

ORDINANCE No. 188907

Vacate portions of NE Deering Dr and NE 112th Ave and NE 111th 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 a portion of NE Deering Drive between NE 105th Avenue and NE 112th Avenue, a portion of NE 112th Avenue south of NE Deering Drive, and a portion of NE 111th Avenue north of NE Deering Drive (Deering Street Area). Sidewalk and street improvements have been constructed along NE 112th Avenue as part of the LID. No development is currently planned, however, vacating the Deering 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 Deering 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 Deering Street Area.

NOW, THEREFORE, the Council directs:

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

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

All together containing 66,629 square feet, more or less.

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

1. **Bureau of Transportation, Street Lighting.** PBOT owns and maintains a street light on a Pacific Power ("PPL") pole within NE Deering Drive, just north of NE 112th Avenue. The property owners at 5445 NE 112th Avenue and 5404 NE 112th Avenue will grant PBOT an easement for access and maintenance in substantially the same form as shown on the attached **Exhibit 3** and incorporated by reference.

2. **Bureau of Transportation, Right-of-Way Acquisition.**

- i. As a condition of street vacation approval, the property owners at 5445 NE 112th Avenue and 5404 NE 112th Avenue will grant PBOT a Trail Easement to maintain public access from NE 112th Avenue to the Columbia Slough, in substantially the same form as shown on the attached **Exhibit 4** and incorporated by reference.
- ii. PBOT will manage the Trail Easement under the terms and conditions of City Code Title 20.04 (General Provisions for Parks), 20.12 (Prohibited Conduct for Parks), 33.272 (Public Recreational Trails), 33.430.190 (Standards for Public Recreational Trails), and all applicable Parks policy documents and administrative rules.

3. **Bureau of Environmental Services ("BES").** As a condition of street vacation approval, the property owners at 5445 NE 112th Avenue and 5404 NE 112th Avenue will grant BES the following easements to be recorded concurrently with this Ordinance:

- i. An Access Easement for access to the Columbia Slough over a portion of the Deering Street Area, in substantially the same form as shown on the attached **Exhibit 5** and incorporated by reference.

- ii. A 15.00 foot wide Sewer Easement over an existing facility which crosses NE Deering Drive at the intersection of NE 109th Avenue, in substantially the same form as shown on **Exhibit 6** and incorporated by reference.
 - iii. A Conservation Easement for the portion of NE Deering Drive which will revert to the adjacent property owners on the south side of Deering, in substantially the same form as shown on **Exhibit 7** and incorporated by reference.
4. **Water Bureau ("PWB").** PWB owns and maintains certain improvements within the Deering Street Area (intersection of NE Deering Drive and NE 112th Avenue). Prior to recording this Ordinance, the following conditions will be satisfied:
- i. Any meters, hydrants, or other water facilities in the Deering Street Area must 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 any abandoned facilities in the Deering 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.
- ii. The property owners at 5445 NE 112th Avenue and 5404 NE 112th Avenue will grant the City an easement for an existing water line, from NE 112th Avenue to the Slough, for the full width of NE 112th Avenue, in substantially the same form as the attached **Exhibit 8** and incorporated by reference.
- The easement will be granted to provide for the maintenance, operation, inspection, repair, reconstruction, replacement and enlargement of the existing public water facility and necessary appurtenances. The Water Easement will be recorded concurrently with this Ordinance.
5. **Multnomah County Drainage District ("MCDD")** As a condition of street vacation approval, the property owners at 5445 NE 112th Avenue and 5404 NE 112th Avenue will grant MCDD an easement for access and maintenance from NE 112th Avenue to the Columbia Slough, in substantially the same form as the attached **Exhibit 9** and incorporated by reference.

6. **Planning & Sustainability Commission ("PSC")**. As part of its recommendation for the street vacation, PSC required that maintenance responsibilities for the Trail Easement, as required in Directive b.2, be agreed upon and included in documentation submitted to City Council prior to the hearing.
7. 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 9 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 said vacated 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 vacation area will require written agreements between the Petitioner and owner(s) of the utilities.
8. Notwithstanding Directives b.1, b.2, b.3, and b.4, and except for b.7, this Ordinance will serve as a full release of City interests in the street vacation 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.
9. 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.
10. City costs associated with processing the street vacation petition shall be paid in full before the City records this Ordinance.
11. In the event the above conditions are not satisfied 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.

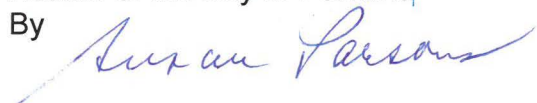
Section 4. After the prerequisites to recording this Ordinance have been met, the Auditor shall return a certified copy of this Ordinance and the acceptance thereof, to the Right-of-Way Acquisition ("RWA") Section, PBOT, which shall, at the expense of the Petitioner, file with the recorder, the assessor, 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: APR 25 2018

Commissioner Dan Saltzman
Prepared by: Karl Arruda: sp
Date Prepared: March 19, 2018

Mary Hull Caballero
Auditor of the City of Portland

By



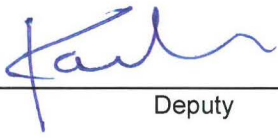
Deputy

372 395

Agenda No.
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Title

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INTRODUCED BY Commissioner/Auditor: COMMISSIONER DAN SALTZMAN	CLERK USE: DATE FILED <u>APR 10 2018</u>
COMMISSIONER APPROVAL Mayor—Finance and Administration - Wheeler Position 1/Utilities - Fritz Position 2/Works - Fish Position 3/Affairs - Saltzman Position 4/Safety – Eudaly	Mary Hull Caballero Auditor of the City of Portland  By: _____ Deputy
BUREAU APPROVAL Bureau: Transportation Development Permitting & Transit Group Manager: Christine Leon Asst. Director: Chris Warner Prepared by: Karl Arruda Date Prepared: March 19, 2018 Supervisor: Dave McEldowney Impact Statement Completed <input 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"/> City Auditor Office Approval: required for Code Ordinances City Attorney Approval: required for contract, code, easement, franchise, comp plan, charter Council Meeting Date April 18, 2018	ACTION TAKEN: APR 18 2018 PASSED TO SECOND READING APR 25 2018 9:30 A.M.

AGENDA
TIME CERTAIN <input type="checkbox"/> Start time: _____ Total amount of time needed: _____ (for presentation, testimony and discussion)
CONSENT <input type="checkbox"/>
REGULAR <input checked="" type="checkbox"/> 2 of 3 Total amount of time needed: 20 (for presentation, testimony and discussion)

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