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191256

Ordinance

Vacate a portion of NE Everett St west of NE 2nd Ave subject to certain conditions and reservations (VAC-10125)

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 Union Pacific Railroad (the “Petitioner”) on April 10, 2019 to vacate a portion of NE Everett Street west of NE 2nd Avenue as described on Exhibit 1 and depicted on Exhibit 2 (the “Street Area”). The Street Area was originally acquired in the duly recorded Plat of East Portland.
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 City Auditor’s Office on September 16, 2019. 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 Auditor’s Office (see attached letter).
3. The petition states that the reason for the vacation is to provide additional parking for local businesses as a mitigation for those parking spots that were recently lost as a result of a track expansion project completed by the Petitioner.
4. The Petitioner has agreed to transfer their property reversion interest of the Street Area to the owners of the abutting property to the south. Said consolidation of property will allow Pacific Coast Fruit Company to continue to provide secure parking spaces for their employees.
5. 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 Report, dated February 8, 2023 and on file with the Office of the City Auditor (the “Auditor”) and PBOT.

Introduced by

[Commissioner Mingus Mapps](#)

Bureau

[Transportation](#)

Contact

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Right of Way Agent II

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Requested Agenda Type

Regular

Date and Time Information

Requested Council Date

April 26, 2023

6. 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.
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. Vacating the Street Area does not interfere with reasonable access to the waterfront pursuant to City Charter 1-104. The Street Area does not currently provide direct access to the Willamette River due to the presence of both the Union Pacific Railroad tracks and the I-5 Freeway to the west. Access to the waterfront is currently available through a nearby portion of the Vera Katz Eastbank Esplanade.
9. 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:

As described on Exhibit 1 and depicted on Exhibit 2 attached and incorporate by reference.

Containing 8,619 square feet, more or less

- B. The vacation of the Street Area is granted subject to the following conditions:
 1. PBOT Development Review has determined that eight (8.00) feet of public right-of-way ("ROW") behind the existing cul-de-sac curb radius needs to be retained for a future construction of a standard 8-foot wide, curb tight sidewalk. All ROW behind that future sidewalk westward can be vacated as to not leave a remnant stub of NE 2nd Avenue. No street improvements are required. *Exhibits 1 and 2 reflect a revision to the Street Area necessary to comply with this requirement.*
 2. PBOT Right-of-Way Acquisition has required the Petitioner to:
 - i) Transfer parcel R316009, currently under the railroad's ownership, to be used as public right-of-way. Said transfer will be in substantially the same form as attached Exhibit 3 and will be recorded concurrently with this Ordinance.
 - ii) Reduce the lease rate to the City for the existing Beautification

Lease. *This lease was amended in 2020 and the annual rent was reduced at that time to comply with this requirement.*

iii) The Petitioner will enter into a lease with the City for existing parking within and north of the NE 2nd Avenue cul-de-sac or refrain from using the area and remove the striping. These conditions will be completed prior to or concurrent with the Ordinance. *The Petitioner has removed the striping north of the NE 2nd Avenue cul-de-sac and is no longer using this area for parking in order to comply with this requirement.*

3. PBOT Parking Control has required that the vacation request exclude the cul-de-sac area located at the NE Everett Street / NE 2nd Avenue intersection in order to retain the existing public parking. *Exhibits 1 and 2 reflect a revision to the Street Area necessary to comply with this requirement.*
4. The Land Use Review Section of the Bureau of Development Services ("BDS") has required the Petitioner to consolidate lots that lose their legal street frontage as a result of the street vacation. A lot consolidation will be processed as a Type 1x land use review. A final plat survey is required for the lot consolidation review and will be recorded prior to or concurrent with the Ordinance.
5. The Bureau of Environmental Services ("BES") has required the following:
 - i) Removal of the cul-de-sac area from the street vacation request due to ongoing vehicle access needs associated with the BES pump station located to the northeast of the requested vacation area.
 - ii) Property owner(s) will grant a Permanent Tunnel Easement to the City for the existing public 264-inch sewer overflow tunnel that crosses NE Everett Street and must be a minimum of 52 feet wide. Said easement will be in substantially the same form as attached Exhibit 4 and will be recorded concurrently with this Ordinance.
 - iii) Property owner(s) will grant a sewer easement to the City for the existing 8-inch sanitary gravity main in NE Everett Street and must be a minimum of 15 feet wide. Said easement will be in substantially the same form as attached Exhibit 5 and will be recorded concurrently with this Ordinance.
6. Portland Fire & Rescue has required that the Street Area exclude the paved cul-de-sac area located at the NE Everett Street / NE 2nd Avenue intersection that provides access for emergency

vehicles. *Exhibits 1 and 2 reflect a revision to the Street Area necessary to comply with this requirement.*

7. Oregon Department of Transportation (the "State") is the transportation facility owner of the I-5 and I-84 freeway ramps that transverse the Street Area. The bridge columns within the Street Area hold up the ramps from I-84 westbound to I-5 southbound (Structure Number 08588B) and from I-5 northbound to I-84 eastbound (Structure Number 08588D) (hereinafter the "Bridge Facilities"). A non-exclusive easement is hereby reserved over the Street Area. Said easement is to ensure the right of the State to enter the property as necessary for the protection, preservation, maintenance, reconstruction, and operation of the Bridge Facilities including the bridge footings (below ground), column, and the bridge structure (above ground). The easement limits the placement of permanent or semi-permanent structures in the property area to ensure State access to the property. Temporary uses such as parking and storage are acceptable. The easement will supersede the rights granted to the State in IGA MCA2080 that encumbered the Street Area. Other than in an emergency, the property owner(s) will be given notice at least 24 hours before State will access the Bridge Facilities for regular inspection and maintenance activities, and said property owner(s) will be asked to clear the area around the columns for the duration of State's activities. State will have access to the Bridge Facilities immediately in the case of an emergency.
8. In accordance with ORS 271.120 and City policy, the street vacation ordinance (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 b.10. 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 property owner(s) and owner(s) of the utilities.

9. Notwithstanding Condition b.8. and except for Conditions b.5.ii., b.5.iii., and b.7., 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.
10. 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.
11. City costs associated with processing the street vacation petition shall be paid in full before the City records this Ordinance.
12. 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. The Property Owner shall file with the City Auditor, in form approved by the City Attorney, a document in writing, accepting the terms and conditions of the Ordinances.

Section 3. Notice is given that the street vacation will not be effective until a certified copy of the 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. 8824.

Documents and Exhibits

 [Exhibit 1](#) 871.38 KB

 [Exhibit 2](#) 256.63 KB

 [Exhibit 3](#) 1.61 MB

 [Exhibit 4](#) 1.99 MB

 [Exhibit 5](#) 1.59 MB

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
April 26, 2023

Auditor of the City of Portland
Simone Rede

Impact Statement

Purpose of Proposed Legislation and Background Information

- The purpose of this legislation is to vacate a portion of NE Everett Street west of NE 2nd Avenue (the "Street Area"), as recommended in the Bureau Director Report.
- On September 16, 2019, the Office of the City Auditor certified a petition for the vacation of a portion of NE Everett Street west of NE 2nd Avenue, with the petition initiated by The Union Pacific Railroad Company (the "Petitioner").
- The petition stated that the reason for the vacation is to provide parking for local businesses as a part of a Union Pacific track project that took part of the existing parking used by area businesses.
- Current plans for the Property are for its continued use as a surface parking lot by Pacific Coast Fruit Company.
- The Ordinance complies with state law under ORS 271 and City Code, Chapter 17.84.

Financial and Budgetary Impacts

- The process for vacating streets is a cost recovery program, typically paid for by the Petitioner, and does not have a net impact on PBOT's budget. Expenses for processing a street vacation request typically range between \$8,000 and \$20,000+, depending on the complexity. This street vacation falls above the high end of the range and is estimated (with moderate confidence) to be approximately \$21,000.
- Fees paid by the Petitioner for this street vacation will cover the actual expenditures incurred by City staff for the processing of this request. The SAP Cost Object is 9TR000002537. These expenses are occurring in FY 18-19, 19-20, 20-21, 21-22 and 22-23.
- This legislation does not affect staffing levels nor will result in a new or modified financial obligation or benefit now or in the future.
- If City Council does not approve the Ordinance, the Street Area will remain as public right-of-way and Pacific Coast Fruit will need to

remain in a lease with the City for its continued use of this area as a private parking lot.

Community Impacts and Community Involvement

- Pursuant to ORS 271.080, the Petitioner obtained the required signatures from surrounding property owners in the 'affected area' as stated in said statute, showing support of the vacation request. As an additional requirement of the state statute, the notice of the public hearing has been published in the Daily Journal of Commerce and signs have been physically posted near the Street Area.
- Comments were also solicited from City Bureaus, government agencies, public utilities and affected neighborhood and business associations in the area. PBOT did not receive any objections to the vacation request.
- The PSC advertised and then held a public hearing on June 9, 2020. Although not required by State Statute or City Code, letters were mailed to all the surrounding neighbors within an 'affected area' as defined by ORS 271 to notify them of the public hearing thereby giving them an opportunity to be heard. No one from the public came forward to testify in support or opposition of the vacation, and the PSC ultimately recommended approval of the vacation request to City Council.
- There do not appear to be any other impacts to the community from vacating this right-of-way. No opposition to this street vacation request is expected and no one has expressed their desire to testify at the hearing. There is no future public involvement anticipated since the Ordinance will conclude the street vacation process.

100% Renewable Goal

Not applicable.

Budget Office Financial Impact Analysis

This action authorizes street vacation (a type of easement by which the City transfers the right-of-way of a public street to a private owner) on a portion of NE Evertt Street. PBOT's street vacation process operates as a cost recovery program paid for by the petitioner, in this case Union Pacific Railroad. The cost to PBOT of processing this vacation is estimated to at \$21,000 with which be recovered via fee, resulting in a net zero budget impact.

Agenda Items

311 Regular Agenda in [April 19, 2023 Council Agenda](#)

Rescheduled

Rescheduled to April 19, 2023 at 2:15 p.m.

316 Regular Agenda in [April 19, 2023 Council Agenda](#)

Passed to second reading

Passed to second reading April 26, 2023 at 9:30 a.m.

333 Regular Agenda in [April 26, 2023 Council Agenda](#)

Passed

Commissioner Dan Ryan Yea

Commissioner Rene Gonzalez Yea

Commissioner Mingus Mapps Absent

Commissioner Carmen Rubio Yea

Mayor Ted Wheeler Yea