

November 4, 2021

## MEMORANDUM

**To:** Seattle City Council  
**From:** Lish Whitson, Analyst  
**Subject:** Clerk File 314459: Petition of Grand Street Commons LLC, for the vacation of the alley in Block 14, Jos C. Kinnear’s Addition to the City of Seattle, being the block bounded by South Grand Street, 22nd Avenue South, South Holgate Street and 23rd Avenue South

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On November 8, the City Council will receive a briefing in the morning and hold a public hearing in the afternoon on [Clerk File \(CF\) 314459](#), a petition by Grand Street Commons LLC to vacate the alley on the block between S Grand Street, 22<sup>nd</sup> Avenue S, S Holgate Street, and 23rd Avenue S. The vacation of this alley would allow Mt. Baker Housing (MBH) to build a larger and more efficient affordable housing development on the block. Lake Union Partners (LUP) would develop two adjacent blocks as part of a coordinated plan. The Seattle Department of Transportation (SDOT) and the Seattle Design Commission (SDC) have reviewed the vacation petition in CF 314459 and recommend granting the vacation with conditions.<sup>1</sup>

The Transportation and Utilities Committee was briefed on the petition at its [December 16, 2020 meeting](#).

Public benefits proposed as part of the vacation process include converting excess street right-of-way into public plazas with art and opportunities for public events, improving the streetscape around the block, working with community on art and design features for the plaza, and providing space within the proposed development at no charge for use and programming by the new [Cultural Space Agency](#) Public Development Authority (PDA).

This memorandum describes:

1. the street vacation review policies that guide the Council’s decision;
2. the proposed alley vacation;
3. the proposed public benefits associated with the proposal; and
4. the conditions proposed to be placed on the vacation and a proposed amendment to those conditions.

### Street Vacation Policies

From time to time, property owners seek to permanently acquire the street or alley next to their property from the City. The process to do so is laid out in the Revised Code of Washington

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<sup>1</sup> Since filing the petition, MBH has formed “Grand Street Commons MBH LLLP,” which will develop the subject property.

[Chapter 35.79](#), Seattle Municipal Code, [Chapter 15.62](#), and the City Council's [Street Vacation Policies](#). In 2018, the City Council updated its street vacation policies to provide greater clarity for petitioners, members of the public and decision-makers in proposing and reviewing street vacation petitions. The policies identify two related but independent questions that the Council must consider in reviewing a street vacation petition:

1. are the “public trust functions” of the right-of-way maintained? and
2. will the public receive a benefit from the vacation?

Public trust functions are the uses of right-of-way. The policies describe the public trust functions as follows:

Streets are dedicated in perpetuity for use by the public for travel, transportation of goods, and locating utilities. The dedication carries with it public rights to circulation, access, utilities, light, air, open space, views, free speech, and assembly, and contributes significantly to the form and function of the city. The primary concern of the City in vacation decisions is to safeguard the public’s present and future needs and to act in the public’s best interest. (p. 7)

Public benefits are a required component of street vacations to offset loss of public space. The policies describe public benefits as follows:

The City acts as a trustee for the public in its administration of rights-of-way. Courts have required that in each vacation there shall be an element of public use or benefit, and a vacation cannot be granted solely for a private use or benefit. Therefore, before this public asset can be vacated to a private party, there shall be a permanent or long-term benefit to the public.

The fact that these benefits are provided equally to all members of the public may be most important to those who have the least. To best address the needs of the community, a strong focus on race and social equity is important in assessing the public benefits included as part of a street vacation petition.

Proposed vacations may be approved only when they provide a permanent or long-term public benefit. Because the public permanently loses the street, short-term public benefits or public benefits that solely benefit individuals will not be considered. The following are not considered public benefits:

- Mitigating the vacation’s adverse effects;
- Meeting code requirements for development;
- Paying the required vacation fee;
- Facilitating economic activity; or
- Providing a public, governmental, or educational service.

While the nature of the project is a factor in deciding the adequacy of a public benefit proposal, it is not itself a public benefit. (p. 22)

After a petitioner files a complete vacation petition, it is sent to SDOT and the SDC for review. SDOT collects comments from City Departments, private utilities, transit agencies, and others with an interest in the City's rights-of-way. After review and recommendation by these parties, the petition is returned and considered by the City Council. The Council is required to hold a public hearing on the petition, and then must act on the petition. State law states that approval of vacations is solely a legislative act.

If the Council decides it is appropriate to vacate the right-of-way, it will typically grant conditional approval. That approval is placed in the CF alongside the vacation petition. That conditional approval allows the petitioner to begin developing in the right-of-way. After all conditions have been met and all fees have been paid, SDOT will draft an ordinance for Council consideration that authorizes the transfer of ownership of the right-of-way to the petitioner.

### **Proposed Alley Vacation**

Grand Street Partners (GSP) is a partnership between MBH and LUP to develop three blocks of formerly contaminated land in the Judkins Park neighborhood and the North Rainier/Mount Baker Hub Urban Village. The site is at the southern boundary of Council District 3. It is three blocks south of the future Judkins Park light rail station. The proposal includes an affordable housing project to be built by MBH on the block south of S Grand Street between Rainier Avenue S and 23rd Avenue S and two mixed-income housing projects on the northeast and northwest corners of S Grand Street and 22nd Avenue S to be built by LUP. GSP filed a petition to vacate the alley on the MBH block in September 2020.

The MBH block includes an auto repair shop (Dere Auto) on the southwest corner and is otherwise vacant. The block previously was occupied by a manufacturing business, which contaminated the soil. Cleanup of the site is underway. The City previously indicated support for the cleanup of the site under [Resolution 31836](#).

The currently unimproved alley runs north-south through the block, connecting S Grand and S Holgate streets. The alley is fenced off and inaccessible. Dere Auto is accessed directly from S Holgate Street and does not require the alley to access its property. Dere Auto signed the vacation petition. If the vacation is approved, Dere Auto would be able to acquire the section of the alley that runs adjacent to its property.

MBH proposes a mixed-use building with ground floor retail, including a space to be provided rent-free to the Cultural Space Agency. All 206 residential units in the building will be affordable to households earning up to 60% of the Area Median Income. Fifty units will have two or three bedrooms. Vacating the alley will allow the project to include 49 additional units. Doing so will

reduce the cost of City subsidies per unit from \$137,000 a unit to \$83,000 a unit, allowing more affordable units at a lower cost to the city.

In their review of the petition, SDOT found that there would be no negative impacts from the vacation to the public trust functions of the right-of-way.

### **Proposed Public Benefits**

The proposed project would voluntarily provide the following public benefits on top of the requirements of the City's codes and regulations:

1. Over 20,000 square feet of public plaza improvements in the right-of-way adjacent to the buildings, designed to accommodate cultural and civic gatherings.
2. A 1,500 square foot space within the building to be given rent-free for the life of the building to the Cultural Space Agency to use as a community focused space that will help activate the public plaza throughout the year;
3. Visual art, including funding for an arts plan, public art, and incorporation of art into the design of lighting and benches in plazas at the site;
4. A commitment to arts programming at the site; and
5. Pedestrian right-of-way improvements around the site, including widened sidewalks and increased pedestrian lighting.

While not considered "public benefits" under the street vacation policies, the Council should also consider the affordable housing to be built on site in determining whether the benefits the public will receive are adequate.

### **Proposed Conditions**

The Director of SDOT has recommended conditional approval of the vacation and has proposed 12 conditions, as shown on Attachment 1. Key conditions include (1) consistency with the project as presented to the Council, including use of [community preference](#) policies to combat displacement; and (2) implementation of the public benefit features described above, including additional review of some of the features by the Seattle Design Commission and City departments prior to implementation.

If the Council supports the proposed vacation, it should add these conditions to CF 314459. The conditions as drafted would indicate the Council's approval of the project as conditioned and would allow development to occur. The conditions indicate the things the Grand Street Partners will need to complete prior to the Council granting final approval and transferring ownership of the right-of-way to Grand Street Partners.

## **Proposed Amendment**

Councilmember Mosqueda has proposed an amendment to the SDOT recommended conditions, as shown in Attachment 2 to this memorandum. This amendment would remove the requirement that Grand Street Partners pay the appraised value of the alley space. Adopting the amendment would reduce MHBA's and the City's costs to develop the affordable housing by at least \$400,000, but would also reduce revenue to SDOT by the same amount.

Under [RCW 35.79.030](#), the City may require that the petitioner compensate the City for the appraised value of the right-of-way, prior to the final vacation. The City currently exempts City, State and Federal agencies from paying this compensation. At least half of the money the City receives from street vacations is required to be spent on transportation or open space capital projects. Typically, all funds received from street vacations are allocated to SDOT.

## **Next Steps**

The Council will receive a briefing the morning of November 8 during the Council Briefing meeting and will hold a public hearing the afternoon of November 8 during the City Council meeting. It may vote on CF 314459 at its November 15 meeting.

## **Attachments:**

1. Draft conditions as proposed by SDOT
2. Amendment 1 to the conditions

cc: Esther Handy, Director  
Dan Eder, Deputy Director  
Aly Pennucci, Policy and Budget Manger

**IN THE MATTER OF THE PETITION OF GRAND STREET COMMONS LLC, FOR THE VACATION OF THE ALLEY IN BLOCK 14, JOS C. KINNEAR'S ADDITION TO THE CITY OF SEATTLE, BEING THE BLOCK BOUNDED BY SOUTH GRAND STREET, 22ND AVENUE SOUTH, SOUTH HOLGATE STREET AND 23RD AVENUE SOUTH**

CLERK FILE 314459

The City Council hereby grants the petition from Grand Street Commons LLC, now Grand Street Commons MBH LLLP, ("GSC", "Grand Street" or "Petitioner") for the vacation of the Alley in Block 14 Jos C. Kinnear's Addition to the City of Seattle being the alley in the block bounded by S Grand Street, 23 Avenue South, S Holgate Street, and 22<sup>nd</sup> Avenue South in the North Rainier Hub Urban Village, described as:

That certain alleyway, being 16 feet in width, created by Plat, between South Grand Street and South Holgate Street and lying between Lots 1, 2, and 3, and Lots 4, 5, and 6, Block 14, Jos C. Kinnear's Addition to the City of Seattle, according to the Plat thereof, recorded in Volume 1 of Plats, Page 123, records of King County, Washington.

The alley proposed for vacation is approximately 180 feet in length by 16 feet in width for a total of approximately 2,880 square feet of right-of-way.

The vacation is granted upon the Petitioner meeting the following conditions. The Petitioner shall demonstrate that all conditions imposed on the vacation by the City Council have been satisfied and all required fees paid before the street vacation ordinance is passed.

1. The vacation is granted to allow the Petitioner to build a project substantially in conformity with the project presented to the City Council and for no other purpose. This approval constitutes the substantive Council approval of the vacation and the Petitioner may proceed with the permitting and development of the project, consistent with the conditions of this approval.
2. All street improvements shall be designed to City standards, as modified by these conditions to implement the Public Benefit requirements, and be reviewed and approved by SDOT through a Street Improvement Permit, including:
  - Establishing curb lines, sidewalk dimensions and garage entry,
  - Proposed use of pavement scoring in the right-of-way,
  - Design features, dimensions, and material of curbless portion of S Grand Street,
  - Use of bollards,
  - Location of utility facilities, including SCL poles and SPU solid waste bins,
  - Landscaping, and

- Material use, signage, art elements and other public benefit features in the right-of-way.
3. Cooperation between Lake Union Partners and Mt Baker Housing shall continue on the review and implementation of the proposed and required regulatory elements such as the SIP and UMP, the recommendations from the SDC including the Art & Cultural Expression Plan and the vacation conditions. It shall be the responsibility of the development team to provide information to review bodies and make sure that the varying elements can be implemented as required by City Council. If project changes or regulatory provisions impact any vacation conditions, including the public benefit features, SDOT Street Vacations will facilitate a resolution of any conflicts. Lake Union Partners and Mt Baker Housing shall provide information to SDOT about the coordination activities before the passage of the final vacation ordinance.
  4. The utility issues shall be resolved to the full satisfaction of the affected utility before the final vacation ordinance is approved. Before starting any development activity on the site, the Petitioner shall work with the affected utilities and provide protection for the utility facilities. This may include easements, restrictive covenants, relocation agreements, or acquisition of the utilities, which shall be at the sole expense of the Petitioner. The utilities that may be impacted include SCL and SPU.
  5. It is expected that development activity will commence within approximately 24 months after this approval and that development activity will be completed within 7 years. To ensure timely compliance with the conditions imposed by the City Council, the Petitioner shall provide SDOT with regular reports, following City Council vacation approval, providing an update on the development activity, schedule, and progress on meeting the conditions and anticipated date of project completion and opening. This report shall include an update on other elements of the development review. The Petitioner shall not request or be issued a Final Certificate of Occupancy until SDOT determines that all conditions have been satisfied and all fees have been paid as applicable. If development activity has not commenced within 7 years, the Petitioner must seek an extension of the approval from the City Council.
  6. In addition to the conditions imposed through the vacation process, the project as it proceeds through the permitting process is subject to SEPA review and to conditioning pursuant to City codes through the regulatory review processes.
  7. The Petitioner shall work with the Office of Housing to implement the anti-displacement policy to give preference to renters already located in the neighborhood to the extent feasible.

8. Free speech activities such as hand billing, signature gathering, and holding signs, all without obstructing access to the space, the building, or other adjacent amenity features, and without unreasonably interfering with the enjoyment of the space by others, shall be allowed within the on-site vacation public benefit features. While engaged in allowed activities, members of the public shall not be asked to leave for any reason other than conduct that unreasonably interferes with the enjoyment of the space by others. Signage clearly identifying public access and allowed free speech activities shall be required at the public open space elements and shall require the review and approval of SDOT Street Vacations. Signage shall be consistent with signage provided for public amenity spaces. Any violation of this condition by the Petitioner or its successors will be enforced through Chapter 15.90 of the Seattle Municipal Code.
9. Additional review by the SDC shall include the following:
  - If any substantive changes are proposed to elements of the public benefit package, including funding associated with any public benefit feature, removing, relocating, or changing the type of design features for the plaza or related right-of-way improvements, the size and orientation of any spaces provided for cultural or artistic activities, or any changes to the proposed street furniture, paving, landscaping, lighting, or any other similar feature, the revisions shall be brought to the SDC for review and approval. The review and approval by the SDC shall occur before issuing any associated street use permit or a building permit for GSC South needed to install or implement any such elements.
  - Before issuing any Certificate of Occupancy for GSC South, the SDC's Executive Director shall review and approve the agreement to between the Office of Arts & Culture and the Cultural Space PDA to create a condominium of approximately 1,500 square feet for the PDA to use as a community focused space that will help activate the public plaza throughout the year.
  - Within 180 days of issuing a building permit associated with GSC South (MUP 3035498-LU) the SDC shall review and approve the final Cultural Expression and Public Art Plan developed as a part of the vacation public benefit package. A member of the SDC shall be a voting member in the selection of artists.
  - Funds used to create items of cultural expression to be incorporated into the plaza designs shall result in the creation of elements that have a long-term or permanent quality as opposed to items that are temporary in nature.
10. The Petitioner shall develop and maintain the public benefit elements as defined by the City Council. A Property Use and Development Agreement (PUDA) or other binding mechanism shall be required to ensure that the public benefit elements remain open and accessible to the public and to outline future maintenance obligations of the improvements.



11. Public amenities and nonstandard elements in the right-of-way shall require a binding mechanism to ensure that the features remain open and accessible and to outline future maintenance and insurance provisions. This may, as determined by SDOT, include a City Council Term Permit, a long-term permit from SDOT, a maintenance agreement, provisions in the SIP, or inclusion in the vacation PUDA.
  
12. Signage clearly identifying public access shall be required at the public open space elements and shall require the review of SDOT Street Vacations. The final design of the public benefit elements shall require the review and approval of SDOT Street Vacations. SDOT Street Vacations may require additional review by the SDC as needed. Changes to the proposed public benefits require SDOT review and may necessitate additional SDC review. The public benefit requirements include the following features including approximate quantities and square footage dimensions, shall be described in the PUDA:

**Public Benefit Matrix:**

PUBLIC BENEFIT		CODE REQUIRED	APPROXIMATE VALUE	RESPONSIBLE PARTY (IMPLEMENTATION AND COST)
<b>ROW Enhancements</b>	Added 12,124 SF of ROW enhancements, for a total of 33,800 SF <ul style="list-style-type: none"> <li>• Nine new bike racks</li> <li>• Two new street lights</li> <li>• Building setbacks</li> <li>• Pre-construction work (surveying, clearing, fencing, staking, erosion control)</li> </ul>	None	\$391,000	Mt Baker Housing
<b>Onsite Art &amp; Cultural Opportunities</b>	Hired local BIPOC art consultant to oversee, manage and implement opportunities for onsite Cultural and Artistic Expression (\$50,000)  Budget for hiring local artists (BIPOC priority) and materials to create art (\$190,000)  Cultural and Artistic Expression elements in the public plaza that are part of the artists' scope of work:	None	\$695,000	\$240,000 (Mt Baker Housing)  \$455,000 (Lake Union Partners)

	<ul style="list-style-type: none"> <li>• 150 SF water feature (\$250,000)</li> <li>• 29 artistic plaza pole lights, 12 seats / benches (\$205,000)</li> </ul>			
<b>Arts &amp; Culture Community Space Fronting the Plaza</b>	<i>Contract executed with the Cultural Space Agency (CSA) as year-round programming for the plaza, as well as community-focused opportunities and events</i>	None	N/A	Mt Baker Housing
<b>Arts &amp; Cultural Implementation</b>	<i>Dedicating 1,500 SF of commercial space fronting the public plaza to the CSA for the life of the building</i>	None	\$250,000	Mt Baker Housing
<b>South Public Plaza, Woonerf &amp; Landscaping</b>	<i>11,601 SF of New Plaza and 10,075 SF of woonerf. (\$250,000). 14 new trees, 412 new plants and groundcover plantings (\$47,000)</i>	None	\$297,000	Mt Baker Housing
<b>North Public Plaza</b>	<i>Additional 9,100 SF of extended plaza and special paving within the plaza</i>	None	\$307,000	Lake Union Partners
	<b>TOTAL COST FOR PUBLIC BENEFITS</b>		<b>\$1,940,000</b>	

Granted by the City Council the \_\_\_\_\_ day of \_\_\_\_\_, 2021,  
and signed by me in open session in authentication of its passage this \_\_\_\_ day of  
\_\_\_\_\_, 2021.

\_\_\_\_\_  
President \_\_\_\_\_ of the City Council

DRAFT

Lish Whitson

**Date: November 2, 2021**

**Version: 1a**

Attachment 1 – Amendment 1 to the Conditions

**Amendment 1**

**to**

**Council Conditions for Clerk File 314459**

**Sponsor: CM Mosqueda**

Remove fee requirement for Mt. Baker Housing

This amendment adds a final condition 13 to the Council’s conditional approval of the Grand Street Alley Vacation, as follows:

13. Mount Baker Housing and Grand Street Commons MHB, LLC shall be exempt from the required compensation for the appraised value of the right of way, but shall pay to the City all costs incurred by the City in processing the vacation request.

**Effect:**

Under Seattle Municipal Code section 15.62.090, most petitioners for a street or alley vacation are required to compensate the City for the appraised value of the right-of-way to be vacated prior to final approval of the vacation. That section exempts City, State or Federal agencies from the requirement to compensate the City for the value of the property, and the City Council has authority to waive the fees for any project it deems appropriate. This amendment would also exempt the Mount Baker Housing project, which is receiving City money to build affordable housing from the compensation requirement. An appraisal has not yet been performed, but looking at the assessed value of the property, the costs to Mt. Baker Housing for the vacated right-of-way could be over \$400,000. If approved, the Seattle Office of Housing would be able to reduce their grants to Mount Baker Housing by approximately \$400,000 and allocate those funds to another affordable housing project. However, the Seattle Department of Transportation would have fewer dollars to address Transportation needs.