

**RECORDING COVER SHEET (Please Print or Type)**

This cover sheet was prepared by the person presenting the instrument for recording. The information on this sheet is a reflection of the attached instrument and was added for the purpose of meeting first page recording requirements in the State of Oregon, ORS 205.234, and does NOT affect the instrument.

*THIS SPACE RESERVED FOR USE BY  
THE COUNTY RECORDING OFFICE*

**AFTER RECORDING RETURN TO:**

Attn: Alissa Angelo, Deputy City Recorder  
City of Stayton  
362 N. Third Avenue  
Stayton, OR 97383

REEL 3622 PAGE 59  
MARION COUNTY  
BILL BURGESS, COUNTY CLERK  
07-22-2014 09:01 am.  
Control Number 365270 \$ 66.00  
Instrument 2014 00024553

**1) TITLE(S) OF THE TRANSACTION(S) ORS 205.234(a)**

Ordinance No. 972, an ordinance vacating a portion of N. Fourth Avenue, south of E. Cedar Street, in the City of Stayton, marion County, Oregon and establishing and retaining a Public Utility Easement

**2) DIRECT PARTY / GRANTOR(S) ORS 205.125(1)(b) and 205.160**

City of Stayton  
362 N. Third Avenue  
Stayton, OR 97383

**3) INDIRECT PARTY / GRANTEE(S) ORS 205.125(1)(a) and 205.160**

**4) TRUE AND ACTUAL CONSIDERATION**  
ORS 93.030(5) – Amount in dollars or other

\$ \_\_\_\_\_  Other

**5) SEND TAX STATEMENTS TO:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**6) SATISFACTION of ORDER or WARRANT**  
ORS 205.125(1)(e)

CHECK ONE:  FULL  
(If applicable)  PARTIAL

**7) The amount of the monetary obligation imposed by the order or warrant. ORS 205.125(1)(c)**

\$ \_\_\_\_\_

**8) If this instrument is being Re-Recorded, complete the following statement, in accordance with ORS 205.244: "RERECORDED AT THE REQUEST OF \_\_\_\_\_**

\_\_\_\_\_ TO CORRECT \_\_\_\_\_

PREVIOUSLY RECORDED IN BOOK \_\_\_\_\_ AND PAGE \_\_\_\_\_, OR AS FEE NUMBER \_\_\_\_\_."

## ORDINANCE 972

### AN ORDINANCE VACATING A PORTION OF N FOURTH AVENUE, SOUTH OF E CEDAR STREET, IN THE CITY OF STAYTON, MARION COUNTY, OREGON AND ESTABLISHING AND RETAINING A PUBLIC UTILITY EASEMENT

WHEREAS, ORS 271.080(1) provides that whenever any person interested in any real property in an incorporated city desires to vacate all or part of any street, such person may file a petition setting forth a description of the ground to be vacated, the purpose for which the ground is proposed to be used and the reason for such vacation;

WHEREAS, ORS 271.080(2) provides that appended to such petition, and as a basis for granting the same, must be the written and authorized consent of the owners of all abutting property and of not less than two-thirds in area of the real property affected;

WHEREAS, Allan Rasmussen, representing the Darla Rasmussen Revocable Living Trust, Arthur Porter, Debbie Fessler and Laura Traegar have filed a Petition requesting that the portion of N Fourth Avenue running between the Petitioners' properties be vacated;

WHEREAS, the purpose and reason for the street vacation is to revert ownership of the vacated street portion to the respective Petitioners, so that they can utilize the property;

WHEREAS, appended to such Petition was the written and authorized consent of the owners of all abutting property and of over two-thirds in area of the real property affected;

WHEREAS, on May 27, 2014 the Stayton Planning Commission did conduct a public hearing and following the public hearing recommended to the City Council that the subject portion of right of way of N Fourth Avenue be vacated;

WHEREAS, June 16, 2014, the Stayton City Council did conduct a public hearing concerning the proposed vacation at which public testimony and the written record were received and considered;

WHEREAS, at the conclusion of the public hearing the Stayton City Council determined that it was in the public interest to vacate a portion of N Fourth Avenue, for approximately 113 feet south of E Cedar St; and

WHEREAS, the public interest will be prejudiced if the vacation of N Fourth Avenue is allowed without the retention of a public utility easement.

NOW, THEREFORE the Stayton City Council hereby ordains as follows:

**Section 1.** That a portion of N Fourth Avenue in Stayton, Marion County, Oregon, specifically the street portion hereafter described and as shown on Exhibit A attached hereto and made a part hereof, is hereby vacated subject to a public utility easement:

Beginning at the northeast corner of Lot 4 in the Third Avenue Subdivision recorded in Volume H46, Page 25 Marion County Book of Town Plats and proceeding S 00°09'34"E 112.53 feet to the southeast corner of Lot 3 in said Third Avenue Subdivision; thence generally southeast on a curve with a radius of 45.00 feet to the east right of way line of N Fourth Avenue and the west line of Lot 10 shown a Survey for A. B. Dombrowsky and recorded with the Marion County Surveyor as County Survey 12921; then proceeding

N00°59'W to the northwest corner of said Lot 10 and the southerly line of the E Cedar St right of way; then proceeding N89°345'W 60 feet to the place of beginning.

**Section 2.** It is in the public interest that the street vacation, acted upon by this Ordinance, is conditioned by the retention of a public utility easement (PUE) over the area to be vacated.

The Public Utility Easement is retained by the City to be used for: all municipal purposes, including but not limited to sewer, water and storm drainage, and for the use and benefit of public utility companies furnishing electric power, natural gas, communication, and cable television; to construct and maintain public utilities; and for unrestricted ingress and egress on the property described above for the purpose of installing, repairing, testing, maintaining, and replacing the utilities and maintaining the utilities and related facilities.

The PUE described above shall be non-exclusive except that City of Stayton and such public utilities shall have the exclusive right to construct, install, maintain and operate the utilities, their equipment and all related facilities above and below ground within the PUE including the right of access to such facilities and the right to require the removal of any obstructions including trees and vegetation that may be placed within the PUE, at property owner's expense.

The PUE shall include the exclusive right, privilege, and authority to the City of Stayton and such public utilities to excavate for, and to construct, build, install, lay, patrol, operate, maintain, repair, replace, and remove underground sanitary sewer, storm drain, or water pipelines; electric power, transmission, and supply cables; natural gas pipelines; and cable television and communication lines with all appurtenances incident thereto or necessary therewith, including aboveground valve boxes, fire hydrants, or manholes, in, under, and across the said premises, and together with the right of the City of Stayton and utility owners to place, excavate, replace, repair, install, maintain, operate, inspect, add to the number of and relocate such utilities and necessary appurtenances, and make excavations therefore from time to time, in, under, and through the above-described premises within said Easement, and to cut and remove from said easement any trees and other obstructions which may endanger the safety or interfere with the use of said utilities, or appurtenances attached to or connected therewith; and the right of ingress and egress to and over said above-described premises at any and all times for the above purposes; and for doing anything necessary, useful, or convenient for the enjoyment of the Easement hereby retained.

The City of Stayton may use the surface of the PUE provided such use does not interfere with property owner's rights described in this PUE. The property owners shall not permit any other use or utilities to be located in the PUE without the written consent of the City of Stayton. Approved uses within the PUE shall consist of, but are not limited to, landscaping, paved driveway or parking areas, trails, paths, sidewalks or other uses that will not affect the ability of the City or utilities to access the PUE. Prohibited uses shall consist of, but are not limited to, permanent structures, buildings, or any other obstruction, excavation or alteration of the PUE. The PUE shall perpetually encumber the property. No additional earth fill or embankment shall be placed within the PUE, nor over any utility fixture therein without a specific written agreement between affected utility owners that may be beneficiaries of the PUE, and property owners, their successors, or assigns. Should such specific agreement be

anticipated, the City of Stayton will set forth the conditions under which such fill or embankment may be placed, including a stipulation that all risks of damage to the utilities shall be assumed by property owner, their successors, or assigns.

The City of Stayton and utilities shall be responsible for the maintenance of the utilities and related facilities located within the PUE. Property owners shall be responsible for landscape and surface maintenance within the PUE. The City of Stayton's use of the PUE shall not unreasonably interfere with property owners' use of their property.

The City of Stayton, and each utility owner beneficiary of the PUE, upon the initial installation, and upon each and every occasion that the same be repaired, replaced, renewed, added to, or removed, shall restore the premises, and any improvements disturbed by the work, to as good condition as it was prior to any such installation or work, including the restoration of any topsoil and lawn.

**Section 3.** This Ordinance shall take effect 30 days after adoption by the Stayton City Council and the Mayor's signing and shall be recorded in the Marion County Deed Records.


ADOPTED BY THE STAYTON CITY COUNCIL this 16<sup>th</sup> day of June, 2014

CITY OF STAYTON

Date: 6-16, 2014

By:   
A. Scott Vigil, Mayor

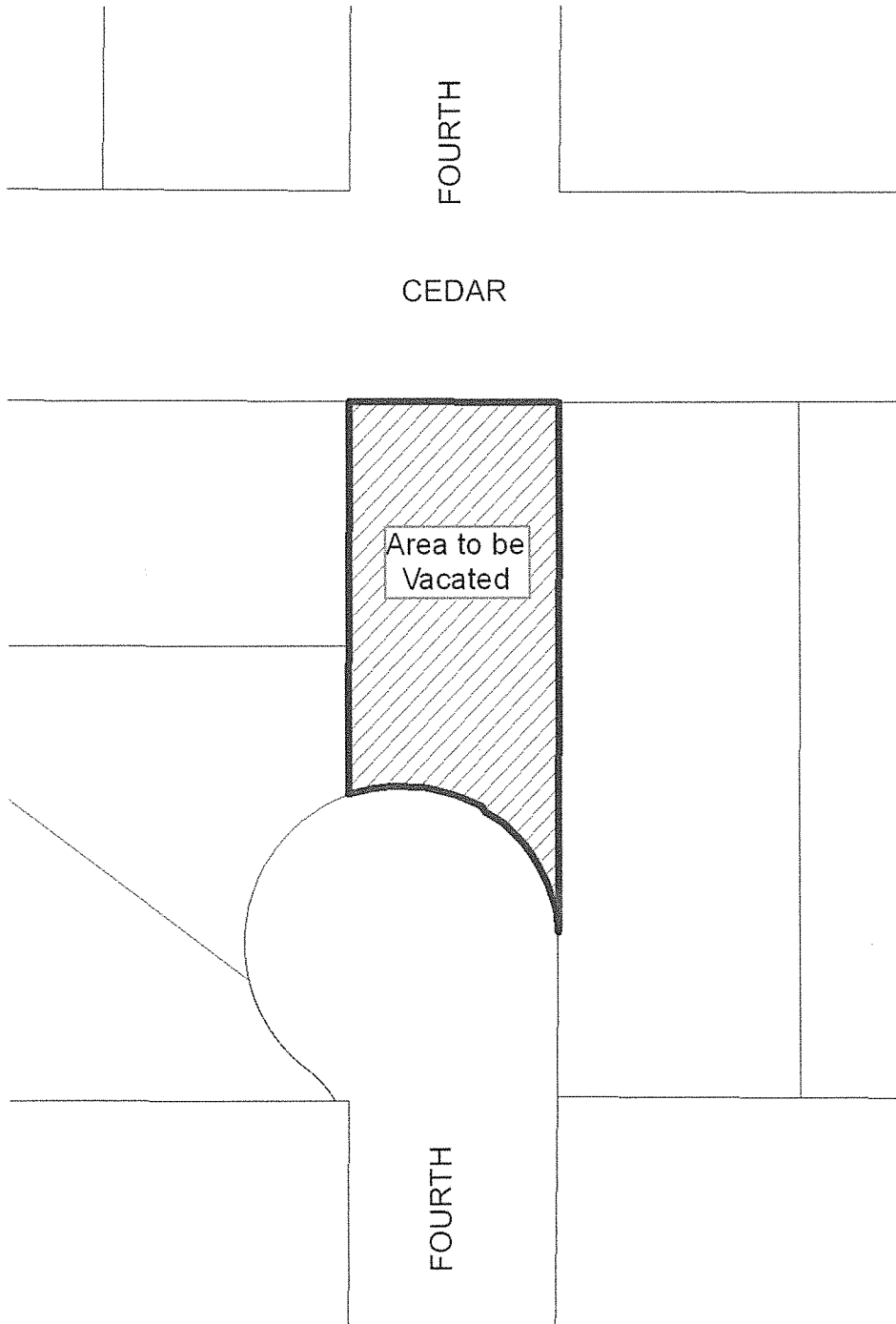
Date: 6-16, 2014

Attest:   
Keith D Campbell, City Administrator

APPROVED AS TO FORM:

  
David A. Rhoten, City Attorney

Exhibit A  
Area to be Vacated  
N Fourth Avenue



**REEL: 3622**

**PAGE: 59**

**July 22, 2014, 09:01 am.**

CONTROL #: 365270

State of Oregon  
County of Marion

I hereby certify that the attached  
instrument was received and duly  
recorded by me in Marion County  
records:

FEE: \$ 66.00

BILL BURGESS  
COUNTY CLERK

THIS IS NOT AN INVOICE.