (i.e., second floor residential), horizontal occupancy separation must be
7 provided to accommodate future commercial occupancies as required by
8 the building code at the time of construction.
- 9 d. Residential uses shall be subject to the same setback, landscaping, and
10 design standards as for permitted uses in the underlying zone.
- 11 2. Mixed Use Developments Inside the Downtown Design Standards Overlay, Large
12 Lots and One-Story Mixed-Use Buildings. Residential densities shall not exceed 15
13 dwelling units per acre in the E-1 zone, 30 dwelling units per acre in the C-1 zone,
14 and 60 dwelling units per acre in the C-1-D zone. For the purpose of density
15 calculations, units of less than 500 square feet of gross habitable floor area shall
16 count as 0.75 of a unit.
- 17 a. Applicability. This subsection, 18.2.3.130.B.2, applies to mixed-use buildings
18 and developments located in the Downtown Design Standards Overlay. In
19 addition, this subsection applies to mixed-use buildings and developments
20 located on lots that are 10 acres and greater in size and to one-story mixed-use
21 buildings, whether the lot or building is located inside or outside the
22 Downtown Design Standards overlay.
- 23 i. Location. Mixed-use buildings and developments located in the Downtown
24 Design Standard overlay shall be subject to the requirements of this
25 subsection.
- 26 ii. Lot Size. Mixed-use buildings and developments located on lots 10 acres
27 and greater in size shall be subject to the requirements of this subsection.
- 28 iii. Building Height. Mixed-use buildings that are one story in height shall be
29 subject to this subsection.
- 30 b. Gross Floor Area.
- i. One Building. When a planning application is limited to one building,
 residential uses may occupy up to 35 percent of the gross floor area of the
 ground floor. At least 65 percent of the gross floor area of the ground floor
 shall be designated for permitted uses and uses permitted with special use
 standards, not including residential uses.
- ii. More Than One Building. When a planning application includes more than
 one building, the equivalent of at least 65 percent of the gross floor area of
 the ground floor for all buildings shall be designated for permitted uses and
 uses permitted with special use standards, not including residential uses.
3. Residential uses shall be subject to the same setback, landscaping, and design
 standards as for permitted uses in the underlying zone.

4. Off-street parking is not required for residential uses in the C-1-D zone.

5. For the purpose of density calculations, units of less than 500 square feet of gross habitable floor area shall count as 0.75 of a unit.

SECTION 3. Section 18.2.6.030 [Unified Standards for Non-Residential Zones – Standards for Non-Residential Zones] of the Ashland Land Use Ordinance is hereby amended to read as follows:

Table 18.2.6.030 – Standards for Non-Residential Zones
(Except as modified under chapter 18.5.5 Variances.)

<i>Standard</i>	<i>C-1</i>	<i>C-1-D</i>	<i>E-1</i>	<i>M-1</i>
Residential Density ¹ (dwelling units/acre)	30 du/ac <u>No Density</u> <u>Maximum</u>	60 du/ac <u>No Density</u> <u>Maximum</u>	15 du/ac <u>No Density</u> <u>Maximum</u>	<u>NA</u>
¹ where allowed per section 18.2.3.130; within E-1 zone, per R-Overlay (see chapter 18.3.13 Residential Overlay). <u>For calculation of the affordable housing requirements provided in 18.5.8.050 the base residential density of C-1 shall be considered 30du/ac, and E-1 shall be considered 15 du/acre.</u>				
Lot Area, Width, Depth Lot Coverage	There is no minimum lot area, width or depth, or maximum lot coverage; or minimum front, side or rear yard, except as required to comply with the special district and overlay zone provisions of part 18.3 or the site development and design standards of part 18.4.			
Setback Yards (feet)	There is no minimum front, side, or rear yard required, except where buildings on the subject site abut a residential zone, in which case a side of not less than 10 ft and a rear yard of not less than 10 ft per story is required. The solar setback standards of chapter 18.4.8 do not apply to structures in the C-1-D zone. Except for buildings within 100 feet of a residential zone, the solar setback standards of chapter 18.4.8 do not apply to structures in the C-1 zone. See also section 18.2.4.030 Arterial Street Setback.			There is no minimum front, side, or rear yard, except 20 ft where adjoining a residential zone.
Building Height ^{28.31 & 2} – Maximum (feet)	40 ft, except: - Buildings greater than 40 ft and less than 55 ft are permitted in C-1-D zone with approval of a Conditional Use Permit. -Where located more than 100 feet from a residential zone, buildings greater than 40 ft and less than 55 ft are permitted in C-1 zone with approval of a Conditional Use Permit.			40 ft

Table 18.2.6.030 – Standards for Non-Residential Zones
(Except as modified under chapter 18.5.5 Variances.)

Standard	C-1	C-1-D	E-1	M-1
²¹ See definition of "height of building" in section 18.6.1.030 . ²² Parapets may be erected up to five feet above the maximum building height; see also, 18.4.4.030 . G.4 for mechanical equipment screening requirements, and 18.5.2.020 for Site Design Review for mechanical equipment review process.				
Landscape Area – Minimum (% of developed lot area)	15%	None, except parking areas and service stations shall meet the standards of chapters 18.4.3 Parking, Access, and Circulation, and 18.4.4 Landscaping, Lighting, and Screening.	15%	10%

SECTION 4. Section 18.3.13.010 [Residential Overlay Regulations – Residential Overlay] of the Ashland Land Use Ordinance is hereby amended to read as follows:

18.3.13.010 Residential Overlay Regulations

- A. Purpose.** The Residential overlay is intended to encourage a concentration and mix of businesses and housing that provides a variety of housing types, supports resource and energy conservation, and promotes walking, bicycling, and transit use.
- B. Applicability.** The Residential overlay applies to all property where 'Residential Overlay' (R) is indicated on the Zoning map.
- C. Requirements.** ~~The Dwellings in the Residential overlay requirements are as followsshall meet the applicable standards in section 18.2.3.130, except that dwellings developed under the Transit Triangle (TT) overlay option are not subject to subsection 18.3.13.010 C, below. See section 18.3.14.040 for the allowed uses in the TT overlay or 18.3.14.040 for the TT overlay.~~
- ~~1. Mixed-Use Developments. If there is one building on a site, ground floor residential uses shall occupy not more than 35 percent of the gross floor area of the ground floor. Where more than one building is located on a site, not more than 50 percent of the total lot area shall be designated for residential uses. At least 65 percent of the gross floor area of the ground floor shall be designated for permitted uses and uses permitted with special use standards, not including residential uses.~~
 - ~~2. Residential densities shall not exceed 15 dwelling units per acre. For the purpose of density calculations, units of less than 500 square feet of gross habitable floor~~

1 ~~area shall count as 0.75 of a unit.~~

2 ~~3. Residential uses shall be subject to the same setback, landscaping, and design~~
3 ~~standards as for permitted uses in the E-1 District.~~

4 **SECTION 5.** Section 18.6.1 [Definitions] of the Ashland Land Use Ordinance is hereby
5 amended to include the following definition which reads as follows:

6 **18.6.1.030 - Definitions**

7 **Commercial Ready Residential Space.** Ground floor area within a mixed-use building
8 **that is designed to accommodate commercial uses in compliance with applicable**
9 **design and building code standards. Commercial Ready Residential Space provides**
10 **the flexibility of occupying a space with commercial uses and allowing the use in**
11 **such space to change to affordable rental housing in accordance with the Ashland**
12 **Affordable Housing Program.**

13
14 **SECTION 6. Codification.** In preparing this ordinance for publication and distribution, the City
15 Recorder shall not alter the sense, meaning, effect, or substance of the ordinance, but within such
16 limitations, may:

- 17 (a) Renumber sections and parts of sections of the ordinance;
18 (b) Rearrange sections;
19 (c) Change reference numbers to agree with renumbered chapters, sections or other parts;
20 (d) Delete references to repealed sections;
21 (e) Substitute the proper subsection, section, or chapter numbers;
22 (f) Change capitalization and spelling for the purpose of uniformity;
23 (g) Add headings for purposes of grouping like sections together for ease of reference; and
24 (h) Correct manifest clerical, grammatical, or typographical errors.

25
26 **SECTION 7. Severability.** Each section of this ordinance, and any part thereof, is severable,
27 and if any part of this ordinance is held invalid by a court of competent jurisdiction, the
28 remainder of this ordinance shall remain in full force and effect.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

The foregoing ordinance was first read by title only in accordance with Article X,
Section 2(C) of the City Charter on the ____th day of _____, 2022,
and duly PASSED and ADOPTED this ____th day of _____, 2022,

Melissa Huhtala, City Recorder

SIGNED and APPROVED this ____ day of _____, 2022.

Julie Akins, Mayor

Reviewed as to form:

Douglas McGeary, Acting City Attorney

ASHLAND PLANNING DIVISION
STAFF REPORT
ADDENDUM
September 27, 2022

PLANNING ACTION: PA-L-2021-00013

APPLICANT: City of Ashland

ORDINANCE REFERENCES: **AMC 18.2.3** Special Use Standards
 AMC 18.2.6 Standards for Non-Residential Zones
 AMC 18.3.13 Residential Overlay
 AMC 18.6.1 Definitions

REQUEST: The proposal includes a series of amendments to the Ashland Municipal Code (AMC) Title 18 Land Use to the residential standards for mixed-use development in the Commercial (C-1) and Employment (E-1) zones. The draft code amendments are attached.

LEGISLATIVE HISTORY:

The Planning Commission held a public hearing on December 14, 2021, and recommended approval of the prior draft of the ordinance amending AMC Title 18 Land Use. The City Council reviewed the proposed land use code amendments at a public hearing on February 1, 2022 and did not approve first reading of the ordinance at that time. The Council requested potential amendments be considered to allow the entirety of the first floor of developments on E-1 and C-1 lands to be residential provided certain housing affordability conditions were met.

The amended draft ordinance presented for consideration newly incorporates allowances for affordable rental housing within *Commercial Ready Space* within the ground floor area. Commercial Ready Space could be utilized in a flexible manner as either permitted and special permitted commercial uses, or as affordable rental housing restricted to households earning 80% the Area Median Income (AMI) consistent with the Ashland Affordable Housing Program.

The ordinance amendments originally presented to the Planning Commission on December 14, 2021, and to the Council on February 1, 2022, are provided as bold underlined black text or as black strikeouts in draft Ordinance 3205 as attached. The amendments made subsequent to the Commission's prior review are presented as bold red underlined text.

I. Ordinance Amendments

A. Summary of Proposed Code Amendments

The proposal includes a series of amendments to AMC Title 18 Land Use to the residential standards for mixed-use development located in the Commercial (C-1) and Employment (E-1) zones. Specifically, the proposed code amendments increase the allowance for residential uses from 35 to 65 percent of the ground floor in multi-story, mixed-use buildings and developments located in the C-1 and E-1 zones and outside of the Downtown Design Standards overlay. Additionally, the development of flexible Commercial Ready Space would allow residential uses within the 35% commercially designated floor area provided an agreement is executed with the City, or deed restriction is recorded on the property, demonstrating that the residential use will be in conformance with the Ashland Affordable Housing Program as affordable rental housing for households earning 80% AMI or less.

Buildings located within the Downtown Design Standards overlay, buildings that are one story in height, and properties that are 10 acres in size or larger would be subject to the current code requirement of 35 percent of the ground floor is permitted in residential uses.

Residential development in the E-1 zone is limited to E-1 properties in the Residential overlay (R-overlay). Approximately 42 percent of the E-1 zoned land in the city limits is in the Residential overlay and 58 percent is not in the Residential overlay. Areas such as Washington Street, Jefferson Avenue, Benson Way and Clover Lane are not located in the Residential overlay. Additionally, the Croman Mill District has its own unique zones based on the master plan and does not include any C-1 or E-1 zoned land.

The amendments are intended to provide more flexibility in the employment zones to respond to fluctuations and changes in the economy and demand for housing. The project objectives are to:

- 1) maintain an inventory of employment parcels in a variety of sizes and locations to encourage new business development.
- 2) increase the supply of moderately-priced rental and for-purchase housing; and
- 3) jumpstart redevelopment in areas that have trouble attracting projects and/or are in proximity to public transit and walking distance to daily service needs, such as groceries, shops, parks, etc.
- 4) provide opportunities to utilize vacant commercial floor area as regulated affordable rental housing restricted to households earning 80% AMI or less.

The draft amendments to the residential standards for mixed-use development are attached and summarized below.

- 18.2.3.130.B.1.a – limits new provisions for residential uses (i.e., up to 65 percent of the ground floor) in the C-1 and E-1 zones to locations outside of the Downtown Design Standards overlay. In addition, to be eligible for the new provisions, the lot size must be less than 10 acres in size and the mixed-use building must be multi-story (i.e., two or more stories in height).

- 18.2.3.B.1.b - increases the allowance for residential uses in multi-story, mixed-use buildings and developments from 35 to 65 percent of the ground floor. Again, this allowance is for locations outside of the Downtown Design Standards overlay. Additionally, the provision is limited to multi-story mixed-use buildings and lots that are less than 10 acres in size.
- 18.2.3.B.1.c.i-iii – Creates a designation for Commercial Ready Space which is developed to accommodate commercial occupancies but may be used flexibly as either a commercial use or as regulated affordable rental housing for households earning 80%AMI or less.
- 18.2.3.130.B.2.a – retains existing standard which allows up to 35 percent of the ground floor to be used for residential uses. The existing standard applies to three situations – properties located inside of the Downtown Design Standards overlay, for lots 10 acres and greater in size and for single-story buildings.
- 18.2.3.130.B.2.b.i – this is the exiting standard allowing up to 35 percent of the ground floor in residential uses, it is simply moved from the existing code section 18.2.3.130. B.1.
- 18.2.3.130.B.1.b.ii – revises the code for situations where a mixed-use development includes more than one building. It requires the equivalent of 65 percent of the ground floor of all the buildings to be provided in permitted or special permitted non-residential uses. This retains the ability in mixed-use developments with more than one building to construct a building that is entirely residential uses as long as the equivalent square footage of 65 percent of the ground floor of the residential building is transferred to another building in the development and is used for permitted and special permitted non-residential uses.
- Table 18.2.6.030 – deletes residential densities in the C-1, C-1-D and E-1 zones.
- 18.3.13.010.C – removes existing language that duplicates the standards in 18.2.3.130 Dwellings in Non-Residential Zones and instead references the requirements in 18.2.3.130 for the Residential overlay or in 18.3.14.040 for the Transit Triangle (TT) overlay. The Residential overlay applies to a portion but not all of the E-1 zone.
- 18.6.1.030 [Definition] - amended to include definition of Commercial Ready Space.

B. Discussion

The 2021-2041 Housing Capacity Analysis (HCA) is a technical study required by state law and was adopted by the City Council on August 17, 2021 as a technical report and supporting document to the *Ashland Comprehensive Plan*. The HCA provides a number of recommended policy changes to address Ashland's unmet housing needs that are related to the proposed code amendments. The HCA's recommended policy changes or strategies are presented as guidance for the upcoming Housing Production Strategy.

Strategy 1: Ensure an adequate supply of land is available and serviced

- Strategy 1.3: Identify opportunities to increase allowances for residential uses on the ground floor of buildings within commercial and employment zones.
- Strategy 1.4: Evaluate decreasing multifamily parking requirements.

Strategy 2: Provide opportunities for housing development to meet the City's identified housing needs

- Strategy 2.2: Evaluate opportunities incentivize smaller units through amendments to allowable densities.

- Strategy 2.4: Evaluate increasing allowances for residential dwellings in commercial and employment zones, such as allowing an increased amount of residential uses in ground floor commercial spaces.

Strategy 5: Align housing planning with the Climate and Energy Action Plan

Strategy 5.4: Evaluate opportunities to develop new housing closer to downtown and commercial centers to reduce dependence on automobiles for transportation.

The Oregon Statewide Planning System requires all cities and counties in Oregon to address Statewide Planning Goal 9 Economic Development. Goal 9 requires cities and counties to provide an adequate land supply for economic development and employment growth. Chapter VII Economy of the *Ashland Comprehensive Plan* and the 2007 Economic Opportunity Analysis (EOA) address the Goal 9 requirements.

Oregon Administrative Rule (OAR) 660 Division 9 implements Goal 9 and provides two options for land use code and comprehensive plan amendments. The first option in OAR 660-009-0010(3) allows local jurisdictions to make amendments by relying on existing plans if findings can be made that there are no significant changes in economic development opportunities based on new information about national, state, regional, count and local trends.

The second option in OAR 660-009-0010(4) requires changes to the designation of land in excess of two acres from an employment use designation to any other use designation. Under this provision, a city or county must show the amendment is consistent with the comprehensive plan and existing EOA. If the proposed amendment can't be supported by the adopted comprehensive plan and EOA, OAR 660-009-0010(4) requires an update the comprehensive plan and/or EOA.

After researching the Goal 9 requirements and speaking to the Oregon Department of Land Conservation (DLCD), staff believes the analysis performed by Fregonese Associates can be used to address OAR 660-009-0010(3) for the proposed code amendments to increase the allowance for residential uses from 35 to 65 percent of the ground floor in multi-story, mixed-use buildings and developments located in the C-1 and E-1 zones and outside of the Downtown Design Standards overlay.

With assistance from Fregonese Associates, staff researched and assessed the rate of employment land consumption and the growth rate in number of jobs in Ashland since the adoption of the 2007 EOA. Fregonese and Associates analyzed the buildable lands data, building permits issued, and Ashland's employment data in the last 10 years and found there is sufficient C-1 and E-1 land for future employment needs. Specific items in the data analysis include the following.

- The land consumption rate in the C-1 and E-1 zones is relatively low with an average of 2 acres per year used for the last 8 years.
- Of the 50 building permits that were issued for commercial development in the last 10 years, 26 permits were in located in the C-1 and E-1 zones and the other 24 permits were located in the C-1-D zone (Downtown) or were public projects such as SOU and Ashland School District projects.

- The 2007 Economic Opportunity Analysis (EOA) forecasted more employment growth than has occurred over the last 14 years. The EOA projected 15,220 jobs by 2027, including 10,654 jobs in retail and services. State employment data shows a total of 10,237 jobs in the Ashland Urban Growth Boundary in 2019.
- The EOA determined that 30% of the employment growth would not require consumption of vacant land.
- Currently, approximately 20% of the jobs are in residential zones.

As proposed in the ordinance amendments, at least 35% of the ground floor must be used as a permitted or special permitted (commercial) use, or alternatively as Commercial Ready Space that could be used as income restricted affordable rental housing. In 2021 the Oregon Legislature approved Senate Bill 8 which restricts local governments from denying or limiting the approval of affordable housing applications in a number of circumstances including when the property is zoned for commercial uses. By providing an option for the development of Commercial Ready Space on the ground floor of mixed-use buildings, that can be used as affordable rental housing restricted to households with incomes at 80%AMI, the amendments proposed create a path for the city to approve of the use of vacant commercial floor area as needed affordable housing within the C-1 and E-1 zones.

C. Project Background

The Planning Commission, at the study session meeting on December 22, 2020 evaluated a proposal from members of the private development community that suggested that there is a surplus of commercial space that could be used to provide housing units. The concerns raised included the decreased demand for commercial space due to ecommerce and the pandemic while housing demand continues to increase, particularly after the Alameda fire. The private development representatives suggested amending the land use code to allow the temporary use of ground floor commercial space to be used for housing units and requiring the buildings to be constructed to commercial building code standards so the space could be converted in the future should demand for commercial space return.

The City Council initiated the project at the March 16, 2021 business meeting. Specifically, the Council directed staff to work with the Planning Commission to evaluate the draft code language prepared by private development representatives (KDA Homes), and propose amendments to the land use ordinance which would provide the flexibility to temporarily use the ground floor of commercial buildings for housing.

The Planning Commission reviewed and discussed the proposed code amendment project at the June 22, 2021, August 24, 2021, October 26, 2021 and November 23, 2021 study session meetings. The Planning Commission held a public hearing on December 14, 2021, and recommended approval of the prior draft of the ordinance amending AMC Title 18 Land Use. The City Council reviewed the proposed land use code amendments at a public hearing on February 1, 2022 and did not approve first reading of the ordinance at that time.

Currently, at least 65 percent of the ground floor of buildings in the commercial (C-1) and employment (E-1) zones is required to be commercial and light industrial uses. The remaining 35 percent of the ground floor can be used for residential dwellings as well 100 percent of the upper stories in multi-story buildings. The exceptions are:

- 1) in the Transit Triangle (TT) overlay, a minimum of 35 percent of the ground floor is required to be used for commercial and light industrial uses and
- 2) in the commercial area of the North Mountain Neighborhood District, the ground floor can be used entirely for housing but must be built to commercial building code standards so that the space can be converted to commercial uses in the future.

In 1992, the land use code was amended to eliminate entirely residential buildings as an allowed use in the C-1 and E-1 zones (Ord. 2688). The current standard of requiring 65 percent of the ground floor in commercial or light industrial uses was put in place at that time, as well as residential densities for each of the zones. Prior to 1992, residential buildings comprised entirely of housing units could be built in the C-1 and E-1 zones with the approval of a conditional use permit. The 1992 code update was in part due to concern about construction of residential buildings near the downtown and loss of future commercial space.

II. Procedural

18.5.9.020 Applicability and Review Procedure

Applications for Plan Amendments and Zone Changes are as follows:

B. Type III. It may be necessary from time to time to make legislative amendments in order to conform with the Comprehensive Plan or to meet other changes in circumstances or conditions. The Type III procedure applies to the creation, revision, or large-scale implementation of public policy requiring City Council approval and enactment of an ordinance; this includes adoption of regulations, zone changes for large areas, zone changes requiring comprehensive plan amendment, comprehensive plan map or text amendment, annexations (see chapter 18.5.8 for annexation information), and urban growth boundary amendments. The following planning actions shall be subject to the Type III procedure.

1. Zone changes or amendments to the Zoning Map or other official maps, except where minor amendments or corrections may be processed through the Type II procedure pursuant to subsection 18.5.9.020.A, above.
2. Comprehensive Plan changes, including text and map changes or changes to other official maps.
3. Land Use Ordinance amendments.
4. Urban Growth Boundary amendments.

III. Conclusions and Recommendations

Staff recommends the Planning Commission recommend approval of the proposed amendments to the City Council.

The proposed amendments are scheduled for a public hearing and first reading at the City Council on November 15th, and for second reading on December 6, 2022.

ASHLAND PLANNING DIVISION

STAFF REPORT

December 14, 2021

PLANNING ACTION: PA-L-2021-00013

APPLICANT: City of Ashland

ORDINANCE REFERENCES: **AMC 18.2.3** Special Use Standards
 AMC 18.2.6 Standards for Non-Residential Zones
 AMC 18.3.13 Residential Overlay

REQUEST: The proposal includes a series of amendments to the Ashland Municipal Code (AMC) Title 18 Land Use to the residential standards for mixed-use development in the Commercial (C-1) and Employment (E-1) zones. The draft code amendments are attached.

I. Ordinance Amendments

A. Summary of Proposed Code Amendments

The proposal includes a series of amendments to AMC Title 18 Land Use to the residential standards for mixed-use development located in the Commercial (C-1) and Employment (E-1) zones. Specifically, the proposed code amendments increase the allowance for residential uses from 35 to 65 percent of the ground floor in multi-story, mixed-use buildings and developments located in the C-1 and E-1 zones and outside of the Downtown Design Standards overlay. Buildings located within the Downtown Designs Standards overlay, buildings that are one story in height, and properties that are 10 acres in size are larger would be subject to the current code requirement of 35 percent of the ground floor is permitted in residential uses.

Residential development in the E-1 zone is limited to E-1 properties in the Residential overlay (R-overlay). Approximately 42 percent of the E-1 zoned land in the city limits is in the Residential overlay and 58 percent is not in the Residential overlay. Areas such as Washington Street, Jefferson Avenue, Benson Way and Clover Lane are not located in the Residential overlay. Additionally, the Croman Mill District has its own unique zones based on the master plan and does not include any C-1 or E-1 zoned land.

The amendments are intended to provide more flexibility in the employment zones to respond to fluctuations and changes in the economy and demand for housing. The project objectives are to: 1) maintain an inventory of employment parcels in a variety of sizes and locations to encourage new business development; 2) increase the supply of moderately-priced rental and for-purchase housing; and 3) jumpstart redevelopment in areas that have trouble attracting projects and/or are in proximity to public transit and walking distance to daily service needs, such as groceries, shops, parks, etc.

The draft amendments to the residential standards for mixed-use development are attached and summarized below.

- 18.2.3.130.B.1.a – limits new provisions for residential uses (i.e., up to 65 percent of the ground floor) in the C-1 and E-1 zones to locations outside of the Downtown Design Standards overlay. In addition, to be eligible for the new provisions, the lot size must be less than 10 acres in size and the mixed-use building must be multi-story (i.e., two or more stories in height).
- 18.2.3.B.1.b - increases the allowance for residential uses in multi-story, mixed-use buildings and developments from 35 to 65 percent of the ground floor. Again, this allowance is for locations outside of the Downtown Design Standards overlay. Additionally, the provision is limited to multi-story mixed-use buildings and lots that are less than 10 acres in size.
- 18.2.3.130.B.2.a – retains existing standard which allows up to 35 percent of the ground floor to be used for residential uses. The existing standard applies to three situations – properties located inside of the Downtown Design Standards overlay, for lots 10 acres and greater in size and for single-story buildings.
- 18.2.3.130.B.2.b.i – this is the exiting standard allowing up to 35 percent of the ground floor in residential uses, it is simply moved from the existing code section 18.2.3.130. B.1.
- 18.2.3.130.B.1.b.ii – revises the code for situations where a mixed-use development includes more than one building. It requires the equivalent of 65 percent of the ground floor of all the buildings to be provided in permitted or special permitted non-residential uses. This retains the ability in mixed-use developments with more than one building to construct a building that is entirely residential uses as long as the equivalent square footage of 65 percent of the ground floor of the residential building is transferred to another building in the development and is used for permitted and special permitted non-residential uses.
- Table 18.2.6.030 – deletes residential densities in the C-1, C-1-D and E-1 zones and adds a minimum floor area ratio (FAR) of .50.
- 18.3.13.010.C – removes existing language that duplicates the standards in 18.2.3.130 Dwellings in Non-Residential Zones and instead references the requirements in 18.2.3.130 for the Residential overlay or in 18.3.14.040 for the Transit Triangle (TT) overlay. The Residential overlay applies to a portion but not all of the E-1 zone.

B. Discussion

The 2021-2041 Housing Capacity Analysis (HCA) is a technical study required by state law and was adopted by the City Council on August 17, 2021 as a technical report and supporting document to the *Ashland Comprehensive Plan*. The HCA provides a number of recommended policy changes to address Ashland's unmet housing needs that are related to the proposed code amendments. The HCA's recommended policy changes or strategies are presented as guidance for the upcoming Housing Production Strategy.

Strategy 1: Ensure an adequate supply of land is available and serviced

- Strategy 1.3: Identify opportunities to increase allowances for residential uses on the ground floor of buildings within commercial and employment zones.
- Strategy 1.4: Evaluate decreasing multifamily parking requirements.

Strategy 2: Provide opportunities for housing development to meet the City's identified housing needs

- Strategy 2.2: Evaluate opportunities incentivize smaller units through amendments to allowable densities.
- Strategy 2.4: Evaluate increasing allowances for residential dwellings in commercial and employment zones, such as allowing an increased amount of residential uses in ground floor commercial spaces.

Strategy 5: Align housing planning with the Climate and Energy Action Plan

Strategy 5.4: Evaluate opportunities to develop new housing closer to downtown and commercial centers to reduce dependence on automobiles for transportation.

The Oregon Statewide Planning System requires all cities and counties in Oregon to address Statewide Planning Goal 9 Economic Development. Goal 9 requires cities and counties to provide an adequate land supply for economic development and employment growth. Chapter VII Economy of the *Ashland Comprehensive Plan* and the 2007 Economic Opportunity Analysis (EOA) address the Goal 9 requirements.

Oregon Administrative Rule (OAR) 660 Division 9 implements Goal 9 and provides two options for land use code and comprehensive plan amendments. The first option in OAR 660-009-0010(3) allows local jurisdictions to make amendments by relying on existing plans if findings can be made that there are no significant changes in economic development opportunities based on new information about national, state, regional, count and local trends.

The second option in OAR 660-009-0010(4) requires changes to the designation of land in excess of two acres from an employment use designation to any other use designation. Under this provision, a city or county must show the amendment is consistent with the comprehensive plan and existing EOA. If the proposed amendment can't be supported by the adopted comprehensive plan and EOA, OAR 660-009-0010(4) requires an update the comprehensive plan and/or EOA.

After researching the Goal 9 requirements and speaking to the Oregon Department of Land Conservation (DLCD), staff believes the analysis performed by Fregonese Associates can be used to address OAR 660-009-0010(3) for the proposed code amendments to increase the allowance for residential uses from 35 to 65 percent of the ground floor in multi-story, mixed-use buildings and developments located in the C-1 and E-1 zones and outside of the Downtown Design Standards overlay.

With assistance from Fregonese Associates, staff researched and assessed the rate of employment land consumption and the growth rate in number of jobs in Ashland since the adoption of the 2007 EOA. Fregonese and Associates analyzed the buildable lands data, building permits issued, and Ashland's employment data in the last 10 years and found there is sufficient C-1 and E-1 land for future employment needs. Specific items in the data analysis include the following.

- The land consumption rate in the C-1 and E-1 zones is relatively low with an average of 2 acres per year used for the last 8 years.
- Of the 50 building permits that were issued for commercial development in the last 10 years, 26 permits were in located in the C-1 and E-1 zones and the other 24 permits

were located in the C-1-D zone (Downtown) or were public projects such as SOU and Ashland School District projects.

- The 2007 Economic Opportunity Analysis (EOA) forecasted more employment growth than has occurred over the last 14 years. The EOA projected 15, 220 project jobs by 2027, including 10,654 jobs in retail and services. State employment data shows a total of 10,237 jobs in the Ashland Urban Growth Boundary in 2019.
- The EOA determined that 30% of the employment growth would not require consumption of vacant land.
- Currently, approximately 20% of the jobs are in residential zones.

As originally suggested by KDA, one of the options that the Planning Commission discussed included revising the land use code to allow 100 percent of the ground floor of newly constructed buildings in the C-1 and E-1 zones to be used for residential uses.

According to staff's research, an amendment allowing 100 percent of the ground floor of mixed-use buildings in the C-1 and E-1 zones to be used for housing will likely be considered a significant change and possibly a change from an employment land use designation under OAR 660-009-0010(4). As a result, it is staff's understanding that the 2007 EOA would need to be updated to show that there will be an adequate supply of employment lands to address Ashland's future economic and job needs.

In staff's opinion, the options are to move forward with the attached amendments, consider the 100 percent residential ground floor as one of the options in the housing production strategy, or both amend the code as proposed and identify the 100 percent residential ground floor amendment in the housing production strategy. Potential future actions could involve rezoning employment lands for residential purposes, creating a mixed-use zone with greater flexibility and residential allowances similar to the North Mountain Neighborhood Commercial Zone, or simply retaining existing C-1 and E-1 zoning with the options to build 100 percent residential projects.

C. Project Background

Laz Ayala and Mark Knox from KDA Homes introduced the issue to the Planning Commission at the study session meeting on December 22, 2020. The KDA representatives suggested that there is a surplus of commercial space that could be used to provide housing units. The concerns raised included the decreased demand for commercial space due to ecommerce and the pandemic while housing demand continues to increase, particularly after the Alameda fire. The KDA representatives suggested amending the land use code to allow the temporary use of ground floor commercial space to be used for housing units and requiring the buildings to be constructed to commercial building code standards so the space could be converted in the future should demand for commercial space return.

The City Council initiated the project at the March 16, 2021 business meeting. Specifically, the Council directed staff to work with the Planning Commission to evaluate the draft code language prepared by representatives of KDA Homes and propose amendments to the land use ordinance which would provide the flexibility to temporarily use the ground floor of commercial buildings for housing.

The Planning Commission reviewed and discussed the proposed code amendment project at the June 22, 2021, August 24, 2021, October 26, 2021 and November 23, 2021 study session meetings.

Currently, at least 65 percent of the ground floor of buildings in the commercial (C-1) and employment (E-1) zones is required to be commercial and light industrial uses. The remaining 35 percent of the ground floor can be used for residential dwellings as well 100 percent of the upper stories in multi-story buildings. The exceptions are: 1) in the Transit Triangle (TT) overlay, a minimum of 35 percent of the ground floor is required to be used for commercial and light industrial uses and 2) in the commercial area of the North Mountain Neighborhood District, the ground floor can be used entirely for housing but must be built to commercial building code standards so that the space can be converted to commercial uses in the future.

In 1992, the land use code was amended to eliminate entirely residential buildings as an allowed use in the C-1 and E-1 zones (Ord. 2688). The current standard of requiring 65 percent of the ground floor in commercial or light industrial uses was put in place at that time, as well as residential densities for each of the zones. Prior to 1992, residential buildings comprised entirely of housing units could be built in the C-1 and E-1 zones with the approval of a conditional use permit. The 1992 code update was in part due to concern about construction of residential buildings near the downtown and loss of future commercial space.

II. Procedural

18.5.9.020 Applicability and Review Procedure

Applications for Plan Amendments and Zone Changes are as follows:

B. Type III. It may be necessary from time to time to make legislative amendments in order to conform with the Comprehensive Plan or to meet other changes in circumstances or conditions. The Type III procedure applies to the creation, revision, or large-scale implementation of public policy requiring City Council approval and enactment of an ordinance; this includes adoption of regulations, zone changes for large areas, zone changes requiring comprehensive plan amendment, comprehensive plan map or text amendment, annexations (see chapter 18.5.8 for annexation information), and urban growth boundary amendments. The following planning actions shall be subject to the Type III procedure.

1. Zone changes or amendments to the Zoning Map or other official maps, except where minor amendments or corrections may be processed through the Type II procedure pursuant to subsection 18.5.9.020.A, above.
2. Comprehensive Plan changes, including text and map changes or changes to other official maps.
3. Land Use Ordinance amendments.
4. Urban Growth Boundary amendments.

III. Conclusions and Recommendations

Staff recommends the Planning Commission recommend approval of the proposed amendments to the City Council. The proposed amendments are scheduled for a public hearing and first reading at the City Council on January 4 and for second reading on January 18.

Ashland Economic Sustainability Assessment

Laz Ayala, KDA Homes, LLC

12/11/2020

Ashland Planning Commission,

For many years, our community has been experiencing a housing supply problem involving market rate and subsidized housing, particularly 1- and 2-bedroom units often referred to as workforce housing. Workforce housing is essential in attracting businesses to our community as we look to diversify our local economy. Forrester fires, Covid-19 and E-commerce have caused serious short- and long-term damage to Ashland's economy. These phenomena are not likely to disappear and in fact, experts warn to expect more in the years ahead. While these phenomena have created economic devastation and accelerated shifts in how we live, work, shop, and play they also bring opportunities we must embrace if Ashland is to remain the thriving community it still is today. We have two choices: embrace these opportunities or become collateral damage.

We have time to assess what may or may not work in Ashland's future economy and make the necessary changes to adapt to the fast-changing world we live in. If we agree that our tourist economy is in peril, we must respond with the changes needed to adapt to a more diverse and sustainable economy. As earlier mentioned, an adequate supply of workforce housing is fundamental in this effort and as such we must explore ways, we can provide much needed workforce housing that will not only address our housing needs, but provide revenue to fund City services such as fire, police, water, sewer, roads, parks, schools, affordable housing and other public funded programs.

If we agree that demand for office and retail commercial space is in decline and recognize the need for more workforce housing, council should consider a minor amendment to the commercial and employment zones (C-1/ E-1) allowing for 100% residential uses at ground level (with conditions for future commercial conversion) such as in the Transit Triangle and North Mountain neighborhoods. Except for these two neighborhoods, 100% residential is not permitted at ground level in other commercial zone districts in Ashland. We believe Downtown should not be part of this amendment, but rather commercial properties located within the fringe of Downtown, such as the commercial and employment district between "A" and Hersey extending west to Laurel and east to Mountain. Why 100% residential at ground level? There is no demand for retail or office space and

banks will not finance these projects nor will developers take a risk building commercial space for which there is no market.

Amending the commercial code to allow for 100% residential use makes projects like Meadowbrook Apartments along Fair Oaks Avenue within the North Mountain Master Plan area feasible. Below is a summary of the economic benefit to the City in terms of revenue in addition to the workforce housing opportunities provided:

The Meadowbrook Apartments project which is currently under construction has contributed approximately \$148,575.75 in permit fees and \$206,253.19 system development fees (CDCs) for a total of \$358,000. Upon completion it is estimated to provide \$72,333.57 in annual tax revenue, \$52,000 of which will go directly to the City of Ashland.

It is conceivable that amending the commercial zone requirements to allow for 100% residential would generate enough interest in similar projects and it is conceivable to see several of these projects get built every year thereby providing revenue for the City and its agencies and much needed workforce housing to attract investment and businesses to diversify our economy.

Sincerely,

Laz Ayala

[Submitted by Amy Gunter]

Good evening planning commissioners,

I would like to add to the discussion on changes to the housing and employment zones codes. Now is the opportunity for the city to make a meaningful, substantive impact on the present restrictions regarding provision of housing in the commercial and employment zones and parking requirements.

This discussion shouldn't be relegated to the existing residential overlay. This discussion should be regarding all commercial and employment zone lands. There are areas that do not have residential overlay but directly abut residential lands. The industrial zone does not allow for residential use. I would wager a bet that there are a number of 'residences' in the Employment zone.

Additionally, the existing uses of a site shouldn't determine that residential isn't allowed for example properties that have a conditional use permit such as a hotel cannot be converted to the 65/35 ratio as the code prevents residential development when the commercial property is occupied by a conditional use. The irony of this is that hotels have similar if not more fire life safety protections for their guests as an apartment complex requires. Additionally, generally the parking for a hotel is similar to the parking for a studio or small one bedroom so the physical changes to the property to accommodate the change of use are limited.

The code appears to eliminate the allowance for multiple buildings that would allow for a building that was entirely residential in conjunction with a commercial development. This should be allowed so that there can be stand-alone apartments. Possibly require the commercial building to be fronting upon the street like the projects we are doing in Talent on North Pacific Highway.

I suggest that it be considered that commercial property is allowed to develop at 100% residential when developed to the high-density multi-family residential standards. Medford has had successful residential development adjacent to large scale commercial developments in their commercial zones and the numbers of pedestrians and foot traffic to the businesses is increased due to the increase in housing on directly adjacent properties. For all intents and purposes, multi-family residential functions like and has similar traffic impacts as many permitted commercial uses. The traffic impacts are similar except that there is the ability to functionally reduce trips because people can walk to the nearby businesses. You'll find projects like this on West Main/Ross in Medford.

Parking:

The parking is not part of the discussion this evening I would like to comment that in all of the Rogue Valley jurisdictions where I have done planning and development projects Ashland has the highest parking requirements. This includes not only the number of parking spaces, the sizes of the parking spaces, the required buffering for said parking, most communities allow for stacking of residential parking. So in the event that a garage has a 20 foot front yard setback that garage space provides one parking space and the space behind that provides a second this way acknowledging that is how much of the historic area, the area around Harmony Lane, Ross Lane, Linda Ave., Ray lane, Parker St, Garfield St, you get my drift, there's a lot of single width driveways around town that only count as one parking space regardless of the how many vehicles can stack in the same driveway.

In conclusion,

Nobody wants to build vacant commercial structures but there is a lot of interest in building, expanding residential structures. I did suggest that my clients that own commercial and employment zoned property participate in this discussion because there are many that feel stuck. The folks on A Street and Hersey Street in the houses that are nearly impossible to convert to commercial are stuck in non-conforming developments.

I thank you for looking into making changes. I suggest you look deeper and consider broader, more impactful changes some of the suggestions include.

- Allow for 100 percent residential in the C-1 zones when developed to high density, multi-family residential standards.
- Retain the mix in the employment zones
- Retain the mixed-use component that allows for 50 percent of the site area (or some other number) to be residential in conjunction with commercial development when in separate structures.
- Allow for residential use when there is a conditional use on the property and do not restrict to permitted or special permitted uses.
- Allow for single story, mixed use construction of buildings
- Consider taller buildings (3 and 4 story buildings in the E-1)
- Revise the Economic Opportunity Analysis due to substantial changes to Ashland's economy that may not have been captured in 2007. This would provide avenue to allow more E-1 with R overlay in the areas that I note above.
- By all means reduce the parking requirements.

Thank you for your time.

KDAHomes

plan. develop. build

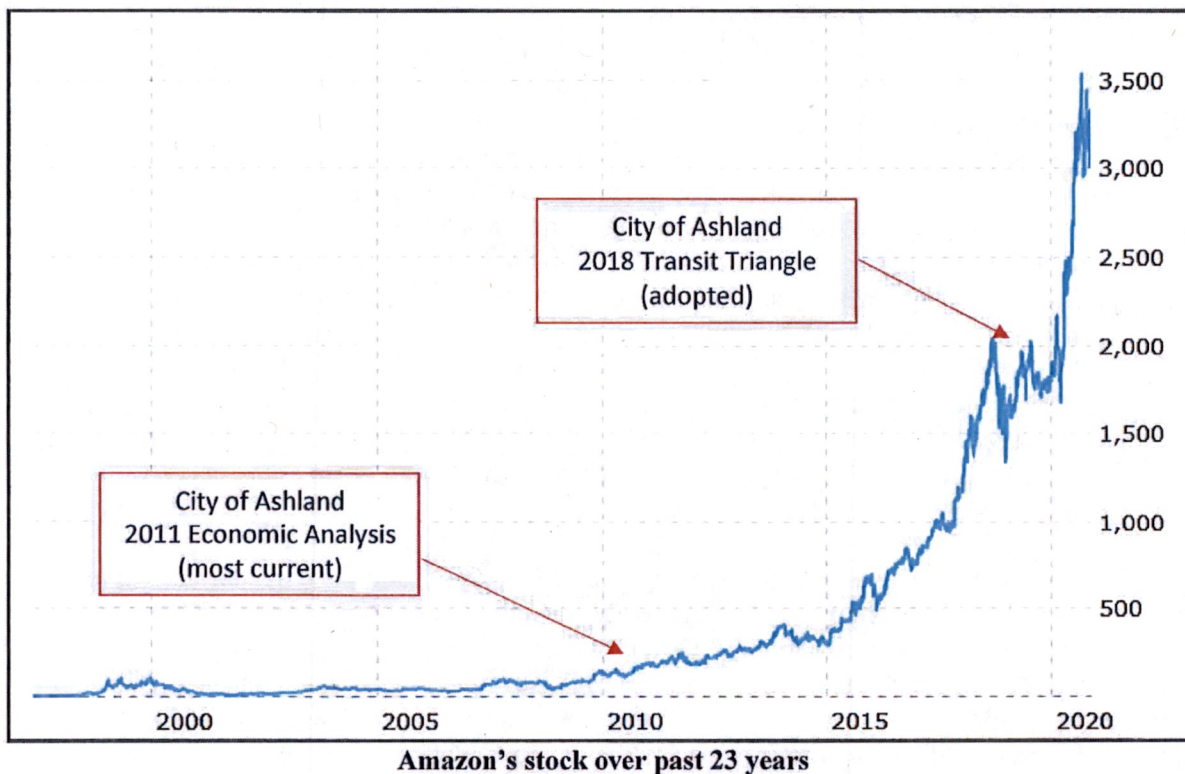
December 16th, 2020

TO: Ashland Planning Commission & Planning Staff

FROM: Mark Knox, KDA Homes, LLC

SUBJECT: Ashland Economic Sustainability

Background: As the Planning Commission and Planning Staff are aware, over the last few years I have spoken publically about concerns relating to e-commerce and how quickly technology is effecting Main Street's across the country. Main Streets have always been under attack with the innovation of the automobile, invention of malls or most recently big box retailers. But, today's rapid technological advancements relating to e-commerce, automation and overnight shipping, compounded by low-cost goods sourced from other countries is far different and likely to have the most devastating impact.



After experiencing the phenomenon first hand in the summer of 2017 while visiting the Main Street section in Tiburon California, reading multiple articles on the subject and closely monitoring our own Downtown Main Street, the problem is real. I've also talked with numerous professionals

Planning Commission's hearings and discussion of the Transit Triangle Infill Strategy, I submitted testimony relating to this issue and suggested the Planning Commission consider "swapping" the ground floor commercial code "requirement" from a minimum 65% required ground floor commercial use and maximum 35% ground floor residential use and the Planning Commission unanimously concurred, as did the City Council. The general idea being commercial space demand is in decline whereas residential demand continues to remain strong.

Unfortunately, since 2018, the issue has only worsened for a variety of reasons and so I'm again speaking out, talking with the Chamber of Commerce, City Council, Planning Staff, Southern Oregon University, Planning Staff, colleagues and anyone else who will listen.

Problem: The problems facing Ashland's Main Street are not just tied to e-commerce, big box or auto centric competition, but now it's facing the impacts and/or implications of forest fires, fear of travel from the pandemic, declining lease projections for professional office space due to the pandemic and a decline in Shakespeare or theatre enthusiasts. Further, in what should be considered a warning alarm, lending institutions have either stopped or significantly increased their lending demands for commercial developments, including mixed-use developments.

Unlike many other small towns across the country, Ashland has numerous attributes and livability components that draw visitors and locals to its fine dining establishments, pubs and bookstores, but it is not immune to real world issues and a slow erosion can quickly occur if we do not try to address it. And, because of the speed at which it is occurring, it needs immediate attention.

Solution: As most people know, I was a City Planner for the City of Ashland in what seems like yesterday but is now "years ago". I'm now a local Developer who does land use planning for a small development company. Over the last eight years, I've had the opportunity to work on various land use projects from small subdivisions (Garden Cottages – Ashland's first Cottage Housing Development) to large scale commercial developments (First Place along Lithia Way). I've also had the opportunity to work with a variety of professionals and obtain a better understanding of complex financial matters and market trends.

To this point, I've reached out to the Ashland Planning Department to discuss a possible amendment to the Ashland Municipal Code that could not only help stabilize the issues noted above, but also provide additional housing opportunities that have realistically never been resolved since I moved to Ashland 28 years ago.

In simple terms, the request is for the Planning Commission and Staff to consider a relatively simple code amendment that looks similar to the ground floor code amendments recently adopted in 2018 for the Transit Triangle Overlay or code language within the adopted 1995 North Mountain Neighborhood Plan that allows 100% ground floor residential until there is commercial demand. The suggested code language would apply in certain employment and commercial zones (not Downtown, Croman, or Airport areas) with code stipulations that ground floor spaces are to be: 1) Designed and built following Commercial Building Codes, 2) Designed to comply with all commercial Site Design & Use Standards 3) Permitted to be converted to commercial use at any time and 4) Only applicable to qualifying buildings that are at least two stories measured from adjacent street grade.

Benefits: The suggested amendment should be beneficial for a number of reasons, including the following:

- 1) It provides much needed small unit affordable rental housing in areas that are generally close to essential services;
- 2) It provides much needed housing that hopefully creates a surplus and thus helps stabilize market rental housing prices;
- 3) It provides the financial incentive for property owners to invest and construct mixed-use buildings;
- 4) It encourages financial institutions to finance mixed-use buildings. This is critical as without the financing, the building does not get built nor do “any” permissible residential units;
- 5) It helps maintain the City’s tax base and related construction impact fees for streets, roads, schools, etc. A perfect example is the now under construction Meadowbrook Square Apartment Building (see picture insert below) that would NOT have been possible without the suggested exception language built into the North Mountain Master Plan in 1995. In this case, the related construction fees are approximately \$148,575 and SDC fees \$206,253. Upon completion, the annual tax revenue will be roughly \$72,333 of which \$52,000 will go to the City of Ashland and Ashland School District. *Note:* The Meadowbrook Square Condominiums (across the street) are currently contributing \$30,229.06 in tax revenue annually of which approximately \$22,000 goes directly to the City of Ashland and Ashland School District. Permit and SDC’s paid to City of Ashland totaled \$95,751.26. This building’s ground floor unit is also “interim” and used as a residence;



Meadowbrook Apartments (12.16.2020) Three-story Mixed-Use Building with “24” 500 sq. ft. apartments on 2nd and 3rd floors and “5” interim residential apartments on ground floor to eventually be converted to commercial office/retail use pending market demand.

- 6) It still requires the appearance of typical commercial mixed-use facades as envisioned in the City's Site Design & Use Standards;
- 7) It provides an opportunity for an expeditious conversion from residential to commercial when the market demands. In the vast majority of cases, commercial business cannot "wait" the typical 1 to 2 year timeframe for land use planning and construction and thus under the suggested code provision, the commercial spaces are already in existence and only have to "wait" 6 to 9 months to complete tenant improvements;
- 8) It helps stimulate construction employment and any related employment;
- 9) It can help provide for an added customer base for local businesses during what appears to be a long slow trend of declining tourism due to a variety of real or perceived factors related to climate change conditions, tourism preferences, etc.

Negative Implications: At the present time, I do not believe there are any negative implications with this proposal, but also understand the idea needs to be vetted with the public, staff, Planning Commission and City Council. Further, I do not believe there are any State land use limitations as the proposal does not eliminate or reduce available commercial or employment lands, it simply provides for a more efficient use of those lands until the market demand exists.

Overall, I appreciate the opportunity to voice my opinion on this important matter and look forward to discussing it with the Planning Commission. As mentioned, I've discussed the suggested amendment proposal with a number of City leaders and local business owners and all agree the idea is sound and timing appropriate. In that regard, the starting point for official consideration is the Ashland Planning Commission via a public Study Session.

Sincerely,



Mark Knox
276 W. Nevada Street
Ashland, OR 97520

Related Articles:

- 1) *Mounting commercial real estate losses threaten banks, recovery* (The Washington Post, 11/11/20)
<https://www.washingtonpost.com/business/2020/11/11/commercial-real-estate-economy/>
- 2) *Amazon is now a drug store.* (CNN Business, 11/17/20)
<https://www.cnn.com/2020/11/17/business/amazon-pharmacy-launch/index.html>
- 3) *Can Governments Save Main Street?* (The Salem News, 11/30/20).
https://www.salemnews.com/opinion/columns/column-can-governments-help-save-main-street/article_000a1e23-cadd-54ca-b9f1-651b11cbdb3a.html

- 4) *Small Town Kept Walmart Out. Now It Faces Amazon.* (The Atlantic, 3/3/18)
<https://www.theatlantic.com/business/archive/2018/03/amazon-local-retail/554681/>
- 5) *Downtowns Matter* (State of Main, Edward T. McMahon Fall 2016)
<https://www.mainstreet.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=32bde503-eeb9-3bd4-0ff5-0a525562b1b8&forceDialog=0>

From: [Melissa Huhtala](#)
To: [Brandon Goldman](#)
Subject: FW: Ashland City Council Public Testimony
Date: Tuesday, February 01, 2022 11:45:14 AM

FYI

From: Eric Navickas <navickasdesign@gmail.com>
Sent: Sunday, January 30, 2022 3:20 PM
To: Public Testimony <public-testimony@ashland.or.us>
Subject: Ashland City Council Public Testimony

[EXTERNAL SENDER]

Agenda Item X.1. **Public Hearing and First Reading of Housing in Employment Lands Code Amendments**

Council,

The proposal before you is a land use decision subject to appeal to LUBA pursuant to ORS 197.825(1), stating, "the Land Use Board of Appeals shall have exclusive jurisdiction to review any land use decision or limited land use decision of a local government".

The ordinance changes propose to shift the use of employment zones and commercial zones to allow more residential uses. Under OAR 600-009-0010(4) a plan amendment "that changes the plan designation of land in excess of two acres within an existing urban growth boundary from an industrial use designation to a non-industrial use designation, or an other employment use designation to any other use designation, a city or county must address all applicable planning requirements, and; (a) Demonstrate that the proposed amendment is consistent with its most recent economic opportunities analysis and the parts of its acknowledged comprehensive plan which address the requirements of this division".

OAR 600-090-0010(1) states that cities "subject to this division must adopt plan and ordinance amendments necessary to comply with this division." The outdated 2007 Economic Opportunities Analysis and related Comprehensive Plan need to be amended to meet this requisite demand.

The staff report relies on exceptions allowed under OAR 600-009-0010(5), stating, "[a] jurisdiction's planning effort is adequate if it uses the best available or readily collectable information to respond to the requirements of this division." To fulfill this exception the staff offers a limited study by Fergonese's and Associates, stating, "[i]n order to ensure that Ashland's inventory of commercial and employment lands could accommodate future business development, the city contracted with Fergonese and Associates to assist in

analyzing the buildable lands data, building permits issued, and Ashland's employment data over the last 10 years."

The inadequacy of the Fergonese and Associates study is obvious when compared with the requirement of the Economic Opportunity Analysis as defined under OAR 600-009-0015(1), stating, "[t]he economic opportunities analysis must identify the major categories of industrial or other employment uses that could reasonably be expected to locate or expand in the planning area based on information about national, state, regional, county or local trends." A specifically local analysis fails to meet this requirement especially as the national trend of "onshoring" or "reshoring" manufacturing as a result of supply chain disruptions continues to make headline news.

OAR 600-009-0015(2) requires consideration of site characteristics, stating, "[t]he economic opportunities analysis must identify the number of sites by type reasonably expected to be needed to accommodate the expected employment growth based on the site characteristics typical of expected uses." With the subsequent proposal to convert much of the Croman Mill Site to residential uses, the prerequisite of an Economic Opportunities Analysis that considers existing land in relation to site characteristics is imperative to maintaining the types of land where employment activities can realistically be realized. This concept is continued in OAR 600-009-0015(4)(a)-(h), stating that the estimate of employment growth "must consider the planning area's economic advantages and disadvantages" with a long list of factors to consider. The Fergonese and Associates study fails to address these important elements.

Finally, ORS 600-900-0015(5) states, "[c]ities and counties are strongly encouraged to assess community economic development potential through a visioning or some other public input based process in conjunction with state agencies." It is discouraging to see this effort to move forward in changing employment zones that are intended to maintain the economic health of our city through avoiding the requirement of updating the Economic Opportunities Analysis that encourages a visioning process that includes public input. In this case, the city staff has been very transparent about the fact that these proposed changes were initiated by a private development firm with obvious special interests. A proposal from KDA Homes cannot meet the need for "public input based process in conjunction with state agencies".

In conclusion, the State of Oregon has developed a land use regulatory program that establishes requisite procedures that demand statewide compliance. The City of Ashland is attempting to circumvent these procedures through failing to update the Economic Opportunities Analysis prior to making changes to lands zoned for employment uses. Further, the proposed changes are significant enough to bring into question whether or not they continue to fulfill the desired use as defined within the Comprehensive Plan.

Respectfully,
Eric Navickas
27 1/2 N. Main St.
Ashland OR.

Council Business Meeting

January 3, 2023

Agenda Item	Award of a Professional Services Contract; Talent-Ashland-Phoenix (TAP) Intertie System Improvements	
From	Scott Fleury PE	Public Works Director
Contact	Scott.fleury@ashland.or.us	

SUMMARY

Before the Council is a request to award of a professional services contract to RH2 Engineering Inc. for the design of TAP Intertie system improvements defined in the TAP Master Plan. Ashland, Talent and Phoenix were awarded three million dollars in grant funding via American Rescue Plan Act (ARPA) to fund defined projects within the TAP Master Plan. Per the grant agreement the ARPA funds must be expended by 2026.

POLICIES, PLANS & GOALS SUPPORTED

City Council Goals:

Essential Services

- Drinking Water System

Enhance Value Services:

- Water Conservation
- Address Climate Change

CEAP Goals:

Natural Systems: Air, water, and ecosystem health, including opportunities to reduce emissions and prepare for climate change through improved resource conservation and ecosystem management.

Department Goals:

- Maintain existing infrastructure to meet regulatory requirements and minimize life-cycle costs
- Deliver timely life cycle capital improvement projects
- Maintain and improve infrastructure that enhances the economic vitality of the community
- Evaluate all city infrastructure regarding planning management and financial resources

PREVIOUS COUNCIL ACTION

The City Council has taken numerous actions over the past three decades in relation to the TAP system with the most recent being adoption of the TAP System Master Plan as the guiding planning document for TAP ([Staff Report](#)).

The Council also approved the supplemental budget resolution accepting the three million dollars in grant funding at the January 4, 2022 Council Business Meeting ([Staff Report](#)).

BACKGROUND AND ADDITIONAL INFORMATION

The **purpose** of this project is to develop the engineering plans, specifications and estimates for improvements to the TAP system as defined in the TAP Master Plan and covered by the ARPA grant. Talent, Ashland and Phoenix have entered into an Intergovernmental Agreement (IGA) for Ashland to manage the projects and ARPA funding.

The project was formally solicited on the OregonBuys on May 13, 2022 and responses were received on June 1, 2022. A single proposal was submitted by RH2 Engineering Inc. for the project. The proposal was graded by Kevin Caldwell, Senior Engineering Project Manager, Bret Marshall, City of Talent Public Works Director and Matias Mendez, City of Phoenix Public Works Superintendent.

The results of the scoring are as follows:

CONSULTANT	TOTAL SCORE	RANK
RH2 Engineering Inc.	276	1

After scoring was completed, RH2 Engineering Inc. was notified of the City's intent to begin scope and fee negotiations for the project. Through several formal discussions a final scope and fee was agreed upon in concept by Talent, Ashland, Phoenix and RH2 Engineering Inc. The scope and fee is part of the professional services contract, reference attachment #1.

This contract supports the development of plans, specifications and estimates for the following improvements:

1. Backup power generator – Talent booster pump station
 - a. Upsized generator for the Talent booster station to provide backup power needs to meet fire flow and max day demand for Talent and Ashland
2. Backup power generator – Ashland booster pump station
 - a. New generator to provide backup power to the Ashland station
3. Booster pump upgrades to the regional pump station
 - a. Upsize existing pumps to meet fire and max day demand needs into the future
4. Booster pump upgrades to the Talent booster pump station
 - a. Upsize existing pumps to meet fire and max day demand needs for Talent and Ashland
5. Seismic retrofit of the Talent booster pump station
 - a. Seismic resilience improvements to the facility to protect delivery of potable water to Talent and Ashland
6. Booster pump station programming improvements (Telemetry)
 - a. Coordinate SCADA improvements in the TAP system to ensure that booster stations and reservoirs are properly coordinated

Staff expects to issue another RFP document that will cover two other TAP System Improvements outlined in the ARPA grant at a future date to be determined.

FISCAL IMPACTS

The proposed fee for the engineering and construction administration for the project is \$299,684 and is funded 100% from the ARPA grant received. Construction cost estimates will be updated during the design process and staff will bring forward future construction contracts for award by the City Council. If the grant amount is exceeded in the construction phase then each community will pay their appropriate share based on the TAP Master Plan cost allocation basis.

STAFF RECOMMENDATION

Staff recommends approval of the professional services contract with RH2 Engineering Inc. for TAP system improvements.

ACTIONS, OPTIONS & POTENTIAL MOTIONS

1. I move to approve a Legal Department approved professional services contract with RH2 Engineering Inc. for TAP system improvements in the amount of \$295,172

REFERENCES & ATTACHMENTS

Attachment #1: Professional Services Contract with RH2 Engineering

Attachment #2: ARPA Award Letter Notification

Attachment #3: Request for Proposal Solicitation

PERSONAL SERVICES AGREEMENT (greater than \$35,000.00)

CITY OF ASHLAND

20 East Main Street
Ashland, Oregon 97520
Telephone: 541/488-5587
Fax: 541/488-6006

CONSULTANT: RH2 ENGINEERING, INC.

CONSULTANT'S CONTACT: Jeff Ballard

ADDRESS: 3553 Arrowhead Dr, STE 200
Medford, OR 97504

EMAIL: jballard@rh2.com

This Personal Services Agreement (hereinafter "Agreement") is entered into by and between the City of Ashland, an Oregon municipal corporation (hereinafter "City") and RH2 Engineering, Inc., a foreign business corporation ("hereinafter "Consultant"), for development of TAP Water System Improvements.

NOW THEREFORE, in consideration of the mutual covenants contained herein, the City and Consultant hereby agree as follows:

- Effective Date and Duration:** This Agreement shall become effective on the date of execution on behalf of the City, as set forth below (the "Effective Date"), and unless sooner terminated as specifically provided herein, shall terminate upon the City's affirmative acceptance of Consultant's Work as complete and Consultant's acceptance of the City's final payment therefore, but not later than June 30, 2024.
- Scope of Work:** Consultant will provide development of TAP Water System Improvements as more fully set forth in the Consultant's Scope of Work dated September 2022, which is attached hereto as "Exhibit A" and incorporated herein by this reference. Consultant's services are collectively referred to herein as the "Work."
- Supporting Documents/Conflicting Provisions:** This Agreement and any exhibits or other supporting documents shall be construed to be mutually complimentary and supplementary wherever possible. In the event of a conflict which cannot be so resolved, the provisions of this Agreement itself shall control over any conflicting provisions in any of the exhibits or supporting documents.
- All Costs Borne By Consultant:** Consultant shall, perform the Work described above and, unless otherwise specified in this Agreement, furnish all labor, equipment, and materials required for the proper performance of such Work.
- Qualified Work:** Consultant has represented, and by entering into this Agreement now represents, that all personnel assigned to the Work to be performed under this Agreement are fully qualified to perform the service to which they will be assigned in a skilled and worker-like manner and, if required to be registered, licensed or bonded by the State of Oregon, are so registered, licensed and bonded.
- Compensation:** City shall pay Consultant at the hourly rates and for the amounts actually incurred for

any subcontracting activities as set forth in Consultant's fee schedule entitled "RH2 Engineering, Inc. 2020 Schedule of Rates and Charges" which is attached hereto as "Exhibit "B" and incorporated herein by this reference, as full compensation for Consultant's performance of all Work under this Agreement. In no event shall Consultant's total of all compensation and reimbursement under this Agreement exceed the sum of **\$295,172.00 (two hundred ninety-five thousand and one hundred seventy-two U. S. dollars)** without the express, written approval from the City official whose signature appears below, or such official's successor in office. Payments shall be made within 30 days of the date of receipt by the City of Consultant's invoice. Should this Agreement be terminated prior to completion of all Work, payments will be made for any phase of the Work completed and accepted as of the date of termination.

7. **Ownership of Work/Documents:** All Work product or documents produced in furtherance of this Agreement belong to the City, and any copyright, patent, trademark proprietary or any other protected intellectual property right shall vest in and is hereby assigned to the City. All reuse not occurring as part of this Work shall be without liability to the Consultant.
8. **Statutory Requirements:** The following laws of the State of Oregon are hereby incorporated by reference into this Agreement: ORS 279B.220, 279B.230 and 279B.235.
9. **Living Wage Requirements:** If the amount of this Agreement is \$21,507.75 or more, Consultant is required to comply with Chapter 3.12 of the Ashland Municipal Code by paying a living wage, as defined in that chapter, to all employees performing Work under this Agreement and to any Subcontractor who performs 50% or more of the Work under this Agreement. Consultant is also required to post the notice attached hereto as "Exhibit D" predominantly in areas where it will be seen by all employees.
10. **Indemnification:** Consultant hereby agrees to defend, indemnify, save, and hold City, its officers, employees, and agents harmless from any and all losses, claims, actions, costs, expenses, judgments, subrogations, or other damages resulting from injury to any person (including injury resulting in death), or damage (including loss or destruction) to property, of whatsoever nature to the extent caused by or arising out of the intentional or negligent acts, errors, or omission in the performance of this Agreement by Consultant (including but not limited to, Consultant's employees, agents, and others designated by Consultant to perform Work or services attendant to this Agreement). However, Consultant shall not be held responsible for any losses, expenses, claims, subrogations, actions, costs, judgments, or other damages, caused solely by the negligence of City.
11. **Termination:**
 - a. Mutual Consent. This Agreement may be terminated at any time by the mutual consent of both parties.
 - b. City's Convenience. This Agreement may be terminated by City at any time upon not less than 30 days' prior written notice delivered by certified mail or in person.
 - c. For Cause. City may terminate or modify this Agreement, in whole or in part, effective upon delivery of written notice to Consultant, or at such later date as may be established by City under any of the following conditions:
 - i. If City funding from federal, state, county or other sources is not obtained and continued at levels sufficient to allow for the purchase of the indicated quantity of services;

- ii. If federal or state regulations or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this Agreement or are no longer eligible for the funding proposed for payments authorized by this Agreement; oriii. If any license or certificate required by law or regulation to be held by Consultant to provide the services required by this Agreement is for any reason denied, revoked, suspended, or not renewed.

d. For Default or Breach.

- i. Either City or Consultant may terminate this Agreement in the event of a breach of the Agreement by the other. Prior to such termination the party seeking termination shall give to the other party written notice of the breach and its intent to terminate. If the party committing the breach has not entirely cured the breach within fifteen (15) days of the date of the notice, or within such other period as the party giving the notice may authorize in writing, then the Agreement may be terminated at any time thereafter by a written notice of termination by the party giving notice.
 - ii. Time is of the essence for Consultant's performance of each and every obligation and duty under this Agreement. City by written notice to Consultant of default or breach may at any time terminate the whole or any part of this Agreement if Consultant fails to provide services called for by this Agreement within the time specified herein or within any extension thereof.
 - iii. The rights and remedies of City provided in this subsection (d) are not exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.
- e. Obligation/Liability of Parties. Termination or modification of this Agreement pursuant to subsections a, b, or c above shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination or modification. However, upon receiving a notice of termination (regardless whether such notice is given pursuant to Subsection a, b, c, or d of this section, Consultant shall immediately cease all activities under this Agreement, unless expressly directed otherwise by City in the notice of termination. Further, upon termination, Consultant shall deliver to City all Agreement documents, information, works-in-progress and other property that are or would be deliverables had the Agreement been completed. City shall pay Consultant for Work performed prior to the termination date if such Work was performed in accordance with this Agreement.

12. **Independent Contractor Status:** Consultant is an independent contractor and not an employee of the City for any purpose. Consultant shall have the complete responsibility for the performance of this Agreement. Consultant shall provide workers' compensation coverage as required in ORS Chapter 656 for all persons employed to perform Work pursuant to this Agreement. Consultant is a subject employer that will comply with ORS 656.017.
13. **Assignment:** Consultant shall not assign this Agreement or subcontract any portion of the Work without the written consent of City. Any attempted assignment or subcontract without written consent of City shall be void. Consultant shall be fully responsible for the acts or omissions of any assigns or subcontractors and of all persons employed by them, and the approval by City of any assignment or

subcontract of the Work shall not create any contractual relation between the assignee or subcontractor and City.

14. **Default.** The Consultant shall be in default of this Agreement if Consultant: commits any material breach or default of any covenant, warranty, certification, or obligation under the Agreement; institutes an action for relief in bankruptcy or has instituted against it an action for insolvency; makes a general assignment for the benefit of creditors; or ceases doing business on a regular basis of the type identified in its obligations under the Agreement; or attempts to assign rights in, or delegate duties under, this Agreement.
15. **Insurance.** Consultant shall, at its own expense, maintain the following insurance:
 - a. Worker's Compensation insurance in compliance with ORS 656.017, which requires subject employers to provide Oregon workers' compensation coverage for all their subject workers
 - b. Professional Liability insurance with a combined single limit, or the equivalent, of not less than \$2,000,000 (two million dollars) per claim. This is to cover any damages caused by error, omission or negligent acts related to the professional services to be provided under this Agreement. "Tail" coverage will be required at the completion of the Work under this Agreement for the remaining Term, and for not less than twenty-four (24) months after completion of all Work. Consultant shall be responsible for furnishing certification of the "tail" coverage as described herein or continuous "claims made" liability coverage for not less than twenty-four (24) months following completion of all Work, provided that the continuous "claims made" coverage has a retroactive date on or before the Effective Date of this Agreement.
 - c. General Liability insurance with a combined single limit, or the equivalent, of not less than \$2,000,000 (two million dollars) per occurrence for Bodily Injury, Death, and Property Damage.
 - d. Automobile Liability insurance with a combined single limit, or the equivalent, of not less than \$1,000,000 (one million dollars) for each accident for Bodily Injury and Property Damage, including coverage for owned, hired or non-owned vehicles, as applicable.
 - e. Notice of cancellation or change. There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance coverage(s) without 30 days' prior written notice from the Consultant or its insurer(s) to the City.
 - f. Additional Insured/Certificates of Insurance. Consultant shall name the City of Ashland, Oregon, and its elected officials, officers and employees as Additional Insureds on any insurance policies, excluding Professional Liability and Workers' Compensation, required herein, but only with respect to Consultant's services to be provided under this Agreement. The consultant's insurance is primary and non-contributory. As evidence of the insurance coverages required by this Agreement, the Consultant shall furnish acceptable insurance certificates prior to commencing the Work under this Agreement. The certificate will specify all of the parties who are Additional Insureds. Insuring companies or entities are subject to the City's acceptance. If requested, complete copies of insurance policies; trust agreements, etc. shall be provided to the City. The Consultant shall be financially responsible for all pertinent deductibles, self-insured retentions, and/or self-insurance.
16. **Nondiscrimination:** Consultant agrees that no person shall, on the grounds of race, color, religion, creed, sex, marital status, familial status or domestic partnership, national origin, age, mental or physical

disability, sexual orientation, gender identity or source of income, suffer discrimination in the performance of any Work under this Agreement when employed by Consultant. Consultant agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. Further, Consultant agrees not to discriminate against a disadvantaged business enterprise, minority-owned business, woman-owned business, a business that a service-disabled veteran owns or an emerging small business enterprise certified under ORS 200.055, in awarding subcontracts as required by ORS 279A.110.

17. Consultant's Compliance With Tax Laws:

17.1 Consultant represents and warrants to the City that:

17.1.1 Consultant shall, throughout the term of this Agreement, including any extensions hereof, comply with:

- (i) All tax laws of the State of Oregon, including but not limited to ORS 305.620 and ORS Chapters 316, 317, and 318;
- (ii) Any tax provisions imposed by a political subdivision of the State of Oregon applicable to Consultant; and
- (iii) Any rules, regulations, charter provisions, or ordinances that implement or enforce any of the foregoing tax laws or provisions.

17.1.2 Consultant, for a period of no fewer than six (6) calendar years preceding the Effective Date of this Agreement, has faithfully complied with:

- (i) All tax laws of the State of Oregon, including but not limited to ORS 305.620 and ORS Chapters 316, 317, and 318;
- (ii) Any tax provisions imposed by a political subdivision of the State of Oregon applicable to Consultant; and
- (iii) Any rules, regulations, charter provisions, or ordinances that implement or enforce any of the foregoing tax laws or provisions.

18. Governing Law; Jurisdiction; Venue: This Agreement shall be governed and construed in accordance with the laws of the State of Oregon without resort to any jurisdiction's conflict of laws, rules or doctrines. Any claim, action, suit or proceeding (collectively, "the claim") between the City and the Consultant that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Jackson County for the State of Oregon. If, however, the claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon filed in Jackson County, Oregon. Consultant, by its signature hereon of its authorized representative, hereby consents to the *in personam* jurisdiction of said courts.

19. THIS AGREEMENT AND THE ATTACHED EXHIBITS CONSTITUTE THE ENTIRE UNDERSTANDING AND AGREEMENT BETWEEN THE PARTIES. NO WAIVER, CONSENT, MODIFICATION OR CHANGE OF TERMS OF THIS AGREEMENT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY BOTH PARTIES. SUCH WAIVER, CONSENT, MODIFICATION OR CHANGE, IF MADE, SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN

REGARDING THIS AGREEMENT. CONSULTANT, BY SIGNATURE OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT HE/SHE HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

20. **Amendments.** This Agreement may be amended only by written instrument executed by both parties with the same formalities as this Agreement.
21. **Nonappropriations Clause.** Funds Available and Authorized: The City has sufficient funds currently available and authorized for expenditure to finance the costs of this Agreement within the City's fiscal year budget. Consultant understands and agrees that City's payment of amounts under this Agreement attributable to Work performed after the last day of the current fiscal year is contingent on City appropriations, or other expenditure authority sufficient to allow City in the exercise of its reasonable administrative discretion, to continue to make payments under this Agreement. In the event City has insufficient appropriations, limitations or other expenditure authority, City may terminate this Agreement without penalty or liability to City, effective upon the delivery of written notice to Consultant, with no further liability to Consultant.
22. **Certification.** Consultant shall sign the certification attached hereto as "Exhibit C" and incorporated herein by this reference.

CITY OF ASHLAND:

RH2 ENGINEERING, INC. (CONSULTANT):

By: _____
City Manager

By: _____
Signature

Printed Name

Printed Name

Date

Title

Date

Purchase Order No. _____

(**W-9** is to be submitted with this signed Agreement)

APPROVED AS TO FORM:

City Attorney

Date

EXHIBIT C

CERTIFICATIONS/REPRESENTATIONS: Consultant, by and through its authorized representative, under penalty of perjury, certifies that (a) the number shown on the attached W-9 form is its correct taxpayer ID (or is waiting for the number to be issued to it and (b) Consultant is not subject to backup withholding because: (i) it is exempt from backup withholding, or (ii) it has not been notified by the Internal Revenue Service (IRS) that it is subject to backup withholding as a result of a failure to report all interest or dividends, or (iii) the IRS has notified it that it is no longer subject to backup withholding. Consultant further represents and warrants to City that: (a) it has the power and authority to enter into and perform the Work, (b) the Agreement, when executed and delivered, shall be a valid and binding obligation of Consultant enforceable in accordance with its terms, (c) the work under the Agreement shall be performed in accordance with the highest local standards, and (d) Consultant is qualified, professionally competent, and duly licensed (if applicable) to perform the Work. Consultant also certifies under penalty of perjury that its business is not in violation of any Oregon tax laws, it is an independent contractor as defined in the Agreement, it is authorized to do business in the State of Oregon, and Consultant has checked four or more of the following criteria that apply to its business.

- _____ (1) Consultant carries out the work or services at a location separate from a private residence or is in a specific portion of a private residence, set aside as the location of the business.
- _____ (2) Commercial advertising or business cards or a trade association membership are purchased for the business.
- _____ (3) Telephone listing is used for the business separate from the personal residence listing.
- _____ (4) Labor or services are performed only pursuant to written contracts.
- _____ (5) Labor or services are performed for two or more different persons within a period of one year.
- _____ (6) Consultant assumes financial responsibility for defective workmanship or for service not provided as evidenced by the ownership of performance bonds, warranties, errors and omission (professional liability) insurance or liability insurance relating to the Work or services to be provided.

Consultant

Date

EXHIBIT D

CITY OF ASHLAND, OREGON

City of Ashland LIVING WAGE

ALL employers described below must comply with City of Ashland laws regulating payment of a living wage.



\$17.02 per hour, effective June 30, 2022.

The Living Wage is adjusted annually every June 30 by the Consumer Price Index.

Employees must be paid a living wage:

- For all hours worked under a service contract between their employer and the City of Ashland if the contract exceeds **\$24,050.68** or more.
- For all hours worked in a month if the employee spends 50% or more of the employee's time in that month working on a project or

portion of business of their employer, if the employer has ten or more employees, and has received financial assistance for the project or business from the City of Ashland in excess of **\$24,050.68**.

- If their employer is the City of Ashland, including the Parks and Recreation Department.
- In calculating the living wage, employers may add the value

of health care, retirement, 401K and IRS eligible cafeteria plans (including childcare) benefits to the amount of wages received by the employee.

- **Note:** For temporary and part-time employees, the Living Wage does not apply to the first 1040 hours worked in any calendar year. For more details, please see Ashland Municipal Code Section 3.12.020.

For additional information:

Call the Ashland City Administrator's office at 541-488-6002 or write to the City Administrator, City Hall, 20 East Main Street, Ashland, OR 97520, or visit the City's website at www.ashland.or.us.

Notice to Employers: This notice must be posted predominantly in areas where it can be seen by all employee

CITY OF
ASHLAND

EXHIBIT A
Scope of Work
City of Ashland
Development of TAP Water System Improvements

City of Ashland Project No. 2021-13
September 2022

Background

The Talent-Ashland-Phoenix (TAP) water system was initially developed in the early 2000s and delivers potable water from the Medford Water Commission to the Cities of Talent, Ashland, and Phoenix (Cities). The TAP system includes several miles of large diameter transmission lines, three booster pump stations (BPS), and associated reservoirs. The TAP water system is the only water source for the City of Talent (Talent) and the City of Phoenix (Phoenix) and is a supplemental water source for the City of Ashland (Ashland). All three Cities collaborate to manage and maintain the TAP system for the benefit of the partner Cities.

In 2020, the *TAP Water System Master Plan* (WMP) was completed. This WMP includes a summary of current management, operations, and maintenance and identifies specific capital improvement projects for the system. The water system improvements identified in this Scope of Work are derived from the WMP, except for the new standby generator at the Ashland Booster Pump Station (BPS). The identified improvements are part of the individual water systems of the Cities of Talent, Ashland, and Phoenix. However, Ashland is administering the contract for the work in coordination with the other Cities.

RH2 Engineering, Inc., (RH2) was selected through a Request for Proposal solicitation issued by Ashland in May 2022 to provide professional engineering services for the design and construction period services for the following improvements:

- Replace an existing 50 horsepower (hp) pump with a 125 hp pump, including necessary station modifications at the Regional BPS.
- Install a new 50 hp pump and necessary improvements at the Talent BPS.
- Replace the existing standby generator at the Talent BPS with a new larger generator, including equipment modifications to facilitate the upgrade.
- Install a new standby generator at the Ashland BPS, including necessary equipment modifications to facilitate the installation.
- Evaluate system telemetry components and recommend/implement the improvements.

This Scope of Work details the tasks that will be performed by RH2. *Unless otherwise indicated in a specific task, RH2 will rely on the accuracy and completeness of any data, materials, or information generated or provided by the Cities or others in relation to this Scope of Work.* RH2 assumes that the entity providing such information to RH2 is either the owner of such information or has obtained

written authorization from the owner to distribute said information. *It is assumed that reviews and comments required of the Cities will be provided in a timely manner.*

Task 1 – Project Management/Administration Services

Objective: Manage the project scope, budget, and schedule, and coordinate with Cities staff.

Approach:

- 1.1 Manage the RH2 Project Team – Manage the RH2 project team to track work elements accomplished, work items planned for the next phase, man hours, scope changes, time, and budget needed to complete the work. Submit a monthly invoice summarizing costs and remaining budget.
- 1.2 Coordinate with City – Provide correspondence and coordination with the City of Ashland project manager and staff. *Correspondence will include RH2 and City project manager check-in calls.*

RH2 Deliverables:

- Monthly invoices in electronic format (PDF).

Task 2 – Kick-Off Meeting and Data Review

Objective: Review the project information and data, and work with Cities staff to prepare the design criteria for the improvements at each facility. Attend a kick-off meeting with City representatives.

Approach:

- 2.1 Perform Data Review – Review provided construction/as-built drawings and records of the facilities to determine if other information is needed and/or available for the project.
- 2.2 Attend Kick-Off Meeting – Prepare for and attend one (1) kick-off meeting with the Cities to determine design criteria. Visit the sites to confirm planned improvements and collect additional field data.

Assumptions:

- *RH2 will perform an evaluation of information provided by the Cities and others, as needed, to develop the design criteria. Unknowns, assumptions, and other issues that may impact the accuracy of the design will be identified and provided to the Cities for review and discussion. If additional effort is required to further investigate these issues, a modification to this Scope of Work may be mutually negotiated between RH2 and the Cities.*
- *This Task will include site visits to three (3) facilities, RBPS, TBPS and ABPS. Information gathered from these visits will be used for the remaining tasks in this Scope of Work.*

Provided by Ashland:

- Available construction/as-built documents for the pump stations for use by RH2.
- Construction submittals submitted to the owner during construction or an Operations and Maintenance manual containing relevant documentation.

- Identification of current flow parameters and long-term planned design flow parameters for each facility to aid in equipment selection.

RH2 Deliverables:

- Design criteria in electronic format (PDF).
- Attendance at kick-off meeting and site visits.

Task 3 – Regional Booster Pump Station Improvements

Objective: Design and manage the replacement of the existing pump #120 (50 hp) with a new 125 hp pump that matches the other two (2) existing 125 hp pumps. The facility was designed to have this upgrade completed when additional capacity became necessary. Select a new 125 hp to match the existing pumps #130 and #140 at the facility. Prepare electrical and control modifications at the facility to handle the operation of the new pump installation.

Approach:

- 3.1 Select Pump – Review flow data provided by the Cities and select a pump that matches the flow capabilities of the other two (2) existing pumps at the station.
- 3.2 Design Electrical and Control – Design the modifications necessary to install and operate the new pump. *Design is assumed to include conductors, variable frequency drive, and motor control center modifications.* Prepare 60-percent, 90-percent, and bid-ready design submittals for Cities review. Prepare Engineer’s opinion of probable construction cost (OPCC). *Control design will modify the operation of the new pump to be consistent with the desired operation of the Cities.*
- 3.3 Evaluate Generator – Confirm the capacity of the existing generator and back-up power equipment to identify any necessary upgrades to keep the facility fully operational under back-up power. *(If modifications are necessary, it will be completed under a separate negotiated task.)*
- 3.4 Prepare Pump and Electrical Enclosure Pre-Purchase Documentation – Prepare pre-purchase documents, including specifications and drawings, for mechanical and electrical equipment for bidding.
- 3.5 Prepare Specifications – Prepare front-end and technical specifications for use during bidding the construction of the improvements. Prepare 60-percent, 90-percent, and bid-ready submittals for Cities review. *Front-end specifications will be based on City of Ashland template to be provided. Technical specifications will be in RH2’s modified Construction Specifications Institute (CSI) format.*
- 3.6 Provide Services During Construction – Provide engineering services during the construction phase to facilitate project completion.
 - a) Prepare Construction Package – Prepare conformed for construction plan sets and specifications and produce PDF version of documents to be provided to the City and the contractor.

- b) Correspond with City and Contractor – Maintain ongoing communications with City staff and the contractor as necessary to facilitate project construction. *This subtask is assumed to span the duration of Services During Construction.*
- c) Attend Pre-Construction Meeting – Coordinate and attend one (1) pre-construction meeting with City staff and the contractor, respond to questions, and prepare meeting agenda and minutes.
- d) Review Construction Documents – Review and prepare responses as appropriate for submittals (includes shop drawings, catalog submittals, and other data), pay requests, requests for information (RFIs), and change order requests.
- e) Provide On-Site Construction Observation – Provide on-site construction observation to review whether those elements of construction that are observed by RH2 conform to the project plans and specifications. *Observation services will be provided on an as-needed basis as requested by the City. Up to thirty-four (34) hours has been budgeted for this subtask.* Prepare observation reports following on-site observations.
- f) Attend Testing and Startup – Provide technical expertise during testing and startup. Conduct pumping simulation to confirm pump performance. Perform an electrical and controls check.
- g) Prepare Operations and Maintenance Manual – Prepare Operations and Maintenance (O&M) Manual. This manual will build upon and include existing O&M manual materials.

Assumptions:

- *Phoenix will administer and manage all aspects of project construction and provide on-site inspection, and RH2 will support this effort only as explicitly stated herein. It is assumed that Phoenix will work directly with the contractor regarding contracting, work progress and schedule, claims, protests, and all other aspects to manage construction of this project. It also is assumed that Phoenix will provide the award letter, notice to proceed, substantial completion letter, physical completion letter, punch list, and all other documentation necessary for project administration and completion.*
- *The number of hours estimated to perform Services During Construction is based on similar projects with similar complexity and depend in part on the contractor awarded the project. The number of hours spent may vary depending on the completeness, responsiveness, and clarity of each document provided by the contractor, field conditions encountered, and other factors. These services shall be performed up to the level included in the attached Fee Estimate.*
- *RH2 is not responsible for site safety or for directing the contractor in their work.*
- *O&M Manual will rely on information within existing O&M manuals provided by the City. Information within the new O&M Manual will build upon, refer to, and/or modify the existing O&M manual materials.*

Provided by Cities:

- Project administration and management.
- Attendance at the pre-construction meeting.
- Construction contract execution, construction inspection, letters, and all other documentation needed for project administration and closeout.

RH2 Deliverables:

- Pre-purchase drawings and specifications for mechanical and electrical equipment in electronic format (PDF).
- Design plans and specifications at 60-percent, 90-percent, and bid-ready in electronic format (PDF).
- OPCC electronic format (PDF).
- Conformed for construction plan sets and specifications in electronic format (PDF).
- Correspondence with City staff and the contractor as required.
- Attendance at the pre-construction meeting and meeting agenda and minutes in electronic format (PDF).
- Submittal review responses, recommendations for payment, RFI responses, and change orders up to the limit described herein in electronic format (PDF).
- Observation reports following on-site observation emailed in electronic format (PDF).
- Attendance at startup and testing.
- O&M Manual in electronic format (PDF).

Task 4 – Talent Booster Pump Station Improvements

Objective: Design and observe the installation of a new pump and necessary mechanical and electrical equipment to supply 500 gallons per minute of additional flow from the Talent BPS. Size and design the improvements to replace the existing generator with an adequately sized generator to operate the demand at the facility. Prepare electrical and control modifications at the facility to handle the operation of the new pump installation.

Approach:

- 4.1 Select Pump – Review flow requirement recommendations provided by Talent’s *Water Master Plan* and select a pump that matches the flow requirements recommended in the planning documentation.
- 4.2 Perform Generator Sizing and Calculations – Perform generator load and sizing calculations based on the existing electrical load (including the pumps identified in the Background section) at the facility to determine the generator size. Prepare generator sizing calculations using manufacturer sizing software. Coordinate with generator manufacturers that will be specified

for this project to determine the physical size of the generator and automatic transfer switches and obtain equipment pricing information. Provide specifications for the new generator to allow the City to pre-purchase the generator with the goal of keeping the project on the preferred schedule.

- 4.3 Prepare Electrical Design Plans – Develop electrical plans for the power distribution system improvements and installation of the new standby generator to include a one-line diagram showing the equipment layout, a power distribution and signal plan showing conduit routing and equipment locations, power distribution switchboard equipment installation details, generator installation details, electrical schedules, and electrical details. Prepare electrical site plans identifying the location of the new generator, site conduit routing, and site improvements that are required for the installation of the generator. Prepare generator and fuel tank installation details. Complete interfacing of the generator and automatic transfer switch alarm and status signals with the existing telemetry system. *Integration work will be completed through Control Systems NW, LLC (CSNW), a subsidiary of RH2. CSNW will prepare telemetry block diagrams showing the required modifications to the existing telemetry panel. The block diagrams will be provided to RH2 and included in the appendices of the bid documents.*
- 4.4 Prepare OPCC – Prepare an OPCC for City review purposes at the 60-percent, 90-percent, and bid-ready reviews.
- 4.5 Prepare Plans and Specifications – Prepare technical specifications using RH2’s modified CSI format. Update the City’s standard specifications and general conditions as warranted for this project. Provide the City with mechanical, electrical, and structural plans at the 60-percent, 90-percent, and bid-ready design levels, and specifications at the 90-percent and bid-ready design levels for City review. Meet up to two (2) times with City staff at the 60- and 90-percent design levels to discuss and review the plans and specifications. Edit plans at the 60-percent review level, and edit plans and specifications at the 90-percent review level based on City review comments. Advance plans and specifications to the bid-ready design level.
- 4.6 Provide Services During Construction – Provide engineering services during the construction phase to facilitate project completion.
- a) Prepare Construction Package – Prepare conformed for construction plan sets and specifications and produce PDF version of documents to be provided to the City and the contractor.
 - b) Correspond with City and Contractor – Maintain ongoing communications with City staff and the contractor as necessary to facilitate project construction. *This subtask is assumed to span the duration of Services During Construction.*
 - c) Attend Pre-Construction Meeting – Coordinate and attend pre-construction meeting with City staff and the contractor, respond to questions, and prepare meeting agenda and minutes.

- d) Review Construction Documents – Review and prepare responses as appropriate for submittals (includes shop drawings, catalog submittals, and other data), pay requests, RFIs, and change order requests.
- e) Provide On-Site Construction Observation – Provide on-site construction observation to review whether those elements of construction that are observed by RH2 conform to the project plans and specifications. Observation services will be provided on an as-needed basis as requested by the City. *Up to Forty-two (42) hours has been budgeted for this subtask.* Prepare observation reports following on-site observations.
- f) Attend Testing and Startup – Provide technical expertise during testing and startup. Conduct pumping simulation to confirm pump performance. Perform an electrical and controls check.
- g) Prepare O&M Manual – Prepare O&M Manual. This manual will build upon and include existing O&M manual materials.

Assumptions:

- *The number of hours estimated to perform Services During Construction is based on similar projects with similar complexity and depend in part on the contractor awarded the project. The number of hours spent may vary depending on the completeness, responsiveness, and clarity of each document provided by the contractor, field conditions encountered, and other factors. These services shall be performed up to the level included in the attached Fee Estimate.*
- *The City of Talent will administer and manage all aspects of project construction and provide on-site inspection, and RH2 will support this effort only as explicitly stated herein. It is assumed that the City will work directly with the contractor regarding contracting, work progress and schedule, claims, protests, and all other aspects to manage construction of this project. It also is assumed that the City will provide the award letter, notice to proceed, substantial completion letter, physical completion letter, punch list, and all other documentation necessary for project administration and completion.*
- *RH2 is not responsible for site safety or for directing the contractor in their work.*
- *O&M Manual will rely on information within existing O&M manuals provided by the City. Information within the new O&M Manual will build upon, refer to, and/or modify the existing O&M manual materials.*

Provided by City:

- Project administration and management.
- Attendance at the pre-construction meeting.
- Construction contract execution, construction inspection, letters, and all other documentation needed for project administration and closeout.

RH2 Deliverables:

- Pre-purchase drawings, calculations, and specifications for generator in electronic format (PDF).
- Design plans at 60-percent, 90-percent, and bid-ready design in electronic format (PDF).
- Specifications at 90-percent and bid-ready design in electronic format (PDF).
- OPCC at 60-percent, 90-percent, and bid-ready design in electronic format (PDF).
- Conformed for construction plan sets and specifications in electronic format (PDF).
- Correspondence with City staff and the contractor as required.
- Attendance at the pre-construction meeting and meeting agenda and minutes in electronic format (PDF).
- Submittal review responses, recommendations for payment, RFI responses, and change orders in electronic format (PDF).
- Observation reports following on-site observation emailed in electronic format (PDF).
- Attendance at station startup and testing.
- O&M Manual in electronic format (PDF).

Task 5 – Ashland Booster Pump Station Improvements

Objective: Design and manage the installation of a new generator and electrical equipment to supply back-up power to the Ashland BPS. Size and design an adequately sized generator to operate the demand at the pump station. Prepare electrical and control modifications at the facility to handle the operation of the new generator installation.

Approach:

- 5.1 Perform Generator Sizing and Calculations – Perform generator load and sizing calculations based on the existing electrical load along with the load of one (1) future pump at the facility that matches the existing pumps to determine the generator size. Prepare generator sizing calculations using manufacturer sizing software. Coordinate with generator manufacturers that will be specified for this project to determine the physical size of the generator and automatic transfer switches and obtain equipment pricing information. Provide specifications for the new generator to allow Ashland to pre-purchase the generator with the goal of keeping the project on the preferred schedule.
- 5.2 Prepare Electrical Design Plans – Develop electrical plans for the power distribution system improvements and installation of a new standby generator to include a one-line diagram showing the equipment layout, a power distribution and signal plan showing conduit routing and equipment locations, power distribution switchboard equipment installation details, generator installation details, electrical schedules, and electrical details. Prepare electrical site plans identifying the location of the new generator, site conduit routing, and site improvements

that are required for the installation of the generator. Prepare generator and fuel tank installation details. Complete interfacing of the generator and automatic transfer switch alarm and status signals with the existing telemetry system. *Integration work will be completed through CSNW, a subsidiary of RH2. CSNW will prepare telemetry block diagrams showing the required modifications to the existing telemetry panel. The block diagrams will be provided to RH2 and included in the appendices of the bid documents.*

- 5.3 Prepare OPCC – Prepare an OPCC for Ashland review purposes at the 60-percent, 90-percent, and bid-ready reviews.
- 5.4 Prepare Plans and Specifications – Prepare technical specifications using RH2’s modified CSI format. Update Ashland’s standard specifications and general conditions as warranted for this project. Provide Ashland with civil, electrical, and structural plans at the 60-percent, 90-percent, and bid-ready design levels, and specifications at the 90-percent and bid-ready design levels for Ashland review. Meet up to two (2) times with Ashland staff at the 60- and 90-percent design levels to discuss and review the plans and specifications. Edit plans at the 60-percent review level and edit plans and specifications at the 90-percent review level based on Ashland review comments. Advance plans and specifications to the bid-ready design level.
- 5.5 Provide Services During Construction – Provide engineering services during the construction phase to facilitate project completion.
 - a) Prepare Construction Package – Prepare conformed for construction plan sets and specifications and produce PDF version of documents to be provided to Ashland and the contractor.
 - b) Correspond with Ashland and Contractor – Maintain ongoing communications with Ashland staff and the contractor as necessary to facilitate project construction. *This subtask is assumed to span the duration of Services During Construction.*
 - c) Attend Pre-Construction Meeting – Coordinate and attend pre-construction meeting with Ashland staff and the contractor, respond to questions, and prepare meeting agenda and minutes.
 - d) Review Construction Documents – Review and prepare responses as appropriate for submittals (includes shop drawings, catalog submittals, and other data), pay requests, RFIs, and change order requests.
 - e) Provide On-Site Construction Observation – Provide on-site construction observation to review whether those elements of construction that are observed by RH2 conform to the project plans and specifications. Observation services will be provided on an as-needed basis as requested by Ashland. *Up to thirty-eight (38) hours has been budgeted for this subtask.* Prepare observation reports following on-site observations.
 - f) Attend Testing and Startup – Provide technical expertise during testing and startup. Attend pumping simulation to confirm pump performance. Perform an electrical and controls check.

- g) Prepare O&M Manual – Prepare O&M Manual. This manual will build upon and include existing O&M manual materials.

Assumptions:

- *RH2 will use existing documentation and electronic files from the pump station facility constructed in 2017. No surveying is planned to be required.*
- *Ashland will administer and manage all aspects of project construction and provide on-site inspection, and RH2 will support this effort only as explicitly stated herein. It is assumed that Ashland will work directly with the contractor regarding contracting, work progress and schedule, claims and protests, and all other aspects to manage construction of this project. It also is assumed that Ashland will provide the award letter, notice to proceed, substantial completion letter, physical completion letter, punch list, and all other documentation necessary for project administration and completion.*
- *The number of hours estimated to perform Services During Construction is based on similar projects with similar complexity and depend in part on the contractor awarded the project. The number of hours spent may vary depending on the completeness, responsiveness, and clarity of each document provided by the contractor, field conditions encountered, and other factors. These services shall be performed up to the level included in the attached Fee Estimate.*
- *RH2 is not responsible for site safety or for directing the contractor in their work.*
- *O&M Manual will rely on information within existing O&M manuals provided by the City. Information within new O&M Manual will build upon, refer to, and/or modify the existing O&M manual materials.*

Provided by Ashland:

- Project administration and management.
- Attendance at the pre-construction meeting.
- Construction contract execution, construction inspection, letters, and all other documentation needed for project administration and closeout.

RH2 Deliverables:

- Pre-purchase drawings, calculations, and specifications for generator in electronic format (PDF).
- Design plans at 60-percent, 90-percent, and bid-ready design in electronic format (PDF).
- Specifications at 90-percent and bid-ready design in electronic format (PDF).
- OPCC at 60-percent, 90-percent, and bid-ready design in electronic format (PDF).
- Conformed for construction plan sets and specifications in electronic format (PDF).
- Correspondence with Ashland staff and the contractor as required.

- Attendance at the pre-construction meeting and meeting agenda and minutes in electronic format (PDF).
- Submittal review responses, recommendations for payment, RFI responses, and change orders in electronic format (PDF).
- Observation reports following on-site observation emailed in electronic format (PDF).
- Attendance at station startup and testing.
- O&M Manual in electronic format (PDF).

Task 6 – Control System Improvements

Objective: Attend a workshop with the Cities to analyze and define Cities system performance criteria and propose programming modifications to key facilities. Analyze inter-City and inter-facility communication and data flows to allow an improved data exchange between the Cities.

Approach:

- 6.1 Conduct Performance Criteria Workshop – Meet with Cities staff to discuss and define Cities system performance criteria, including desired facility data flow and key facility programming.
- 6.2 Draft 90-Percent Preliminary Engineering Report – Compile, review, and draft a preliminary engineering report and deliver to Cities staff for review and comment.
- 6.3 Meet with Cities Staff – Meet with Cities staff to discuss comments and recommendations on preliminary engineering report.
- 6.4 Perform Quality Control on 90-Percent Report – Perform internal quality assurance/quality control review on 90-percent preliminary engineering report and provide input on recommendations.
- 6.5 Prepare Final Preliminary Engineering Report – Prepare final engineering report, including OPCC for Cities.
- 6.6 Implement Recommended Modifications and Upgrades – Perform integration work outlined in the final engineering report. *Integration work will be completed through a separate task authorization once defined.*

Assumptions:

- *Alternate control strategies will be discussed with the goal to maximize system efficiency. Cities staff will agree on a best method of control to be implemented moving forward.*
- *Inter-City data exchange will be read-only.*
- *Adjacent integration projects outside the scope of this project may be required to be completed simultaneously. This Scope of Work excludes effort required to coordinate or combine this effort with adjacent projects.*
- *Financial implementation to be discussed within the Cities.*

Provided by Cities:

- Active participation in the performance criteria workshop.
- Timely review of 90-percent preliminary engineering report and provide one (1) redlined hardcopy.
- Attendance at meeting with RH2 to discuss comments on 90-percent report.

RH2 Deliverables:

- Attendance at one (1) performance criteria workshop with Cities staff and meeting notes in electronic format (PDF).
- 90-percent preliminary engineering report in electronic format (PDF).
- Attendance at one (1) meeting with Cities and meeting notes in electronic format (PDF).
- Final preliminary engineering report in electronic format (PDF).

Project Schedule

The schedule for this project will be determined after execution of the contract. RH2 is aware of the funding time constraints and will work within these requirements. Project completion will occur by 2027 or sooner. The order in which the separate projects will be completed will be at the discretion of the Cities.

EXHIBIT A

Fee Estimate

City of Ashland

Development of TAP Water System Improvements

Nov-22

Description		Total Hours	Total Labor	Total Subconsultant	Total Expense	Total Cost
Task 1	Project Management/Administration Services	50	\$ 11,646	\$ -	\$ 291	\$ 11,937
Task 2	Kick-Off Meeting and Data Review	46	\$ 10,634	\$ -	\$ 486	\$ 11,120
Task 3	Regional Booster Pump Station Improvements	334	\$ 62,474	\$ -	\$ 9,311	\$ 71,785
Task 4	Talent Booster Pump Station Improvements	456	\$ 88,466	\$ -	\$ 11,996	\$ 100,462
Task 5	Ashland Booster Pump Station Improvements	328	\$ 62,600	\$ -	\$ 9,534	\$ 72,134
Task 6	Control System Improvements	130	\$ 27,058	\$ -	\$ 676	\$ 27,734
PROJECT TOTAL		1344	\$ 262,878	\$ -	\$ 32,294	\$ 295,172

EXHIBIT A
RH2 ENGINEERING, INC.
2022 SCHEDULE OF RATES AND CHARGES

RATE LIST	RATE	UNIT
Professional I	\$159	\$/hr
Professional II	\$173	\$/hr
Professional III	\$189	\$/hr
Professional IV	\$206	\$/hr
Professional V	\$218	\$/hr
Professional VI	\$236	\$/hr
Professional VII	\$251	\$/hr
Professional VIII	\$262	\$/hr
Professional IX	\$262	\$/hr
Control Specialist I	\$144	\$/hr
Control Specialist II	\$155	\$/hr
Control Specialist III	\$171	\$/hr
Control Specialist IV	\$187	\$/hr
Control Specialist V	\$198	\$/hr
Control Specialist VI	\$213	\$/hr
Control Specialist VII	\$227	\$/hr
Control Specialist VIII	\$238	\$/hr
Technician I	\$119	\$/hr
Technician II	\$131	\$/hr
Technician III	\$150	\$/hr
Technician IV	\$161	\$/hr
Technician V	\$175	\$/hr
Technician VI	\$191	\$/hr
Technician VII	\$208	\$/hr
Technician VIII	\$217	\$/hr
Administrative I	\$79	\$/hr
Administrative II	\$93	\$/hr
Administrative III	\$109	\$/hr
Administrative IV	\$131	\$/hr
Administrative V	\$153	\$/hr
CAD/GIS System	\$27.50	\$/hr
CAD Plots - Half Size	\$2.50	price per plot
CAD Plots - Full Size	\$10.00	price per plot
CAD Plots - Large	\$25.00	price per plot
Copies (bw) 8.5" X 11"	\$0.09	price per copy
Copies (bw) 8.5" X 14"	\$0.14	price per copy
Copies (bw) 11" X 17"	\$0.20	price per copy
Copies (color) 8.5" X 11"	\$0.90	price per copy
Copies (color) 8.5" X 14"	\$1.20	price per copy
Copies (color) 11" X 17"	\$2.00	price per copy
Technology Charge	2.50%	% of Direct Labor
Mileage	\$0.6250	price per mile (or Current IRS Rate)
Subconsultants	15%	Cost +
Outside Services	at cost	

Rates listed are adjusted annually.

ARPA/SLFRF Required Contract Clauses

Purpose: The purpose of this reference is to assist ARPA grant award recipients by summarizing required contract clauses consistent with the federal Uniform Guidance requirements that are applicable to the State and Local Fiscal Recovery Funds (SLFRF) program as part of the American Rescue Plan Act (ARPA).

As described in this document a “recipient” is a recipient of an APRA funded grant award from Business Oregon.

The SLFRF awards are generally subject to the requirements set forth in the [The Office of Management and Budget's \(OMB\) Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards](#) (commonly called "Uniform Guidance"). The “Uniform Guidance” is the set of federal rules (administrative requirements, cost principles, and audit guidelines) that apply to federal money. This includes requirements such as the treatment of eligible uses of funds, procurement, and reporting requirements. [Please see the SLFRF Compliance and Reporting Guidance page 12 for full Award terms and conditions.](#)

It is the recipient’s responsibility to ensure all SLFRF award funds are used in compliance with these requirements. In addition, recipients should be mindful of any additional compliance obligations that may apply – for example, additional restrictions imposed upon other sources of funds used in conjunction with SLFRF award funds, or statutes and regulations that may independently apply to water and sewer infrastructure projects.

Contract Clause Checklist

Directions:

[Appendix II of 2 CFR 200 \(The Uniform Guidance\)](#) outlines the contract provisions that you must place in contracts with your contractors, and in contracts with subrecipients (if any). The checklist below contains these standard clauses for inclusion in contracts needed to utilize ARPA funds.

Clauses for All Contracts:

Creating a contract that complies with ARPA requirements must include the below sections as verbatim:

☐ **Contractor must be registered in SAM.gov.** - The Contractor shall register in the System for Award Management (SAM), which is the primary registrant database for the U.S. Federal Government and shall update the information at least annually after the initial registration and maintain its status in the SAM through the Term of this Agreement. Information regarding the process to register in the SAM can be obtained at Sam.gov

☐ **Whistleblower** - Contractor receiving ARPA funds shall under or through this contract post notice of the rights and remedies provided to whistleblowers under No Fear Act Pub. L. 107-174. 29 CFR § 1614.703 (d).

☐ **Inspections; Information** - Contractor shall permit, and cause its subcontractors to allow the State of Oregon, the federal government and any party designated by them to:

- Examine, visit and inspect, at any and all reasonable times, the property, if any, constituting the Project.
- Inspect and make copies of any accounts, books and records, including, without limitation, its records regarding receipts, disbursement, contracts, and any other matters relating to the Project, and to its financial standing, and shall supply such reports and information as reasonably requested.
- Interview any officer or employee of the Contractor, or its subcontractors, regarding the Project.

☐ **Equal Opportunity** - Contractor shall comply with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60).

☐ **Copeland "Anti-Kickback" Act** - Contractor shall comply with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

☐ **Debarment and Suspension (Executive Orders 12549 and 12689)** - A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

☐ **Prohibition on purchasing telecommunications or surveillance equipment, services, or systems.** As required by 2 CFR 200.216, federal grant or loan recipients and subrecipients are prohibited from obligating or expending loan or grant funds to procure or obtain; extend or renew a contract to procure or obtain; or enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that use covered telecommunications equipment, video surveillance services or services as a substantial or essential component of

any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities). Prohibitions extend to the use of Federal funds by recipients and subrecipients to enter into a contract with an entity that "uses any equipment, system, or service that uses covered telecommunications equipment or services" as a substantial or essential component of any system, or as critical technology as part of any system. Certain equipment, systems, or services, including equipment, systems, or services produced or provided by entities subject to the prohibition are recorded in the System for Award Management exclusion list.

☐ **Preference to United States made goods.** - As appropriate and to the extent consistent with law, the contractor should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award. For purposes of this section:

(1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

Additional Clauses for Contracts Over \$10,000:

Creating a contract over \$10,000 that complies with ARPA requirements must include the additional below sections as verbatim:

☐ **Procurement of recovered materials over \$10,000.** - The Contractor must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

☐ **Termination for cause and for convenience** - Contractor shall address termination for cause and for convenience, including the manner by which it will be affected and the basis for settlement.

The Contract Owner shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience and without cause. The Contract Owner shall exercise this option by giving Contractor written notice of termination. The notice shall specify the date on which termination shall become effective.

Additional Clauses for Contracts Over \$100,000:

Creating a contract over \$100,000 that complies with ARPA requirements must include the additional below section(s) as verbatim:

☐ **Certification form located in Appendix I. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)** - Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

☐ **Note: Only include for contracts that involve the employment of mechanics or laborers.** The Contract Work Hours and Safety Standards Act requires all contractors—prime and sub—to pay laborers and mechanics performing on a federal service contract and federal and federally assisted construction contract over \$100,000, 1.5 times their basic rate of pay for all hours worked over 40 in a workweek. Employers are liable to employees for these unpaid wages. The failure of a contractor to comply with this Act may also result in liability under the False Claims Act. Employees who are due unpaid wages under the Contract Work Hours and Safety Standards Act may file a complaint with the Wage and Hour Division within the U.S. Department of Labor. The DOL may then enforce the provisions of the Act against violators.

Additional Clauses for Contracts Over \$150,000:

Creating a contract over \$150,000 that complies with ARPA requirements must include the additional below section(s) as verbatim:

☐ Contractor shall comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33

U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15).

Additional Clauses for Contracts Over \$250,000 (the simplified acquisition threshold as of 2022):

Creating a contract over \$250,000 that complies with ARPA requirements must include the additional below section(s) as verbatim:

☐ Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

Upon any breach of this Agreement by Contractor, the Contract Owner shall have all remedies available to it both in equity and/or at law.

Appendix I

**Certification Regarding Lobbying
(Awards to Contractors and Subcontractors in Excess of \$100,000)**

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or

employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan or cooperative agreement.

- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Signed : _____

Title: _____

Date: _____



September 2, 2021

Scott Fleury, Public Works Director
City of Ashland
20 East Main Street
Ashland, OR 97520

RE: Award for Legislative Appropriation for City of Ashland, Talent-Ashland-Phoenix
Intertie Improvements, \$3,000,000.00 funded with the American Rescue Plan Act
(ARPA)

Congratulations, as identified in HB 5006 of the 2021 Oregon legislative session your organization was awarded an allocation of American Rescue Plan Act (ARPA) funding for the above referenced project.

ARPA funds are federal funds that pass through the state of Oregon to your organization. There are still a few actions at the federal level yet to take place, including the release of final guidance from the US Treasury on eligible uses for ARPA funds. We anticipate this will occur around Fall 2021.

We encourage you to not begin work until final guidance is received or contract execution; however, we can begin working with you to gather the details of your project, which will assist us in expediting contract execution after final guidance from the US Treasury has been received.

Attached to this letter is a Project Contract Information form for collecting information regarding your project. This information will help us understand the nature of the project, determine eligibility related to final ARPA rules, expedite contract development, determine readiness to proceed and understand if additional resources are needed.

Please direct any questions to your Regional Development Officer, Marta Tarantsey, at 503-856-2693 or Marta.Tarantsey@oregon.gov. Please submit completed form to Marta Tarantsey at the email provided above.

Sincerely,

Melisa Drugge

Melisa Drugge, Regional Development Manager

Marta Tarantsey, Regional Development Officer
Business Oregon

Tawni Bean, Regional Project Manager
Business Oregon

REQUEST FOR PROPOSAL (RFP)

Professional Engineering Services for the Development of Talent - Ashland - Phoenix Water System Improvements

Project No: 2021-13

ISSUE DATE: May 13, 2022

PROJECT DURATION: 12 months

PROPOSALS DUE: June 1, 2022

Not later than 2:00 PM

Late proposals will not be
considered

REFER QUESTIONS TO:

Kevin Caldwell, Senior Project Manager

Phone: 541-552-2414

Email: kevin.caldwell@ashland.or.us

SUBMIT PROPOSALS TO:

Kevin Caldwell

20 East Main St

Ashland, OR 97520

**CITY OF
ASHLAND**

**PUBLIC WORKS ENGINEERING
20 EAST MAIN STREET
ASHLAND OR 97520
541/488-5587**

TABLE OF CONTENTS

Table of contents	2
Advertisement	4
Definitions	5
<u>Section 1: Project Overview</u>	<u>6</u>
1.1 Objectives	6
1.2 Background Information	6
1.3 Recommended Water System Improvements	6
<u>Section 2: Schedule</u>	<u>8</u>
<u>Section 3: Scope of services</u>	<u>8</u>
3.1 General Requirements	8
3.2 Specific tasks and deliverables	10
3.3 Tentative schedule of key tasks and deliverables	11
<u>Section 4: Selection criteria</u>	<u>11</u>
4.1 General	11
4.2 Selection criteria and scoring	12
<u>Section 5: Proposal evaluation</u>	<u>12</u>
5.1 Review	12
5.2 Right of rejection	12
5.3 References	13
5.4 Responsibility	13
5.5 Clarification of response	13
5.6 Finalist selection	13
5.7 Ties among Proposers	13
5.8 Notice of intent to award	13
5.9 Contract negotiation	14
5.10 Protest procedures	14
5.11 Resulting contract	15
<u>Section 6: Contract</u>	<u>15</u>
6.1 Contract form	15
6.2 Business license required	15
6.3 Insurance requirements	16
6.4 Laws and regulations	16
<u>Section 7: Instructions to Proposers</u>	<u>16</u>
7.1 General	16
7.2 Information of record	17
7.3 Proposal preparation	17
7.4 Proposal format and contents	17
7.5 Signature on proposal	17
7.6 Preparation costs	17

7.7	Conformance to solicitation requirements	17
7.8	Questions and clarifications	18
7.9	Addenda	18
7.10	Protest of requirements	18
7.11	Proposal modification	18
7.12	Proposal withdrawals	19
7.13	Proprietary information	19
7.14	Terms and conditions	19
7.15	Proposal opening	20

<u>APPENDICES (BOUND SEPARATELY)</u>	<u>21</u>
--------------------------------------	-----------

EXHIBIT A – MAP AND PHOTOS OF THE ASHLAND BPS	21
EXHIBIT B – MAP AND PHOTOS OF THE TALENT BPS	22
EXHIBIT C – MAP AND PHOTOS OF THE REGIONAL (PHOENIX) BPS	23
EXHIBIT D – PROJECT DESCRIPTIONS FROM THE TAP MASTER PLAN	24
EXHIBIT E – EXAMPLE PERSONAL SERVICES AGREEMENT	25



ADVERTISEMENT

CITY OF ASHLAND PUBLIC WORKS – REQUEST FOR PROPOSAL PROFESSIONAL ENGINEERING SERVICES

The City of Ashland is seeking Proposals for professional engineering services for development of **Project No. 2021-13, the Development of Talent, Ashland and Phoenix (TAP) Water System Improvements.**

The project will result in these water system improvements as identified in the TAP Water System Master Plan:

1. Replace an existing 50 horsepower (HP) pump with a 125 HP pump at the Regional Booster Pump Station.
2. Installation of a new 50 HP pump at the Talent Booster Pump Station (BPS).
3. Replace the existing standby generator at the Talent BPS with a new larger generator.
4. Installation of a new standby generator at the Ashland BPS (not listed in the TAP Master Plan).
5. Evaluation of system telemetry components and recommendation/implementation of improvements.

The installation of these water system improvements must comply with all applicable codes and design standards pertaining to essential water facility components. The project will include, but is not specifically limited to, development of Plans, Specifications, and Estimates (PS&E), and bidding and construction support.

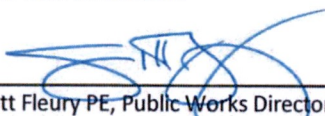
Proposals must be physically received by **2:00 PM**, (main lobby clock), **June 1, 2022** in the City of Ashland Engineering Office located at 51 Winburn Way, Ashland OR 97520 or by mail at 20 E. Main Street, Ashland, OR 97520. For further information, contact Kevin Caldwell, Project Manager at 541/552-2414 or by email at kevin.caldwell@ashland.or.us. Consultant selection is anticipated to result in the issuance of a contract for engineering services in the form provided in this RFP.

Proposal documents may be downloaded from the OregonBuys website. Any addendum that may be issued, relating to this proposal will only be available from OregonBuys and potential proposers are cautioned to continuously monitor the site for updates and addendum.

All proposals shall be submitted as set forth in Section 6 - Instructions to Proposers. The City is not responsible for proposals submitted in any manner, format or to any delivery point other than as required by the Solicitation Document. Proposals must be from an Oregon Professional Engineer and shall be concise, appropriate to the scale of the evaluation and include only items that are relevant to this specific project.

Consultant selection will be based upon weighed criteria as set forth in the Solicitation Document and will include criteria such as (but not limited to): proposed work plan and approach, schedule, general and special project experiences, team experience and availability, and other applicable criteria.

The City of Ashland reserves the right to cancel this procurement or reject any and all proposals in accordance with ORS 279B.100.



Scott Fleury PE, Public Works Director

First date of solicitation: May 13, 2022

DEFINITIONS

For the purpose of this RFP:

"Agency" or "City" means City of Ashland.

"Business days" means calendar days, excluding Saturdays, Sundays and all City recognized holidays.

"Calendar days" or "days" means any day appearing on the calendar, whether a weekday, weekend day, national holiday, State holiday or other day.

"Council" means City of Ashland Council

"Department" means the City of Ashland Engineering Department.

"Manager" means the City of Ashland Project Manager.

"Proposers"- All firms submitting proposals are referred to as Proposers in this document; after negotiations, an awarded Proposer will be designated as "Consultant".

"RFP" means Request for Proposal.

"Scope of Work" means the general character and range of services and supplies needed to complete the work's purpose and objectives, and an overview of the performance outcomes expected by Agency.

"Services" means the services to be performed under the Contract by the Consultant.

"Statement of Work" means the specific provision in the final contract which sets forth and defines in detail (within the identified Scope of Work) the agreed-upon objectives, expectations, performance standards, services, deliverables, schedule for delivery and other obligations.

SECTION 1: PROJECT OVERVIEW

1.1 OBJECTIVES

The City of Ashland is seeking Proposals for professional engineering services for development of **Project No. 2021-13, the Development of Talent, Ashland and Phoenix (TAP) Water System Improvements**.

The project will result in these water system improvements as identified in the TAP Water System Master Plan:

1. Replace an existing 50 horsepower (HP) pump with a 125 HP pump at the Regional Booster Pump Station.
2. Installation of a new 50 HP pump at the Talent Booster Pump Station (BPS).
3. Replace the existing standby generator at the Talent BPS with a new larger generator.
4. Installation of a new standby generator at the Ashland BPS (not listed in the TAP Master Plan).
5. Evaluation of system telemetry components and recommendation/implementation of improvements.

The installation of these water system improvements must comply with all applicable codes and design standards pertaining to essential water facility components. The project will include, but is not specifically limited to the development of Plans, Specifications, and Estimates (PS&E), and bidding and construction support.

1.2 BACKGROUND INFORMATION

The TAP water system was initially developed in the early 2000's and delivers potable water from the Medford Water Commission to the Cities of Talent, Ashland and Phoenix. The TAP system includes several miles of large diameter transmission lines, three Booster Pump Stations and associated Reservoirs. The TAP water system is the only water source for Talent and Phoenix and is an supplemental water source for Ashland. All three Cities collaborate to manage and maintain the TAP system for the benefit of the partner Cities.

In 2020 the TAP Water System Master Plan was completed. This Master Plan includes a summary of current management, operations, maintenance and identifies specific capital improvement projects for the system. All of the Water System Improvements identified by this solicitation are derived from the TAP Water System Master Plan with the exception of the new standby generator at the Ashland BPS. The identified improvements are part of the individual water systems of the Cities of Talent, Ashland and Phoenix. However, the City of Ashland is administering the contract for all of the work in coordination with the other Cities.

1.3 RECOMMENDED WATER SYSTEM IMPROVEMENTS

The Regional BPS is located at 2992 Samike Dr. in Medford, OR and is managed by the City of Phoenix Public Works. At this facility it is recommended to replace an existing 50 HP vertical turbine pump with a new 125 HP vertical turbine pump and associated controls/electrical work. The existing pump has a US Motors 3-phase, 460 volt electric motor. It is also suggested to review and update the SCADA programming and telemetry to better allow for coordination between Cities and constant-rate pumping. A map and photos of this facility are attached in Exhibit C.

The Talent BPS is located at 260 Suncrest Rd. in Talent, OR and is managed by the City of Talent Public Works. At this facility it is recommended to add a new pump bay with a 50 HP horizontal pump and the necessary plumbing and controls/electrical work. It is also suggested to review and update the SCADA programming and telemetry to better allow for coordination between Cities and constant-rate pumping. The Talent BPS is currently served by a 3-phase 480 volt 200 KW back-up generator and an automatic transfer switch. This generator is recommended for replacement with a larger 300 KW generator to serve full build-out demands of the Talent BPS. A map and photos of this facility are attached in Exhibit B.

The Ashland BPS is located at 1001 W. Jackson Rd in Ashland, OR. and is managed by the City of Ashland Water Department. This facility does not have a back-up power supply. It is recommended that a new 450 KW generator be installed to serve full build-out demands of the BPS. This facility currently has a manual transfer switch and generator power inlet for emergency use. It is also suggested to review and update the SCADA programming and telemetry to allow for better coordination between Cities. A map and photos of this facility are attached in Exhibit A.

SECTION 2: SCHEDULE

The schedule of events listed below represent City's estimated schedule for this RFP. This schedule is SUBJECT TO CHANGE and will be adjusted as required.

	EVENT	DAILY COUNT (CALENDAR DAYS)	DATE
1.	Request for Proposal Released	0	5/13/22
2.	Last Date for Request for changes/Protest for Specifications/Questions	10 days prior to Proposal Closing	5/20/22
3.	Last Date for City to Post Addenda	3 days prior to Proposal Closing	5/27/22
4.	Closing Date (last day to submit Proposals)		6/1/22
5.	Responses Evaluated	~15 days after Closing Date	6/16/22
7.	Intent to Award Announced	~15 days after Closing Date	6/16/22
8.	Contract Development and Award	~30 days after Closing Date	7/1/22
9.	Expected Project Completion (all phases)	~12 months after Contract Award	7/1/23

SECTION 3: SCOPE OF SERVICES

The successful Proposer will be expected to enter into a Personal Services Agreement with the City of Ashland (Exhibit E) for the completion of the following major tasks and requirements specific to those tasks:

3.1 GENERAL REQUIREMENTS

Personnel, Materials, & Equipment: The Consultant shall provide qualified and competent personnel and shall furnish all supplies, equipment, tools and incidentals required to accomplish the work. All materials and supplies shall be of good quality and suitable for the assigned work.

Safety Equipment: The Consultant shall provide and use all safety equipment including, and not limited to hard hats, safety vests and clothing required by State, Federal regulations and City or Department policies and procedures.

Professional Responsibilities: The Consultant shall perform the work using the standards of care, skill and diligence normally provided by a professional in the performance of such services in respect to similar work and shall comply with all applicable codes and standards.

Project Management: The Consultant shall attend a project kickoff meeting with representatives of all three Cities. Thereafter, the Consultant and the City staff will meet as required for the project duration. The objectives of the meetings will include reviewing the scope, budget, schedule and deliverables. The Consultant will organize and manage the consultant project team and coordinate with Ashland Project Manager and City staff as necessary.

Monthly Invoices and Progress Reports: The Consultant shall prepare monthly invoices and progress reports including the following:

- Work Completed during the month by work task as a percentage of completion.

- Needs for Additional Information, Reviews, or Changes to the Scope of Work.
- Scope, Schedule, and Budget Issues and Changes

3.2 SPECIFIC TASKS AND DELIVERABLES

1. SITE INVESTIGATION, DATA COLLECTION, RECORD RESEARCH

- Review existing records and data including but not limited to drawings, maps, and other documents relevant to the limits and scope of this project.
- Locate on-site utilities and contacting utility companies for existing base maps.
- Visually inspect facility grounds for potential generator placement, pump installation, SCADA/telemetry hardware and programming, electrical components and requirements.
- Identify any potential conflicts or additional information required.
- Identify utility relocation or extension needs.

2. PRELIMINARY DESIGN (60% DESIGN SUBMITTAL)

- Prepare base mapping for each facility which includes elevations, utilities, right-of-way, easement, and other pertinent features.
- Develop preliminary design, showing existing and proposed improvements.
- Prepare list of technical specifications and engineer's cost estimate.

Deliverables:

A digital pdf copy of the 60% design submittal shall be presented to the City of Ashland for review. The submittal shall include the conceptual design showing the proposed improvements per facility and probable construction cost estimates. One meeting shall be scheduled with City staff for Consultant to present the 60% design submittal.

3. 90% DESIGN SUBMITTAL

- Incorporate 60% Design Submittal comments.
- Prepare complete detailed plans, standard and project details, technical specifications, bid schedule, bid item descriptions, and 90% engineer's cost estimate.
- Consultant shall prepare the Scope of Bids and Bid Schedule specification sections in addition to the technical specifications.
- The 90% Design Submittal shall be considered a complete design submittal.

Deliverables:

A digital pdf copy of the 90% design submittal shall be presented to the City for review. The submittal shall include contract documents and probable construction cost estimates. One meeting shall be scheduled with City staff to review City comments on the 90% design submittal.

4. FINAL DESIGN SUBMITTAL (100% DESIGN)

- Incorporate any 90% Design Submittal comments.
- Submit three sets of full-size stamped and signed final drawings along with three sets of technical specifications and other contract documents.
- Submit one copy of final quantity calculations and engineer's construction cost estimates.
- Submit all digital files (AutoCAD, MS Word, MS Excel, etc.) for the project.

Deliverables:

One (1) hard copy and one (1) pdf copy of the 100% final design submittal shall be presented to the City of Ashland for bid. The submittal shall include full-size stamped and signed final drawings, contract documents and probable construction cost estimates.

5. BID AND CONSTRUCTION SUPPORT

- The City of Ashland will administer the bidding and contract award processes in coordination with the other partner Cities.
- Provide bidding assistance/clarifications which includes responding to questions from potential bidders, attending the pre-bid meetings and job walks (assume 3 pre-bid meetings, one at each facility), assisting with preparation of addenda reviewing the submitted bids, and recommending a contract for award.
- Facilitate mandatory pre-construction site meetings with all necessary parties (assume 3 meetings, one at each facility).
- Attend and facilitate construction meetings as necessary.
- Conduct site visits at all locations during construction at appropriate stages.
- Provide submittal list, review submittals and shop drawings, change order requests and provide written recommendations to the City of Ashland.
- Review and respond to contractor's request for information (RFI) and clarifications during construction and provide written recommendations to the City of Ashland.
- If necessary, assist the City of Ashland with the pre-purchase of major project components.
- Participate in the final inspection and assist with preparing the punch list of deficiencies.
- Prepare and submit digital as-builts / record drawings to the City of Ashland.

Deliverables:

Three (3) full-size hard copies, one (1) pdf digital copy and one (1) AutoCAD format copy of the record drawings.

3.3 TENTATIVE SCHEDULE OF KEY TASKS AND DELIVERABLES

The following the City's desired schedule for key tasks and major deliverables:

<u>Task</u>	<u>Date</u>
Award Contract	7/1/22
Kick-off Meeting	7/10/22
50% Design Submittal	8/10/22
90% Design Submittal	8/25/22
100% Design Submittal	9/15/22
Release Construction Solicitation	10/1/22
Award Construction Contract	11/15/22
Construction Kick-Off Meeting	12/1/22
Construction Complete	6/1/23
As-built Drawing Submittal	7/1/23

SECTION 4: SELECTION CRITERIA

4.1 GENERAL

This method of personal services solicitation is categorized as Intermediate Procurement (contracts between \$5,000 and \$75,000). In accordance with ORS 279B.070 and AMC Section 2.50.120(A), Intermediate Procurement (4), If a contract is awarded, the contracting agency shall award the contract to the offeror whose quote or proposal will best serve the interests of the contracting agency, taking into account considerations including, but not limited to, experience, expertise, product functionality, suitability for a particular purpose and contractor responsibility under ORS 279B.110.

4.2 SELECTION CRITERIA AND SCORING

The selection criteria defined below are consistent with the minimum selection criteria established for Intermediate Procurement by AMC Section 2.50.120(C).

1. **Letter of Transmittal (Required, No Points Awarded).** On company letterhead, describe your firm's interest in providing professional engineering services to the Cities of Talent, Ashland and Phoenix. This letter shall include the following components:
 - a. Certification that the Proposer is an Independent Contractor.
 - b. Indication that the Proposer accepts the terms of the City of Ashland Personal Services Agreement, provided in the Exhibit E of this RFP.
 - c. Acknowledgment of the specific addenda received OR a statement acknowledging no addenda were received.
 - d. An original, ink signature of an authorized representative of the firm.
 - e. Name, title, address, email, and telephone number of the signatory representative.
2. **Project Approach (25 Points Possible).** Provide a description of your firm's approach to complete a successful preliminary design, final design, construction specifications, and construction administration for these types of critical water system projects. Include a summary of your quality control program.
3. **Project Experience (30 Points Possible).** Discuss at least three projects performed in the last 10 years involving similar work to the scope of work for this RFP, particularly any projects involving critical water systems. Include the following information for each project:
 - a. Client name, point of contact, address, and telephone number
 - b. Description and location of project and year of completion
 - c. Key Persons from your proposed Team involved in all disciplines
4. **Proposer's Demonstrated Ability to Deliver Budget and Schedule on Similar Projects (25 Points Possible).** For each of the three (3) projects listed above, provide a discussion of whether the project was completed on time and on budget or needed to be revised. Briefly explain the reason for any revisions, and what attempts were made to bring the project back on schedule and within budget.
5. **Project Team Experience and Availability (20 Points Possible).**
 - a. Provide a list of the key staff proposed for this project ("Key Person(s)"). Provide the following for each key person: a summary of their proposed roles and a description of their relevant experience.
 - b. Indicate which individual will manage the project and be the primary contact. Indicate the specific experience this individual has managing projects similar to the project in this RFP.
 - c. State the estimated proportion of each Key Person's time that will be spent on City's project vs. total time spent on all Key Person's projects during the term of contract.
 - d. Submit resumes that support each Key Person's relevant experience. *No more than five resumes should be submitted as Appendix A and will not count against page limit.*
6. **Termination for Default (Pass or Fail).** Proposers shall indicate if they have had a contract terminated for default in the last five years. Termination for default is defined as notice to stop performance that was delivered to the Proposer due to the Proposer's non-performance or poor performance and the issue of performance was either (a) not litigated due to inaction on the part of the Proposer, or (b) litigated and

determined that the Proposer was in default. If a Proposer has had a contract terminated for default in this period, then the Proposer shall submit full details including the other party's name, address and phone number. City of Ashland will evaluate the facts and may, at its sole discretion, reject the proposal on the grounds of past performance.

SECTION 5: PROPOSAL EVALUATION

5.1 REVIEW

Proposals will be reviewed and evaluated by an evaluation committee of reviewers consisting of at least one representative from each of the TAP partner Cities (Talent, Ashland, Phoenix). The total number of points possible for written Proposals is 100.

5.1 DEFECTIVE PROPOSALS

Due to limited resources, the City of Ashland generally will not completely review or analyze Proposals that on their faces fail to comply with the minimum mandatory requirements of the solicitation documents nor will City generally investigate the references or qualifications of such proposals. Therefore, City will not acknowledge whether an unsuccessful Proposal was complete, responsive, responsible, sufficient, or lawful in any respect. This is a public solicitation, the processes and procedures which are established and required by Oregon law and City-adopted rules. Proposers are advised to strictly follow the process, procedures, and requirements as set forth in this RFP and not anticipate or rely on any opportunity to negotiate, beyond such limitations that are identified herein.

5.2 RIGHT OF REJECTION

Proposers must comply with all terms of this RFP and all applicable federal, state, and local laws, administrative rules, and regulations. The City may reject any Proposal that does not comply with all material and substantial terms, conditions, and performance requirements of this RFP.

Proposers may not qualify the Proposal nor restrict the rights of the Cities of Talent, Ashland or Phoenix. If a Proposer does so, the City of Ashland may determine the Proposal to be a non-responsive counter-offer, and the Proposal may be rejected.

Minor informalities that may be waived include those that:

- do not affect responsiveness,
- are merely a matter of form or format,
- do not change the relative standing or otherwise prejudice other offers,
- are trivial, negligible, or immaterial in nature,
- do not reflect a material change in the work, or,
- do not constitute a substantial reservation against a requirement or provision.

The City of Ashland reserves the right to refrain from making an award if the City determines that to be in its best interest.

A Proposal from a debarred or suspended Proposer shall be rejected.

5.3 REFERENCES

The City reserves the right to investigate any and all references and the past performance information provided in the Proposal with respect to the proposer's successful performance of similar projects, compliance with specifications and contractual obligations, completion or delivery of a project on a schedule, and lawful payment of employees and workers.

The City of Ashland reserves the right to check any and all sources for information on a proposer's past performance, including sources other than the references provided in the proposer's Proposal. The City may consider information available from any source, including government bodies and regulatory authorities.

5.4 RESPONSIBILITY

The City of Ashland reserves the right to investigate and evaluate, at any time prior to award and execution of the contract, the apparent successful Proposer's responsibility for performing the contract. Submission of a signed Proposal shall constitute approval for City to obtain any information the City deems necessary to conduct evaluation. The City of Ashland reserves the right to request additional information or documentation from the successful Proposer prior to award of contract. Such information may include, but is not limited to, current and recent balance sheets, income statements, cash flow statements, or a performance bond from an acceptable surety. Failure to provide this information will result in rescission of City's Intent to Award.

City may postpone the award of contract after announcement of the apparent successful Proposer in order to complete its investigation and evaluation. Failure of the apparent successful Proposer to demonstrate responsibility shall render the Proposer non-responsible and shall constitute grounds for rejection of the proposal.

5.5 CLARIFICATION OF RESPONSE

The City of Ashland reserves the right to request clarification of any item in any Proposal, or to request additional information necessary to properly evaluate a particular Proposal. All request for clarification and responses shall be in writing.

During the evaluation of Proposals, Proposers must respond to any request for clarification from the Evaluation Committee within 24 hours of request (Monday through Friday). Inability of the Evaluation Committee to reach a Proposer for clarification and/or failure of a Proposer to respond within the time stated may result in rejection of the Proposer's Proposal.

5.6 FINALIST SELECTION

The firm with the highest cumulative score as a result of written Proposal scoring will be considered the Finalist, and all other firms will be ranked according to next highest score, etc.

5.7 TIES AMONG PROPOSERS

If the City of Ashland determines after the ranking of potential firms, that two or more of them are equally qualified to be the Finalist, City may select a candidate through any process that the City believes will result in the best value for taking into account the scope, complexity and nature of the Work. The process shall instill public confidence through ethical and fair dealing, honesty and good faith on the part of the City of Ashland and Proposers and shall protect the integrity of the Public contracting process.

As part of the procedure for choosing the Finalist between two or more equally qualified candidates, City may elect to give a preference to a local consulting firm.

5.8 NOTICE OF INTENT TO AWARD

After the completion of the evaluation and ranking, the City of Ashland will issue a written Notice of Intent to Award, naming the Finalist, and send copies to all Proposers.

5.9 CONTRACT NEGOTIATION

The City of Ashland will attempt to reach an agreement with the Finalist in terms of Contractor's performance obligation, final schedule, and any modifications to Scope of Work deemed necessary for successful completion of the Project. The City may, in its sole discretion, terminate negotiations and reject the proposal if it appears agreement cannot be reached. The City may then attempt to reach a final agreement with the second highest scoring Proposer and may continue on in the same manner with the remaining proposers until an agreement is reached.

5.10 PROTEST PROCEDURES

The City of Ashland shall provide to all Proposers a copy of the selection notice that City sent to the Finalist. A Qualified Proposer who claims to have been adversely affected or aggrieved by the selection of the highest ranked Proposer may submit a written protest of the selection to the City. A Proposer submitting a protest must claim that the protesting Proposer is the highest ranked Proposer because the Proposals of all higher ranked Proposers failed to meet the requirements of the RFP or because the higher ranked Proposers otherwise are not qualified to perform the Architectural, Engineering, or Land Surveying Services, or Related Services described in the RFP.

Eligible Proposers protesting award shall follow the procedures described herein. Protests that do not follow these procedures shall not be considered. This protest procedure constitutes the sole administrative remedy available to Proposers.

- a) Protests must be received within seven (7) days after issuance of the notice of intent to award the Contract. The City of Ashland will not consider late protests.
- b) All protests must be in writing, signed by the protesting party or an authorized Agent. The protest must specify the grounds for the protest to be considered by the City.
- c) Protests based on procedural matters will not be considered.
- d) The City of Ashland's Public Works Director will review the protest and will fax and mail the protesting party a written response within three (3) business days of receipt of the written protest to the fax number and address provided in the proposal. Any written response may be comprised of a determination of the protest, a notice to the protesting party of the need for additional time in which to evaluate the matter, or other notice to the protesting party.
- e) If the Public Works Director's determination (response) is adverse to the protester, any further appeal of the Public Works Director's determination by the party must be submitted in writing to the Ashland City Manager within three (3) business days of issuance of the Public Works Director's determination (response).
- f) The City Manager will review any appeal of the Public Works Director's determination and shall fax and mail, in accordance with the fax number and address provided in the proposal, the protesting party a written response within three (3) business days of receipt of written appeal.
- g) If the determination of the Ashland City Manager is adverse to the protesting party's interest, the protesting party may only appeal to the Ashland City Council by filing a written notice of appeal to the Council with the City Manager within two (2) business days of issuance of the City Manager's written determination.
- h) The Ashland City Council, in considering the protest, shall review the documentation presented to the Public Works Director and the City Manager on the next regularly scheduled Council Meeting, but in

no event shall they be required to review in less than ten (10) business days, and thereafter, base their decision on such material. The Council review will be limited to the evaluation of compliance with City's policies and procedures, requirements of the RFP and the equal and fair application of the City of Ashland contracting rules. The Ashland City Council's determination shall be City's final decision.

- i) An adversely affected or aggrieved proposer must exhaust all avenues of administrative remedies before seeking judicial review of City's Consultant selection or Notice of Intent to Award.

5.11 RESULTING CONTRACT

Upon reaching final agreement with an awarded Proposer, the City will issue a Personal Services Agreement (PSA) in substantially the form as found in Exhibit E. The PSA will include the City's Standard Terms and Conditions, the final schedule and statement of work, and the proposal and all responses provided by the awarded Proposer.

SECTION 6: CONTRACT

6.1 CONTRACT FORM

The consultant selected by the City of Ashland in coordination with the other partner Cities will be expected to enter into a written agreement substantially the same form as attached to this RFP. The Proposal should indicate acceptance of the City of Ashland contract provisions. Suggested reasonable alternatives that do not substantially impair City's rights under the contract may be submitted. Unconditional refusal to accept contract provisions will result in Proposal rejection.

Contract Duration – The City anticipates having the Consultant begin work immediately upon contract execution with submittal of final deliverables to the City of Ashland occurring no later than 12 months after contract execution. Proposals containing earlier completion of the deliverables are acceptable and encouraged.

Contract Payment – Contingent upon City's need, Consultant's performance and availability of approved funding, the City of Ashland reserves the right to amend the contract (within the scope of the project described in this RFP) for additional tasks, project phases and compensation as necessary to complete a particular project. Proposers are advised that the award and potential dollar amount of the contract under this RFP will be contingent upon approval by the Ashland City Council acting as the Contract Review Board.

Payment will be made for completion of, or acceptable monthly progress on, tasks and deliverables in conformance with contract requirements and applicable standards. The method of compensation will be determined by the City and may be based upon any one or combination of the following methods:

- Cost plus fixed-fee, up to a maximum NTE amount
- Fixed price for all services. Fixed price per deliverable. Fixed price per milestone
- Time and materials, up to a maximum NTE amount (City preferred method)
- Price per unit

Ashland Living Wage Requirements – Consultant is required to comply with Chapter 3.12 of the Ashland Municipal Code by paying at least the living wage as established by the City of Ashland for the effective date of June 30, 2021 (\$15.96 per hour). Additional information on when the living wage applies and how to calculate the living wage is appended to the Personal Services Agreement included in the appendix of this RFP.

6.2 BUSINESS LICENSE REQUIRED

The selected consultant must have or acquire a current business license from the Cities of Ashland, Talent and Phoenix prior to conducting any work under the contract.

6.3 INSURANCE REQUIREMENTS

Contractor shall at its own expense provide the following insurance:

- a. Worker's Compensation insurance in compliance with ORS 656.017, which requires subject employers to provide Oregon workers' compensation coverage for all their subject workers.
- b. Professional Liability insurance with a combined single limit, or the equivalent, of not less than \$2,000,000 per occurrence. This is to cover damages caused by any error, omission, or negligent act related to the professional services to be provided under the contract.
- c. General Liability insurance with a combined single limit, or the equivalent, of not less than \$2,000,000 per occurrence for bodily injury and property damage. It shall include contractual liability coverage for the indemnity provided under the contract.
- d. Automobile Liability insurance with a combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence for each accident for bodily injury and property damage, including coverage for owned, hired or non-owned vehicles, as applicable.
- e. Notice of Cancellation or Change. There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance coverage(s) without 30 days' written notice from the contractor or its insurer(s) to the City.

Additional Insured/Certificates of Insurance. Contractor shall name the Cities of Ashland, Talent, Phoenix, and the elected officials, officers and employees of all three (3) Cities as additional insurers on any insurance policies required herein but only with respect to contractor's services to be provided under this contract. As evidence of the insurance coverage required by this contract, the contractor shall furnish acceptable insurance certificates prior to commencing work under this contract. The certificate will specify all of the parties who are additional insureds. The consultant's insurance is primary and non-contributory. Insuring companies or entities are subject to City of Ashland acceptance. If requested, complete copies of insurance policies; trust agreements, etc. shall be provided to the City of Ashland. The contractor shall be financially responsible for all pertinent deductibles, self-insured retention and/or self-insurance.

6.4 LAWS AND REGULATIONS

The proposer is assumed to be familiar with all Federal, State, County or City laws or regulations, which in any manner affect those engaged or employed in the work or the materials or equipment used or which in any way affect the conduct of the work, and no pleas of misunderstanding will be considered on account of ignorance thereof. If the proposer shall discover any provision in these specifications or project information, plans or contract documents which is contrary to or inconsistent with any law or regulations, they shall report it to the City of Ashland in writing.

All work performed by the contractor shall be in compliance with all Federal, State, County and local laws, regulations and ordinances. Unless otherwise specified, the contractor shall be responsible for applying for applicable permits and licenses.

SECTION 7: INSTRUCTIONS TO PROPOSERS

7.1 GENERAL

All proposals and any resulting contracts are subject to the provision and requirements of Oregon Revised Statutes, Sections 279A and 279B. Engineering contracts are further subject to 279C and to the City of Ashland (City) Municipal Code Section 2.50.

7.2 INFORMATION OF RECORD

This Request for Proposal (RFP) will be distributed through OregonBuys. All updates, addendum, and related communications will be published through OregonBuys. It is the sole responsibility of the proposer to check the OregonBuys website (<https://oregonbuys.gov/bsol/>) on a timely basis for critical information regarding the proposal.

7.3 PROPOSAL PREPARATION

Proposals shall be typewritten, precise, and shall not include unnecessary promotional material. Except for Letter of Transmittal and resumes, the proposal shall contain **no more than 8 pages**. Proposals shall be titled "Proposal for Professional Engineering Services for the Development of TAP Water System Improvements".

One original (wet ink signature) and six complete copies of the proposal shall be submitted to the City of Ashland prior to the advertised proposal closing date. One digital copy shall be submitted on a USB drive.

7.4 PROPOSAL FORMAT AND CONTENTS

Responses must follow the format outlined in this RFP. Headers, titles or tabs shall be used to identify required information. Additional materials in other formats of pages beyond the stated page limit may not be considered. Proposal responses shall be organized in the following manner and shall address each item listed in the Selection Criteria:

- ☐ Letter of Transmittal
- ☐ Project Approach
- ☐ Project Experience
- ☐ Demonstrated Ability to Deliver Budget and Schedule on Similar Projects
- ☐ Project Team Experience and Availability
- ☐ Termination for Default Status

7.5 SIGNATURE ON PROPOSAL

Proposals shall be signed in ink by an authorized representative of the Proposer. Signature on a Proposal certifies that the Proposal is made without connection with any person, firm or corporation making a proposal for the same goods and/or services and is in all respects fair and made without collusion or fraud. Signature on a Proposal also certifies that the proposer has read, fully understands and agrees with all solicitation requirements, terms and conditions. No consideration will be given to any claim resulting from proposing without fully comprehending all requirements of this RFP.

7.6 PREPARATION COSTS

The City of Ashland may cancel a solicitation, whether informal or formal, or reject all Proposals, without liability incurred by City at any time after issuing an RFP, if City believes it is in City's best interest to do so. Consultants responding to RFPs are responsible for all costs they may incur in connection with submitting Proposals and responses to RFPs, which includes, but is not limited to: preparation, submittal, travel expenses, interviews, presentations, or evaluation of any Proposal.

7.7 CONFORMANCE TO SOLICITATION REQUIREMENTS

Proposals shall conform to the requirements of this Request for Proposals. All necessary attachments (Letter of Transmittal, Resumes, etc.) shall be submitted with the Proposal and in the required format. Failure to comply with all requirements may result in Proposal rejection.

7.8 QUESTIONS AND CLARIFICATIONS

Questions regarding the information contained in the RFP document must be submitted in writing or by email to the City of Ashland Project Manager listed on the cover page of this RFP. All questions must be received not later than ten (10) calendar days prior to the proposal submission deadline. Answers to questions received by City, which are deemed by City to be substantive, will be issued as official addenda to this RFP to ensure that all proposers base their proposals on the same information.

7.9 ADDENDA

Any addendum or addenda issued by the City of Ashland which may include changes, corrections, additions, interpretations or information, and issued seventy-two (72) hours or more before the scheduled closing time for submission of bids, Saturday, Sunday and legal holidays not included, shall be binding upon the proposer. All official addendums will be issued through OregonBuys and it shall be the proposer's sole responsibility to acquire any and all addendum pertaining to RFP. Proposer shall indicate receipt of all issued addenda by indicating the number of addenda received on the Proposal Form

7.10 PROTEST OF REQUIREMENTS

Proposers may submit a written protest of any provision, specification or contract term contained in this RFP and may request a change to any provision, specification or contract term contained in this RFP, not later than ten (10) calendar days prior to the advertised proposal closing date.

A proposer's written protest must meet the following requirements:

- A detailed statement of the legal and factual grounds for the protest.
- The reason for the protest or request for change.
- A statement of the form of relief requested or any proposed changes to the specifications or contract document.

All protests shall be mailed or otherwise delivered to the City marked as follows:

PROPOSAL PROTEST

Project No. 2021-13

City of Ashland Public Works Dept.

ATTN: Kevin Caldwell, Project Manager

20 East Main St

Ashland, OR 97520

City Response: The City of Ashland may reject without consideration a proposer's protest after the deadline established for submitting protest. The City shall provide notice to the applicable proposer if it entirely rejects a protest. If the City agrees with the proposer's protest, in whole or in part, the City shall either issue an addendum reflecting its determination or cancel the solicitation.

Extension of Closing: If the City of Ashland receives a written protest from a proposer in accordance with this rule, the City may extend closing if the City determines an extension necessary to consider the protest and to issue addenda, if any, to the solicitation of document.

Judicial review of the City's decision relating to a specification protest shall be in accordance with ORS. 279B.405.

7.11 PROPOSAL MODIFICATION

Modifications or erasures made before proposal submission shall be initialed in ink by the person signing the proposal. Proposals, once submitted, may be modified in writing before the time and date set for proposal

closing. Any modification shall be prepared on company letterhead, shall be signed by an authorized representative, and shall state that the new document supersedes or modifies prior proposal submissions and any other prior proposal modifications. Proposal modifications shall be submitted in a sealed envelope clearly marked "Proposal Modification," identifying the project number and closing date and time. Proposers may not modify proposals after proposal closing date and time.

7.12 PROPOSAL WITHDRAWALS

Proposals may be withdrawn in writing on company letterhead signed by an authorized representative and received by the Project Manager prior to the date and time set for closing. Proposals may be withdrawn in person before closing time upon presentation of appropriate identification.

7.13 PROPRIETARY INFORMATION

All information submitted by Proposers shall be public record and subject to disclosure pursuant to the Oregon Public Records Act (ORS 192.311 to 192.478 410 et seq.), except such portions of the proposals for which Proposer requests exception from disclosure consistent with Oregon Law. Any portion of a proposal that the Proposer claims is confidential must meet the requirements of ORS 192.345, 192.355, or other applicable law. The entire proposal may not be marked as "confidential".

The City of Ashland is subject to the Oregon Public Records Laws (ORS 192.311 to 192.478), which require the City to disclose all records generated or received in the transaction of City business, except as expressly exempted. The City of Ashland will not disclose records submitted by a Proposer that are exempt from disclosure under the Oregon Public Records Law, subject to the following procedures and limitations.

The entire Proposal cannot be marked confidential. All pages containing the records exempt from disclosure shall be marked "confidential" and segregated in the following manner:

- It shall be clearly marked in bulk and on each page of the confidential document.
- It shall be kept separate from the other Proposal documents in a separate envelope or package
- Where the specification conflicts with other formatting and response instruction specifications, this specification shall prevail.
- Where such conflict occurs, the Proposer is instructed to respond with the following: "Refer to confidential information enclosed."
- This statement shall be inserted in the place where the requested information was to have been placed.

Proposers who desire that additional information be treated as confidential must mark those pages as "confidential." Proposers shall also cite the specific statutory basis for the exemption and give the reasons why the public interest would be served by the confidentiality. Should a Proposal be submitted as described in this section, no portion of it will be held confidential unless that portion is segregated as described in the criteria above.

Notwithstanding the above procedures, the City of Ashland reserves the right to disclose information that the City determines, in its sole discretion, is not exempt from disclosure or that the City is directed to disclose by the City's Attorney, the District Attorney, or a court of competent jurisdiction.

7.14 TERMS AND CONDITIONS

Unless an official addendum has modified or reserved the right to negotiate any terms contained in the contract or exhibits thereto, the City will not negotiate any term or condition after the protest deadline, except the statement of work and calendar with the selected proposer. By submitting a Proposal, the selected proposer agrees to be bound by the terms and conditions as set forth in this RFP and as such terms and conditions may

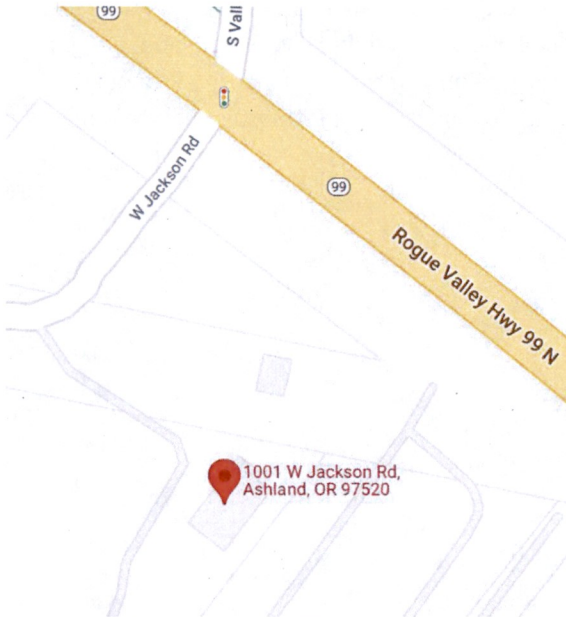
have been modified or reserved by the City of Ashland for negotiation. Any Proposal that is received conditioned upon City's acceptance of any other terms and conditions or rights to negotiate will be rejected.

7.15 PROPOSAL OPENING

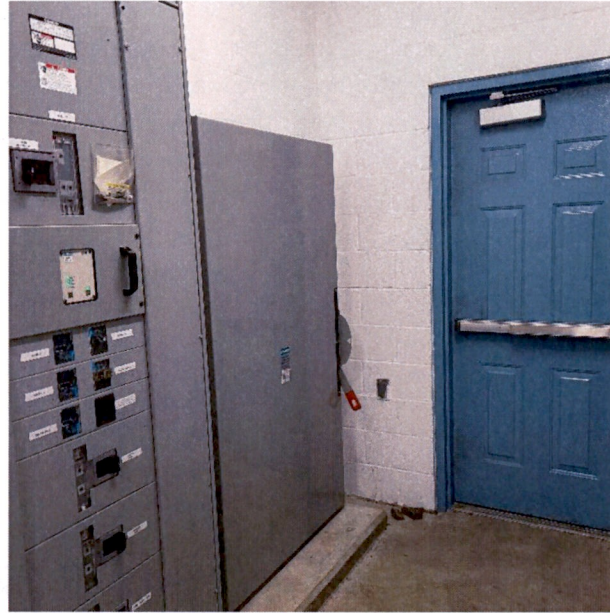
Unless otherwise provided by law, Proposals received in response to this RFP shall be opened at the date and time set for closing at the City of Ashland Engineering Services Building at 51 Winburn Way, Ashland, Oregon 97520. Proposers who attend the Proposal opening shall be informed only of the names of the Proposers submitting Proposals. No other information shall be available, and no copies of the Proposals shall be made. Award decisions will NOT be made at that time.

EXHIBIT A

Ashland BPS map and photos



Location of the Ashland BPS



Manual transfer switch inside Ashland BPS



Ashland BPS proposed new generator location



BPS generator electrical power inlet cabinet

EXHIBIT B

Talent BPS map and photos



Location of the Talent BPS



Existing pumps inside the Talent BPS



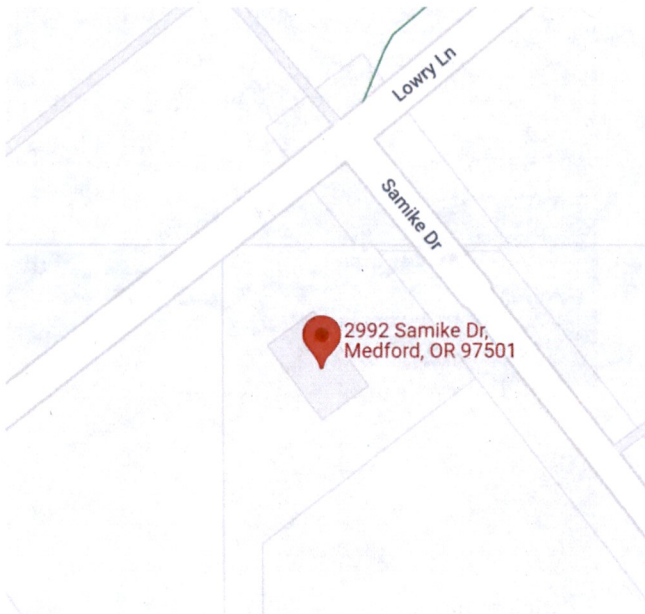
Existing generator at the Talent BPS



Existing automatic transfer switch in Talent BPS

EXHIBIT C

Regional BPS map and photos



Location of the Regional BPS



1 of 2 (50 hp) pumps proposed for replacement



Regional BPS 50 hp pump motor tag

EXHIBIT D

Project descriptions from the TAP Master Plan

PS-1: Regional BPS Programming Updates

Programming updates to the Regional BPS require SCADA Human Machine Interface (HMI) improvements, Phoenix Shop BPS programming and Regional BPS programmable logic controller (PLC) programming.

PS-2: Regional BPS Short-Term Expansion

Replace one of the 50 hp pumps at the Regional BPS with a 125 hp pump. This project is needed to meet increasing TAP demands when all TAP Partner Cities are at maximum day demands.

PS-3: Talent BPS Small Pump Installation

A smaller 50 hp pump is recommended to allow Talent to pump at a constant rate to meet its low winter demands.

PS-4: Talent BPS Programming Updates

This project includes SCADA (HMI) improvements and Talent BPS programming to adjust to constant rate pumping.

PS-5: Talent BPS Generator Upgrade

The generator upgrade at the Talent BPS will provide standby power to run the BPS for build-out demands for Talent and Ashland combined.

O-2: Telemetry Summary Report

A summary of the existing telemetry systems is recommended, including an update to the topology graphics for the TAP system.

Note: The Ashland BPS generator and telemetry improvements are not specifically listed in the TAP Master Plan.

EXHIBIT E

Example Personal Services Agreement

PERSONAL SERVICES AGREEMENT

CITY OF ASHLAND 20 East Main Street Ashland, Oregon 97520 Telephone: 541/488-XXXX Fax: 541/552-XXXX	CONSULTANT: CONSULTANT'S CONTACT: ADDRESS: TELEPHONE:
--	---

This Personal Services Agreement (hereinafter "Agreement") is entered into by and between the City of Ashland, an Oregon municipal corporation (hereinafter "City") and XXXXXXXXXX, a domestic professional corporation or limited liability company ("hereinafter "Consultant"), for (description of services to be provided.).

NOW THEREFORE, in consideration of the mutual covenants contained herein, the City and Consultant hereby agree as follows:

1. **Effective Date and Duration:** This Agreement shall become effective on the date of execution on behalf of the City, as set forth below (the "Effective Date"), and unless sooner terminated as specifically provided herein, shall terminate upon the City's affirmative acceptance of Consultant's Work as complete and Consultant's acceptance of the City's final payment therefore, but not later than XXXXXXXXXX.
2. **Scope of Work:** Consultant will provide (description of services to be provided) as more fully set forth in the Consultant's Proposal dated XXXXXXXXXX, which is attached hereto as "Exhibit X" and incorporated herein by this reference. Consultant's services are collectively referred to in this Agreement as the "Work."
3. **Compensation:** City shall pay Consultant the sum of \$XXXXXXX (this amount may be an hourly rate OR a lump sum - write out amount in long form here, e.g. two hundred thousand and eighty-five dollars) as full compensation for Consultant's performance of all Work under this Agreement. In no event shall Consultant's total of all compensation and reimbursement under this Agreement exceed the sum of \$XXXXXXXXX (write out amount in long form here) without the express, written approval from the City official whose signature appears below, or such official's successor in office. Payments shall be made within thirty (30) days of the date of receipt by the City of Consultant's invoice. Should this Agreement be terminated prior to completion of all Work, payments will be made for any phase of the Work completed and accepted as of the date of termination.

4. **Supporting Documents/Conflicting Provisions:** This Agreement and any exhibits or other supporting documents shall be construed to be mutually complementary and supplementary wherever possible. In the event of a conflict which cannot be so resolved, the provisions of this Agreement itself shall control over any conflicting provisions in any of the exhibits or supporting documents.
5. **All Costs Borne by Consultant:** Consultant shall, at its own risk, perform the Work described above and, unless otherwise specified in this Agreement, furnish all labor, equipment, and materials required for the proper performance of such Work.
6. **Qualified Work:** Consultant has represented, and by entering into this Agreement now represents, that all personnel assigned to the Work to be performed under this Agreement are fully qualified to perform the services to which they will be assigned in a skilled manner and, if required to be registered, licensed, or bonded by the State of Oregon, are so registered, licensed, or bonded.
7. **Ownership of Work/Documents:** All Work, work product, or other documents produced in furtherance of this Agreement belong to the City, and any copyright, patent, trademark proprietary or any other protected intellectual property right shall vest in and is hereby assigned to the City.
8. **Statutory Requirements:** The following laws of the State of Oregon are hereby incorporated by reference into this Agreement: ORS 279B.220, 279B.230 and 279B.235.
9. **Living Wage Requirements:** If the amount of this Agreement is \$22,310.46 or more, Consultant is required to comply with Chapter 3.12 of the Ashland Municipal Code by paying a living wage, as defined in that chapter, to all employees performing Work under this Agreement and to any Subcontractor who performs 50% or more of the Work under this Agreement. Consultant is also required to post the notice attached hereto as "Exhibit B" predominantly in areas where it will be seen by all employees.
10. **Indemnification:** Consultant hereby agrees to defend, indemnify, save, and hold City, its officers, employees, and agents harmless from any and all losses, claims, actions, costs, expenses, judgments, or other damages resulting from injury to any person (including injury resulting in death), or damage (including loss or destruction) to property, of whatsoever nature arising out of or incident to the performance of this Agreement by Consultant (including but not limited to, Consultant's employees, agents, and others designated by Consultant to perform Work or services attendant to this Agreement). However, Consultant shall not be held responsible for any losses, expenses, claims, costs, judgments, or other damages, caused solely by the gross negligence of City.
11. **Termination:**
 - a. Mutual Consent. This Agreement may be terminated at any time by the mutual consent of both parties.
 - b. City's Convenience. This Agreement may be terminated by City at any time upon not less than thirty (30) days' prior written notice delivered by certified mail or in person.
 - c. For Cause. City may terminate or modify this Agreement, in whole or in part, effective upon delivery of written notice to Consultant, or at such later date as may be established by City under any of the following conditions:
 - i. If City funding from federal, state, county or other sources is not obtained and continued at levels sufficient to allow for the purchase of the indicated quantity of services;
 - ii. If federal or state regulations or guidelines are modified, changed, or interpreted in such a way that the services are no longer allowable or appropriate for purchase under this Agreement or are no longer eligible for the funding proposed for payments authorized by this Agreement; or
 - iii. If any license or certificate required by law or regulation to be held by Consultant to provide

the services required by this Agreement is for any reason denied, revoked, suspended, or not renewed.

d. For Default or Breach.

- i. Either City or Consultant may terminate this Agreement in the event of a breach of the Agreement by the other. Prior to such termination the party seeking termination shall give to the other party written notice of the breach and its intent to terminate. If the party committing the breach has not entirely cured the breach within fifteen (15) days of the date of the notice, or within such other period as the party giving the notice may authorize in writing, then the Agreement may be terminated at any time thereafter by a written notice of termination by the party giving notice.
- ii. Time is of the essence for Consultant's performance of each and every obligation and duty under this Agreement. City, by written notice to Consultant of default or breach, may at any time terminate the whole or any part of this Agreement if Consultant fails to provide the Work called for by this Agreement within the time specified herein or within any extension thereof.
- iii. The rights and remedies of City provided in this subsection (d) are not exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

- e. Obligation/Liability of Parties. Termination or modification of this Agreement pursuant to subsections a, b, or c above shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination or modification. However, upon receiving a notice of termination (regardless whether such notice is given pursuant to Subsection a, b, c, or d of this section, Consultant shall immediately cease all activities under this Agreement, unless expressly directed otherwise by City in the notice of termination. Further, upon termination, Consultant shall deliver to City all documents, information, works-in-progress and other property that are or would be deliverables had the Agreement been completed. City shall pay Consultant for Work performed prior to the termination date if such Work was performed in accordance with this Agreement.

12. **Independent Contractor Status:** Consultant is an independent contractor and not an employee of the City for any purpose. Consultant shall have the complete responsibility for the performance of this Agreement. Consultant shall provide workers' compensation coverage as required in ORS Chapter 656 for all persons employed to perform Work pursuant to this Agreement. Consultant is a subject employer that will comply with ORS 656.017.
13. **Assignment:** Consultant shall not assign this Agreement or subcontract any portion of the Work without the written consent of City. Any attempted assignment or subcontract without written consent of City shall be void. Consultant shall be fully responsible for the acts or omissions of any assigns or subcontractors and of all persons employed by them, and the approval by City of any assignment or subcontract of the Work shall not create any contractual relation between the assignee or subcontractor and City.
14. **Default.** The Consultant shall be in default of this Agreement if Consultant: commits any material breach or default of any covenant, warranty, certification, or obligation under the Agreement; institutes an action for relief in bankruptcy or has instituted against it an action for insolvency; makes a general assignment for the benefit of creditors; or ceases doing business on a regular basis of the type identified in its obligations under the Agreement; or attempts to assign rights in, or delegate duties under, this Agreement.

15. **Insurance.** Consultant shall, at its own expense, maintain the following insurance:
- a. Worker's Compensation insurance in compliance with ORS 656.017, which requires subject employers to provide Oregon workers' compensation coverage for all their subject workers
 - b. Professional Liability insurance with a combined single limit, or the equivalent, of not less than \$2,000,000 (two million dollars) per occurrence. This is to cover any damages caused by error, omission or negligent acts related to the Work to be provided under this Agreement.
 - c. General Liability insurance with a combined single limit, or the equivalent, of not less than \$2,000,000 (two million dollars) per occurrence for Bodily Injury, Death, and Property Damage.
 - d. Automobile Liability insurance with a combined single limit, or the equivalent, of not less than \$1,000,000 (one million dollars) for each accident for Bodily Injury and Property Damage, including coverage for owned, hired or non-owned vehicles, as applicable.
 - e. Notice of cancellation or change. There shall be no cancellation, material change, reduction of limits or intent not to renew the insurance coverage(s) without thirty (30) days' prior written notice from the Consultant or its insurer(s) to the City.
 - f. Additional Insured/Certificates of Insurance. Consultant shall name the City of Ashland, Oregon, and its elected officials, officers and employees as Additional Insureds on any insurance policies, excluding Professional Liability and Workers' Compensation, required herein, but only with respect to Consultant's services to be provided under this Agreement. The consultant's insurance is primary and non-contributory. As evidence of the insurance coverages required by this Agreement, the Consultant shall furnish acceptable insurance certificates prior to commencing the Work under this Agreement. The certificate will specify all of the parties who are Additional Insureds. Insuring companies or entities are subject to the City's acceptance. If requested, complete copies of insurance policies; trust agreements, etc. shall be provided to the City. The Consultant shall be financially responsible for all pertinent deductibles, self-insured retentions, and/or self-insurance.
16. **Nondiscrimination:** Consultant agrees that no person shall, on the grounds of race, color, religion, creed, sex, marital status, familial status or domestic partnership, national origin, age, mental or physical disability, sexual orientation, gender identity or source of income, suffer discrimination in the performance of any Work under this Agreement when employed by Consultant. Consultant agrees to comply with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. Further, Consultant agrees not to discriminate against a disadvantaged business enterprise, minority-owned business, woman-owned business, a business that a service-disabled veteran owns or an emerging small business enterprise certified under ORS 200.055, in awarding subcontracts as required by ORS 279A.110.
17. **Consultant's Compliance With Tax Laws:**
- 17.1 Consultant represents and warrants to the City that:
 - 17.1.1 Consultant shall, throughout the term of this Agreement, including any extensions hereof, comply with:
 - (i) All tax laws of the State of Oregon, including but not limited to ORS 305.620 and ORS Chapters 316, 317, and 318;
 - (ii) Any tax provisions imposed by a political subdivision of the State of Oregon applicable to Consultant; and
 - (iii) Any rules, regulations, charter provisions, or ordinances that implement or enforce any of the foregoing tax laws or provisions.
 - 17.1.2 Consultant, for a period of no fewer than six (6) calendar years preceding the Effective Date of this Agreement, has faithfully complied with:

- (i) All tax laws of the State of Oregon, including but not limited to ORS 305.620 and ORS Chapters 316, 317, and 318;
- (ii) Any tax provisions imposed by a political subdivision of the State of Oregon applicable to Consultant; and
- (iii) Any rules, regulations, charter provisions, or ordinances that implement or enforce any of the foregoing tax laws or provisions.

18. **Notice.** Whenever notice is required or permitted to be given under this Agreement, such notice shall be given in writing to the other party by personal delivery, by sending via a reputable commercial overnight courier, by mailing using registered or certified United States mail, return receipt requested, postage prepaid, or by electronically confirmed at the address or facsimile number set forth below:

If to the City:

City Department
Attn: Contract Administrator
Address
Ashland, Oregon 97520

With a copy to:

City of Ashland – Legal Department
20 E. Main Street
Ashland, Oregon 97520
Phone: (541) 488-5350

If to Consultant:

XXXXXXX
XXXXXXXXXX
XXXXXXXXXX

19. **Governing Law.** This Agreement shall be governed by the laws of the State of Oregon without regard to conflict of laws principles. Exclusive venue for litigation of any action arising under this Agreement shall be in the Circuit Court of the State of Oregon for Jackson County unless exclusive jurisdiction is in federal court, in which case exclusive venue shall be in the federal district court for the district of Oregon. Each party expressly waives any and all rights to maintain an action under this Agreement in any other venue, and expressly consents that, upon motion of the other party, any case may be dismissed or its venue transferred, as appropriate, so as to effectuate this choice of venue.
20. **Amendments.** This Agreement may be amended only by written instrument executed by both parties with the same formalities as this Agreement.
21. **Nonappropriations Clause.** Funds Available and Authorized: City has sufficient funds currently available and authorized for expenditure to finance the costs of this Agreement within the City's fiscal year budget. Consultant understands and agrees that City's payment of amounts under this Agreement attributable to Work performed after the last day of the current fiscal year is contingent on City appropriations, or other expenditure authority sufficient to allow City in the exercise of its reasonable

administrative discretion, to continue to make payments under this Agreement. In the event City has insufficient appropriations, limitations or other expenditure authority, City may terminate this Agreement without penalty or liability to City, effective upon the delivery of written notice to Consultant, with no further liability to Consultant.

22. THIS AGREEMENT AND THE ATTACHED EXHIBITS CONSTITUTE THE ENTIRE UNDERSTANDING AND AGREEMENT BETWEEN THE PARTIES. NO WAIVER, CONSENT, MODIFICATION OR CHANGE OF TERMS OF THIS AGREEMENT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY BOTH PARTIES. SUCH WAIVER, CONSENT, MODIFICATION OR CHANGE, IF MADE, SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS AGREEMENT. CONSULTANT, BY SIGNATURE OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT HE/SHE HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.
23. **Certification.** Consultant agrees to and shall sign the certification attached hereto as "Exhibit C" and incorporated herein by this reference.

IN WITNESS WHEREOF the parties have caused this Agreement to be signed in their respective names by their duly authorized representatives as of the dates set forth below.

CITY OF ASHLAND:

By: _____
Joseph L. Lessard, City Administrator

Date

Purchase Order No. _____

XXXXXXXXXX (CONSULTANT):

By: _____
Signature

Printed Name

Title

Date

(W-9) is to be submitted with this signed Agreement)____

APPROVED AS TO FORM:

City Attorney

Date

CITY OF ASHLAND, OREGON

City of Ashland LIVING WAGE

ALL employers described below must comply with City of Ashland laws regulating payment of a living wage.



\$15.74 per hour, effective June 30, 2020.

The Living Wage is adjusted annually every June 30 by the Consumer Price Index.

Employees must be paid a living wage:

- For all hours worked under a service contract between their employer and the City of Ashland if the contract exceeds **\$22,002.43** or more.
- For all hours worked in a month if the employee spends 50% or more of the employee's time in that month working on a project or

portion of business of their employer, if the employer has ten or more employees, and has received financial assistance for the project or business from the City of Ashland in excess of **\$22,002.43**.

- If their employer is the City of Ashland, including the Parks and Recreation Department.
- In calculating the living wage, employers may add the value of health care, retirement,

401K and IRS eligible cafeteria plans (including childcare) benefits to the amount of wages received by the employee.

- **Note:** For temporary and part-time employees, the Living Wage does not apply to the first 1040 hours worked in any calendar year. For more details, please see Ashland Municipal Code Section 3.12.020.

For additional information:

Call the Ashland City Administrator's office at 541-488-6002 or write to the City Administrator, City Hall, 20 East Main Street, Ashland, Oregon 97520, or visit the City's website at www.ashland.or.us.

Notice to Employers: This notice must be posted predominantly in areas where it can be seen by all employees.

CERTIFICATIONS/REPRESENTATIONS: Consultant, by and through its authorized representative, under penalty of perjury, certifies that (a) the number shown on the attached W-9 form is its correct taxpayer ID (or is waiting for the number to be issued to it and (b) Consultant is not subject to backup withholding because: (i) it is exempt from backup withholding, or (ii) it has not been notified by the Internal Revenue Service (IRS) that it is subject to backup withholding as a result of a failure to report all interest or dividends, or (iii) the IRS has notified it that it is no longer subject to backup withholding. Consultant further represents and warrants to City that: (a) it has the power and authority to enter into this Agreement and perform the Work, (b) the Agreement, when executed and delivered, shall be a valid and binding obligation of Consultant enforceable in accordance with its terms, (c) the work under the Agreement shall be performed in accordance with the highest professional standards, and (d) Consultant is qualified, professionally competent, and duly licensed (if applicable) to perform the Work. Consultant also certifies under penalty of perjury that its business is not in violation of any Oregon tax laws, it is an independent contractor as defined in the Agreement, it is authorized to do business in the State of Oregon, and Consultant has checked four or more of the following criteria that apply to its business.

- _____ (1) Consultant carries out the work or services at a location separate from a private residence or is in a specific portion of a private residence, set aside as the location of the business.
- _____ (2) Commercial advertising or business cards or a trade association membership are purchased for the business.
- _____ (3) Telephone listing is used for the business separate from the personal residence listing.
- _____ (4) Labor or services are performed only pursuant to written contracts.
- _____ (5) Labor or services are performed for two or more different persons within a period of one year.
- _____ (6) Consultant assumes financial responsibility for defective workmanship or for service not provided as evidenced by the ownership of performance bonds, warranties, errors and omission (professional liability) insurance or liability insurance relating to the Work or services to be provided.

Consultant's signature

Date