

**ORDINANCE No. 189658**

Vacate portions of SE 106<sup>th</sup> Ave, SE 108<sup>th</sup> Ave, SE 110<sup>th</sup> Ave, SE Bybee Blvd, and SE Duke St south of SE Foster Rd subject to certain conditions and reservations (Hearing; Ordinance; VAC-10124)

The City of Portland ordains:

Section 1. The Council finds:

1. In accordance with ORS 271.130 (Vacation on council's own motion), the City of Portland ("City") through its Bureau of Environmental Services ("BES" or "Petitioner"), the controlling bureau of adjoining property, initiated the vacation of the Street Area portions of SE 106<sup>th</sup> Avenue, SE 108<sup>th</sup> Avenue, SE 110<sup>th</sup> Avenue, SE Bybee Boulevard, and SE Duke Street south of SE Foster Road (the "Street Area").
2. The reason for the City initiated vacation is to eliminate portions of public right-of-way that are no longer needed for street purposes in order to consolidate BES' control of the Foster Floodplain project area. All street improvements within the Street Area have been removed as a part of previously completed environmental restoration work.
3. The vacation is in conformance with the City's Comprehensive Plan and is consistent with recommendations made by the Director of PBOT and the Planning and Sustainability Commission, as provided in the Bureau Director's Report, dated April 30, 2019 and on file with the Office of the City Auditor (the "Auditor").
4. 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 areas proposed for vacation.
5. 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.

NOW, THEREFORE, the Council directs:

- a. The Street Area, more particularly described as follows, is hereby vacated:  
**Parcel 1 – SE 106<sup>th</sup> Avenue:** All that portion of SE 106<sup>th</sup> Avenue in the unrecorded plat of "D.J. Harris Tract", said parcel lying between the south line of SE Foster Road (width varies) and the north line of SE Bybee Boulevard (width varies), said area being approximately 1,565 feet long by 50 feet wide, containing approximately 78,250 square feet.

**Parcel 2 - SE 108<sup>th</sup> Avenue:** A portion of SE 108<sup>th</sup> Avenue in the duly recorded plat of "Stout's Acres", said parcel lying between the south line of said SE Foster Road and the east extension of a point located 33 feet south of the southeast corner of Lot 15 of said Plat, said area being approximately 1,034 feet long by 50 feet wide, containing approximately 51,700 square feet.

**Parcel 3 - SE 110<sup>th</sup> Avenue:** A portion of SE 110<sup>th</sup> Avenue in the duly recorded plat of "Johnson Creek Avenue and Pareygis Avenue", said parcel lying between the west extension of the south line of SE Duke Street and the north line of SE Cooper Street (width varies), said area being approximately 759 feet long by 24 feet wide, containing approximately 18,216 square feet.

**Parcel 4 - SE Bybee Boulevard:** All that portion of SE Bybee Boulevard in the duly recorded plat of "Greb Villa", said area being approximately 707 feet long and having a variable width, containing approximately 21,993 square feet.

**Parcel 5 - SE Duke Street:** A portion of said SE Duke Street in the duly recorded plat of "Johnson Creek Avenue and Pareygis Avenue", said parcel lying between the west line of SE 110<sup>th</sup> Avenue and the west line of SE 110<sup>th</sup> Drive, said area being approximately 163 feet long by 30 feet wide, containing approximately 4,890 square feet.

As depicted on **Exhibit 1** attached and incorporate by reference.

Altogether containing 175,049 square feet, more or less

- b. The vacation of the Street Area is granted subject to the following conditions:
1. The Land Use Review Section of the Bureau of Development Services ("BDS") has determined that the street vacation as proposed will create loss of legal street frontage for a majority of the abutting properties, and is therefore requiring that one of the following options occur:
 

**Option #1:** A zone change is required for any tax lots that will be left without legal street frontage as a result of the street vacation. Said lots should be changed from R10 Residential to Open Space (OS) as adopted under the 2035 Comprehensive Plan Update. Land Use Review Section of BDS supports this option since lots in the OS zone have no minimum lot dimension and no minimum street frontage (Title 33.605). Said zone change will be completed prior to the Ordinance being recorded. If for some reason the zone change does not occur, then Option #2 is required.

**OR**

**Option #2:** Lot Consolidations are required for any tax lots, historically platted lots, or lots of record that will be left without legal street frontage as

a result of the street vacation. All tax lots abutting the Street Area under the same ownership be consolidated into one or more parcels. However, no more than three parcels may be created per lot consolidation review. Said Lot Consolidations will be completed prior to the Ordinance being recorded.

2. In accordance with ORS 271.120 and City policy, the 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**. Subject to Paragraph b4 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.
3. Notwithstanding Condition b2, 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.
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 the Petitioner fails to fully comply with the above conditions within one year of Council adopting this Ordinance, 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 PBOT RWA, 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. PBOT RWA shall return a copy of the recorded ordinance to the Auditor and retain the original recorded ordinance in RWA File No. 8529.

Passed by the Council: **AUG 21 2019**

Commissioner Chloe Eudaly  
Prepared by: Lance Lindahl  
Date Prepared: June 26, 2019

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

By

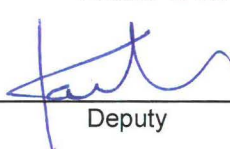


Deputy



Agenda No.  
**Ordinance NO. 189658**  
 Title

✓ Vacate portions of SE 106<sup>th</sup> Ave, SE 108<sup>th</sup> Ave, SE 110<sup>th</sup> Ave, SE Bybee Blvd, and SE Duke St south of SE Foster Rd subject to certain conditions and reservations (Hearing; Ordinance; VAC-10124)

<p><b>INTRODUCED BY</b>                  Commissioner/Auditor:  <b>Chloe Eudaly</b></p>	<p>CLERK USE: DATE FILED <u>JUL 30 2019</u></p>
<p><b>COMMISSIONER APPROVAL</b></p> <p>Mayor—Finance &amp; Administration – Wheeler</p> <p>Position 1/Utilities - Fritz</p> <p>Position 2/Works - Fish</p> <p>Position 3/Affairs - Hardesty</p> <p>Position 4/Safety - Eudaly</p>	<p>Mary Hull Caballero                  Auditor of the City of Portland</p> <p>By:                   Deputy</p>
<p><b>BUREAU APPROVAL</b></p> <p>Bureau: PBOT                  Group: Development Permitting &amp; Transit                  Group Manager: Christine Leon                  Director: Chris Warner</p> <p>Prepared by: Lance Lindahl                  Supervisor: Dave McEldowney                  Date Prepared: June 26, 2019</p>	
<p><b>Impact Statement</b></p> <p>Completed <input checked="" type="checkbox"/> Amends Budget <input type="checkbox"/></p> <p><b>Portland Policy Document</b>                  If "Yes" requires City Policy paragraph stated in document.                  Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>	<p><b>ACTION TAKEN:</b></p> <p>AUG 07 2019 PASSED TO SECOND READING AUG 21 2019 9:30 A.M.</p>
<p><b>City Auditor Office Approval:</b>                  required for Code Ordinances</p>	
<p>✓ <b>City Attorney Approval:</b>                  required for contract, code, easement, franchise, charter, Comp Plan</p>	
<p>Council Meeting Date <b>August 7, 2019</b></p>	

<p><b>AGENDA</b></p>
<p><b>TIME CERTAIN</b> <input type="checkbox"/></p> <p>Start time: _____                  Total amount of time needed: _____                  (for presentation, testimony and discussion)</p>
<p><b>CONSENT</b> <input type="checkbox"/></p>
<p><b>REGULAR</b> <input checked="" type="checkbox"/></p> <p>Total amount of time needed: <b>10 Minutes</b>                  (for presentation, testimony and discussion)</p>

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