

Legislation Details (With Text)

File #: 21-220 **Version:** 1
Type: Informational Report **Status:** Filed
In control: City Council
On agenda: 6/14/2021 **Final action:** 6/14/2021
Title: Pedestrian path through Pioneer Cemetery.
Ward(s): Ward 7
Councilor(s): Councilor Nordyke
Neighborhood(s): SWAN, SCAN, Sunnyslope
Result Area(s): Safe, Reliable and Efficient Infrastructure; Welcoming and Livable Community

Sponsors:**Indexes:****Code sections:**

Attachments: 1. ADA Compliance Legal Opinion, 2. Ownership of Alley, 3. Staff Reports Related to Pioneer Cemetery Path

Date	Ver.	Action By	Action	Result
6/14/2021	1	City Council	received and filed	

TO: Mayor and City Council

THROUGH: Steve Powers, City Manager

FROM: Peter Fernandez, PE, Public Works Director

SUBJECT:

Pedestrian path through Pioneer Cemetery.

Ward(s): Ward 7
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Neighborhood(s): SWAN, SCAN, Sunnyslope
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ISSUE:

Additional information confirming the costs and complications of constructing a pedestrian path connecting the Candalaria and Fairmount neighborhoods through Pioneer Cemetery.

RECOMMENDATION:

Information only.

SUMMARY:

On January 11, 2021, Council asked staff to determine how the City could create a simple, uncomplicated, low-cost path through Pioneer cemetery. Based on the information compiled and research completed, it is impossible to construct a pedestrian path through Pioneer Cemetery without incurring high costs and addressing the issues and constraints related to accessibility, archaeology, public access on private property, and tribal relationships. A City path must meet federal accessibility requirements. The City has never owned the property abutting Pioneer Cemetery.

FACTS AND FINDINGS:

On August 10, 2020, City Council approved a motion directing staff to submit a report with information regarding two potential pedestrian paths linking the Candalaria and Fairmount neighborhoods. One path involved City View Cemetery and the other Pioneer Cemetery.

On January 11, 2021, City Council received the report. The estimated costs, excluding possible expenses for acquiring property or easements, were between \$324,000 and \$569,000, depending on the route and selected options. In addition to costs, the Information Report noted constraints related to:

- Compliance with the Americans with Disability Act;
- Archaeological permitting;
- Tribal review and consent related to excavation; and
- Public access across private property.

Council discussed the potential level of difficulty and estimated costs of creating a path through a cemetery. Council directed staff to conduct further research and identify how a path could be constructed at a lower cost and with fewer complications.

Research conducted by staff between January and April 2021 produced three key findings:

Finding No. 1: The path must meet ADA standards. Any connection through Pioneer Cemetery must be accessible per the federal Americans with Disability Act (ADA). To meet ADA requirements for a shared-use path, the path cannot exceed a certain slope, it must meet minimum width requirements, and its surface must be firm, stable, and slip resistant. Specific to an often-suggested alternative surface, a bark path will not meet ADA standards for a shared-use path.

A local government can create a natural or hiking type trail. Such a trail must still comply with ADA requirements although it will have different guidelines than for a shared-use path. Staff believe the proper designation for this connection is a shared-use path, a position supported by an independent legal review.

Any gate connecting the cemetery to the Fairmount neighborhood must meet accessibility requirements from both sides, requiring either excavation or fill owing to differences in grade. This finding was reviewed by the City Attorney's Office and confirmed by the law firm Beery Elsner & Hammond, LLP. Attachment 1 provides additional details.

Finding No. 2: The City does not own the property abutting Pioneer Cemetery. Contrary to assumptions dating to at least 1985, the City does not, and never has, owned an unopened 12-foot-wide dedicated alley right-of-way in the Fairmount neighborhood abutting the north boundary of Pioneer Cemetery. Before a path could be constructed, easements must be obtained, or property must be purchased. Either option will significantly increase project costs and complexity. This finding was documented by the City Surveyor based on a thorough review of recorded land transactions dating to 1908. The City Surveyor's work was reviewed by a title company and confirmed by the law firm Beery Elsner & Hammond, LLP. Attachment 2 provides additional details regarding the property's ownership history. In a separate action item, Council will be asked to approve execution of a quitclaim deed, releasing any City interests in this property.

Finding No. 3: Tribal consultation is required before any further City action. The January 11, 2021, staff report noted that excavation on cemetery grounds would require an archaeological permit issued by the Oregon State Historic Preservation Office (SHPO). Under state law, an impacted Native American Tribe has the right to object to the work. If the objection cannot be resolved, the SHPO must deny the permit and work will not be allowed to proceed. Based on input from representatives of the region's tribal nations, there are cultural, social, historical, traditional, and spiritual implications of a City project designed to facilitate people transiting through a cemetery. These implications are present regardless of whether excavation occurs. The City must consult with the Confederated Tribes of the Grand Ronde, Confederated Tribes of Siletz Indians, and Confederated Tribes of the Warm Springs Reservation prior to taking any further action on a path through Pioneer Cemetery. Depending on the tribe and the City's proposal, one or more of the tribal nations may file an objection, effectively terminating any project. This finding is based on written correspondence and a series of direct discussions between tribal nation representatives and the City.

The next sets of amendments for the *Salem Transportation System Plan* and the *Comprehensive Parks System Master Plan* will include recommendations on whether to retain references to a potential connection between the Candalaria and Fairmount neighborhoods in the vicinity of Pioneer Cemetery.

A chronological list of staff reports and Council agenda items relevant to Pioneer Cemetery is provided in Attachment 3.

BACKGROUND:

Public Works staff submitted a report to Council with information regarding a possible path through Pioneer Cemetery. The report estimated costs for the path to be in the \$100,000s and further noted

there were many complicated issues with the project. On January 11, 2021, City Council received a staff report that provided information regarding a potential path connecting the Candalaria and Fairmount neighborhoods involving Pioneer Cemetery, City View Cemetery, or both. (See report File No. 20-470.) The January report built on information contained in an earlier report provided to Council on June 22, 2020 (File No. 20-223) and provided planning-level cost estimates and summarized the issues, constraints, and options for connecting the two neighborhoods.

In response to direction by Council staff reviewed the costs and constraints identified in the January 11, 2021, staff report and attempted to identify how the City could construct a simple, low-cost path through the cemetery that would connect the two neighborhoods. The results of this research are presented in this information report.

Robert D. Chandler, PhD, PE
Assistant Public Works Director

Attachments:

1. Findings regarding compliance with the Americans with Disabilities Act.
2. Summary of research into ownership of the unopened 12-foot-wide alley right-of-way abutting the north boundary of Pioneer Cemetery.
3. Council action and information reports related to a path through Pioneer Cemetery from 1985 to present.