

**CITY OF EUGENE HEARINGS OFFICIAL**  
**APPEAL OF EUGENE ADMINISTRATIVE ORDER 58-13-02 AUTHORIZING**  
**THE REMOVAL OF PARKING ON THE SOUTH SIDE OF W. 18<sup>TH</sup> AVENUE,**  
**BETWEEN FRIENDLY STREET AND VAN BUREN STREET, AND ON THE**  
**NORTH SIDE OF W. 18<sup>TH</sup> AVENUE, BETWEEN VAN BUREN STREET AND**  
**POLK STREET**

**Application Summary**

On February 7, 2013, the Eugene Traffic Engineer promulgated Administrative Order 58-13-02 authorizing the removal of parking on the south side of W. 18<sup>th</sup> Avenue, between Friendly Street and Van Buren Street and on the north side of W. 18<sup>th</sup> Avenue, between Van Buren Street and Polk Street. On February 11, 2013, written notice of the administrative action was provided to affected property owners and residents located along W. 18<sup>th</sup> Avenue. On March 13, 2013, Patricia Norberg filed a timely appeal.

**Appellant**

Patricia Norberg

**Interested Parties**

Cheryl & Edmond Olsen	Mike Timmons	Susan Stovall
Sam Jossie	Michael Crotty	Morgan Voss
Patrick Jones	Andrew Henson	Shaniquer Trigg
Elena Stylos	Margaret Dunlap	Angela Diaz
Holly Robinson	Marianne Curtis	Spencer Mills
Eric Selker	Richard Hughes	Janet Schmidt
Mike Sims	Duncan Rhodes	Sue Wolling
Shane MacRhodes	Judi Horstmann	Rex Redmon
BPAC	Marc & Mindy Schlossberg	Gloria Williamson
Shakelah Morgan	Beverly & Wayne Ferrell	Marc & Mindy Schlossberg
Andrea Ogden	Laura McCoid	

**Appeal History**

Hearing Date: May 2, 2013  
(Record Held Open Until May 16, 2013)

Decision Date: May 21, 2013

**Statement of Criteria**

Eugene Code 5.055

## Administrative Orders 58-92-01 and 58-13-02

**Findings of Fact**

1. The Eugene Traffic Engineer adopted Administrative Order 58-13-02 authorizing the removal of parking (42 spaces total) on the south side of W. 18<sup>th</sup> Avenue, between Friendly Street and Van Buren Street, and on the north side of W. 18<sup>th</sup> Avenue, between Van Buren Street and Polk Street, on February 7, 2013. The existing curb-to-curb width of W. 18<sup>th</sup> Avenue within the project area does not allow for the full 6-foot wide desirable bike lane width without parking removal. The proposed cross section includes two 6-foot bike lanes, one 8 foot parking lane, and two 11-foot wide automobile travel lanes.

Administrative Order 58-13-02 will be implemented in coordination with a pavement preservation project scheduled for W. 18<sup>th</sup> Avenue. This project will repave W. 18<sup>th</sup> Avenue, from Friendly Street to Polk Street.

2. Eugene Code 5.040 authorizes the City Manager, or the City Manager's designee, to adopt rules necessary for the administration and enforcement of the provisions of the Eugene Code. Section 5.040(1)(h)(5) authorizes the removal of parking by administrative action. Section 5.055 of the Eugene Code specifies the criteria to be considered when the City Manager or the City Manager's designee takes a traffic control-related administrative action.
3. Through Administrative Order 58-00-29, the Eugene City Manager has appointed Tom Larsen as Eugene Traffic Engineer and delegated to Mr. Larsen the authority to exercise all duties and responsibilities granted to the City Manager by Eugene Code 5.040, 5.050, 7.450, 7.410 and 9.538(6)(d).
4. Eugene Administrative Order 58-92-01 specifies the procedures for appealing traffic control administrative actions.
5. The City Traffic Engineer gave notice of the Order 58-13-02 to affected property owners on February 11, 2013. Patricia Norberg filed an appeal of the administrative order on March 13, 2013. Notice of the appeal hearing was sent to the appellant and affected parties on April 15, 2013.
6. West 18<sup>th</sup> Avenue has been designated as a minor arterial by Eugene Ordinance No. 20181. The City Arterial Collector Street Plan (ACSP) describes Arterial Streets as those that "primarily function to serve a high degree of vehicular mobility." The ACSP goes on to establish bike lanes as a standard feature of Minor Arterials and parking as an optional feature. Through Resolution 4608, the Eugene City Council has adopted design standards and guidelines for Eugene streets, sidewalks, bikeways and accessways. Consistent with the City Arterial Collector Street Plan, the resolution makes bike lanes a standard feature and parking an optional feature on streets. The Eugene Pedestrian and Bicycle Master

Plan, adopted by the Eugene City Council but not yet adopted or incorporated into TransPlan, calls for adding bike lanes on West 18<sup>th</sup> Avenue from Friendly Street to Polk Street (Project 527). This plan also calls for 6-foot wide bike lanes rather than the existing city standard of 5-feet.

The Eugene Climate and Energy Action Plan seeks to limit unnecessary vehicle travel and greenhouse gas emissions through reducing the latter to 10 percent below 1990 levels by 2020 and 75 percent below those levels by 2050.

7. Oregon Administrative Rule (OAR) Chapter 660, Division 12 is known as the "Transportation Planning Rule." OAR 660-012-0020 states that a transportation system plan shall include the elements that require that "...the layout of local streets shall provide for safe and convenient bike and pedestrian circulation necessary to carry out OAR 660-012-045(3)(b)." Section 045(3)(b) calls for local government to adopt land use regulations and to provide on-site facilities that "ensure that new development provides on-site streets and accessways that provide reasonably direct routes for pedestrian and bicycle travel in areas where pedestrian and bicycle travel is likely if connections are provided, and which avoids wherever possible levels of automobile traffic which might interfere with or discourage pedestrian or bicycle travel."
8. There are an estimated 98 parking spaces on the north side of W. 24<sup>th</sup> Avenue and 108 parking spaces on the south side on W. 18<sup>th</sup> Avenue between Friendly Street and Polk Street. Administrative Order No. 58-13-02 would remove 42 of these spaces. In evaluating the proposed changes to 18<sup>th</sup> Avenue, staff conducted 23 parking surveys covering mornings, evenings and weekends to determine the level of existing residential parking utilization. There are an estimated 61 parking spaces east of Van Buren (utilization of 11% north, 10% south) and 37 parking spaces west of Van Buren (utilization 11% north, 14% south). The decision to split parking removal at Van Buren Street preserves the maximum number of parking spaces where they are needed most. The removal of parking will not appreciably increase vehicle speed in areas where few cars actually use those parking spaces.
9. Opponents of Administrative Order No. 58-13-02 voiced concerns over vehicular speed, safety when backing out of a driveway and the need for on-street parking for residential use. Concern was also expressed on the impact of removing parking from in front of a Lil' Blessings Day Care Center operated by Mrs. Shakelah Morgan. Lil' Blessings Day Care is a certified family day care with hours of operation from 5:30 AM to 11:00 PM Monday-Friday and 9:00 AM to 5:00 PM on Saturdays. It is located at 1040 W. 18<sup>th</sup> Avenue in the second house west of Jackson Street on the south side of West 18<sup>th</sup> Avenue. The approximate distance of Jackson Street to Lil' Blessings walkway is 120 feet. The property is also two houses away from Van Buren Street and a proposed pedestrian crossing island. The approximate distance of the proposed Van Buren Street crossing to Lil' Blessings is 200 feet. A Lane Transit District bus stop is located at the

southwest corner of W 18<sup>th</sup> and Jackson. On-street parking is available on the north side of W. 18<sup>th</sup> and on both sides of Jackson.

Post-hearing observations of the drop-off and pick-up activities associated with the day care center indicate that some parents choose to use the existing driveway for pick up and drop off, some already use Jackson Street for pick up, and some parents park on the north side of the street and cross W. 18<sup>th</sup> Avenue with their children in their arms. LTD buses will stop in the bike lane to load and unload passengers, just as they do on other sections of W. 18<sup>th</sup> Avenue, and school busses and Ride Share vehicles have the same ability.

The property upon which the day care center is located is zoned R-1. Day care is a permitted use in the R-1 District for 3-12 children. Per Eugene Code Table 9.2740 and Section 9.5200, the property is required to contain one parking space onsite for each outside employee. Adjacent properties are residential (R-1).

### **Decision**

THE APPEAL OF EUGENE ADMINISTRATIVE ORDER NO. 58-13-02 IS DISMISSED.

### **Justification for the Decision**

The appellant has raised a number of issues in their challenge to Administrative Order No. 58-13-02, many of which were related to the impact of parking removal on vehicle speed along W. 18<sup>th</sup> Avenue and safety. Eugene Code Section 5.040(1)(h)(6) gives the city manager's designee (the Traffic Engineer) the authority to remove or alter parking areas. The approval criteria required by Eugene Code 5.055 for an administrative action does not require that the Traffic Engineer make the "best" decision or the "most reasonable" decision but rather only that he or she consider (*emphasis mine*) fourteen factors in that decision-making process. It is clear from the written and oral testimony from the Traffic Engineer that these factors had been considered in his decision. A summary of this analysis is as follows:

#### **Eugene Code 5.055**

**(a) Traffic engineering principles and traffic investigations.**

The City's Traffic Engineer's consideration of this factor focused on the circumstance that W. 18<sup>th</sup> Avenue is designated as a Minor Arterial by the City Arterial Collector Street Plan. This plan has bike lanes as a standard feature on minor arterials but provides that parking spaces are merely optional. The traffic engineer further considered that bike lanes on W. 18<sup>th</sup> Avenue are an important link in the city's bike lane network and that the alternating of parking will slightly calm traffic speed.

All proposed design features, lane widths and signage are consistent with allowable city and national minimum traffic standards. The existing curb-to-curb width of W. 18<sup>th</sup> Avenue in the project area does not allow for the full 6-foot desirable bike lane width without parking removal. The proposed cross section includes two 6-foot bike lanes, one 8 foot parking lane, and two 11-foot automobile travel lanes.

The impact of parking removal was subject to 23 parking surveys that covered mornings, evenings and weekends to determine the level of existing residential parking utilization. The surveys identified an estimated 61 parking spaces east of Van Buren with a utilization rate of 11% on the north side of the street and a utilization rate of 10% on the south side of the street. West of Van Buren the survey identified 37 parking spaces with a utilization rate of 11% on the north side of the street and a utilization rate of 14% on the south side of the street. The decision to split parking removal at Van Buren Street preserves the maximum number of parking spaces where they are needed most. Parking will be retained on the north side of W 18<sup>th</sup> from Friendly to Van Buren (35 spaces) and on the south side from Van Buren to Polk (21 spaces). This split preserves 56 spaces and removes 42 spaces.

**(b) Standards, limitations, and rules promulgated by the Oregon Transportation Commission or the Oregon Public Utility Commission or their successors.**

In adopting the administrative order, the Traffic Engineer considered OAR 660-012-0020 that states that a transportation system plan shall include the elements that require that "...the layout of local streets shall provide for safe and convenient bike and pedestrian circulation necessary to carry out OAR 660-012-045(3)(b)." Section 045(3)(b) calls for local government to adopt land use regulations and to provide on-site facilities that "ensure that new development provides on-site streets and accessways that provide reasonably direct routes for pedestrian and bicycle travel in areas where pedestrian and bicycle travel is likely if connections are provided, and which avoids wherever possible levels of automobile traffic which might interfere with or discourage pedestrian or bicycle travel." The removal of parking spaces to further bike traffic is consistent with this rule.

**(c) Other recognized traffic control standards.**

In his review of this criterion, the Traffic Engineer noted that West 18<sup>th</sup> Avenue has been designated as a minor arterial street by Eugene Ordinance No. 20181 and that through Resolution 4608, the Eugene City Council has adopted design standards and guidelines for Eugene streets, sidewalks, bikeways and accessways. Consistent with the City Arterial Collector Street Plan, the resolution makes bike lanes a standard feature and parking an optional feature on streets.

**(d) The city's adopted transportation-related plans and policies.**

The Traffic Engineer has noted that the City's adopted plans played a large role in his decision to remove parking spaces on W. 18<sup>th</sup> Avenue and to enlarge the bike and traffic lanes. He pointed out that bike lanes at this location are consistent with both Ordinance 20181 and Council Resolution 4608. The order is also consistent with the Eugene Pedestrian and Bicycle Master Plan (PBMP) which includes Project No. 527 adding buffers to existing bike lanes on W. 18<sup>th</sup> and directed the City Manager to integrate the PBMP into the proposed Transportation System Plan update. The current project does not add buffers but does widen the bike lanes to the current proposed standard. Parking removal from one side of the street to allow bike and travel lane widening was determined to be preferable to complete parking removal.

**(e) Existing state and local laws regulating use of public ways.**

It has been pointed out by the Traffic Engineer that state law allows cyclists to operate on city streets and that cyclists are currently using W. 18<sup>th</sup> Avenue. It is his conclusion that the removal of parking and increase in the width of striped bike lanes will add to the safety of this transportation use. Testimony has supported the conclusion that a major source of bicycle crashes are due to doors opening from parked cars into a bike lane, either hitting the cyclist or forcing the cyclist to ride into a traffic lane.

**(f) The efficient use of the public way by the public.**

The appellants have raised two issues in regard to this criterion. First, they have argued that using the Westmoreland-Fern Ridge bike path, would better serve the Friendly Area neighborhood and would be safer for bicyclists. However, the record demonstrates that W. 18<sup>th</sup> Avenue is designated and planned to have bike lanes and that the Westmoreland-Fern Ridge bike path is out-of-direction for many cyclists.

Second, the appellants argue that the removal of parking will create a dangerous situation for those who are backing out of their driveway. However, the removal of parking will increase visibility, despite tree cover along the street, and will slow traffic slightly because of the offset nature of the parking removal.

In summary, the Traffic Engineer has found that on-street parking along W. 18<sup>th</sup> Avenue is underutilized, that the bike lane widths are substandard, and that the most efficient use of W. 18<sup>th</sup> Avenue is to eliminate parking on one side of the street to increase transportation mobility.

**(g) The use of abutting property.**

In his decision to remove the parking on portions of W. 18<sup>th</sup> Avenue, the Traffic Engineer determined that adequately serving the adjoining property owners and all roadway users was a critical consideration in the process. All residential properties on West 18<sup>th</sup> Avenue have driveways and off street parking. Most have garages. Simply put, based on existing average usage, the number of displaced vehicles on West 18<sup>th</sup> Avenue is small compared to the remaining parking supply. The parking study shows only 3 or 4 cars at most would be displaced from one side of the street to the other if parking is removed from one side.

**(h) The intensity of use of the street by vehicles and pedestrians.**

The Traffic Engineer has noted that W. 18<sup>th</sup> is a minor arterial. It is the intensity of use by thru automobiles and cyclists that leads to the choice of wider bike lanes to provide a safer space for cyclists.

**(i) The physical condition and characteristics of the street and abutting property.**

It was pointed out by the Traffic Engineer that the proposed paving project for W. 18<sup>th</sup> Avenue is essentially limited by the existing curbs as there is no budgeted money to widen the street and to do so would have a significant impact on adjacent property owners. The condition of the existing pavement has resulted in a project that will completely rehabilitate the street and make changes to widen bike lanes and thus support the city's goals for encouraging alternative modes and decreasing auto dependence.

**(j) Emergencies.**

In his decision to adopt Administrative Order 58-13-02, the Traffic Engineer determined that the removal of parking would not have an adverse impact on emergency services. It was noted that vehicles serving special needs as well as emergency vehicles have the ability to park in the bicycle lane when accessing a residence.

**(k) The public health, safety and welfare.**

One of the primary reasons for removing parking is to provide bike lanes in a manner that is safer than exists at present. Included in this analysis is the assumption that the change will lead to an increase in cycling that will reduce automobile volume and increase physical activity on the part of the community.

**(l) Special events of community interest including parades and public gatherings.**

In his determination of whether to remove parking on the south side of W. 18<sup>th</sup> Avenue, the Traffic Engineer considered parades and public gatherings. It was his conclusion that parking removal will not impact special community events or public gatherings.

**(m) Construction within or adjacent to the street.**

The purpose of the administrative order was to take advantage of the pavement preservation project scheduled for W. 18<sup>th</sup> Avenue and the public meeting notices reflected this fact. The project had the potential to create a "clean slate" upon which to implement existing city transportation policies.

**(n) When establishing conditions upon the use of parking in the public way and city-owned parking facilities:**

**1. Applicable and appropriate time limits;**

The administrative order does not affect time limitations on parking but rather removes parking spaces entirely. Therefore, this criterion does not appear to be relevant to this appeal.

**2. The vehicle type and purpose;**

This criterion does not appear to be relevant to this appeal.

**3. The relative, seasonal and special event demands for parking spaces within the areas of the requested parking;**

There are no identified seasonal or special event parking demands made on the on-street parking on W. 18<sup>th</sup> avenue.

**4. The other public uses for the property;**

Conversion of the roadway space devoted to parking into wider bike lanes is the basis for parking removal. The process considered the public benefits of widening bike lanes with the loss of parking.

**5. The location and physical characteristics of the parking area or facility;**

The Traffic Engineer inventoried the parking spaces along W. 18<sup>th</sup> Avenue and determined their amount of usage. Based upon this data, he concluded that the remaining supply of parking would be adequate to handle the average parking demand.

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**6. The demand for operating revenues, the costs of operations and enforcement;**

The issue of revenue and cost of enforcement does not appear to be relevant or considered during the promulgation of the administrative rule or its appeal.

**7. The use of parking regulations to promote city adopted goals and policies;**

The Traffic Engineer has noted that limiting the amount of available parking is a strategy used to meet city goals of encouraging alternative mode travel, reducing private automobile use, limiting Greenhouse Gas production and increasing neighborhood livability by reallocating the use of space curb-to-curb for accommodation of additional travel modes. Removing parking to provide bike lanes meets TransPlan goals, provides a roadway meeting ACSP design standards and is consistent with goals identified in the Pedestrian and Bicycle Master Plan.

**8. Abuse by applicants of any parking-related permits;**

This criterion is not relevant to this decision to remove parking from a street.

**9. The impact on nearby commercial uses;**

An issue not raised in the appeal but brought up in written testimony was a question about how the reduction in parking spaces will affect the Lil' Blessings Day Care Center on W. 18<sup>th</sup> Avenue. This day care center is located in the second house west of Jackson Street on the south side of West 18<sup>th</sup> Avenue. The approximate distance of Jackson Street to Lil' Blessings walkway is 120 feet. The property is also two houses away from Van Buren Street and a proposed pedestrian crossing island. The approximate distance of the proposed Van Buren Street crossing to Lil' Blessings is 200 feet. A Lane Transit District bus stop is located at the southwest corner of W 18<sup>th</sup> and Jackson. On-street parking is available on the north side of 18<sup>th</sup> and on both sides of Jackson. The City Engineer conducted a post-hearing inspection of the drop-off and pick-up activities associated with the day care center and concluded that the removal of parking in front of Lil' Blessings is unlikely to place an undue hardship on the use of the property given its close proximity to available on-street parking supply and the availability of onsite pick up and drop off alternatives. Current use of Jackson Street by patrons is an indication that, while not as convenient, Jackson Street is a reasonable alternative.

**10. The ease of enforcing the provisions of this chapter; and**

Efficiency of enforcement does not appear to be an issue raised in either the decision-making process or in the appeal. Obviously, the prohibition of parking along a street should not be a difficult matter to enforce.

**11. The availability of other parking spaces.**

As noted previously, the Traffic Engineer considered the remaining parking space inventory on the north side of W. 18<sup>th</sup> Avenue and the availability of parking along adjacent streets.

**Conclusion**

As noted above, EC 5.055 only requires the Traffic Engineer to consider certain factors in making an administrative decision regarding the removal of parking spaces. It is clear that the Traffic Engineer did consider the applicable provisions of EC 5.055(1). In conclusion, I find that the adoption of Administrative Order 58-13-02 is consistent with the applicable standards of the Eugene Code and conforms to citizen involvement requirements.

**Judicial Review**

The appeal path for this decision is not entirely clear. If this decision is determined to be a land use decision then an appeal must be taken to the Oregon Land Use Board of Appeals (LUBA). Notice of Intent to Appeal to the Board must be taken within 21 days of when a decision becomes final. As this decision is final on May 21, 2013, an appeal to LUBA must be perfected by June 11, 2013.

ORS 197.015(10)(b)(A) states that a decision of a local government where there are land use standards that do not require interpretation or the exercise of policy or judgment is not a land use decision. It can be argued that EC 5.055 does not require the City Engineer to exercise either policy or judgment. In this case, my decision must be appealed within 60 days to the Circuit Court of Lane County through a Writ of Review as provided by ORS 34.010 through 34.100.

Dated, issued, and mailed this 21<sup>th</sup> day of May, 2013.

**Respectfully Submitted,**

  
**Gary Darnielle**  
**Eugene Hearings Official**