



## Ordinance No. 11-01

**A SPECIAL ORDINANCE VACATING AN ALLEY RIGHT-OF-WAY, LOCATED  
SOUTH OF UNION AVENUE, NORTH OF SHASTA WAY, WEST OF EAST MAIN  
STREET, AND EAST OF OWENS STREET**

**WHEREAS**, the applicants, Cook Woods and Klamath Health Partnership, have submitted a written proposal for vacation of certain real property which is hereinafter described; and

**WHEREAS**, a public hearing was held on October 25, 2010, pursuant to applicable laws, at which time all evidence and objection with reference to said proposed vacation were considered by the Planning Commission; and

**WHEREAS**, hearing notices were duly given and the City Council held a public hearing on December 6, 2010, on the recommendation of and including the record of the Planning Commission concerning the vacation; and

**WHEREAS**, pursuant to such record and hearing the City Council has determined the vacation to be in compliance with the Community Development Ordinance and the Comprehensive Plan; and

**WHEREAS**, the City Council adopted the findings of the Planning Commission, as modified by staff, attached hereto and incorporated by this reference as Exhibit B; and

**WHEREAS**, the applicant, Klamath Health Partnership, is required as a condition of this vacation to complete the deed restriction or replat required in Condition number four of Section 2 of this Ordinance prior to the second reading of the proposed ordinance; NOW, THEREFORE,

**THE CITY OF KLAMATH FALLS ORDAINS AS FOLLOWS:**

**Section 1.**

There is hereby vacated an alley right-of-way as shown on the map attached hereto as Exhibit A, and described as:

An alley right-of-way approximately 20 feet in width that abuts Lots 10, 11, 12, 13, 14, 15, 16, 17, 18 and 19 of Block 206 of Mills 2nd Addition.

**Section 2.**

The vacation ordered in Section 1 is subject to the following conditions:

1. The applicants shall construct a City approved clean-out at the north end of the alley at the south right-of-way line of Union Avenue.
2. The applicants shall create an agreement designating the ownership of the 6-inch sewer line to the adjacent properties that are serviced by the 6-inch sewer line.
3. The applicants shall create a utility line access easement for the 6-inch sewer line for the 200 feet of line that runs adjacent to Klamath Health Partnership Lot 19 prior to the second reading of an ordinance vacating the alley.
4. Klamath Health Partnership shall, through a deed restriction or replat, prohibit the individual sale or development of lots 1, 2, 3, 19, and 20 of Block 206 of Mills 2nd Addition and lots 1, 2, 8, 9, 10, 11, 12, and 13 of Block 205 of Mills 2nd Addition, or any portion thereof.
5. The City shall revoke the three encroachment permits recorded in the Klamath County Clerk's office as M04-45835, M04-60711, and M04-82103.

Passed by the Council of the City of Klamath Falls, Oregon, the 18<sup>th</sup> day of January, 2011.

Presented to the Mayor, approved and signed this 19<sup>th</sup> day of January, 2011.

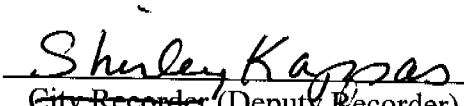
  
\_\_\_\_\_  
Mayor

ATTEST:

  
\_\_\_\_\_  
City Recorder

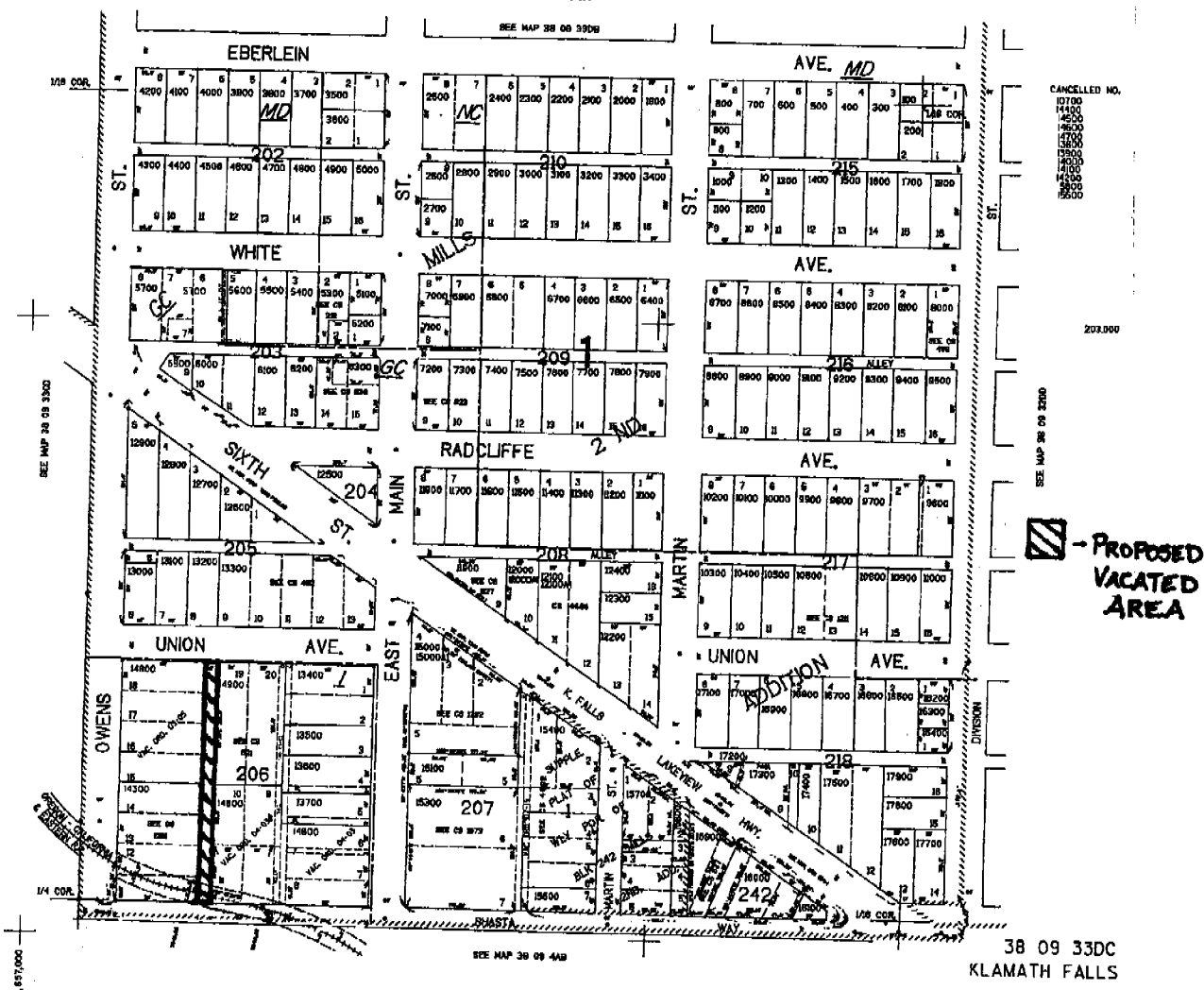
STATE OF OREGON                    }  
COUNTY OF KLAMATH            }  
CITY OF KLAMATH FALLS        }       SS

I, Shirley Kappas, ~~Recorder~~ (Deputy Recorder) for the City of Klamath Falls, Oregon, do hereby certify that the foregoing is a true and correct copy of an Ordinance duly adopted by the Council of the City of Klamath Falls, Oregon at the meeting on the 18<sup>th</sup> day of January, 2011 and therefore approved and signed by the Mayor and attested by the City Recorder

  
\_\_\_\_\_  
City Recorder (Deputy Recorder)

REVISED 10-01-08  
THIS MAP WAS PREPARED FOR  
ASSESSMENT PURPOSE ONLY

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KLAMATH FALLS



## **Exhibit B FINDINGS**

This proposal is being reviewed according to the provisions of the Klamath Falls Community Development Ordinance (CDO), Chapters 10-14, specifically Sections 13.005-13.055, regarding Vacations.

**A. Criterion: Consent of the owners of the requisite area has been obtained.**

Facts and Analysis: Per CDO Section 10.515(1) consent of the owners of all abutting property and of not less than two thirds in area of the real property affected thereby as defined by ORS 271.080(2) are required. The applicant obtained the signatures of all abutting property owners (Cook Woods and Klamath Health Partnership) and 86.69% of the surrounding property area as defined by ORS requirements.

Finding: Consent of the owners of the requisite area has been obtained. **This criterion is met.**

**B. Criterion: Notice of the proposed vacation has been duly given.**

Facts and Analysis: Notice of this public hearing before the Planning Commission was mailed to 30 adjacent property owners on September 23, 2010 and published in the Herald and News on October 3, 2010.

Finding: Notice of the proposed vacation was duly given by mail and published in the local newspaper. **This criterion is met.**

**C. Criterion: The public interest will not be prejudiced by the vacation of such plat or part thereof.**

Facts and Analysis: The alley right-of-way proposed for vacation is approximately 391.15 feet in length along the west right-of-way line and 396.17 feet in length along the east right-of-way line. This alley right-of-way is 20 feet in width along its entire length. The right-of-way is located between Shasta Way and Union Avenue, south of Union Avenue, north of Shasta Way, west of East Main Street, and east of Owens Street. If approved, the abutting properties will equally receive 10 feet of the right-of-way.

A portion of the alley is currently in the process of being repaved to driveway standards for the Klamath Health Partnership parking lot on the southwest corner of Union Avenue and East Main Street. The alley is unimproved for the remainder of the alley right-of-way south of the parking lot. There is a new paved apron at the northern end of the alley terminus that is built to driveway specifications.

The alley in question has three recorded public right-of-way encroachment permits issued by the City of Klamath Falls. The encroachment permits are recorded in the Klamath County Clerk's office as M04-45835, M04-60711, and M04-82103. If the Alley is vacated, the three permits should be officially revoked by the City. The following information is regarding the three encroachment permits:

M04-45835 is an encroachment permit that allows Klamath Health Partnership, non-exclusive permission to encroach upon a two and one-half foot strip of the alley. This permit is granted for the limited purpose of adding parking spaces and painted striping.

M04-60711 is an encroachment permit that allows Cook Woods, non-exclusive permission to encroach upon a portion of the alley for limited purpose of a fire service waterline. This waterline services a building owned by Cook Woods that is addressed as 1629 Owens Street. This waterline runs from East Main Street, across Lot 6, then across a 20 foot vacated alley, then across Lot 9, and across Lot 10 of Block 206. The waterline then crosses the alley proposed for vacation at an angle for 30 feet, before proceeding across Lots 15, 16, and 17 of Block 206.

M04-82103 is an encroachment permit that allows 5C, LLC (Cook Woods), non-exclusive permission to encroach upon a portion of the alley right-of-way adjacent to Lots 10, 11, 12, 13, and 14 of Block 206. Exhibit B of this encroachment permit establishes that a fence is allowed, but shall have gates and that all materials shall be clear from the alley. The machinery and sawdust that are currently located in the alley are not permitted through this encroachment permit and shall be removed if the proposed vacation is not approved. There are two fences that traverse the alley right-of-way that belong to Cook Woods. These fences were installed to protect equipment and material, and prevent people from accessing the work area. Fence Permit 139-F-04 approved a 6' high fence with barbed wire. Gates were installed at each end of the alley right-of-way as per the encroachment permit.

The City does not have any water, storm water pipe, or geothermal infrastructure in this right-of-way. The City does have a 6-inch sewer line in the alley. Full access is beneficial for any future maintenance or reconstruction of the sewer line. If the alley is vacated the Engineering Division recommends that the properties being serviced by the sewer line construct a City approved clean-out at the north end of the alley where it meets the south right of way line of Union Avenue. This clean-out would enable the Wastewater Division to maintain the sewer line from a sewer manhole at the centerline intersections of Union Avenue and the Alley to the proposed clean-out, which is approximately 30 feet south. At the southern end of the Alley is an existing sewer lamphole. From the proposed clean-out to the existing lamphole the sewer line would need to become privately maintained by the adjacent properties that are serviced by the 6-inch sewer line.

Avista Gas, Qwest, and Pacific Power and Light (PP&L) commented, but had no objections to the proposed vacation. Charter Communications was given opportunity to comment regarding the proposed vacation, but no comments were received. No comments, either for or against, were received from property owners within the notification area.

According to James Beauchemin with the State of Oregon, the title to the OC&E railroad spur as mentioned by City Engineering is clouded. This vacation shall not involve Oregon Parks and Recreation Department (OPRD) land holdings, alter the integrity of the existing rail bed or change OPRD legal property rights in any manner. *The railroad spur does not receive any additional property through the vacation process as the reversion rights belong to the original lots of Block 206 of Mills 2nd Addition. That portion of the railroad spur between Owens Street and Shasta Way is an easement and therefore does not have any consent/non-consent rights. Also, there are no indications that an easement was ever created for the railroad spur to cross Shasta Way, Owens Street, or the subject alley. It is most likely the City of Klamath Falls granted the railroad permission to cross the public right-of-ways.*

Finding: Closure of the alley proposed for vacation would only be allowed with the construction of a City approved clean-out and the creation of an agreement designating the existing 6-inch sewer line as privately owned and maintained. If the Alley is vacated, the three encroachment permits should be officially revoked by the City. No comments were received in opposition of this proposed vacation. The public interest will not be prejudiced by the vacation of this right-of-way if the previous conditions are imposed. **This criterion is met with conditions.**

**D. Criterion: The vacation conforms to the Comprehensive Plan, all applicable provisions of Chapters 10 to 14 of the City Code and any applicable street plans.**

Facts and Analysis: The vacation of this right-of-way would eliminate a potential access point on Union Avenue and a potential access point on Shasta Way. Union Avenue is currently classified as a local street. The portion of Shasta Way adjacent to the alley is currently not classified as it is not developed. Once Shasta Way right-of-way is widened and fully developed it will most likely be classified as a major collector.

The vacation of the alley would allow for this industrial zoned block to properly function as a larger uninterrupted industrial site about 160,000 square feet in size. This is in conformance with Comprehensive Plan Policy 239 which states that lands designated for industrial use shall be preserved

for that use and protected from incompatible uses. Creating a larger uninterrupted site discourages smaller separate businesses from occupying the lots.

Finding: The vacation conforms to the Comprehensive Plan and applicable provisions of Chapters 10 to 14 of the CDO and any applicable street plans. **This criterion is met.**