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190504

Ordinance

Vacate unnamed alley between SW McDonnell Terrace and SW Fairmount Blvd subject to certain conditions and reservations (Hearing; VAC-10128)

Passed

The City of Portland ordains:

Section 1. The Council finds:

1. The Portland Bureau of Transportation ("PBOT"), Right-of-Way Acquisition ("RWA") received a request from Natasha Armstrong (the "Petitioner") on March 14, 2018 to vacate the unnamed alley between SW McDonnell Terrace and SW Fairmount Boulevard as described on **Exhibit A** and depicted on **Exhibit B**, containing 397 square feet, more or less, attached and incorporated by reference (the "Alley"). The Alley was originally acquired in the duly recorded Plat of Healy Heights recorded January 12, 1911, Multnomah County Plat Records.
2. The petition has been signed by all abutters and the requisite number of property owners pursuant to ORS 271.080, and all signatures have been verified and certified by the Office of the City Auditor (the "Auditor") on November 1, 2019.
3. The property on each side of the Alley is currently under the same ownership and therefore bisected by the Alley. The petition states that the reason for the vacation is to consolidate the Alley with the abutting properties. Due to the steep topography, PBOT has no plans for a pedestrian connection through the Alley. The vacation would also allow improvements built within the Alley, by a previous property owner, to remain. A portion of the Alley was previously vacated and therefore, this request, if successful, would vacate the remaining Alley. No additional development is planned.
4. The vacation is in conformance with the City's Comprehensive Plan and is consistent with recommendations made by the Director of PBOT and the Director of the Planning and Sustainability Commission, as provided in the Bureau Director's Report, revised April 19, 2021 and on file with the Auditor and PBOT.

Introduced by

[Commissioner Jo Ann Hardesty](#)

Bureau

[Transportation](#)

Prepared by

Dee Walker

Date Prepared

May 18, 2021

Requested Agenda Type

Regular

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5. In accordance with ORS 271.100, the Portland City Council (the "Council") fixed a time and place for public hearing before the Council; notice was published in the Daily Journal of Commerce and posted at the site in the areas proposed for vacation.
6. 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 Alley.

NOW, THEREFORE, the Council directs:

- a. The Alley described on said Exhibits A and B, is hereby vacated.
- b. The vacation of the Alley is granted subject to the following conditions:
 1. i) Owner of the Property will construct a retaining wall to address visible erosion and soil stability issues behind and near the end of the existing reinforced concrete retaining wall along McDonnell Terrace. These erosion and soil stability issues appear to have been caused by development of the existing unpermitted private improvements in the Alley. The retaining wall shall be designed by a professional engineer registered in Oregon and shall be designed to AASHTO standards and to the approval of the City Engineer; and
 - ii) Owner of the Property will improve existing wall drainage system. Existing corrugated wall drainage system appears to outfall onto a steep slope and will likely create erosion and slope stability issues. Wall drainage system shall be designed by a professional engineer registered in Oregon to the approval of the City Engineer and/or the approval of the Director of the Bureau of Environmental Services.
 - iii) Owner of the Property will obtain the necessary permits required to complete the required work.
2. i) Owner of the Property will provide a site survey stamped by an Oregon licensed professional that shows the existing property boundaries, existing rights-of-way ("ROW"), and the location of site improvements; e.g. retaining walls, decks, drainage discharge, etc., to determine if development is in conformance with the appropriate City development codes (e.g. building and Zoning codes).
- ii) If it is determined that improvements requiring permit have been made that exceed the scope of currently permitted work, the owner of the Property must obtain the appropriate development permits (e.g. building permits from BDS and an encroachment permit from PBOT for working within the ROW) to bring the development into conformance with applicable development code requirements.
- iii) The street vacation ordinance (this "Ordinance") will be recorded only after final inspection approval of the required permits.

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- iv) The encroachment permits for development within the current Alley ROW will be written to terminate upon recording this Ordinance.
 - v) If the site survey demonstrates the improvements are constructed within private property, in accordance with approved permits, then the owner of the Property will be required to demonstrate to the satisfaction of PBOT that the current development is compliant with Chapter 10.30 of the Erosion and Sediment Control Regulations.
3. In accordance with ORS 271.120 and City 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. Subject to Paragraph 5 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.
4. Notwithstanding Condition b.3., this Ordinance will serve as a full release of City interests in the Alley 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 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 petition shall be paid in full before the City records this Ordinance.
7. 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. 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

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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 3. 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. 8924.

Documents and Exhibits

 [Exhibits A & B](#) (110.29 Kb)

An ordinance when passed by the Council shall be signed by the Auditor. It shall be carefully filed and preserved in the custody of the Auditor (City Charter Chapter 2 Article 1 Section 2-122)

Passed by Council
July 21, 2021

Auditor of the City of Portland
Mary Hull Caballero

Impact Statement

 [Impact Statement](#) (167.52 Kb)

Agenda Items

562 Regular Agenda in [July 14-15, 2021 Council Agenda](#)

Passed to second reading

Passed to second reading July 21, 2021 at 9:30 a.m.

579 Regular Agenda in [July 21-22, 2021 Council Agenda](#)

Passed

Commissioner Jo Ann Hardesty Yea

Commissioner Mingus Mapps Yea

Commissioner Carmen Rubio Yea

Commissioner Dan Ryan Yea

Mayor Ted Wheeler Yea

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General information

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City of Portland, Oregon



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