

ORDINANCE No. 188861

Vacate a portion of NE Marx St between NE 109th Ave and NE 112th Ave subject to certain conditions and reservations (Hearing; Ordinance; VAC-10114)

The City of Portland ordains:

Section 1. The Council finds:

1. On February 12, 2016, the Bureau of Transportation ("PBOT" or "Petitioner") initiated a request to vacate portions of NE Marx Street, NE 111th Avenue, NE 112th Avenue, and NE Deering Drive (the "Street Area"). On July 26, 2016, City staff held an Early Assistance meeting for the proposed vacation (EA 16-192639).
2. The purpose of the vacation is to 1) consolidate unused and unneeded right-of-way to the abutting tax lots along NE Marx Street; and 2) consolidate property to allow for increased and improved management by adjacent property owners along NE 112th Avenue and NE Deering Drive. The vacation request is in connection with the NE 112th Avenue & Marx Street Local Improvement District (the "LID").
3. This street vacation ordinance (this "Ordinance") is one of three ordinances to vacate the right-of-way. This Ordinance is specifically for the vacation of portions of NE Marx Street between NE 109th and NE 112th Avenues ("Marx Street Area"). Sidewalk improvements have been constructed along NE Marx Street as part of the LID, and the Marx Street Area is excess right-of-way for which PBOT has no current or foreseeable need. No development is planned, and therefore, vacating the Marx Street Area would provide the abutting owners more flexibility to develop in the future.
4. The vacation is in conformance with the City of Portland's Comprehensive Plan and is consistent with recommendations made by the Director of PBOT and Planning and Sustainability Commission, as provided in the Bureau Director's Report, dated November 2, 2017 and on file with the Office of the City Auditor (the "Auditor") and PBOT.
5. In accordance with ORS 271.100, the Council fixed a time and place for public hearing before the Council; the Auditor published notice thereof, and posted notice in the areas proposed for vacation, and provided notice to property owners in the affected area as required by ORS 271.110 and 130.
6. In accordance with ORS 271.190, since the Marx Street Area lies within 5,000 feet of the harbor line, approval in writing of the proposed vacation has been secured from the Port of Portland.

7. Other procedural requirements of ORS 271 have been complied with, and the Council, having held a public hearing, finds no objections were made or filed hereto, and it is in the public interest to vacate the Marx Street Area.

NOW, THEREFORE, the Council directs:

- a. The following described Marx Street Area is hereby vacated:

As described in Exhibits 1A through 1J and depicted on Exhibits 2A through 2J, attached and incorporated by reference.

All together containing 7,404 square feet, more or less.

- b. The vacation of the above-described Marx Street Area is granted subject to the following conditions and reservations:

1. Water Bureau ("PWB"). PWB owns and maintains certain improvements in the vicinity of the Marx Street Area. Prior to recording this Ordinance, the following conditions will be satisfied:

- i. Any meters, hydrants, or other water facilities within the Marx Street Area must be relocated to the remaining right-of-way at the Petitioner's expense.
- ii. Survey location work shall be provided for water service at 10930 and 10944 NE Marx Street to confirm location of water meters. If the meters for those properties are in the Marx Street Area, they will be relocated to the remaining right-of-way at the permit applicant's expense.

PWB will complete any necessary work within a reasonable period of time after receiving payment. The pertinent property owners and the owners' successors and assigns, will agree to accept ownership of abandoned facilities, if any, in the Marx Street Area and will waive any claims of any nature that may arise in connection with the existence of such facilities or the City's prior use of those facilities. City will provide any necessary release documents.

2. In accordance with ORS 271.120 and City of Portland policy, this Ordinance, shall not cause or require the removal or abandonment of any sewer, water or gas main, conduit of any kind, wire, pole or thing used, or intended to be used, for any public service, including, but not limited to those identified by NW Natural and Pacific Power. Subject to Paragraph 4 below, this Ordinance will reserve an easement for the owner of any such

utility or thing to maintain, continue, repair, reconstruct, renew, replace, rebuild, and/or enlarge any and all such thing; that no building or structure of any kind shall be built or erected within a distance of ten (10) feet from the centerline of any such utility, except with the prior written consent of the City Engineer and the owner of the utility and that any and all contemplated building plans in the Marx Street Area shall be submitted for approval to the City Engineer and to the Director of the Bureau of Development Services, to the end that such construction may be so adjusted with reference to all public utilities in said areas as to cause a minimum of danger or inconvenience to the public and to the owner of such utility and to protect and preserve the same as presently constructed or hereinafter reconstructed, renewed, replaced and/or enlarged. Removal or relocation of existing utilities in the Marx Street Area will require written agreements between the Petitioner and owner(s) of the utilities.

3. Notwithstanding Directive b.2, this Ordinance will serve as a full release of City interests in the Marx Street Area and will provide City Bureaus with the authority necessary to take all other legal actions as may be reasonably necessary (including the issuance of quitclaim deeds acknowledging the release of any interests) to achieve this intent.
4. If any property, encumbered by an easement reserved in this Ordinance, is ever rededicated as public right-of-way, that portion of the easement located in the rededicated right-of-way shall automatically be terminated.
5. City costs associated with processing the street vacation petition shall be paid in full before the City records this Ordinance.
6. In the event that the above conditions are not met within one year of Council adopting this Ordinance, City Council may repeal this Ordinance at its sole discretion.

Section 2. Petitioner and other interested parties shall file with the Auditor, in form approved by the City Attorney, a document in writing, accepting the terms and conditions of this Ordinance.

Section 3. Notice is given that the street vacation will not be effective until a certified copy of this Ordinance has been recorded by the City in Multnomah County Deed Records. Prerequisites to recording this Ordinance are that 30 days have passed after final Council passage of this Ordinance, that all conditions of this Ordinance have been met, and that all vacation costs have been paid.

Section 4. After the prerequisites to recording this Ordinance have been met, the Auditor shall return a certified copy of this Ordinance and the acceptance thereof, to the

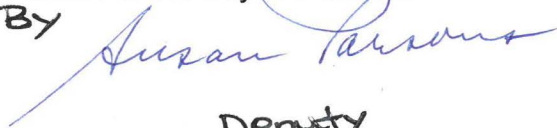
Right-of-Way Acquisition ("RWA") Section, PBOT, which shall, at the expense of the Petitioner, file with the recorder, the assessor, and the surveyor of the county in which said property is located, the certified copy of this Ordinance and the acceptance, and any map, plat or other record which may be required by law. The RWA Section shall provide the Auditor with a copy of the recorded ordinance and retain the original in RWA File No. 8073.

Passed by the Council: MAR 14 2018

Commissioner Dan Saltzman
Prepared by: Karl Arruda: sp
Date Prepared: February 5, 2018
Deputy

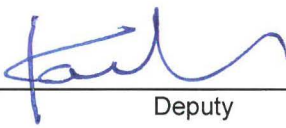
Mary Hull Caballero
Auditor of the City of Portland

By


Deputy

Agenda No.
ORDINANCE NO. 188861
Title

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<p align="center">INTRODUCED BY Commissioner/Auditor: COMMISSIONER DAN SALTZMAN</p> <hr/> <p align="center">COMMISSIONER APPROVAL</p> <p>Mayor—Finance and Administration - Wheeler</p> <p>Position 1/Utilities - Fritz</p> <p>Position 2/Works - Fish</p> <p>Position 3/Affairs - Saltzman</p> <p>Position 4/Safety – Eudaly</p> <hr/> <p align="center">BUREAU APPROVAL</p> <p>Bureau: Transportation</p> <p>Development Permitting & Transit</p> <p>Group Manager: Christine Leon</p> <p>Director: Leah Treat</p> <p>Prepared by: Karl Arruda KNA</p> <p>Date Prepared: February 5, 2018</p> <p>Supervisor: Dave McElDowney</p> <hr/> <p>Impact Statement</p> <p>Completed <input type="checkbox"/> Amends Budget <input type="checkbox"/></p> <hr/> <p>Portland Policy Document</p> <p>If "Yes" requires City Policy paragraph stated in document.</p> <p>Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p> <hr/> <p>City Auditor Office Approval: required for Code Ordinances</p> <hr/> <p>City Attorney Approval: required for contract, code, easement, franchise, comp plan, charter</p> <hr/> <p>Council Meeting Date March 7, 2018</p>	<p>CLERK USE: DATE FILED <u>FEB 27 2018</u></p> <hr/> <p align="center">Mary Hull Caballero Auditor of the City of Portland</p> <p>By: <u></u> Deputy</p> <hr/> <p>ACTION TAKEN:</p> <p align="center">MAR 07 2018 PASSED TO SECOND READING MAR 14 2018 9:30 A.M.</p>
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<p align="center">AGENDA</p> <hr/> <p>TIME CERTAIN <input type="checkbox"/></p> <p>Start time: _____</p> <p>Total amount of time needed: _____ (for presentation, testimony and discussion)</p> <hr/> <p>CONSENT <input type="checkbox"/></p> <hr/> <p>REGULAR <input checked="" type="checkbox"/> <i>30 min for 3 items</i></p> <p>Total amount of time needed: 15 <i>1 of 3</i> (for presentation, testimony and discussion)</p>

FOUR-FIFTHS AGENDA	COMMISSIONERS VOTED AS FOLLOWS:		
		YEAS	NAYS
1. Fritz	1. Fritz	<input checked="" type="checkbox"/>	
2. Fish	2. Fish	<input checked="" type="checkbox"/>	
3. Saltzman	3. Saltzman	<input checked="" type="checkbox"/>	
4. Eudaly	4. Eudaly	<input checked="" type="checkbox"/>	
Wheeler	Wheeler	<input checked="" type="checkbox"/>	