



July 12, 2018

Portland City Council
Portland City Hall
1120 SW 4th Avenue
Portland, Oregon 97204

Dear Mayor Wheeler and Commissioners,

East Side Plating is a major contributor to the region's economy and manufacturing sector. It is also key to the Central Eastside's vitality, providing family wage jobs at its Central Eastside facility for the past 72 years.

We are deeply concerned by the City's sale of the adjacent property. For Eastside Plating to continue its operations, the business needs access to its building through the easement that that City granted in 2016. The Central Eastside Industrial Council asks that the City hold to its promise of preserving exact access to the building, by keeping the easement as was intended.

East Side Plating is an integral part of the Central Eastside's legacy, and we hope to keep it that way. While several engineering solutions have been offered to East Side Plating in lieu of the easement, the owner has made us aware that none of these solutions are viable. In order for East Side Plating to remain in that location, an easement is the only feasible solution.

We thank you for taking this in consideration and making the right decision, to maintain your promise and to ensure that this local legacy business is able to thrive.

Sincerely,

A handwritten signature in blue ink, appearing to read "Brad Malsin", is written over a light blue horizontal line.

Brad Malsin
Central Eastside Industrial Council, President



EAST SIDE PLATING, INC.

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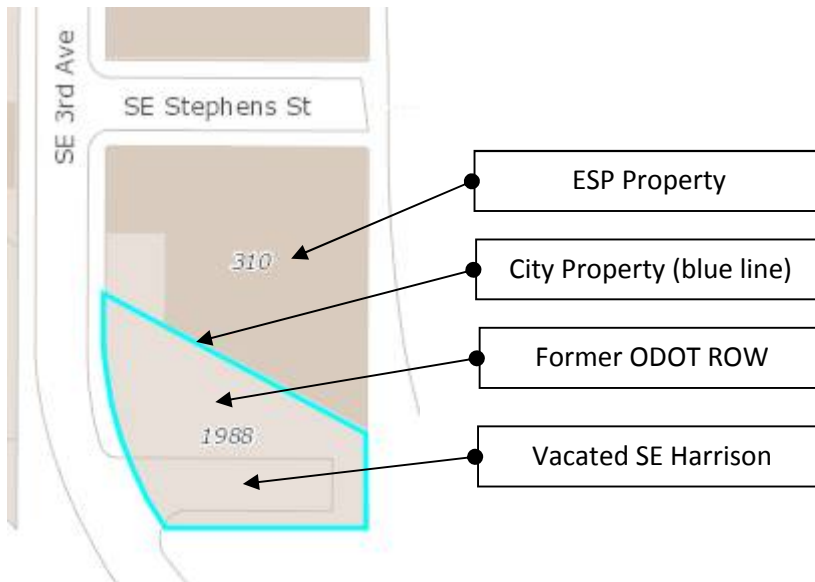
May 29, 2018

Margie Sollinger
Office of the Ombudsman
City of Portland
1221 SW 4th Avenue, Room 310
Portland, OR 97204
ombudsman@portlandoregon.gov

RE: City Refusal to Grant Easement Previously Promised

Dear Ms. Sollinger:

I am writing to ask for your assistance in finding a fair and reasonable resolution to an issue that threatens my business in the Central Eastside industrial sanctuary. Our company, East Side Plating, Inc. (“ESP”), owns property commonly known as 310 SE Stephens Street, Portland, OR 97214 (the “**ESP Property**”) which is adjacent to property owned by the City of Portland (“**City**”) commonly known as 1988 SE 3rd Avenue, Portland, OR 97214 (the “**City Property**”):



Since 1963, ESP used SE Harrison Street and the former ODOT right of way just to the north (the “**ODOT ROW Property**”), now part of the City Property, in conjunction with the operation of the ESP business on the ESP Property. In particular, ESP used the City Property, as right of way, to access to a door located on the south-east wall of its building (the “**SE Door**”) for both deliveries of industrial chemicals and for emergency egress of its employees. When the City purchased the ODOT ROW Property in 2015, ESP was assured by the City that it would still have access to the SE Door.



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A portion of the City Property consists of a section of SE Harrison Street east of SE 3rd Avenue which was vacated by the City of Portland in Ordinance No. 187591 (the “**Vacation Ordinance**”). The Vacation Ordinance is attached as Exhibit A to this letter. When the Planning and Sustainability Commission (“**PSC**”) considered the vacation of Harrison, they voted to recommend denial of the vacation due to the City’s policy to retain and support industrial and transportation uses in the Central Eastside industrial sanctuary. See Vacation Ordinance § 1.8.

City Council considered the PSC’s recommendation, as well as my written and oral testimony, and specifically addressed ESP’s access concern, noting in the Vacation Ordinance that:

“Since the PSC hearing additional evidence has come to light that:

- a. OMF can maintain beneficial use of [the City Property] and still provide 15 foot-wide access for trucks along part of the northern edge of its property and 10 feet of buffered emergency egress along the entire northern edge of the property.
- b. A tractor and trailer with combined length of up to 75 feet will be able use the 15 foot-wide access.
- c. The 10-foot-wide buffer is sufficient to provide emergency egress.”

Further, City Council directed that:

“8. The City shall work in good faith towards a reasonable engineering design to accommodate the delivery of chemicals to East Side Plating.”

Understandably, I assumed that, although OMF was going to make whatever use of the City Property that it deemed the most beneficial, they would “work in good faith” to “still provide 15 foot-wide access for trucks along part of the northern edge of its property and 10 feet of buffered emergency egress along the entire northern edge of the property.” All that was needed, it seemed, was a “reasonable engineering design” – which seemed unproblematic as Bob Kieta, Facilities Manager at OMF had the previous day (email 2/23/16) shared with me drawings from PBOT engineers to demonstrate tanker truck delivery requirements in “accommodating chemical delivery at ESP”. Moreover, during the 2/24/16 City Council meeting, Mayor Hales indicated “we have very bright people working in our engineering department in transportation. They will be able to figure out a way to get a tanker truck to access your door. We will not execute an action that will hamper a business from being successful.”

Unfortunately, the City has now definitively reneged on its commitment to provide ESP that access. It did not happen all at once. A full timeline of my communications with various City bureaus and offices is attached as Exhibit B.

First, as you may know, the City Property was picked as the City’s first choice to relocate the Right 2 Dream Too (“**R2D2**”) homeless camp from the Pearl District. R2D2 plans circulated in April through June 2016 show the 15’ ESP access alley. However, after the Land Use Board of Appeals (“**LUBA**”) concluded that the City could not move R2D2 to the City Property consistent with the City’s own zoning laws (designed to protect the industrial sanctuary), the tone of the City’s commitments began to change.

In February 2018, the City seems to have disregarded its previous commitments to ESP and determined that the City Property was excess to be sold without any access easement for ESP. Berk Nelson, a Senior Advisor in Mayor Wheeler’s office, after a meeting with ESP and Kyle Chisek, told me he would write an



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easement for ESP and that I should check back in two weeks. Over a month later, Berk stated that all the City would provide was a permit – which would be useless after the City Property is sold.

Second, ESP's counsel reached out to the City Attorney on 4/5/18, who indicated that the City would like ESP to present the City Attorney with an easement agreement for a price and to do it quickly. ESP drafted and submitted an easement to the City Attorney for her consideration on 4/13/18, referencing the same access area as defined on other PBOT documents and offering to pay \$45,000 for the easement. The draft easement and 4/13 cover letter are attached as Exhibit C.

Perhaps the most frustrating part of this process was being asked to draft an easement only to have the City go dark for five weeks and refuse to respond definitively to the request. For example, ESP's counsel reached out to Linda Law on 4/30 requesting to know who was in charge of the review of the easement and to be able to speak to City staff directly. ESP's counsel followed up on the 4/30 email on 5/7, 5/8, 5/9, and 5/15 and received no response. ESP finally contacted Jamie Dunphy from Councilor Fish's office, who spoke to the City Attorney's office on 5/16 and, although Jamie did not have a "definitive answer", assured ESP that someone will be reaching out. Finally, Kyle Chisek indicated on 5/22/18 that a sale to a developer (SKB) was in process and that ESP's only option was to try to negotiate with SKB (who, of course, would have no incentive to encumber a 15' strip of land). Linda Law responded later on 5/22 that the "City has reviewed [the] request for easement and cannot agree to encumber the property in this manner."

What we now know is that during the time without a "definitive answer", the City was finalizing negotiations with a buyer, SKB, to sell the City Property. It would appear that the City's strategy was to delay negotiation of the easement through unresponsiveness – by not providing a "definitive answer" long enough to allow the sale to be finalized.

I understand that you, as the City Ombudsman, act as an independent advocate for a fair, reasonable and just City government. I am hoping that we can meet to discuss this matter and perhaps that you can recommend that the City negotiate with me on this matter in good faith, as they were directed to do by City Council in the Vacation Ordinance.

Thank you for your time and consideration of this matter.

Sincerely,

Gary Rehnberg
President
East Side Plating, Inc

Enclosures.



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Exhibit A

Harrison Street Vacation Ordinance

Attached.

ORDINANCE No. 187591 As Amended

*Vacate a portion of SE Harrison St east of SE 3rd Ave subject to certain conditions and reservations (Hearing; Ordinance; VAC-10106)

The City of Portland ordains:

Section 1. The Council finds:

1. On October 9, 2015, the Bureau of Transportation received a petition from the Office of Management and Finance (“OMF” or “Petitioner”) for the vacation of a portion of SE Harrison St east of SE 3rd Ave. Therefore, pursuant to ORS 271.130 and City Code 17.84.065, the City initiated the vacation proceedings on its own motion.
2. The petition states that the reason for the vacation is to assemble the street area to OMF’s adjoining property.
3. The vacation is in conformance with the City of Portland's Comprehensive Plan and is consistent with recommendations made by the City Engineer, as provided in the City Engineer's Report, dated December 23, 2015 and on file with the Office of the City Auditor and the Bureau of Transportation.
4. Approval of the street vacation will not affect the functional performance of the current street system network.
5. The existing bicycle and pedestrian connection to the south of the vacation area will not be affected by the proposed vacation.
6. 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 area proposed for vacation.
7. In accordance with ORS 271.190, since the area to be vacated lies within 5,000 feet of the harbor line, approval in writing of the proposed vacation has been secured from the Port of Portland.
8. PSC held a hearing on December 15, 2015 and voted to recommend denial of the proposed vacation due to the City’s policy to retain and support industrial uses in the Central Eastside industrial sanctuary. An existing business uses the right-of-way, in conjunction with a portion of the OMF parcel north of the right-of-way, for the delivery of industrial chemicals and for a secondary emergency egress.

9. Since the PSC hearing additional evidence has come to light that:
 - a. OMF can maintain beneficial use of its property and still provide 15 foot-wide access for trucks along part of the northern edge of its property and 10 feet of buffered emergency egress along the entire northern edge of the property.
 - b. A tractor and trailer with combined length of up to 75 feet will be able use the 15 foot-wide access.
 - c. The 10-foot-wide buffer is sufficient to provide emergency egress.
 - d. The City will retain the existing guard-railed, concrete way between SE 3rd and SE Martin Luther King, referenced above in paragraph 5, which runs just south of the SE Harrison right-of-way, then turning 90 degrees north along the NE MLK right-of-way, and then providing access to the stop for the A Loop Portland Street Car and the 30E Tri-Met Estacada Express Bus.
 - e. No part of the existing guard-railed, concrete way is within the SE Harrison right-of-way to be vacated.
 - f. Because the portion of SE Harrison right-of-way to be vacated is blocked at its east end by topographic constraints and an ODOT viaduct and blocked on its west end by Union Pacific Railways, it cannot be practicably developed as part of the City's circulation system for automobiles, trucks or emergency vehicles; the non-development of such a short stub of right-of-way will not have any significant effect on the functional classification, level of service, travel patterns on the adjoining streets, or total vehicle miles traveled within the City.
 - g. The existing guard-railed, concrete way, south of the SE Harrison right-of-way to be vacated, provides superior pedestrian and bicycle travel, including access to transit. An alternative way confined to the SE Harrison right-of-way would be steeper than the existing way and would abruptly penetrate the rail on the viaduct at a point where there is a curve with limited sight distance for motorists.
 - h. In light of this additional evidence, and for the reasons stated in Exhibit 3, the Council concludes:
 - i. There is no longer any existing or future need for the right of way;
 - ii. Established street patterns will not be significantly interrupted by vacation of the right-of-way;
 - iii. The functional classifications of nearby streets will be maintained; and
 - iv. The concerns expressed by the PSC regarding the need to support existing industrial uses are adequately addressed by these additional facts and reasons.
 - v. The requested street vacation is consistent with the City's Comprehensive Plan.
10. Other procedural requirements of ORS 271 and City Code 17.84.065 have been complied with, and the Council having held a public hearing, finds no objections were made or filed hereto pursuant to ORS 271.130, and notwithstanding the PSC's recommendation, it is in the public interest that said street be vacated.

NOW, THEREFORE, the Council directs:

a. The supplemental findings and conclusions contained herein and in Exhibit 3 are hereby adopted and by this reference incorporated as if set out verbatim.

b. The following described street area is hereby vacated:

As described on Exhibit 1 and depicted on Exhibit 2 attached hereto and by this reference made a part hereof.

Contains 9,229 square feet, more or less.

c. The vacation of the above-described street area is granted subject to the following conditions and reservations:

1. **Bureau of Transportation, Permit Engineering.** The Petitioner will a) permanently close SE Harrison Street where it intersects with SE 3rd Avenue; b) pay all costs to remove curb returns (north and south) and concrete gutter; c) pay for constructing City standard curb and sidewalk corridor (4 foot minimum furnishing zone and 6 foot wide concrete sidewalk), in accordance with the requirements of the City Engineer. Petitioner will also perform other incidental work that may be necessary, such as, but not limited to, tree and brush removal, asphalt paving, sign relocation, and utility / street light pole relocation.

i) To ensure the completion of the required street improvements, the Petitioner shall provide to the City Engineer, a Performance Guarantee, in the form of a Memorandum of Understanding. The Petitioner acknowledges that the Performance Guarantee indicated is a preliminary estimate subject to change, and agrees to provide additional guarantee and/or fees as required by the City Engineer.

ii) The Petitioner agrees to authorize the Bureau of Transportation 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 Petitioner agrees to obtain the necessary permits to complete the required improvements.

2. **Bureau of Environmental Services.**

i) The Bureau of Environmental Services owns and maintains certain improvements within the street area to be vacated. Subject to Paragraph 5 below, as a condition of street vacation approval, the Petitioner will agree to the reservation of a public sewer easement to cover the east 35 feet of the vacated street area. This will be accomplished through a "springing easement" to be effective if City sells, transfers, or conveys the property. A Declaration of Covenant to Reserve Future Sewer Easement, in substantially the same format as Exhibit 4, will be executed and recorded concurrently with this vacation Ordinance.

- ii) Petitioner will determine whether the sanitary sewer and lateral line in SE Harrison are active or not. If the lines are not active, Petitioner will accept ownership of the facilities in their current condition and will transfer ownership of the facilities if the property is ever sold. (This would be accomplished in the conveyance document.) If the lines are active, prior to or at the time of any sale, Petitioner will either 1) grant an easement to the abutting property owner, in a form satisfactory to BES, for the existing facilities or 2) relocate the lateral line to a location and in a manner approved by BES.
3. In accordance with ORS 271.120 and City of Portland policy, the street vacation 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 Portland General Electric. Subject to Paragraph 5 below, the 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.
4. Notwithstanding c(3) and except for c(2), 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.
5. If any property, encumbered by an easement reserved in this vacation 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.
6. City costs associated with processing the street vacation are being directly billed to OMF, SAP IO #7TRMF0000043, FY 2015/16.
7. In the event the Petitioner fails to fully comply with the above conditions within one year of Council adopting this Ordinance, City Council may repeal the Ordinance at its sole discretion.
8. The City shall work in good faith towards a reasonable engineering design to accommodate the delivery of chemicals to East Side Plating.

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

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

Section 4. After the prerequisites to recording the Ordinance have been met, the City Auditor shall return a certified copy of this Ordinance and the acceptance thereof, to the Right-of-Way Acquisition Section, Bureau of Transportation, 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 Right-of-Way Acquisition Section shall return the recorded Ordinance to the Auditor and retain a copy in RWA File No. 8030.

Section 5. The Council declares an emergency exists because any further delay in the vacation of this property no longer needed for street purposes would harm the public welfare. Therefore this ordinance shall be in full force and effect from and after its passage by the Council.

Passed by the Council, FEB 18 2016

Commissioner Steve Novick
Prepared by: Karl Arruda: ck
Date Prepared: December 28, 2015

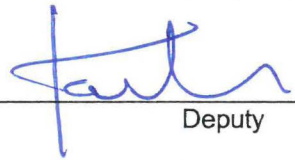
Mary Hull Caballero
Auditor of the City of Portland

By



Deputy

Vacate a portion of SE Harrison St east of SE 3rd Ave subject to certain conditions and reservations (Hearing; Ordinance; VAC-10106)

| | |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>INTRODUCED BY Commissioner/Auditor: COMMISSIONER STEVE NOVICK</p> | <p>CLERK USE: DATE FILED <u>JAN 26 2016</u></p> |
| <p>COMMISSIONER APPROVAL</p> <p>Mayor—Finance and Administration - Hales</p> <p>Position 1/Utilities - Fritz</p> <p>Position 2/Works - Fish</p> <p>Position 3/Affairs - Saltzman</p> <p>Position 4/Safety – Novick</p> | <p>Mary Hull Caballero Auditor of the City of Portland</p> <p>By:  Deputy</p> |
| <p>BUREAU APPROVAL</p> <p>Bureau: Transportation Development, Permitting & Transit Group Manager: Christine Leon Division Mgr: Alex Bejarano Assistant Director: Maurice Henderson <i>1/11/16</i></p> <p>Prepared by: Karl Arruda: ck <i>KA</i> Date Prepared: December 28, 2015 Supervisor: Dave McEldowney <i>DM</i></p> | <p>ACTION TAKEN:</p> <p>FEB 04 2016 <i>RESCHEDULED TO</i> FEB 18 2016 2 P.M. <i>TIME CERTAIN</i></p> |
| <p>Impact Statement Completed <input checked="" type="checkbox"/> Amends Budget <input type="checkbox"/></p> | |
| <p>Portland Policy Document If "Yes" requires City Policy paragraph stated in document. Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p> | |
| <p>City Auditor Office Approval: required for Code Ordinances</p> | |
| <p>City Attorney Approval: required for contract, code, easement, franchise, comp plan, charter <i>GF</i></p> | |
| <p>Council Meeting Date February 4, 2016</p> | |

| |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p align="center">AGENDA</p> <p>TIME CERTAIN <input checked="" type="checkbox"/> <i>1 of 3</i></p> <p>Start time: 2:00 pm</p> <p>Total amount of time needed: 2 hours (for presentation, testimony and discussion)</p> |
| <p>CONSENT <input type="checkbox"/></p> |
| <p>REGULAR <input type="checkbox"/></p> <p>Total amount of time needed: _____ (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. Novick | 4. Novick <input checked="" type="checkbox"/> | |
| Hales | Hales <input checked="" type="checkbox"/> | |



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Exhibit B

Timeline of City Commitments and Actions

2010/2011 – ODOT completes the MLK (99) roadway rebuild and the Portland Streetcar ramp from MLK over 3rd down to OMSI. Ken Earlywine from ODOT and Gary Hopkins from PBOT verified acceptability of ESP continuing to park on the ODOT ROW Property and continuing to access the SE Door for chemistry delivery.

December 2010 to March 2011 – ODOT contractor Kuney disconnects ESP downspouts and floods ESP. Roof drains diverted to sewer connection on ODOT ROW Property. This is a drain connection that must be protected by a future property owner or ESP will flood again. ESP signs release 4/8/11 for ODOT to get work done.

2013/2014 – ESP permits and installs anodizing line in south side of building with occupancy use change from F1-H4 for south end of facility. Permit life/safety portion of the permit requires use of the SE Door for chemical deliveries to ESP's waste treatment department and requires use of the ODOT RPW Property as employee evacuation/mustering area (IVR 3067614 Permit # 2011-135436-000-00-C0). Permit finalized 4/19/13.

Mid-2015 – City acquires ODOT ROW Property for \$254k for the purpose of relocating R2D2 camp from 4th and Burnside and completes environmental testing. ESP has meetings with Mayor Hales and Amanda Fritz and nearby business owners and raises the issue of access to the SE Door. Letters against the move provided to mayor and council.

Late 2015 – City initiates a vacation action of Harrison Street to expand the available property size to accommodate the R2D2 camp. ESP communicated to Portland Planning Commission that Harrison was used to deliver chemicals to ESP and for emergency egress. Other local business owners also shared written and verbal concerns. On 12/15/15, the Planning Commission voted to recommend denial of the proposed vacation of Harrison because the street continued to serve a transportation need – namely for ESP's adjacent business with the need to deliver chemicals to the SE Door. During the Planning Commission meeting Bob Keita, OMF Facilities Manager, suggested that, in response to ESP's concerns related to access to the SE Door, the City could "grant an easement that would need to be restrictive and would have a sunset clause if the building was ever demolished". Keita continued later in the discussion: "Regarding the easement, we'd work with the building owner to make sure he meets code and not have to do improvements to create the buffer. As we do site development with plans and permits, we will work with the adjacent owner to have as little impact on his site as possible." (Quotations were pulled from Planning Commission notes of meeting.)

January 2016 – Neighborhood meeting held at neighborhood parish and City indicates that there is no other plan but to relocate R2D2 to the City Property. Bob Kieta reports only need to provide 3' access along south wall to ESP for emergency egress according to BDS. ESP meets with Bob Kieta and Laura Pedersen from OMF on site 1/12/16 to evaluate options to reserve space for ESP to have chemicals delivered to the SE Door. During the subsequent 1/30/16 meeting on site, Bob Kieta showed plans with an access alley 15' feet wide, per PBOT tanker truck simulations.

February 2016 – Bob Kieta at OMF receives and shares drawings from PBOT engineers (email 2/23/16) to demonstrate tanker truck delivery requirements in "accommodating chemical delivery at ESP". City



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Council rejects the Planning Commission recommendation and approves the vacation of Harrison Street 2/24/16. ESP testified during the council meetings. A new layout dated 1/21/16 for the R2D2 use is shared with interested parties using the entirety of the City Property except for a "15 foot Delivery Access" for ESP. During the 2/18/16 Mayor Hales said "the city will work in good faith to accommodate an engineering design to accommodate chemical delivery to East Side Plating." During the 2/24/16 meeting Mayor Hales indicated "we have very bright people working in our engineering department in transportation. They will be able to figure out a way to get a tanker truck to access your door. We will not execute an action that will hamper a business from being successful." City Council approves R2D2 to move to the City Property.

April – June 2016 – Office of Neighborhood Involvement holds five "Good Neighbor" meetings that ESP and R2D2 and OMF attend. PBOT meeting at ESP 6/6/16 confirms tanker truck access line and the work that the City will do in the street to accommodate (wider driveway, curb work, etc.). R2D2 plans circulated show 15' ESP access ally adjacent to south wall. ESP asks Pauline Goble, OMF Facilities Manager, about getting the easement written up. Goble responds with an annually renewable permit where the use area is paved and fenced. ESP writes letter to Pauline 6/27/16 indicating what revisions are required to align to what was promised, including that ESP's right to use the access area should not be revocable.

July 2016 – ESP joins a group of other area businesses, the Central Eastside Industrial Council, as petitioner in LUBA action against the City's planned use of the City Property for people camping in an industrially zoned area.

August 2016 – Construction site work begins on City Property to prepare for R2D2 move. ESP again requests an easement.

August 30, 2016 – LUBA determines R2D2 cannot move to the City Property because of industrial zoning. Contractor walks off the job after a month of work. Newspapers report City investment in contractor agreements at \$800k.

September 2016 – Gravel was leveled on adjacent property and OMF allows fencing to be placed in order to provide ESP the promised 15' of access to the south side of building and SE Door.

March 2017 – City provides ESP Revocable Permit Parking Area 3/6 to 4/14/17 to allow access and employee parking while contractor (Tapini) wraps up grading the City Property.

April 7, 2017 – Recorded vacation ordinance of Harrison 187591 certified by Mary Hull Caballero indicates "OMF can maintain beneficial use of the property and still provide 15 foot wide access for trucks along the northern edge of the property. A tractor and trailer with combined length of up to 75 feet will be able to use the 15 foot access. The 10 foot buffer is sufficient for emergency access." The ordinance directs that "the city will work in good faith towards a reasonable engineering design to accommodate the delivery of chemicals to East Side Plating."

June 2017 – PBOT completes a portion of the street work for the vacation of Harrison with curbing and sidewalks completed on 3rd. ESP driveway construction leaves driveway farther away from power pole from plan that impairs chemical deliveries and cracks the curbing as a result. ESP access alley remains in gravel form. PBOT indicates that the "vacation is now complete".



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July 2017 – Ian McCloud at Prosper Portland calls to indicate that the City will likely be selling the City Property and wondering if ESP has any interest in it.

August 2017 – ESP receives mailing from OMF indicating the City Property is “EXCESS” and that an open comment period is available for two months concerning the property.

September 2017 – Berk Nelson, the Mayor’s Senior Policy Advisor, visits the site and ESP presents why the access was so critical to ESP’s operation. When Nelson suggested ESP buy it, ESP replied that it could only offer \$319k. Nelson said that sounded like a reasonable offer. ESP sends letter to Pauline Goble at OMF communicating concerns for access to south side of building and requesting an easement prior to disposition or sale of the City Property. On 9/27/17, that correspondence is stamped as received at OMF. Goble confirms receipt of ESP letter in a phone call, says that it would be great if ESP were able to buy the City Property, and that it will likely come down to money.

February 2018 – ESP received an email from Pauline Goble indicating City Council has approved disposition of the City Property in its entirety. Berk Nelson signs off on the City Property as excess. The approval contains no allowance for ESP access. ESP has meeting with Berk Nelson and Kyle Chisek from Mayor’s office requesting easement prior to disposition or purchase for \$300k. Left meeting with Nelson indicating “I need to write an easement for you. Check back in with me in two weeks”. ESP is contacted by broker Charlie Floberg on 2/28/18 indicating that he has offers “well in excess of \$300k”.

March 2018 – Rather than drafting an easement, Nelson tells ESP on 3/22 that OMF is authorized to sell the City Property, that, although ESP needed an easement, all the City would provide would be a permit, and asked if ESP wanted to be put in touch with the new buyer. ESP responds that the City has not provided a solution for the delivery access and emergency egress as promised. Kyle Chisek indicates that if the access was promised and now is being sold that the city attorney would find that “problematic” and cc’d Linda Law and Ken McGair.

April 2018 – 4/5/18 ESP’s counsel has a conversation with the City Attorney. City Attorney indicates that the City would like ESP to present the City Attorney with an easement agreement for a price and to do it quickly. Easement submitted 4/13/18 to the City Attorney for the same access area as defined on other PBOT documents for approved tanker access in current gravel condition for \$45k. ESP’s counsel follows up with City Attorney Linda Law on 4/18/18 and receives no response until 4/25, when Linda Law says that the Mayor’s Office had spoken with ESP, which they had not. (ESP’s counsel was told not to communicate directly with any City staff, but was unable to work through the City Attorney’s office because of unresponsiveness). ESP reaches out directly to Kyle Chisek on 4/23 requesting assistance in getting any answer to the easement request. Chisek indicates 4/30 that the City is working with a developer and that ESP could talk to them, but that Linda Law was leading the process. ESP’s counsel reaches out to Linda Law later in the day on 4/30 requesting to know who is in charge of the review of the easement and to be able to speak to City staff directly. ESP’s counsel follows up on the 4/30 email on 5/7, 5/8, 5/9, and 5/15 and receives no response.

May 2018 – ESP asked Jamie Dunphy in Nick Fish’s office to ask Councilor Fish to advocate for ESP’s access, as promised. Jamie Dunphy speaks to the City Attorney’s office on 5/16 and, although she does not have a “definitive answer”, assures ESP that someone will be reaching out. Kyle Chisek indicates on 5/22/18 that a sale to a developer (SKB) was in process and that ESP might be able to talk to them.



EAST SIDE PLATING, INC.

8400 SE 26TH PLACE
PORTLAND, OR 97202
PHONE 503-654-3774
FAX 503-654-6464

Exhibit C

Draft Easement and Cover Letter

Attached.

Zoe Powers

From: Zoe Powers
Sent: Friday, April 13, 2018 1:35 PM
To: linda.law@portlandoregon.gov
Cc: Rebecca Tom; Christe White; Gary@eastsideplating.com; kyle.chisek@portlandoregon.gov
Subject: Eastside Plating Easement
Attachments: Access, Parking, and Emergency Egress Easement Agreement (00782597-3xC624A).DOC

Linda,

Please find attached a draft easement agreement for the city property located at 1988 SE 3rd Avenue. As you may know, Eastside Plating has been concerned that the property is to be sold and that access to the southeast door of Eastside's facility will be eliminated, jeopardizing their ability continue operating and eliminating a required emergency egress for staff working in the facility.

As you will see in the attached document, Eastside Plating is offering \$45,000 for the purchase of the easement, based on an estimate of the City's purchase price and the City's overall investment in the street vacation. This is a significant sum of money because losing this access to the southeast door would cause significant damage to Eastside's business.

I know that this easement has been discussed by OMF, PBOT, and City Council for years, so I am glad that we are can finally move it towards completion. Please let me know any questions or concerns you may have.

Thank you,



Zoe Lynn Powers

Associate

Direct Telephone: 971.634.0215

Direct Fax: 971.634.0579

E-Mail: zpowers@radlerwhite.com

Address: 111 SW Columbia Street, Suite 700, Portland, OR 97201

Main: 971.634.0200

Fax: 971.634.0222

Website: www.radlerwhite.com

We advise you that any discussion of federal tax matters in this email is not intended or written to be used, and may not be used by you or any taxpayer, to (a) avoid penalties under the Internal Revenue Code, or (b) promote, market or recommend to any other party any transaction or matter addressed herein. All taxpayers should seek independent tax advice.

After Recording Return To:

Radler White Parks & Alexander
Attention: Zoe Lynn Powers
111 SW Columbia Street, Suite 700
Portland, Oregon 97201

ACCESS, PARKING, AND EMERGENCY EGRESS EASEMENT AGREEMENT

THIS ACCESS PARKING, AND EMERGENCY EGRESS EASEMENT AGREEMENT (this "**Agreement**") is made and entered into as of _____, 2018, by and between the City of Portland, acting by and through its Office of Management and Finance ("**Grantor**"), and East Side Plating Inc., an Oregon corporation ("**Grantee**"). Grantor and Grantee are each referred to herein as a "**Party**" and collectively as the "**Parties**".

RECITALS

A. Grantor owns that certain real property commonly known as 1988 SE 3rd Avenue, Portland, OR 97214, as more particularly described on Exhibit A (the "**City Property**").

B. Grantee owns that certain real property commonly known as 310 SE Stephens Street, Portland, OR 97214, as more particularly described on Exhibit B (the "**Business Property**"). The Business Property is located adjacent to the City Property.

C. A portion of the City Property consists of the portion of SE Harrison Street east of SE 3rd Avenue which was vacated by the City of Portland in Ordinance No. 187591 (the "**Vacation Ordinance**"). Before the enactment of the Vacation Ordinance, Grantee used SE Harrison Street in conjunction with the operation of its business on the Business Property. In passing the Vacation Ordinance, the Portland City Council considered evidence that Grantee could be provided an easement along the northern edge of the City Property for access and emergency egress (as more particularly described and shown on Exhibit C, the "**Easement Area**"). Accordingly, the Parties now desire to enter into this Agreement to provide for Grantee's use of the City Property for the benefit of the Business Property.

AGREEMENT

NOW, THEREFORE, for and in consideration of the sum of FORTY-FIVE THOUSAND DOLLARS (\$45,000) paid by Grantee to Grantor, the receipt and sufficiency of which are hereby acknowledged, and the mutual covenants contained herein and other good and valuable consideration, the Parties hereby agree as follows:

1. **Grant of Easement.** Subject to the terms, conditions, and restrictions contained in this Agreement, Grantor hereby grants to Grantee and its owners, officers, directors, employees, members, tenants, contractors, customers, invitees, and licensees (collectively, "**Permitted Users**"), for the benefit of the Business Property, a non-exclusive, perpetual easement on, over, and across the Easement Area for (a) vehicular, bicycle, and pedestrian access, ingress, and egress to and from the Business Property; (b) truck deliveries to the Business Property; (c) parking; (d) pedestrian emergency egress; and (e)

emergency vehicle ingress, egress, access and turnaround (the "Easement"). The Easement shall be appurtenant to the Business Property, including any future partitions or subdivisions thereof or any condominium created thereon. The Easement may be used by all police department, fire department, and ambulance service employees and other similar emergency assistance personnel providing emergency services to the Business Property (each, an "**Emergency Service Provider**" and collectively, the "**Emergency Service Providers**").

2. **Reservation of Rights.** Grantor reserves for itself and its successors and assigns the right to use Grantor's Property for any lawful use consistent with this Agreement.

3. **Use.** Grantee, for itself and on behalf of its Permitted Users, agrees to exercise its rights under this Agreement and the Easement in a manner that complies with all applicable laws, statutes, ordinances, rules and regulations (collectively, "Laws") and all covenants, conditions, and restrictions now or hereafter encumbering the City Property and pertaining to the use of the City Property. Neither Grantee nor any of its Permitted Users shall have any right to make any alterations or modifications to the City Property, install any improvements on the City Property, or place any obstruction (other than parked vehicles and trucks) on any portion of the City Property without the express written consent of Grantor.

4. **Maintenance.** Grantor shall at its cost maintain the City Property in substantially its current condition (or a better condition) and keep clear the City Property so as to maintain the City Property in good and passable condition and in compliance with all applicable Laws. Notwithstanding the foregoing, if damage to the City Property beyond ordinary wear or tear is directly attributable to Grantee or any of the Permitted Users, then Grantee shall be solely responsible for all costs, fees, and expenses incurred by Grantor in the performance of the maintenance, repair, and replacement obligations described the previous sentence which are directly caused by the negligence or intentional misconduct of Grantee or any of the Permitted Users. Grantor shall pay when due any and all real property taxes, assessments, or other charges levied against the City Property.

5. **Indemnity.** Grantee shall indemnify, defend, and hold Grantor harmless from all liabilities, penalties, costs, damages, expenses, causes of action, claims, or judgments (including without limitation reasonable attorneys' fees) resulting from injury of any person or physical damage to property, real or personal, of any kind, to the extent such injury or physical damage arises out of the negligence or intentional misconduct of Grantee or any of the Permitted Users or Grantee's failure to comply with the terms and conditions of this Agreement.

6. **Miscellaneous.**

6.1. *Notices.* Any notice, demand, or report required under this Agreement shall be sent to the owner of the City Property or Business Property in care of the tax notification address of such property; provided, however, that an owner can change the owner's notification address by written notice to the other owner(s). Any required notice or demand shall be made by hand delivery or certified mail, and shall be deemed received on actual receipt or refusal to accept delivery, whichever first occurs. Notices may be given by counsel to a party.

6.2. *Runs with Land; Binding Effect.* This Agreement shall run with the land as to all property benefited and burdened hereby and shall bind, burden, and benefit Grantor, Grantee, and their respective successors-in-title with respect to the Business Property and the City Property,

including any future partitions or subdivisions thereof or any condominium created thereon, until such time that this Agreement is terminated in accordance with its terms.

6.3. *Entire Agreement; Amendments.* This Agreement constitutes the entire agreement and understanding between the Parties with respect to the subject matter hereof and supersedes all prior express or implied agreements or understandings between the Parties with respect to the subject matter hereof. This Agreement may be modified, amended, or terminated only by a written instrument executed by the Party against whom enforcement is sought and recorded in the official records of Multnomah County, Oregon.

6.4. *Attorneys' Fees.* If a suit, action, or other proceeding of any nature whatsoever (including any proceeding under the U.S. Bankruptcy Code) is instituted in connection with any controversy arising out of this Agreement or to interpret or enforce any rights or obligations hereunder, the prevailing or non-defaulting Party shall be entitled to recover from the losing or defaulting Party all of its attorneys', paralegals', accountants', and other experts' fees and expenses and all other fees and expenses actually incurred and reasonably necessary in connection therewith, as determined by the court at trial or on any appeal or review, in addition to all other amounts provided by law.

6.5. *Waiver.* Failure to require performance of any provisions of this Agreement shall not limit the right to enforce such provision in the future, nor shall any waiver of any breach of any provision of this Agreement constitute a waiver of any succeeding breach of such provision or a waiver of the provision itself.

6.6. *Severability.* Invalidation of any one of the terms or provisions contained in this Agreement by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

6.7. *Governing Law.* This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon.

6.8. *Counterparts.* This Agreement may be executed in multiple counterparts, all of which when taken together, shall constitute one and the same instrument.

*(Remainder of Page Intentionally Left Blank;
Signature Pages Follow)*

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first written above.

GRANTOR:

The CITY OF PORTLAND, acting by and through its OFFICE OF MANAGEMENT AND FINANCE

By: _____
Printed Name: _____
Title: _____

APPROVED AS TO FORM

City Attorney

STATE OF Oregon)
) ss.
County of Multnomah)

The foregoing instrument was acknowledged before me on _____, 2018, by _____, as _____, of the City of Portland, a municipal corporation, on behalf of said municipal corporation.

Notary Public for _____
My Commission Expires: _____

[Signatures continue on next page.]

GRANTEE:

EAST SIDE PLATING INC.,
an Oregon corporation

By: _____

Printed Name: _____

Title: _____

STATE OF _____)
) ss.
County of _____)

The foregoing instrument was acknowledged before me on _____, 2018, by _____, as _____ of East Side Plating Inc., an Oregon corporation, on behalf of said corporation.

Notary Public for _____

My Commission Expires: _____

Exhibit A

Legal Description of the City Property

A parcel of land lying in Lots 3, 4 and 5, Block 45, STEPHEN'S ADDITION TO EAST PORTLAND, Multnomah County, Oregon and being that property acquired by the State of Oregon, by and through its State Highway Commission in that Final Judgment dated February 13, 1963, entered as Circuit Court Case No. 283-348, Multnomah County, Oregon, containing 9,073 square feet, more or less.

Exhibit B

Legal Description of the Business Property

PARCEL VII

Lots 1, 2, 7 and 8, Block 45, according to the duly filed plat of STEPHENS ADDITION TO EAST PORTLAND, in the City of Portland, filed June 8, 1869, in Plat Book 2, Page 55, Records of the County of Multnomah and State of Oregon.

EXCEPT that portion thereof taken for the widening of SE Union Avenue.

PARCEL VIII

Lots 3, 4, 5, and 6, Block 45, according to the duly filed plat of STEPHEN'S ADDITION TO EAST PORTLAND, in the City of Portland, filed June 8, 1869, in Plat Book 2, Page 55, Records of the County of Multnomah and State of Oregon.

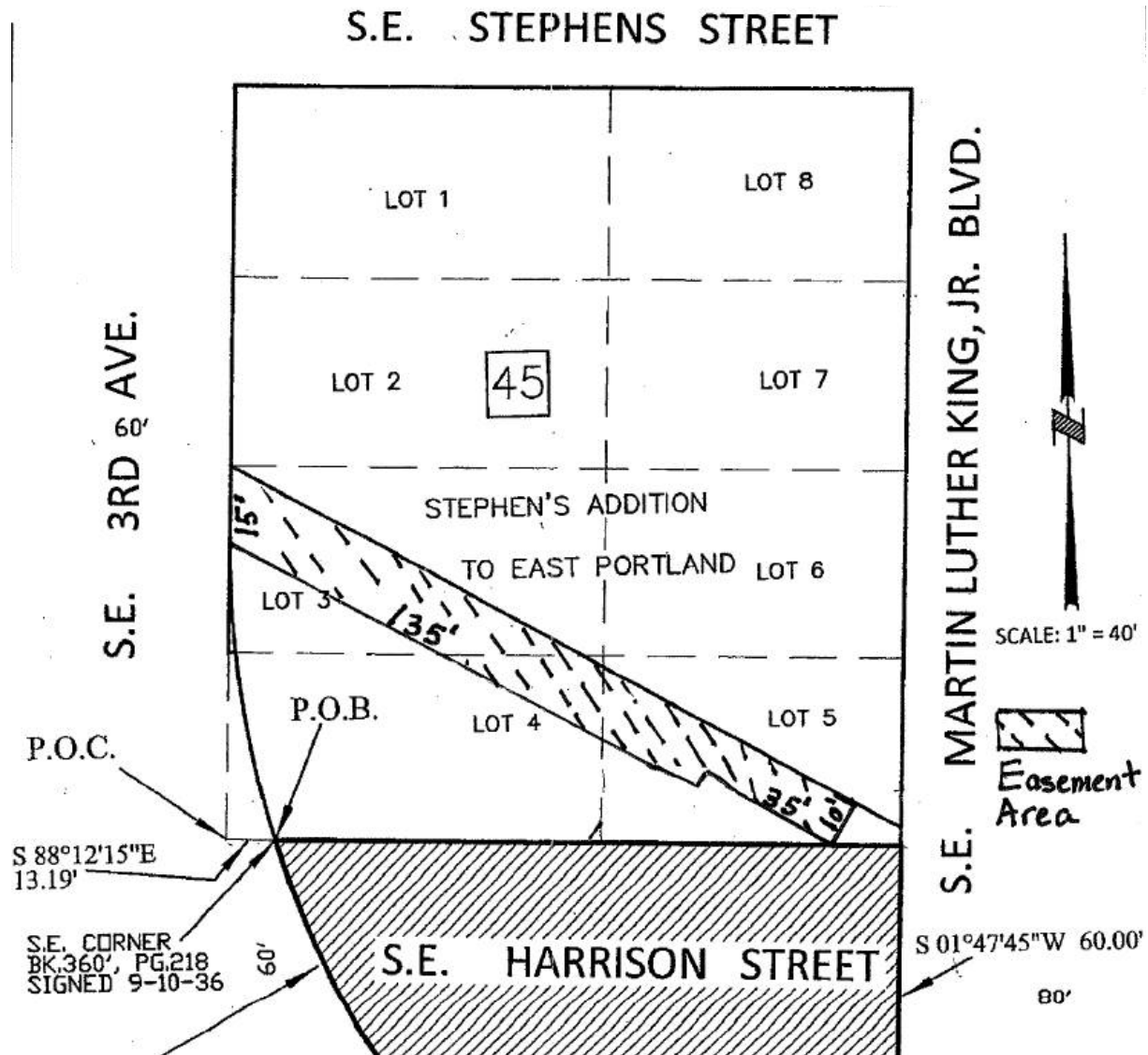
EXCEPT the portion thereof described as follows:

BEGINNING at the intersection of the South line of said Lot 5 and the West Line of SE Union Avenue; thence North along said West line, 5 feet; thence Northwesterly in a straight line, 203.53 feet to the intersection of the North line of said Lot 3 with the East line of SE 3rd Avenue; thence South along said East line, 100 feet, more or less, to the intersection of said East line with the South line of said Block 45; thence East along the South line of said Block 45 to the place of beginning.

Exhibit C

Description and Depiction of Easement Area

An area of approximately 2,375 square feet on the northern portion of the City Property, 15 feet wide at the western portion from 3rd Avenue continuing 135 feet to the southeast along the northern property line, then reducing to 10 feet wide for an additional 35 feet, and terminating slightly east of the existing exit door of the building located on the Business Property.



Moore-Love, Karla

From: Gary Rehnberg <gary@eastsideplating.com>
Sent: Thursday, August 2, 2018 11:32 AM
To: Council Clerk – Testimony
Subject: REQUEST FOR CITY COUNCIL TESTIMONY AT NEXT COUNCIL MEETING HARRISON STREET VACATION ORDINANCE

The city purchased excess property from ODOT a couple years ago that is adjacent to our facility in SE Portland. The city then vacated Harrison Street, which was immediately south of the property they had acquired. Before the Portland Planning Commission in December, 2015 and also before city council in February, 2016 we requested the city not vacate the street since it has been used for years to deliver critical chemistry to our waste treatment department in the south east corner of our facility. On February 24, 2016 the city council promised that although they were vacating the street, they “would figure out how to get a tanker truck to access our back door”. These details were included in adopted ordinance 187591. In the spring of 2016, PBOT city engineers worked with us to define the “access alley” and plans were agreed to in June, 2016. The mayors office has declared that it has completed the street vacation and OMF is selling the property as surplus to the highest bidder. I have requested an easement for the delivery alley promised since August, 2016, but have been denied. Although I was promised a 15’ (then reducing to 10’) delivery alley paved, curbed and fenced without charge, I was denied an easement. In April, 2018 in fear of not being able to deliver critical chemistry, I offered to pay for an easement for the delivery alley at a price based on what the city paid for it when purchased from ODOT, but was denied.

I would like the city to honor their prior commitments to provide us a delivery access alley before the property is sold. I do not understand why the city was able to declare the vacation of Harrison completed, when elements in the vacation ordinance were not completed.

Gary Rehnberg

Gary Rehnberg | President

gary@eastsideplating.com | Ph (503) 654-3774 x 121 | Fax (503) 654-6464

ESP ISO 9001:2015 Certified By Verysis Registrars under certificate number E072018

East Side Plating, Inc. | 8400 SE 26th Place | Portland, Oregon 97202

<http://www.eastsideplating.com/>

Request of Gary Rehnberg to address Council regarding Harrison Street
Vacation (Communication)

SEP 05 2018

PLACED ON FILE

AUG 28 2018

Filed _____

MARY HULL CABALLERO
Auditor of the City of Portland

By *Susan Larson*
Deputy

| COMMISSIONERS VOTED AS FOLLOWS: | | |
|------------------------------------|------|------|
| | YEAS | NAYS |
| 1. Fritz | | |
| 2. Fish | | |
| 3. Saltzman | | |
| 4. Eudaly | | |
| Wheeler | | |