

**CITY OF WEST RICHLAND
ORDINANCE NO. __-19**

AN ORDINANCE OF THE CITY OF WEST RICHLAND, WASHINGTON, RELATING TO RIGHTS OF WAY; RECOGNIZING RESERVED RIGHTS OF WAY CONTAINED IN LAND PATENTS ISSUED BY THE UNITED STATES OF AMERICA; AND ACCEPTING AND DECLINING OFFERS OF DEDICATION OF CERTAIN OF SAID RIGHTS OF WAY.

WHEREAS, the City of West Richland, Washington, (the "City") was incorporated on June 17, 1955. At or about the time of incorporation the City encompassed lands identified as Section 6 and a portion of Section 8, Township 9 North, Range 28 East, Willamette Meridian, or has subsequently annexed said lands after the date of incorporation, which lands are commonly referred to as "Willamette Heights" and are referred to hereinafter as "Section 6" or "Section 8" as the context may require; and

WHEREAS, many if not all of the lots contained in said Section 6 and Section 8 were acquired by their present owners, or the predecessors in interest of the present owners, by patents issued by the United States of America. These patents were authorized by several Acts of Congress, including as approved on June 1, 1938, (52 Stat. 609) which is commonly referred to as the "Small Tract Act"; and

WHEREAS, Section 6 was formally platted into lots and access roads, which plat contained on its face a dedication of roads and public utilities easements and which plat was accepted by Benton County on or about August 22, 1955, and filed for record as AFN 354587; and

WHEREAS, the City identified and adopted local roadway plans for Section 6 and Section 8 as early as 1993, which plans have subsequently been amended in 1999, August 2006, April 2014, April 2018 and on November 5, 2019 (as to Section 6) and in 1999, December 2006, July 2011, August 2012, January 2013, January 2018, and on April 17, 2018 (as to Section 8); and

WHEREAS, on July 17, 2018, the City Council passed Ord. No. 19-18, formally adopting local roadway plans for Section 8, in order to further confirm a logical unified road system that utilizes previously established travel routes, respects topography, and prevents unnecessary roads from being created; and

WHEREAS, on November 5, 2019, the City Council passed Ord. No. 33-19, formally adopting local roadway plans for Section 6, in order to further confirm a logical unified road system that utilizes previously established travel routes, respects topography, and prevents unnecessary roads from being created; and

WHEREAS, from time to time the City has been asked by persons who own or who have an interest in real property in Section 6 or Section 8 to identify a process for vacating rights of way created by the Small Tract Act, particularly in circumstances where the rights of way are not integral to the City's roadway plans and also are unlikely to have any purpose for the City's future needs for roadway or public utilities. Because of uncertainty regarding the technical legal nature of the right of way reservations in the patents for Section 6 and Section 8, and the lack of a comprehensive assessment of the City's needs for the right of way reservations in the patents for Section 6 and Section 8, the City has usually taken the position that no mechanism exists for vacating said rights of way; and

WHEREAS, an offer of dedication for roadway and public utilities purposes, after acceptance by the City, constitutes a valid easement interest which may then be abandoned or vacated by the City pursuant to RCW 35A.11.020 and other applicable state and local law; and

WHEREAS, the City construes the right of way reservations in the patents for Section 6 and Section 8 as offers of public dedication, some of which have heretofore been accepted pursuant to various actions in reliance thereon constituting common law acceptance of said offers of dedication; and

WHEREAS, the City has undertaken a lengthy process of identifying offers of dedication in Section 6 and Section 8 in addition to the aforementioned local roadway plans that should be formally accepted because of their importance to orderly future development of the City, as well as accommodation of public infrastructure, the needs of the City's franchise holders, and other purposes in support of the general public health, safety, and welfare; and

WHEREAS, the City's determination herein to not accept offers of dedication regarding certain right of way reservations in the patents for Section 6 and Section 8 will help achieve benefits for the public interest by clarifying the City's interests in said rights of way. As a result, this action will promote opportunities to use the areas of said rights of way for other purposes; and

WHEREAS, this ordinance does not contain any provision that is intended to, or will, affect the terms of any United States patent or otherwise affect title to any lands in Section 6 or Section 8, including any prior dedications based on the platting of Section 6, offers of dedication in the patents for Section 6 and Section 8 previously accepted pursuant to various actions in reliance thereon constituting common law acceptance of said offers of dedication, and any vacations formally approved by the City in either Section 6 or Section 8, except to the extent specifically stated herein as a matter of local action accepting or rejecting certain offers of dedication affecting the patents for Section 6 and Section 8; and

WHEREAS, the City proposed adoption of an ordinance to accept and reject certain offers of dedication in Section 6 and Section 8 as an action of the City pursuant

to the State Environmental Policy Act, Ch. 43.21C RCW ("SEPA"). The City's Public Works Department prepared a SEPA checklist for said action dated August 26, 2019. After reviewing the SEPA checklist, the City's Community Development Department issued a determination of non-significance dated August 29, 2019, which also gave public notice of a 14-day comment period. The comment period closed on September 12, 2019; and

WHEREAS, the City conducted a public open house informational meeting on October 8, 2019, during which time City staff were available to answer questions about this process and its intended effects; and

WHEREAS, the Council on November 5, 2019 adopted resolution 38-19 establishing a public hearing date of November 19, 2019 for acceptance of offers of dedication for Section 6 and Section 8; and

WHEREAS, the Council conducted a public hearing to consider the actions set forth herein on November 19, 2019, at which public comment was accepted; and

WHEREAS, the City Council has determined that the actions set forth herein are consistent with the goals and policies of the City's comprehensive plan; and

WHEREAS, the City Council has determined that the actions set forth herein are in the best interests of the general public health, safety, and welfare;

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF WEST RICHLAND, WASHINGTON, do hereby ordain as follows:

Section 1: Recognition of reserved easements: The City hereby recognizes and ratifies all rights of way set forth in the land patents issued by the United States of America for roadway and public utilities purposes to the full width stated in said patents for Section 6 and Section 8, Township 9 North, Range 28 East, Willamette Meridian; provided, however, that nothing in this ordinance is intended to affect, or in any way does affect, any lands in said Section 8 outside of the territorial limits of the City on the date hereof.

Section 2: Nondisturbance of plat dedications for Section 6: By Benton County's acceptance of the plat for Section 6 in 1955, a completed dedication occurred in accordance with the terms on the face of said plat. The City does not hereby disturb or alter in any way the status of any dedications set forth on the face of the plat for Section 6, Township 9 North, Range 28 East, Willamette Meridian.

Section 3: Accepted offers of dedication for Section 6 and Section 8: The City hereby accepts the offers of dedication set forth in the patents issued by the United States of America for rights of way for roadway and public utilities purposes to the full width stated in said patents for Section 6, Township 9 North, Range 28 East, Willamette Meridian as more fully set forth in the attached Exhibit A. The City hereby accepts the

offers of dedication set forth in the patents issued by the United States of America for rights of way for roadway and public utilities purposes to the full width stated in said patents for Section 8, Township 9 North, Range 28 East, Willamette Meridian as more fully set forth in the attached Exhibit B.

Section 4: Declined offers of dedication for Section 6 and Section 8: Provided, however, the City declines the offers of dedication set forth in the land patents issued by the United States of America for rights of way for roadway and public utilities purposes in said patents for Section 6 and Section 8, Township 9 North, Range 28 East, Willamette Meridian, which are not specifically identified as set forth in the attached Exhibits A and B.

Section 5: Severability: If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

Section 6: Effective date: This ordinance shall take effect and be in force five days after publication.

**PASSED BY THE CITY COUNCIL OF THE CITY OF WEST RICHLAND,
WASHINGTON,** at a regular meeting thereof this _____ day of _____, 2019.

Brent Gerry, Mayor

ATTEST:

Julie Richardson, City Clerk

APPROVED AS TO FORM:

Bronson Brown, City Attorney

Publication Date: _____