

Council Business Meeting

June 15, 2021

Agenda Item	Request for a Water Service Connection Use Outside of City Limits at 1033 Clay Street	
From	Scott Fleury PE	Public Works Director
Contact	Scott.fleury@ashland.or.us ; (541) 552-2412	

SUMMARY

Before the Council is a request to approve the use from an existing water service connection outside of city limits but within the Urban Growth Boundary (UGB) for the residential property located at 1033 Clay Street. Requirements for a water service connection outside of city Limits, and within the UGB are detailed in Ashland Municipal Code 14.04.060.

POLICIES, PLANS & GOALS SUPPORTED

City Council Goals:

- Maintain Essential Services – Water

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 Council has previously approved water service connections outside city limits and within the UGB.

BACKGROUND AND ADDITIONAL INFORMATION

Public Works staff was contacted by the property owner at 1033 Clay regarding the potential to obtain a City water service due to a failing and significantly under producing well. The property is located outside of City limits but within the UGB and is a .47-acre parcel zoned RR5 by Jackson County. The property is occupied by an 1,801 square foot single story house and associated landscaping.

The property owner had a recent well production test done and the well provided 32 gallons before running out of water and the well only recovered 6 inch after a 15-minute pause. Drilling a new well or deepening the existing well does not guarantee an adequate amount of water will be found to support daily needs.



Ashland Municipal Code 14.04.060 details the requirements associated with approval of a water service connection outside City limits, but within the Urban Growth Boundary.

A. Except as provided herein, no premises located outside the City of Ashland may be connected to the City water system or make use of water obtained through a direct or indirect connection to the City water system.

B. Premises outside the City may be connected to the City water system only as follows:

1. Connections authorized by the Council prior to June 18, 1997.
2. Connections authorized by the Council for City or other governmental facilities.
3. Connections authorized by resolution of the Council where the Council finds:
 - i. The connection is determined, at the Council's discretion, to be in the best interest of the City of Ashland and to not be detrimental to the City's water facilities or resources.
 - ii. The applicant secures, in writing, a statement from the Environmental Health Division, Health Department, Jackson County, Oregon, that the existing water system for the premises has failed.
 - iii. The failed water system cannot feasibly be repaired or improved and there is no other feasible source of water for the premises.
 - iv. An Ashland water main or line exists within 100 feet of the premises.
 - v. The connection is to premises within the City's urban growth boundary.

C. Connections authorized under subsection B.3 above shall be made only after all the criteria in subsection B.3 and the following conditions have been met:

1. The applicant for water service pays the water connection fee for connections outside the City and the systems development charges established by the City. **If approved applicant will pay the appropriate system development charges-condition will be satisfied.**
2. In the event dwellings or buildings connected to the water system are subsequently replaced for any reason, then the replacement building or dwelling may continue to be connected to the water system of the City as long as the use of the water system will not be increased as determined by the Director of Public Works.
3. The applicant furnish to the City a consent to the annexation of the premises and a deed restriction preventing the partitioning or subdivision of the land prior to annexation to the City, signed by the owners of record and notarized so that it may be recorded by the City and binding on future owners of the premises. The cost of recording the deed restriction shall be paid by the property owner. **The applicant will provide the consent to annexation and consent not to subdivide documents for the premises-condition will be satisfied (reference attachments #1 & 2).**
4. The property owner shall execute a contract with the City of Ashland which provides for: payment of all charges connected with the provision of water service to the property; compliance with all ordinances of the City related to water service and use; termination of service for failure to comply with such ordinances and that failure to pay for charges when due shall automatically become a lien upon the property. A memorandum of the contract shall be recorded in the county deed records with the cost of recording to be paid by the property owner. **The property owner will execute a contract with the City-condition will be satisfied (reference attachment #3).**

D. The requirements of this section are in addition to, and not in lieu of, land use approvals and authorizations necessary for extraterritorial extension of water service required by Oregon law.

E. Any person who violates any provision of this chapter shall be punished as set forth in AMC 1.08.020 in addition to other legal and equitable remedies available to the City of Ashland, including restriction or termination of service.

FISCAL IMPACTS

The only resource is staff time expended to bring forth the request to the City Council. The property owner will be required to pay the recording fees associated with the consent to annexation; consent not to subdivide; pay the appropriate system development charge (SDC) and the monthly water bill charges.

The SDC fee for residential is calculated on a square foot basis for livable space (\$2.6069/square foot). The residential unit is 1801 square feet in total. The total SDC is calculated to be 1,801 square feet by \$2.6069/square foot = \$4,695.03.

STAFF RECOMMENDATION

Staff recommends approval of the water service connection for 1033 Clay Street as the property owner has or will meet all conditions specified in AMC 14.08.031.

ACTIONS, OPTIONS & POTENTIAL MOTIONS

I move to approve a water service connection for use outside of city limits for 1033 Clay Street.

I move to deny a water service connection for use outside of city limits for 1033 Clay Street.

REFERENCES & ATTACHMENTS

Attachment 1: Consent to Annexation

Attachment 2: Consent not to Subdivide

Attachment 3: Water Service Contract

CITY OF ASHLAND
IRREVOCABLE CONSENT TO ANNEXATION

The undersigned, referred to in this document as "Owner" whether singular or plural, owns or is the purchaser under a recorded land sale contract of real property in Jackson County, Oregon, described below and referred to in this document as "the property":

See attached Exhibit "A"

In consideration of the City of Ashland permitting the connection of Owner's building water system from the building on the portion of the Property currently outside the City to the water system of the City of Ashland, Owner declares and agrees that the portion of the Property currently outside the City shall be held, sold, and conveyed subject to the following covenants, conditions, and restrictions which shall constitute covenants running with the land and shall be binding on all parties their heirs, successors, and assigns, having any right, title, or interest in said property currently outside the City or any part thereof:

Whenever a proposal to annex the property is initiated by the City of Ashland or otherwise, Owner shall consent and does consent to the annexation of the property to the City of Ashland. Owner agrees this consent to annexation is irrevocable.

Dated this _____ day of _____, 2021.

Signature: _____
James Hartman

State of Oregon)
) ss:
County of Jackson)

Personally, appeared the above named James Hartman and acknowledged the foregoing instrument to be his voluntary act and deed.

Notary Public for Oregon
My Commission expires:_____

Exhibit A

Beginning at a point on the west side line of Clay Street 1621.40 feet South of its intersection with the southerly side line of Siskiyou Boulevard;
thence West $448 \frac{1}{3}$ feet;
thence North 87.0 feet;
thence East $448 \frac{1}{3}$ feet;
to the west side line of Clay Street; thence South 87.0 feet to the point of beginning; being a portion of Lot 20 of the Bellevue Tract in JCO.

CITY OF ASHLAND
RESTRICTIVE COVENANT

The undersigned for themselves, their heirs, assigns, executors, and administrators covenant with the City of Ashland, Oregon, with respect to the land as described and set forth in Exhibit "A", attached hereto and by this reference made a part hereof, that they will not partition, subdivide, nor apply for a partition or subdivision of any portion of the property outside of the **City Limits Boundary encompassed within the full legal description of said property in Exhibit "A" is annexed to the City of Ashland**. Upon annexation of the land outside of **City Limits** described in Exhibit "A" to the City of Ashland, this Restrictive Covenant shall automatically terminate.

The undersigned warrant and represent to the City of Ashland that they are the owners or contract purchasers of land situated in County of Jackson, State of Oregon and as described in Exhibit "A", as set forth herein above.

The covenant contained herein shall run with the land as described in the attached Exhibit "A" and shall also inure to the benefit of the City of Ashland, Oregon.

The consideration for this covenant is the furnishing of water services to the land set forth in Exhibit "A" while it is outside the City of Ashland, by the City of Ashland Oregon.

Dated this _____ day of _____, 2021.

Signature: _____
James Hartman

State of Oregon)
) ss.
County of Jackson)

Personally, appeared the above named James Hartman and acknowledged the foregoing instrument to be his voluntary act and deed.

Notary Public for Oregon

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thence West $448 \frac{1}{3}$ feet;
thence North 87.0 feet;
thence East $448 \frac{1}{3}$ feet;
to the west side line of Clay Street; thence South 87.0 feet to the point of beginning; being a portion of Lot 20 of the Bellevue Tract in JCO.

EXCEPTING THEREFROM:

A tract or parcel of land situated in the Northwest quarter of Section 5, Township 39 South, Range 1 East, Willamette Meridian, Jackson County, Oregon, and being more fully described as follows:

Commencing at a found Brass Disk set in concrete monumenting the Southeast corner of Donation Land Claim No. 48, Township 38 South, Range 1 East, Willamette Meridian, Jackson County, Oregon; thence South 0°19'45" West, 1954.09 feet, to a 3" Diameter brass disk set in concrete and being the initial point of VICTORIA - SUBDIVISION - UNIT NO. 1, in the City of Ashland, Jackson County, Oregon, said point also bears South 70°41'00" East, 237.67 feet, from a found 3/4" iron pipe situated at the Northeast corner of Lot 1, Block 1, PLEASANT VIEW SUBDIVISION, in the City of Ashland, Jackson County, Oregon; thence South 20°09'40" West, along the Northwesterly boundary line of the VICTORIA SUBDIVISION as aforementioned, 120.00 feet, to a found 5/8" iron pin, situated at the Southwest corner of said subdivision, for the true point of beginning; thence South 70°41'00" East, along the Southwesterly boundary line of the VICTORIA SUBDIVISION and the extension thereof, 294.42 feet, to a found 5/8" iron pin, situated on the average center line of Fox Street per Recorded Survey No. 4087; thence South 54°25'25" West, along said center line, 122.22 feet, to a found 5/8" iron pin; thence leaving said center line, North 70°41'00" West, 225.60 feet, to a found pipe which bears North 20°09'40" East, 4.0 feet, from a found 5/8" iron pin; thence North 20°09'40" East, 100.00 feet, to the point of beginning.

EXCEPTING THEREFROM a strip of land 20.0 feet in width, when measured at right angles to the average center line of Fox Street, along the Southeasterly side of the above described parcel.

EXCEPTING THEREFROM:

A tract or parcel of land situated in the Northwest Quarter of Section 5, Township 39 South, Range 1 East, of the Willamette Meridian in Jackson County, Oregon, and being more fully described as follows:

Commencing at the Southeast corner of Donation Land Claim No. 48, Township 38 South, Range 1 East, of the Willamette Meridian in Jackson County, Oregon; thence South 10°18'15" West, 2170.55 feet to a 1/2" galvanized iron pipe for the true point of beginning; thence South 20°02'27" West, 4.0 feet, to a 5/8" iron pin; thence South 38°51'44" East, 162.56 feet, to a 5/8" iron pin, situated on the right of way of Fox Street; thence North 54°18'14" East, 110.10 feet, to a 5/8" iron pin; thence leaving said right of way, North 70°49'21" West, 201.21 feet, to the true point of beginning.

EXCEPTING THEREFROM:

A tract or parcel of land situated in the Northwest Quarter of Section 5, Township 39 South, Range 1 East, Willamette Meridian, Jackson County, Oregon, and being more fully described as follows:

Commencing at the Southeast corner of Donation Land Claim No. 48, Township 38 South, Range 1 East, Willamette Meridian, Jackson County, Oregon; thence South 10°18'15" West, 2170.55 feet to a 1/2" galvanized iron pipe; thence South 20°02'27" West, 83.95 feet, to a 5/8" iron pin for the true point of beginning; thence continuing South 20°02'27" West, 155.08 feet; thence North 89°52'49" East, 51.54 feet, to a 5/8" iron pin situated on the right of way of Fox Street; thence North 54°18'14" East, 86.30 feet, to a 5/8" iron pin; thence leaving said right of way, North 35°43'21" West, 117.30 feet, to the true point of beginning.

NOTE: This legal description was created prior to January 1, 2008.

AGREEMENT FOR PURCHASE OF CITY WATER

Agreement made this ____ day of _____, 2021, between the city of Ashland, Oregon (“City”) and Jim Hartman (“Hartman”).

RECITALS

- A. Hartman owns property outside the city and desires connection to City’s water supply system for a dwelling owned by Hartman located on the following described property:

See attached Exhibit A

- B. Connections to City’s water system for dwellings located outside the city are authorized by Resolution No. 97-27 where the council finds:

1. The connection is determined to be in the best interest of the City of Ashland and not to be detrimental to City’s water facilities or resources.
2. The applicant secures, in writing, a statement from the Environmental Health Division and Health Department of Jackson County, Oregon that the existing water system for the premises has failed.
3. The failed water system cannot feasibly be repaired or improved and there is no other feasible source of water for the premises.
4. An Ashland water main or line exists within one hundred (100) feet of the premises.
5. The connection is to premises within City’s urban growth boundary.

- C. On June 15, 2021, City Council made such findings and authorized the connection on the terms and conditions contained within this Agreement.

City and Hartman agree:

1. Water Sale: City shall supply to Hartman a 3/4" residential water service from its water system for the dwelling located on Hartman’s property described above. The water service shall be provided to Hartman’s southeasterly boundary line from the existing water main located on the north side of East Main St.
2. Fees and Charges to be Paid by Hartman:
 - a. Hartman shall pay City’s water connection fee for connections outside

City and the systems development charges established by City.

- b. City shall supply a water meter at a location to be determined by City to measure the volume of water delivered to the property and Hartman shall pay for all water delivered to the property through such meter at those rates established by City for customers served outside City.
- c. Payment by Hartman shall be made upon receipt of billing by City. If the bill is not paid by the next billing date, a notice complying with the then-current regulations for utility notices shall be given stating that service will be disconnected if the bill is not paid by the date specified.

3. Terms of Service:

- a. Hartman shall comply with all ordinances of City related to water service and use. City shall have the right to terminate service for failure to comply with such ordinances upon ten (10) days' notice to Hartman.
- b. Failure to pay for charges when due shall automatically become a lien upon the property.
- c. A memorandum of this contract shall be recorded in the county deed records with the cost of recording to be paid by Hartman.
- d. In the event dwellings or buildings connected to the water system are subsequently replaced for any reason, the replacement building or dwelling may continue to be connected to the water system of City as long as the use of the water system will not be increased as determined by the Director of Public Works.
- e. Hartman shall furnish to City a consent to the annexation of the premises and a deed restriction preventing the partitioning or subdivision of the land prior to annexation to City, signed by the owners of record and notarized so that it may be recorded by City and binding on future owners of the premises. The cost of recording the deed restriction shall be paid by the property owner.

4. Quantity and Pressure of Water. No liability shall accrue against City arising by reason of shortages in the quantity of water available, lack of water pressure, or interruptions in water deliveries to Hartman for any reason including, but not limited to accidents or failure of City facilities or supply or from any cause beyond City's control including, without limitation, war or acts of God.

5. Default. Time is of the essence of this Agreement. There shall be a default under

this Agreement if either party fails to perform any act or obligation required of that party by this Agreement.

- a. Before declaring a default, the party claiming a failure has occurred shall give written notice to the other party specifying the nature of the breach with reasonable particularity. No default shall occur if the breach is remedied with ten (10) days after the notice is given.
- b. If the breach specified in the notice is of such a nature that a remedy cannot be completely performed within the ten-day period, no default shall occur if the party receiving the notice begins performance of the act or obligation within the ten-day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable.
- c. If substantially the same breach for which notice was given recurs within six (6) months, the party injured by such breach may declare a default by giving written notice to the other party specifying the nature of the breach.

- 6. Remedies. In addition to the remedies specified elsewhere in this Agreement, if a default occurs, the party damaged by the default may elect to terminate this Agreement and pursue any equitable or legal rights and remedies available under Oregon law.
- 7. Assignment. Hartman may not assign or subcontract rights or obligations under this Agreement without the written consent of City, which consent shall not be unreasonably withheld.

City of Ashland, Oregon

 JIM HARTMAN
 1033 CLAY STREET
 ASHLAND OR 97520
 (541) 821-1300

By: _____
 City Manager

REVIEWED AS TO CONTENT

By: _____
 City Department Head
 Date: _____

REVIEWED AS TO FORM

By: _____

David Lohman
City Attorney

Date: _____