



# MEMORANDUM

EUGENE WATER & ELECTRIC BOARD

*Rely on us.*

TO: Commissioners Brown, Carlson, Barofsky, McRae and Schlossberg  
FROM: Frank Lawson, General Manager; Anne Kah, Administrative Services Manager  
DATE: July 27, 2022 (August 2, 2022, Regular Board Meeting)  
SUBJECT: Potential Deed Provisions for EWEB Riverfront Property  
OBJECTIVE: Direction

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## **Issue**

The EWEB riverfront property is a special location with unique value to the community we serve. Commissioners expressed a desire to explore the use of a deed restriction and/or reversion clause to ensure that all future uses of this property are consistent with the values and priorities that have been established by the Board as part of this RFP evaluation process.

## **Background**

The Board directed the General Manager to conduct a Request for Proposals (RFP) process using evaluation criteria that considers both social and economic merits of the proposals. EWEB is committed to selecting the proposal that is in the best interest of EWEB, our customer-owners, and the community. Commissioners may want to take measures to ensure that the desired uses persist into the future.

## **Discussion**

The Board has voiced a preference for the property to be utilized in ways that benefit the community we serve, and Commissioners may wish to limit future uses beyond the parameters established by existing Eugene City Code (See Attachments). Commissioners also acknowledge there are potential risks that could affect the future intended use of the property, especially if ownership were to transfer from the successful proposer to a third party; examples include failure to complete development, inability to obtain adequate financing, unsuccessful business ventures, deviation from the proposed plan, or wholesale real estate investing a.k.a. “flipping”.

The RFP, Section 3.4 Terms and Conditions/Contingencies, currently provides some provisions that could be used to ensure that the property will not be used in ways that are counter to the Board’s priorities. Proposers are asked to indicate their willingness to accept a deed restriction on the property to ensure that only anticipated uses of the property are realized and certain uses are restricted.

This criterion also requests project/development proposal follow through assurance by stating: “By establishing preference points for community benefit (Section 3.1), EWEB has essentially determined that these categories represent an appropriate potential offset to revenue (direct benefit to EWEB) and other indirect benefits to EWEB. EWEB will require assurance that the use of the property and/or development will move forward as proposed. Indicate the mechanism(s) proposed to provide this assurance (e.g. performance bond, deed restriction, etc.). The Proposer must indicate if no assurance or protection as described above is offered.”

Notwithstanding this section of the RFP, EWEB has not been definitive about its potential use of a deed restriction or reversion clause, or the duration thereof.

Eugene City Code explicitly declares permitted and prohibited uses for the S-DR Downtown Riverfront Special Area Zone. Copies of these regulations are incorporated herein for reference. At the August 2, 2022 meeting, Commissioners will have an opportunity to discuss whether they want to exclude any potential uses from the property, beyond those restricted by the Code.

Furthermore, a reversionary interest could be created by a deed that reserves to the grantor a future ownership right upon the occurrence of some triggering event. Commissioners may wish to discuss the possibility of establishing a reversionary interest in the property, and under what conditions the Board might exercise this right. Examples of hypothetical scenarios that might activate a right of reversion include failure to complete the project or milestones within a specified period of time; ceasing to use the property as proposed; the purchaser entity is dissolved or otherwise no longer exists; purchaser receives a bona fide offer from a third party to purchase or lease the property for purposes that are not consistent with parameters established in the agreement; or other criteria defined by the Board. Such an agreement would include terms acceptable to both parties for establishing the sale price should a triggering event occur. Should the Board pursue this provision, Commissioners might also consider the extent to which the agreement should carry on, in other words, if EWEB failed to exercise its option to repurchase the property and a bona fide offer was accepted by a third party, should the third party also be held to the agreement?

**Recommendation/Board Action**

Management does not have any specific recommendation and no action is requested at this time. Management requests the Board’s guidance on a potential deed restriction or reversionary clause. If so directed, Staff will work with legal counsel to prepare a draft agreement for further Board input.

Attachments:

Eugene Code 9.3145 Permitted Uses

Eugene Code 9.3146 Prohibited Uses

## 9.3145 S-DR Downtown Riverfront Special Area Zone Permitted Uses.

The uses listed at EC [9.3145\(1\)](#) through [\(8\)](#) are permitted in the S-DR Zone as specified below, except as limited at EC [9.3146](#) S-DR Downtown Riverfront Special Area Zone Prohibited Uses and EC [9.3147](#) S-DR Downtown Riverfront Special Area Zone Willamette Greenway Setback. Accessory uses as defined at EC [9.0500](#) are permitted.

(1) *Retail Sales and Service Uses.* Permitted as specified in [\(a\)](#) through [\(c\)](#) below. This category of uses refers to the sale, lease, or rent of products to the general public; personal services; entertainment; product repair; or services for consumer and business goods.

(a) *Retail Sales – Oriented.* Permitted in S-DR/MU, S-DR/MU/1, and S-DR/MU/2. Examples include, but are not limited to:

1. Consumer home and business goods stores;
2. Consumer vehicle stores (including passenger vehicles, motorcycles, light and medium trucks, boat and watercraft, bicycles, and other recreational vehicles) provided the activity is within a building;
3. General merchandise stores (including supermarket and department stores).

(b) *Personal Service – Oriented.* Permitted in S-DR/MU, S-DR/MU/1 (above ground floor only), and S-DR/MU/2. Examples include, but are not limited to:

1. Banks and credit unions;
2. Business, arts, and other trade schools;
3. Dance or music studios;
4. Mail, photo, copy, and package services;
5. Personal care services;
6. Urgent medical care;
7. Daycare, preschools, and nursery schools.

(c) *Entertainment – Oriented.* Permitted in S-DR/MU, S-DR/MU/1, and S-DR/MU/2. Examples include, but are not limited to:

1. Artist galleries and studios;
2. Health clubs, gyms, membership clubs, and lodges;
3. Hotels, motels, and other temporary lodging;
4. Indoor or outdoor entertainment activities (including pool halls, bowling alleys, ice rinks, and game arcades);

5. Restaurants, cafes, delicatessens, brewpubs, taverns, and bars;
6. Theaters.

(2) *Office Uses*. Permitted in S-DR/MU, S-DR/MU/1 (above ground floor only), and S-DR/MU/2. This category of uses refers to activities conducted in an office setting generally focused on business, professional, medical, or financial services. Examples include, but are not limited to:

- (a) Financial businesses (including lenders, brokerage houses, bank headquarters, and real estate agents);
- (b) Medical, dental, and veterinarian clinics and laboratories;
- (c) Professional services (including lawyers, accountants, engineers, architects, and planners);
- (d) Sales offices;
- (e) TV and radio studios;
- (f) Live/work units (where there is an office on the ground floor with residential above in an interconnected unit).

(3) *Residential Uses*. Permitted in S-DR/MU, S-DR/MU/1 (above ground floor only), and S-DR/MU/2. This category of uses refers to the residential occupancy of a dwelling unit by one family. Tenancy is arranged for a minimum of 30 days or longer. Uses where tenancy may be arranged for a shorter period are not considered residential. They are considered to be a form of temporary lodging and are listed under "Retail Sales and Service." Examples of residential uses include, but are not limited to:

- (a) Apartments and retirement center apartments (including those with accessory services such as food service, dining rooms, and housekeeping);
- (b) Condominiums;
- (c) Rowhouses.

(4) *Institutional Uses*. Permitted in S-DR/MU and S-DR/MU/2 (above ground floor only). This category of uses refers to:

(a) Activities of a public, nonprofit, or charitable entity, which provide a local service to the community. Generally, they provide the service on the site or have employees at the site on a regular basis. Examples include, but are not limited to:

1. Community centers;
2. Daycare, preschools, and nursery schools;
3. Government services;
4. Libraries, museums, and interpretive centers;

5. Municipal services (including drive-through facilities);
6. Public and private schools, colleges, and universities;
7. Religious institutions;
8. Senior centers;
9. Transit stations;
10. Surface parking owned or operated by a public agency.

(b) Special events sponsored or operated by a public agency (notwithstanding the standards for Temporary Activities at EC [9.5800](#)).

(5) *Manufacturing and Production Uses*. Permitted in S-DR/MU. This category of uses refers to the manufacturing, processing, fabrication, packaging, or assembly of goods. Examples include, but are not limited to:

- (a) Breweries, distilleries, and wineries;
- (b) Catering establishments;
- (c) Processing of food and related products;
- (d) Production of energy;
- (e) Weaving or production of textiles or apparel;
- (f) Woodworking (including cabinet makers).

(6) *Industrial Service Uses*. Permitted in S-DR/MU. This category of uses refers to the repair or servicing of industrial, business, or consumer machinery, equipment, products, or by-products. Examples include, but are not limited to:

- (a) Electric motor repair;
- (b) Printing, publishing, and lithography;
- (c) Research and development laboratories;
- (d) Repair of scientific or professional instruments;
- (e) Sales, repair, or storage for building, heating, plumbing, or electrical contractors;

(7) *Parks and Open Space Uses*. Permitted in S-DR/MU, S-DR/MU/1, S-DR/MU/2, and S-DR/CL. This category of uses refers to areas used for public recreational activities and areas having scenic, biological, or ecological significance identified for preservation or enhancement. Examples include, but are not limited to:

- (a) Parks, public squares, plazas, boardwalks, fountains, arboretums, trails, multi-use paths, gardens, and natural areas;

- (b) Park furnishings (including play equipment, picnic tables, benches, bicycle racks, and interpretive signage);
- (c) Park structures (including kiosks, gazebos, pavilions, picnic shelters, pergola, arbors, and restrooms);
- (d) Green infrastructure (including infiltration planters, rain gardens, flow-through planters, vegetated swales, vegetated filter strips, and water quality ponds, basins, and wetlands).

(8) *Utilities and Communications Uses*. Permitted in S-DR/CL and S-DR/MU. This category of uses refers to above ground infrastructure services that include, but are not limited to:

- (a) Water, gas, sanitary sewer, stormwater treatment and drainage, electric, telephone, and cable service infrastructure;
- (b) Pumping stations, underground transmission facilities, and substations;
- (c) District heating and cooling systems (including geothermal wells);
- (d) Related physical facilities that do not include buildings regularly occupied by employees, parking areas, or vehicle, equipment, or material storage areas.

(Section 9.3145 added by Ordinance No. 20513, enacted July 8, 2013, effective August 9, 2013; and amended by Ordinance No. 20619, enacted July 22, 2019, effective August 25, 2019.)

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**The Eugene Code is current through Ordinance 20659, passed September 15, 2021.**

Disclaimer: The city recorder's office has the official version of the Eugene Code. Users should contact the city recorder's office for ordinances passed subsequent to the ordinance cited above.

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## 9.3146 S-DR Downtown Riverfront Special Area Zone Prohibited Uses.

The following uses are not permitted in the S-DR Zone:

(1) The following "Retail Sales and Service Uses" are not permitted:

- (a) Agricultural Machinery Rental;
- (b) Casinos;
- (c) Drive-through facilities, except as permitted at EC [9.3145\(4\)\(a\)5](#);
- (d) Indoor firing ranges;
- (e) Heavy Equipment Sales;
- (f) Kennels;
- (g) Mortuaries;
- (h) Outdoor sales or leasing of consumer vehicles, including passenger vehicles, motorcycles, light and medium trucks, boat and watercraft, and other recreational vehicles;
- (i) Recreational vehicle parks;
- (j) Recycling or transfer stations (with the exception of small recycling centers as defined at EC [9.0500](#));
- (k) Taxidermists;
- (l) Vehicle service such as motor vehicle repair, tires sales and service, gas station, or car wash.
- (m) A retail marijuana use that is located within 1,000 feet of another retail marijuana use.
  - 1. "Premises" means the location of a retail marijuana use described in a license issued by the Oregon Liquor Control Commission pursuant to ORS 475B.105.
  - 2. "Retail Marijuana Use" means a recreational marijuana retail facility licensed by the Oregon Liquor Control Commission pursuant to ORS 475B.105.
  - 3. "Within 1,000 Feet" means a straight line measurement in a radius extending for 1,000 feet or less in every direction from the closest point anywhere on the premises of a retail marijuana use to the closest point anywhere on the premises of another retail marijuana use.

(2) The following "Residential Uses" are not permitted:

- (a) Detached single-family dwellings;
- (b) Duplexes;

- (c) Manufactured housing.
- (3) The following “Institutional Uses” are not permitted:
- (a) Cemeteries;
  - (b) Correctional facility.
- (4) The following “Manufacturing and Production Uses” are not permitted:
- (a) Concrete batching and asphalt mixing;
  - (b) Feed lots;
  - (c) Lumber mills, pulp and paper mills, and other wood products manufacturing;
  - (d) Production of pre-fabricated structures (including manufactured homes);
  - (e) Slaughterhouses and meatpacking.
- (5) The following “Industrial Service Uses” are not permitted:
- (a) Auto and truck salvage and wrecking;
  - (b) Exterminators;
  - (c) Fuel oil distributors;
  - (d) Heavy truck servicing and repair;
  - (e) Machine shops;
  - (f) Salvage or wrecking of heavy machinery, metal, and building materials;
  - (g) Solid fuel yards;
  - (h) Tire re-treading or recapping;
  - (i) Towing and vehicle storage;
  - (j) Truck stops;
  - (k) Welding shops.
- (6) The following “Parks and Open Space Uses” are not permitted:
- (a) Camping;
  - (b) Community and neighborhood centers within the S-DR/CL subdistrict (permitted in the S-DR/MU subdistrict);
  - (c) Golf course (including driving range);



(d) Dwellings.

(7) The following “Utilities and Communications Uses” are not permitted. Telecommunications facilities, except for telecommunications collocation and antenna, as defined at EC [9.0500](#) and in accordance with EC [9.5750](#), where applicable.

(Section 9.3146 added by Ordinance No. 20513, enacted July 8, 2013, effective August 9, 2013; amended by Ordinance No. 20602, enacted July 23, 2018, effective August 24, 2018; and by Ordinance No. 20619, enacted July 22, 2019, effective August 25, 2019.)

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