

AGENDA ITEM SUMMARY

DATE: 02-09-09 DEPARTMENT: Planning

DEPT. HEAD SIGNATURE: *ER*

SUBJECT: 2nd reading of Ordinance 1026 – vacation of a portion of Cedar Street between Blocks 125 and 136

AUTHORITY: ID Code _____ IAR _____ City Ordinance/Code _____
(IF APPLICABLE)

BACKGROUND/SUMMARY OF ALTERNATIVES CONSIDERED:

The Council held a public hearing and first reading of Ordinance 1026 on January 26, 2009.

FISCAL IMPACT / PROJECT FINANCIAL ANALYSIS: Case# _____
Budget Line Item # _____ YTD Line Item Balance \$ _____
Estimated Hours Spent to Date: _____ Estimated Completion Date: _____
Staff Contact: _____ Phone # _____
Comments: _____

ACKNOWLEDGEMENT BY OTHER AFFECTED CITY DEPARTMENTS: (IF APPLICABLE)

- | | | |
|---|--|---|
| <input type="checkbox"/> City Administrator | <input type="checkbox"/> Library | <input type="checkbox"/> Safety Committee |
| <input type="checkbox"/> City Attorney | <input type="checkbox"/> Mayor | <input type="checkbox"/> Streets |
| <input type="checkbox"/> City Clerk | <input type="checkbox"/> Planning | <input type="checkbox"/> Treasurer |
| <input type="checkbox"/> Building | <input type="checkbox"/> Police | _____ |
| <input type="checkbox"/> Engineer | <input type="checkbox"/> Public Works, Parks | _____ |
| <input type="checkbox"/> Fire Dept. | <input type="checkbox"/> P & Z Commission | _____ |

RECOMMENDATION FROM APPLICABLE DEPARTMENT HEAD:

ADMINISTRATIVE COMMENTS/APPROVAL:

City Administrator _____ Dept. Head Attend Meeting (circle one) Yes No

ACTION OF THE CITY COUNCIL:

Date 2/9 - 1st reading
2/19 - conducted second reading
2/23 - 3rd reading - authorize Mayor to sign
City Clerk 2/25 - publish in Idaho Mtn. Express

FOLLOW-UP:

*Ord./Res./Agmt./Order Originals: Record
Copies (all info.): _____
Instrument # _____

*Additional/Exceptional Originals to: _____
Copies (AIS only)

HAILEY ORDINANCE NO. 1026

AN ORDINANCE OF THE CITY OF HAILEY, IDAHO, VACATING THAT PORTION OF THE CITY RIGHT-OF-WAY WITHIN CEDAR STREET BETWEEN BLOCKS 125 AND 136, ORIGINAL HAILEY TOWNSITE; PROVIDING FOR EXECUTION OF A QUITCLAIM DEED BY THE MAYOR CONVEYING TITLE TO THE VACATED PROPERTY TO THE OWNER OF PROPERTY ADJACENT TO THE VACATED RIGHT-OF-WAY; AND PROVIDING FOR THE EFFECTIVE DATE OF THIS ORDINANCE UPON PASSAGE, APPROVAL, AND PUBLICATION ACCORDING TO LAW.

WHEREAS, the Hailey City Council has determined, and hereby finds, that the portion of Cedar Street between Blocks 125 and 136, Original Hailey Townsite, is no longer needed for as a public street and that vacation of the portion of Cedar Street between Blocks 125 and 136, Original Hailey Townsite is expedient for the public good; and

WHEREAS, the Hailey City Council believes it is appropriate to vacate the portion of Cedar Street between Blocks 125 and 136, Original Hailey Townsite.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF HAILEY, IDAHO, AS FOLLOWS:

Section 1. The city of Hailey hereby vacates the portion of Cedar Street between Blocks 125 and 136, Original Hailey Townsite, as shown on the official Plat of the City of Hailey on file in the office of the Blaine County Recorder.

Section 2. The Mayor of the City of Hailey is hereby authorized to execute and deliver a quitclaim deed, on behalf of the City of Hailey, transferring title to one-half (1/2) of each side of vacated property to the adjacent property owners pursuant to Idaho Code Section 50-311.

Section 3. This Ordinance shall be in full force and effect from and after its passage and publication according to law.

PASSED AND ADOPTED BY THE HAILEY CITY COUNCIL AND APPROVED BY THE MAYOR THIS ____ DAY OF FEBRUARY, 2009.

Richard L. Davis, Mayor, City of Hailey

Attest:

Mary Cone, City Clerk

Published in the Idaho Mountain Express February 25, 2009

ACCESS, UTILITY AND PARKING EASEMENT AGREEMENT

This Access, Utility and Parking Easement Agreement ("**Easement Agreement**") is made this 23rd day of February, 2009, by and between the State of Idaho, and the City of Hailey ("**Grantors**") and City of Hailey, Idaho ("**Grantee**").

RECITALS

A. The City of Hailey, as to an undivided ½ interest, and the State of Idaho, as to an undivided ½ interest, are the owners in fee simple of a parcel of property located in the City of Hailey, Idaho, more particularly described as the portion of Cedar Street between Blocks 125 and 136, Original Hailey Townsite, as shown on the official Plat of the City of Hailey on file in the office of the Blaine County Recorder, Idaho ("**Vacated Street**") and owners in fee simple of the property adjacent to the Vacated Street in all of Block 136 and in Lots 8 through 12, inclusive, and Lots 20 through 24, inclusive, Block 125 Original Hailey Townsite, as shown on the official Plat of the City of Hailey on file in the office of the Blaine County Recorder, Idaho. The City of Hailey has granted a vacation of the Vacated Street.

B. Grantee is a body politic and corporate and has the power and authority to own and hold interests in real property.

C. Grantors and Grantee desire to establish an access, utility and parking easements across and adjacent to the Vacated Street to enable the public to use the easements for access, utility and parking purposes. The easements granted herein are voluntary easements and have not been granted as a condition of the vacation of the Vacated Street.

AGREEMENT

NOW, THEREFORE, IN CONSIDERATION of the above recitals which are incorporated below, and of the mutual covenants and agreements herein contained and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Grant of Easements. Grantors hereby grant and convey to Grantee, and its successors and assigns, a non-exclusive a) fifty foot (50') wide public access and utility easement over, across and under the southern portion of the Vacated Street between Third Avenue and Fourth Avenue ("**Access and Utility Easement**"), and b) thirteen foot (13') wide parking easement over and across the most northern portion of Block 136, Original Hailey Townsite, as shown on the official Plat of the City of Hailey on file in the office of the Blaine County Recorder, Idaho, between Third Avenue and Fourth Avenue ("**Parking Easement**") (the Access and Utility Easement and the Parking Easement are collectively referred to as the "**Easements**"). The Easements are adjacent and contiguous to each other.

2. Purposes/Restrictions. The Easements may be used for the following uses and are granted subject to the following restrictions:

(a) The Easements shall be used solely for the benefit of Grantee and the general public.

(b) The Access and Utility Easement may be used for i) vehicular and pedestrian access by members of the public, ii) vehicular parking by members of the public, iii) improvement, repair and maintenance of street, sidewalk, curb, gutter and other improvements within the Access and Utility Easement by Grantee, and iv) improvement, repair and maintenance of public utilities within the Access and Utility Easement by Grantee or other utilities.

(c) The Parking Easement may be used for i) vehicular parking by members of the public, ii) vehicular and pedestrian access by members of the public, and iii) improvement, repair and maintenance of street, sidewalk, curb, gutter and other improvements within the Parking Easement by Grantee.

3. Successors and Assigns. All provisions of this Easement Agreement, including the benefits and burdens, run with the land covered hereby and are binding on and inure to the benefit of the heirs, permitted assigns, permitted successors, tenants and personal representatives of the parties hereto.

4. Recordation of Instrument. The parties agree that this Easement Agreement may be duly recorded by Grantors.

5. Miscellaneous Provisions.

a. Headings. The headings in this Easement Agreement are inserted for convenience and identification only and are in no way intended to describe, interpret, define or limit the scope, extent or intent of this Easement Agreement or any provision hereof.

b. Severability. Every provision of this Easement Agreement is intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the Easement Agreement.

c. Remedies. The rights and remedies provided by this Easement Agreement are cumulative and the use of any one right or remedy by any party shall not preclude or waive its rights to use any or all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

d. Amendment. This Easement Agreement may be amended only in writing signed by the all of the parties.

e. Attorneys Fees. Should any action be brought to interpret or enforce any provision hereof, or for damages for breach hereof, the prevailing party shall be entitled to such reasonable attorney's fees and costs as may be determined by any court of competent jurisdiction wherein such action is brought, and on appeals and in bankruptcy proceedings.

f. Entire Agreement. This Easement Agreement contains the entire agreement between the parties respecting the matters herein set forth and supersedes all prior agreements between the parties hereto respecting such matter.

g. Governing Law. This Easement Agreement shall be construed in accordance with the laws of the State of Idaho.

h. Counterparts. This Easement Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

i. Presumption. No presumption shall exist in favor of or against any party to this Easement Agreement as the result of the drafting and preparation of the document.

IN WITNESS WHEREOF, the Parties have executed this Easement Agreement the day and year written herein.

GRANTORS

MILITARY DIVISION, OFFICE OF THE
GOVERNOR, STATE OF IDAHO

By _____
Major General Lawrence F. Lafrenz
The Adjutant General, Idaho National Guard

CITY OF HAILEY

By: _____
Richard L. Davis, Mayor

ATTEST:

Mary Cone, City Clerk

GRANTEE

CITY OF HAILEY

By: _____
Richard L. Davis, Mayor

WATER LINE EASEMENT AGREEMENT

This Water Line Easement Agreement (“**Easement Agreement**”) is made this 23rd day of February, 2009, by and between the State of Idaho, and the City of Hailey (“**Grantors**”) and City of Hailey, Idaho (“**Grantee**”) (Grantors and Grantees are collectively referred to as “**Parties**”).

RECITALS

A. The City of Hailey, as to an undivided ½ interest, and the State of Idaho, as to an undivided ½ interest are the owners in fee simple of a parcel of property located in the City of Hailey, Idaho, more particularly described as Lots 8 through 12, inclusive, and Lots 20 through 24, inclusive, Block 125 Original Hailey Townsite, the vacated alley between Lots 8 through 12, inclusive, and Lots 20 through 24, inclusive, Block 125 Original Hailey Townsite, and the fifty foot (50') portion north of the centerline of the right-of-way known as Cedar Street, directly between Blocks 125 and 136, of the Original Hailey Townsite, as shown on the official Plat of the City of Hailey on file in the office of the Blaine County Recorder, Idaho (“**Servient Estate**”).

B. Grantee is a body politic and corporate and has the power and authority to own and hold interests in real property.

C. Grantors and Grantee desire to establish a water line easement across, over and under the Servient Estate to enable the grantee to use the easement for water line purposes.

AGREEMENT

NOW, THEREFORE, IN CONSIDERATION of the above recitals which are incorporated below, and of the mutual covenants and agreements herein contained and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Grant of Easement. Grantors hereby grant and convey to Grantee, and its successors and assigns, a non-exclusive fifteen foot (15') wide public water line easement over, across and under the Servient Estate, centered over the legal description more particularly described on attached **Exhibit “A”** and depicted on attached **Exhibit “B”** (“**Water Line Easement**”).

2. Purposes/Restrictions. The Water Line Easement may be used for the operation, improvement, reconstruction, repair and maintenance of the water line within the Water Line Easement by Grantee and shall be used solely for the benefit of Grantee and the general public.

3. Successors and Assigns. All provisions of this Easement Agreement, including the benefits and burdens, run with the land covered hereby and are binding on and inure to the benefit of the heirs, permitted assigns, permitted successors, tenants and personal representatives of the Parties hereto.

4. Recordation of Instrument. The Parties agree that this Easement Agreement may be duly recorded by Grantors.

5. Miscellaneous Provisions.

a. Headings. The headings in this Easement Agreement are inserted for convenience and identification only and are in no way intended to describe, interpret, define or limit the scope, extent or intent of this Easement Agreement or any provision hereof.

b. Severability. Every provision of this Easement Agreement is intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the Easement Agreement.

c. Remedies. The rights and remedies provided by this Easement Agreement are cumulative and the use of any one right or remedy by any party shall not preclude or waive its rights to use any or all other remedies. Said rights and remedies are given in addition to any other rights the Parties may have by law, statute, ordinance or otherwise.

d. Amendment. This Easement Agreement may be amended only in writing signed by the all of the Parties.

e. Attorneys Fees. Should any action be brought to interpret or enforce any provision hereof, or for damages for breach hereof, the prevailing party shall be entitled to such reasonable attorney's fees and costs as may be determined by any court of competent jurisdiction wherein such action is brought, and on appeals and in bankruptcy proceedings.

f. Entire Agreement. This Easement Agreement contains the entire agreement between the Parties respecting the matters herein set forth and supersedes all prior agreements between the Parties hereto respecting such matter.

g. Governing Law. This Easement Agreement shall be construed in accordance with the laws of the State of Idaho.

h. Counterparts. This Easement Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

i. Presumption. No presumption shall exist in favor of or against any party to this Easement Agreement as the result of the drafting and preparation of the document.

IN WITNESS WHEREOF, the Parties have executed this Water Line Easement Agreement the day and year written herein.

GRANTORS

MILITARY DIVISION, OFFICE OF THE
GOVERNOR, STATE OF IDAHO

By _____
Major General Lawrence F. Lafrenz
The Adjutant General, Idaho National Guard

CITY OF HAILEY

By: _____
Richard L. Davis, Mayor

ATTEST:

Mary Cone, City Clerk

GRANTEE

CITY OF HAILEY

By: _____
Richard L. Davis, Mayor

ATTEST:

Mary Cone, City Clerk

STATE OF IDAHO)
) ss.
County of Blaine)

On this ____ day of February, 2009, before me, a Notary Public in and for said State, personally appeared Lawrence F. Lafrenz, known or identified to me to be the Adjutant General of the State of Idaho, who executed the foregoing instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

Notary Public for Idaho
Residing at: _____
My commission expires: _____

STATE OF IDAHO)
) ss.
County of Blaine)

On this ____ day of February, 2009, before me, a Notary Public in and for said State, personally appeared Richard L. Davis, known or identified to me to be the Mayor of the City of Hailey, who executed the foregoing instrument, and acknowledged to me that he executed the same.

In witness thereof, I have set my hand and affixed my seal the day and year in this certificate above written.

Name: _____
Notary Public for Idaho
Residing at _____
My commission expires _____

SEWER LINE EASEMENT AGREEMENT

This Sewer Line Easement Agreement (“**Easement Agreement**”) is made this 23rd day of February, 2009, by and between the State of Idaho, and the City of Hailey (“**Grantors**”) and City of Hailey, Idaho (“**Grantee**”) (Grantors and Grantees are collectively referred to as “**Parties**”).

RECITALS

A. The City of Hailey, as to an undivided ½ interest, and the State of Idaho, as to an undivided ½ interest, are the owners in fee simple of a parcel of property located in the City of Hailey, Idaho, more particularly described as Lots 8 through 12, inclusive, and Lots 20 through 24, inclusive, Block 125 Original Hailey Townsite, the vacated alley between Lots 8 through 12, inclusive, and Lots 20 through 24, inclusive, Block 125 Original Hailey Townsite, and the fifty foot (50') portion north of the centerline of the right-of-way known as Cedar Street, directly between Blocks 125 and 136, of the Original Hailey Townsite, as shown on the official Plat of the City of Hailey on file in the office of the Blaine County Recorder, Idaho (“**Servient Estate**”).

B. Grantee is a body politic and corporate and has the power and authority to own and hold interests in real property.

C. Grantors and Grantee desire to establish a sewer line easement across, over and under the Servient Estate to enable the grantee to use the easement for sewer line purposes.

AGREEMENT

NOW, THEREFORE, IN CONSIDERATION of the above recitals which are incorporated below, and of the mutual covenants and agreements herein contained and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Grant of Easement. Grantors hereby grant and convey to Grantee, and its successors and assigns, a non-exclusive 16.8' wide public sewer line easement over, across and under the Servient Estate, more particularly described on attached **Exhibit “A”** and depicted on attached **Exhibit “B”** (“**Sewer Line Easement**”). The legal description of the existing location of a sewer mainline on the Servient Estate is described in attached **Exhibit “A.”** The width of the Sewer Line Easement is 6.8' east and 10.0' west of the existing sewer mainline, as depicted on attached **Exhibit “B.”**

2. Purposes/Restrictions. The Sewer Line Easement may be used for the operation, improvement, reconstruction, repair and maintenance of the sewer line within the Sewer Line Easement by Grantee and shall be used solely for the benefit of Grantee and the general public.

3. Successors and Assigns. All provisions of this Easement Agreement, including the benefits and burdens, run with the land covered hereby and are binding on and inure to the benefit of the heirs, permitted assigns, permitted successors, tenants and personal representatives of the Parties hereto.

4. Recordation of Instrument. The Parties agree that this Easement Agreement may be duly recorded by Grantors.

5. Miscellaneous Provisions.

a. Headings. The headings in this Easement Agreement are inserted for convenience and identification only and are in no way intended to describe, interpret, define or limit the scope, extent or intent of this Easement Agreement or any provision hereof.

b. Severability. Every provision of this Easement Agreement is intended to be severable. If any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the Easement Agreement.

c. Remedies. The rights and remedies provided by this Easement Agreement are cumulative and the use of any one right or remedy by any party shall not preclude or waive its rights to use any or all other remedies. Said rights and remedies are given in addition to any other rights the Parties may have by law, statute, ordinance or otherwise.

d. Amendment. This Easement Agreement may be amended only in writing signed by the all of the Parties.

e. Attorneys Fees. Should any action be brought to interpret or enforce any provision hereof, or for damages for breach hereof, the prevailing party shall be entitled to such reasonable attorney's fees and costs as may be determined by any court of competent jurisdiction wherein such action is brought, and on appeals and in bankruptcy proceedings.

f. Entire Agreement. This Easement Agreement contains the entire agreement between the Parties respecting the matters herein set forth and supersedes all prior agreements between the Parties hereto respecting such matter.

g. Governing Law. This Easement Agreement shall be construed in accordance with the laws of the State of Idaho.

h. Counterparts. This Easement Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

i. Presumption. No presumption shall exist in favor of or against any party to this Easement Agreement as the result of the drafting and preparation of the document.

IN WITNESS WHEREOF, the Parties have executed this Sewer Line Easement Agreement the day and year written herein.

GRANTORS

MILITARY DIVISION, OFFICE OF THE
GOVERNOR, STATE OF IDAHO

By _____
Major General Lawrence F. Lafrenz
The Adjutant General, Idaho National Guard

CITY OF HAILEY

By: _____
Richard L. Davis, Mayor

ATTEST:

Mary Cone, City Clerk

GRANTEE

CITY OF HAILEY

By: _____
Richard L. Davis, Mayor

ATTEST:

Mary Cone, City Clerk

STATE OF IDAHO)
) ss.
County of Blaine)

On this _____ day of February, 2009, before me, a Notary Public in and for said State, personally appeared Lawrence F. Lafrenz, known or identified to me to be the Adjutant General of the State of Idaho, who executed the foregoing instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

Notary Public for Idaho
Residing at: _____
My commission expires: _____

STATE OF IDAHO)
) ss.
County of Blaine)

On this _____ day of February, 2009, before me, a Notary Public in and for said State, personally appeared Richard L. Davis, known or identified to me to be the Mayor of the City of Hailey, who executed the foregoing instrument, and acknowledged to me that he executed the same.

In witness thereof, I have set my hand and affixed my seal the day and year in this certificate above written.

Name: _____
Notary Public for Idaho
Residing at _____
My commission expires _____