

## REQUEST FOR COUNCIL ACTION

**SUBJECT:** 3620 West Street Vacation

**SUMMARY:** Ratification or modification of Ordinance 11-33 conditionally vacating an 870 square foot section of 3620 West Street between 7800 South Street and 7825 South Street.

**FISCAL IMPACT:** None.

### STAFF RECOMMENDATION:

Staff recommends that the City Council declare the inadvertently signed Memorandum of Understanding to be invalid and also do one of the following: (1) direct staff to prepare, and present to City Council at a future City Council meeting, a new ordinance to eliminate conditions 1 and 3 and modify condition 4 of Ordinance 11-33; or (2) direct staff to prepare, and present to City Council at a future City Council meeting, a new ordinance to modify conditions 1, 3 and 4 of Ordinance 11-33; or (3) ratify the conditions of vacation found in Ordinance 11-33.

### MOTION RECOMMENDED:

**Motion #1:** "I move to declare the inadvertently executed Memorandum of Understanding invalid."

**Motion #2: Option 1 (direct staff to prepare a new ordinance eliminating conditions 1, 3 and modifying condition 4)**

"I move to direct staff to prepare a new Ordinance to supersede Ordinance 11-33 and remove conditions 1 and 3 and modify condition 4."

**Option 2 (direct staff to prepare a new ordinance modifying conditions 1, 3 and 4)**

"I move to direct staff to prepare a new Ordinance to supersede Ordinance 11-33 and modify conditions 1, 3 and 4 as follows: \_\_\_\_\_"

**Option 3 (Ratify Ordinance 11-33)**

“I move to ratify Ordinance 11-33.”

**Prepared by:**



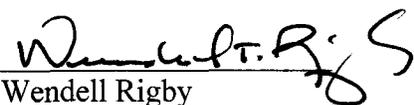
Paul Coates  
ODA Manager

**Reviewed by:**



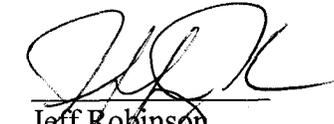
Tom Burdett  
Development Director

**Reviewed by:**

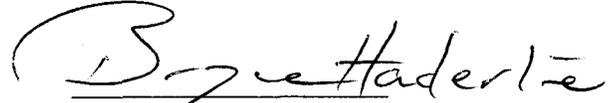


Wendell Rigby  
Public Works Director

**Reviewed as to legal form:**

  
Jeff Robinson  
City Attorney

**Recommended by:**

  
Bryce Haderlie  
Interim City Manager

## **BACKGROUND DISCUSSION:**

In the years 2011 and 2012, the Utah Department of Transportation (UDOT) undertook an Innovative Intersection Construction project (the project) affecting the intersections of 6200 South, 7000 South and 7800 South. The project included a new grade separated interchange at 7800 South. As part of the new ramp configuration, UDOT purchased the home at 7813 South 3620 West and planned to close 3620 West at the point it meets 7800 South. The home at 7813 South 3620 West was removed as part of the ramp and roadway construction.

On October 26, 2011, the City Council was presented with a request to approve the vacation of 3620 West as part of the project. Staff recommended, and the City Council approved, Ordinance 11-33, conditionally vacating a portion of 3620 West Street located in the Western Hills Phase 1 Subdivision. Ordinance 11-33 states that the 870 square feet is vacated subject to the following conditions:

1. Install landscaping in accordance with Zoning Ordinance Section 13-13-11B-1.
2. Modify the access intersections into Western Hills and Nobel Heights Subdivisions, as well as the 3620 West 7825 South intersection, in a manner approved by the West Jordan Engineering Department in order to improve traffic circulation on the two remaining intersections and notify drivers that a portion of 3620 West Street has been closed.
3. Bond for the improvements to the property.
4. Complete recordation of the plat to vacate 3620 West Street in Western Hills Phase 1 Subdivision prior to the closure of the street.

A vacation plat was provided to the City, but it was not recorded because UDOT failed to meet conditions 1 and 3, and consequently, the vacation could not occur under the terms of Ordinance 11-33. Without waiting for the vacation to be completed, UDOT installed a 6-foot tall privacy wall along 7800 South and running the width of 3620, effectively closing the road to vehicular traffic, so the requirement of condition 4 to record the plat prior to closure was also not met.

In addition, UDOT sold the property located at 7813 South 3620 West, the property for which landscaping and bond were required, to the adjoining property owner to the south. City staff has communicated with the new owner in an attempt to meet the conditions of Ordinance 11-33 in order to complete the vacation. While understanding and cooperative, the owner has a longer time frame to construct his proposed garden improvements, and as of the date of this Request for Council Action, conditions 1, 3 and 4 remain unmet.

Prior to UDOT's sale of the property at 7813 South 3620 West, UDOT insisted that the City could not require UDOT to meet the conditions of vacation set forth in Ordinance 11-33. The City disagreed. In an attempt to resolve the impasse (UDOT had already constructed the wall and was preparing to sell the 7813 South 3620 West property), UDOT and City staff engaged in discussions of possible solutions. Possible solutions may have included: (1) UDOT completing the conditions to landscape and bond for improvement of 7813 South 3620 West; (2) City Council passing a new vacation ordinance eliminating conditions 1 and 3 and modifying condition 4; or (3) City Council passing a new vacation ordinance revising conditions 1, 3 and 4. City staff determined to approach City Council and seek guidance but decided to pursue a signed

UDOT commitment prior to doing so. To that end, UDOT and City staff discussed entering a MOU. A detail of the pursuit of a MOU is included in the Chronology below:

### **Chronology**

1. On October 26, 2011, City Council approved Ordinance 11-33 which conditionally vacated a portion of 3620 West at 7800 South contingent on certain conditions.
2. In 2012, UDOT closed the road but not all conditions had been met.
3. City staff engaged in multiple meetings and communications regarding UDOT's failure to meet the conditions.
4. Ultimately, UDOT and City staff decided to pursue a memorandum of understanding ("MOU") between the City and UDOT.
5. City staff engaged in multiple communications and some meetings with UDOT regarding a MOU.
6. City staff discussed and agreed to obtain UDOT's signature on a MOU (to memorialize UDOT's commitment) and then approach City Council for approval of the MOU and a new ordinance changing the original vacation conditions of Ordinance 11-33.
7. UDOT drafted a MOU that did not accurately reflect City staff's envisioned changes to the conditions of Ordinance 11-33.
8. UDOT mailed the original of its MOU, signed by UDOT, to the City with a signature block for the City Manager's signature. This occurred while City staff was reviewing and amending an electronic version of UDOT's draft. The UDOT-signed MOU was never approved by the City or internally by City staff.
9. Rick inadvertently signed the UDOT MOU, and it was returned to UDOT.
10. Staff quickly realized the mistake.
11. City staff then engaged in communication with UDOT, explaining the mistake.
12. UDOT acknowledged the mistake, agreed to treat the MOU as null and void and informed City staff that UDOT would shred the signature page according to its own policy.
13. The City and UDOT were never able to agree on the terms of the MOU, and a subsequent MOU was never signed.
14. The plat vacating 3620 West has never been signed or recorded.

Because there was no agreement, City staff is not able to propose revised conditions of vacation (to supersede conditions 1 and 3, and modify condition 4) that would be acceptable to UDOT, and City staff is also not able to provide a MOU to support any elimination of or change to the unmet conditions.

City staff recommends that the City Council declare the inadvertently signed MOU invalid and either ratify the existing conditions of vacation found in Ordinance 11-33 or adopt a new vacation ordinance (to supersede Ordinance 11-33) with new or different conditions of vacation. The effect of ratification would be that the portion of 3620 West would be deemed not vacated (despite the existing wall), and the plat would not be recorded. Also, it is unlikely that UDOT could meet the ratified conditions now that the property at 7813 South 3620 West is under new ownership. The effect of modifying the conditions could be similar, since UDOT no longer has ownership or control of the property. The effect of eliminating the conditions would be to remove the landscaping and bonding requirement from UDOT for 7813 South 3620 West and

allow the vacation plat to be recorded. The current property owner is subject to the City Code and may be subject to code enforcement if the property is not in compliance.

**ATTACHMENTS:**

Exhibit A – Ordinance 11-33

Legal Review-Date/Initial 10/19/11/ACT  
Text/Format-Date/Initial  
Dept. Review-Date/Initial 10/19/11/gm  
Adopted: 10/26/11 Effective: 11-2-11

## THE CITY OF WEST JORDAN, UTAH

A Municipal Corporation

ORDINANCE NO. 11-33

### AN ORDINANCE VACATING A PORTION OF 3620 WEST STREET BETWEEN 7800 SOUTH. AND 7825 SOUTH.

WHEREAS, The Utah Department of Transportation has requested that the City of West Jordan vacate an 870 square foot section of 3620 West Street between 7800 South Street and 7825 South Street (Exhibit A); and

WHEREAS, The City of West Jordan has the enabling power to vacate the streets on subdivision plats pursuant to §10-9a-609.5. Utah Code Ann.; and

WHEREAS, After receiving a positive recommendation from the Planning Commission and holding the required public hearing, the Council of the City of West Jordan finds the following:

1. The public interest will not be materially injured by vacating a portion of 3620 West within the Western Hills Subdivision – Phase 1. The proposed vacation will not violate any of the policies of the General Plan and does not affect the property lines or lot configuration(s) that existed before the Western Hills Subdivision - Phase 1 plat was recorded.
2. No person will be materially injured by the section of street being vacated. No other property is affected. The intersection at 3620 West and 7800 South will be blocked for vehicular ingress and egress, but no changes to existing streets or public or private accesses will be made as a result of the vacation.
3. There is good cause shown for vacating a portion of 3620 West between 7800 South and 7825 South and the proposed action is consistent with the requirements of State law and with Titles 13 and 14 of the West Jordan Municipal Code.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF WEST JORDAN, UTAH THAT:

An 870 square foot section of 3620 West between 7800 South and 7825 South recorded as public right-of-way within the Western Hills Subdivision – Phase 1 Plat is hereby vacated pursuant to Utah State Code Annotated - §10-9a-609.5, subject to the following conditions:

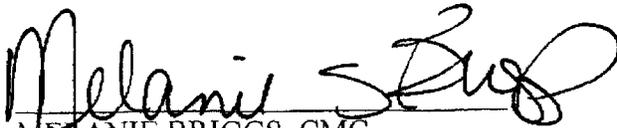
1. Install landscaping in accordance with Zoning Ordinance Section 13-13-11B-1.
2. Modify the access intersections into Western Hills and Nobel Heights Subdivisions, as well as the 3620 West 7825 South intersection, in a manner approved by the West Jordan Engineering Department in order to improve traffic circulation on the two remaining intersections and notify drivers that a portion of 3620 West Street has been closed.
3. Bond for the improvements to the property.
4. Complete recordation of the plat to vacate 3620 West Street in Western Hills Phase 1 Subdivision prior to the closure of the street.

Passed by the City Council of West Jordan, Utah, this 24 day of October, 2011.

CITY OF WEST JORDAN

By:   
 Melissa K. Johnson  
 Mayor

ATTEST:

  
 MELANIE BRIGGS, CMC  
 City Recorder



Voting by the City Council:

	"AYE"	"NAY"
Jim J. Lems	✓	_____
Clive Killpack	✓	_____
Ben Southworth	✓	_____
Lyle Summers	✓	_____
Kim V. Rolfe	✓	_____
Chad Nichols	✓	_____
Mayor Melissa K. Johnson	✓	_____

**CITY RECORDER'S CERTIFICATE OF PUBLICATION**

I, Melanie S. Briggs, certify that I am the City Recorder of the City of West Jordan, Utah, and that the foregoing ordinance was posted at the following locations on the 2 day of ~~October~~ **NON** ~~October~~, 2011: West Jordan City Hall, 8000 South Redwood Road, West Jordan, Utah; West Jordan Library, 1970 West 7800 South, West Jordan, Utah; Bingham Creek Library, 4834 West 9000 South, West Jordan, Utah and the Community Oriented Policing Substation, 7061 South 1700 West, West Jordan, Utah.

*Melanie S. Briggs*  
MELANIE S. BRIGGS, MMC

City Clerk/City Recorder

