

## ORDINANCE No. 188892

Vacate portions of NE Weidler St and NE Halsey St subject to certain conditions and reservations (Hearing; Ordinance; VAC-10118)

The City of Portland ordains:

Section 1. The Council finds:

1. The City of Portland (the "City") has initiated the street vacation of portions of NE Weidler Street and NE Halsey Street east of NE 32<sup>nd</sup> Avenue (the "Street Area") on behalf of GPV II, LLC ("GPV" or the "Petitioner") the owner of the abutting property surrounding the proposed street vacation areas. GPV is being represented by Capstone Partners LLC, ("Capstone").
2. Upon City's review of the proposed design review No. LU 12-186554 DZM AD, the City determined there is no public need for the stub of NE Weidler Street and that only a Trail Access Easement is needed for the stub of NE Halsey Street for the future access to the future Sullivan's Gulch Trail.
3. At the Bureau of Transportation's ("PBOT") request, GPV pursued vacating the Street Area for approximately 1.5 years as part of its adjacent development. Capstone was unable to obtain the support and signature of the abutting property owner, Benderson Development ("Benderson"). Although the Lessee, Kroger, Inc. was in support of the vacation and subsequent development, Benderson in good conscience, would not support the vacation due to the development of a competing business.
4. Due to the full support of the vacation and development by Kroger Inc.; City staff's desire to vacate the Street Area; and the length of time GPV's development was delayed, the City felt it was reasonable to initiate the vacation request which enabled the development to move forward.
5. The Petitioner entered into a lease agreement with City dated July 1<sup>st</sup> 2014 for ingress/egress over NE Weidler Street during development and construction, which will be used as permanent access to the retail store once construction is completed. The lease will terminate upon recording of the street vacation ordinance.
6. The vacation is in conformance with the City of Portland's Comprehensive Plan and is consistent with recommendations made by the Director of the Bureau of Transportation and Planning and Sustainability Commission, as provided in the Bureau Director's Report, dated May 23, 2017 and on file with the Office of the City Auditor (the "Auditor") and PBOT.

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 Street Area.
8. In accordance with ORS 271.100, the Portland City Council (the "Council") fixed a time and place for public hearing before the Council; the Auditor published notice thereof, and posted notice in the Street Area.

NOW, THEREFORE, the Council directs:

- a. The following described Street Area, as depicted on the attached Exhibit 1 and incorporated by reference, is hereby vacated:

All that portion of NE Weidler Street lying between the east right-of-way line of NE 32<sup>nd</sup> Avenue being 60 feet wide, and a southerly projection of the east line of Lot 13, Block 5 in the duly recorded plat of "Broadway Addition", Multnomah County Plat Records, in the City of Portland, State of Oregon;

AND

All that portion of NE Halsey Street lying between the east right-of-way line of said NE 32<sup>nd</sup> Avenue, being 60 feet wide and a southerly projection of the east line of Lot 4, Block 4 of said Plat.

- b. The vacation of the above-described Street Area is granted subject to the following conditions:
  1. The Petitioner will permanently close NE Weidler where it intersects with NE 32<sup>nd</sup> Avenue, GPV II, LLC will pay all costs for constructing curbs, sidewalks and driveway, in accordance with any requirements of the City Engineer.
    - i) The property owner agrees to obtain the necessary permits to complete the required improvements.
    - ii) The property owner agrees to authorize the City to complete the required street improvements at the Petitioner's cost, in the event that the City Engineer, at his sole discretion, determines that the improvements are not being made as required in a reasonable time.
    - iii) The property owner agrees to obtain the necessary permits to complete the required improvements.
  2. The Petitioner will consolidate any historic platted lots for the underlying tax accounts adjacent to Street Area and complete the lot consolidation process to be recorded concurrently with (this "Ordinance")

3. The Petitioner will grant the City a Trail Easement for a pedestrian connection to the future Sullivan's Gulch Trail through the Street Area of NE Halsey Street in substantially the same for as **Exhibit 2** attached and incorporated by reference.
4. Subject to Paragraph 7 below, public sewer easements over vacated NE Halsey Street and vacated NE Weidler Street are hereby reserved to provide for the maintenance, operation, inspection, repair, reconstruction, replacement, enlargement or relocation of the existing public sewer facilities

The easements are reserved on the condition that no building construction, material storage, filling, grade change or tree planting will be permitted within said easement area without the prior written consent of the Director of the Bureau of Environmental Services, and further that the City or its contractors will not be responsible for damage to any improvements, including landscaping existing within the easement area, if such things are damaged or destroyed by the City or its contractors in the course of reconstruction or maintenance of the existing public sewer facilities as described on **Exhibit 3A and 3B** depicted on **Exhibit 4A and 4B** attached and incorporated by reference.

5. 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 CenturyLink and Pacific Power. Subject to Paragraph 7 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 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 Street Area will require written agreements between the Petitioner and owner(s) of the utilities.
6. Notwithstanding Conditions b3 and b4 and except for Condition b5, this Ordinance will serve as a full release of City interests in the 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.

7. 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.
8. City costs associated with processing the street vacation petition shall be paid in full before the City records this Ordinance.
9. In the event the Petitioner fails to fully comply with the above conditions within one year of Council adopting this Ordinance, the Council may repeal this Ordinance at its sole discretion.

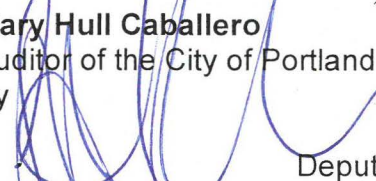
Section 2. Petitioner shall file with the Auditor, in form approved by the City Attorney, a document in writing, accepting the terms and conditions of this Ordinance.

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 return a copy of the recorded ordinance to the Auditor and retain the original in RWA File No. 7920.

Passed by the Council, APR 11 2018

Commissioner Dan Saltzman  
Prepared by: Sarah Johnston: SP  
Date Prepared: 2/9/2018

**Mary Hull Caballero**  
Auditor of the City of Portland  
By  Deputy

Agenda No. **188892**  
**Ordinance NO.**  
 Title

Vacate portions of NE Weidler St and NE Halsey St subject to certain conditions and reservations (Hearing; Ordinance; VAC-10118)

<b>INTRODUCED BY</b> Commissioner/Auditor: <b>Dan Saltzman</b>	CLERK USE: DATE FILED <u>MAR 06 2018</u>
<b>COMMISSIONER APPROVAL</b>  Mayor—Finance & Administration – Wheeler  Position 1/Utilities - Fritz  Position 2/Works - Fish  Position 3/Affairs - Saltzman <i>Dan Saltzman</i>  Position 4/Safety - Eudaly	Mary Hull Caballero Auditor of the City of Portland  <i>Mary Hull</i> By: _____ Deputy  <b>ACTION TAKEN:</b>  MAR 14 2018 <i>RESCHEDULED TO APRIL 4, 2018</i> <span style="float: right;"><b>9:30 A.M.</b></span>  APR 04 2018 <i>PASSED TO SECOND READING</i> APR 11 2018 <b>9:30 A.M.</b>
<b>BUREAU APPROVAL</b> Bureau: PBOT Group: Dev. Permitting & Transit Group Manager: Christine Leon <i>CL</i> Asst. Director: Chris Warner <i>AW</i>  Prepared by: Sarah Johnston <i>SJ</i> Supervisor: David McEldowney <i>DM</i> Date Prepared: 2.9.18	
Impact Statement Completed <input checked="" type="checkbox"/> Amends Budget <input type="checkbox"/>	
Portland Policy Document If "Yes" requires City Policy paragraph stated in document. Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	
<b>City Auditor Office Approval:</b> required for Code Ordinances	
<b>City Attorney Approval:</b> required for contract, code, easement, franchise, charter, Comp Plan <i>KAW</i>	
Council Meeting Date March 14, 2018	

<b>AGENDA</b>
<b>TIME CERTAIN</b> <input type="checkbox"/> Start time: _____ Total amount of time needed: _____ (for presentation, testimony and discussion)
<b>CONSENT</b> <input type="checkbox"/>
<b>REGULAR</b> <input checked="" type="checkbox"/> Total amount of time needed: <b>5 minutes</b> (for presentation, testimony and discussion)

Revised 8/2017

FOUR-FIFTHS AGENDA	COMMISSIONERS VOTED AS FOLLOWS:		
		YEAS	NAYS
1. Fritz	1. Fritz	✓	
2. Fish	2. Fish	✓	
3. Saltzman	3. Saltzman	✓	
4. Eudaly	4. Eudaly	✓	
Wheeler	Wheeler	✓	