



[Home](#) / [Council Documents](#)

191269

Ordinance

Vacate a portion of NE 42nd Ave south of NE Halsey St subject to certain conditions and reservations (VAC-10134)

Passed

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 the Bureau of Transportation ("PBOT") and the Office of the Mayor, initiated the vacation of a portion of NE 42nd Ave south of NE Halsey St described on **Exhibit 1** and depicted on **Exhibit 2** (the "Street Area"). The Street Area was originally acquired in the duly recorded Plat of Laurelhurst, recorded on March 7, 1910, Multnomah County Plat Records.
2. The Street Area is currently used for ingress and egress by public transit buses that serve the Hollywood Transit Center ("HTC") and are operated by the Tri-County Metropolitan Transportation District of Oregon ("TriMet"). Current plans call for this existing bus service to be relocated to a new bus transfer area that will be constructed along a nearby portion of NE Halsey Street.
3. The Street Area is also currently used by pedestrians, bicyclists, and transit riders to access the MAX Light Rail system and a pedestrian bridge that crosses the I-84 Freeway and provides a direct connection to the Laurelhurst neighborhood to the south. Upon completion of the street vacation process, the Street Area will remain under public ownership and public access will be retained through the granting of a Public Walkway Easement.
4. The purpose of this City initiated vacation is to allow for construction of improved pedestrian and bicyclist access between the Hollywood and Laurelhurst neighborhoods, to allow for construction of new TriMet and public transportation related infrastructure, and to make the HTC site viable for a new affordable housing development with approximately 220 housing units.

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

May 10, 2023

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 March 6, 2023 and on file with the Office of the City Auditor (the "Auditor") and PBOT.
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 signs were physically posted at the site in the areas proposed for vacation.
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 Street Area.

NOW, THEREFORE, the Council directs:

- A. The Street Area, more particularly described as follows, is hereby vacated:
 1. As described on **Exhibit 1** and depicted on **Exhibit 2** attached and incorporate by reference.
 2. Containing 15,728 square feet, more or less.
- B. The vacation of the Street Area is granted subject to the following conditions:
 1. PBOT Development Review, PBOT Transportation Planning, and PBOT Active Transportation have required TriMet to grant a Public Walkway Easement over the entire Street Area until such time as the final design of the public access from NE Halsey Street to the Hollywood/NE 42nd Avenue MAX Station has been approved, at which time the easement width may be reduced with PBOT approval. Said easement will be in substantially the same form as **Exhibit 3** attached and will be recorded concurrently with the Ordinance.
 2. PBOT Development Review has also required that the northern 19 feet of NE 42nd Avenue just south of NE Halsey Street be retained as public right-of-way for future street and sidewalk improvements. *Exhibits 1 and 2 reflect the revision to the Street Area necessary to comply with this requirement.*
 3. PBOT Signals, Street Lighting, and ITS has required the following:
 - a. That the Street Area be reduced in size on its north end to allow most of the existing PBOT signal infrastructure located at the southeast corner of the NE 42nd Avenue and NE Halsey Street intersection to remain in the public right-of-way. *Exhibits 1 and 2 reflect the revision to the Street Area*

necessary to comply with this requirement.

AND

- b. Reduce the size of the north end of the Street Area by another 2.00 feet.

OR

- c. Relocate the electrical junction box for the existing signal infrastructure outside of the Street Area and into the remaining public right-of-way with approval from PBOT Street Lighting.

OR

- d. TriMet will grant a Traffic Signal Easement to the City of Portland for the junction box at its current location. Said easement will be in substantially the same form as **Exhibit 4** attached and will be recorded concurrently with the Ordinance.

4. Bureau of Development Services, Land Use Review Section (“BDS”) has required TriMet to complete a replat through a Type 1x Land Use Review for all lots and lot remnants that will fall out of compliance with City Code 33.610.200E Minimum Front Lot Line requirements as a result of the vacation. Lots 12 and 13, Block 44, Laurelhurst must be consolidated through a replat into one or more parcels that will continue to have street frontage after the street vacation is recorded. The replat will be recorded prior to or concurrently with the Street Vacation Ordinance. *A replat of this area has been recorded with Multnomah County as Partition Plat No. 2023-7. The TriMet owned property has been split into three parcels that all have a legal public right-of-way frontage along NE Halsey Street.*

5. Portland Water Bureau (“Water”) owns and maintains certain improvements within the Street Area. As a condition of street vacation approval, TriMet will complete the requirements listed below. All of the work referenced below will be completed by Water and all fees and costs for this work are the responsibility of TriMet. Water’s cost-share program does not apply to this project. All fees must be paid prior to commencement of any work. Fee amounts for the work will be determined by a site-specific estimate. TriMet, and its successors and assigns, will agree to accept ownership of any abandoned facilities in the 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.

Water has required the following:

- a. The public water main currently located in the Street Area will be abandoned from its connection in NE Halsey Street to its terminus located approximately 220 feet to the south, north of the Union Pacific Railroad right-of-way.

AND

- b. The service to 4110 NE Halsey Street that is tapped into the water main located within NE 42nd Avenue must be relocated or abandoned. If the service is relocated, any and all private-side plumbing required to re-connect to the new service is the responsibility of TriMet.

AND

- c. The existing hydrant within the Street Area will be relocated to a location in NE Halsey Street near the intersection of NE Halsey Street and NE 42nd Avenue. TriMet will submit a site utility plan to the City showing the proposed location of the hydrant. Water Bureau staff will review and work with TriMet to determine acceptability of the proposed location prior to payment for the work.
6. Bureau of Environmental Services (“BES”) owns and maintains certain improvements located to the immediate south of the Street Area. As a condition of street vacation approval, TriMet will grant the easement rights described below.
 - a. TriMet will enter into an inter-agency agreement (the “Agreement”) with the City that gives BES continuous access to the Sullivan’s Gulch Trunk Sewer located immediately to the south of the property addressed as 4110 NE Halsey Street (the “Property”). The Agreement will:
 - Identify the area(s) on the Property over which BES will have continuous access to the 48-inch Sullivan’s Gulch Trunk Sewer including through the existing gate.
 - Protect BES long term access to the Sullivan’s Gulch Trunk Sewer through a commitment from TriMet to first record an easement benefitting the City prior to an ownership transfer of the property from TriMet to another party.
 - Dissolve the inter-agency agreement once TriMet has constructed drivable access to BES across relevant portions of the Street Area, as approved by BES.

*Said agreement has been executed by both TriMet and BES and is attached here as **Exhibit 5**.*

AND

- b. TriMet will grant the City a minimum 20-foot-wide BES Access Easement, or other dimensions as approved by the BES Director, within the street area requested to be vacated to allow BES access to the 48-inch Sullivan's Gulch Trunk Sewer located immediately to the south. The easement must have unobstructed vertical clearance. The access easement area must accommodate drivable access to the Sullivan's Gulch Trunk Sewer and its existing easement located on property owned by Union Pacific Railroad. Drivable access must accommodate a turning radius or other turning movement as approved by BES for a "114SD VAC Truck" design vehicle, which could be provided by a combination of new and existing easement, to be approved by BES. The easement may be relocated at the request of TriMet or the current property owner with approval of the BES Director, provided equal or better access to the Sullivan's Gulch Trunk Sewer is granted to the City elsewhere, at which time the easement granted will be released. Said easement will be in substantially the same form as **Exhibit 6** attached and will be recorded concurrently with the Ordinance.
7. Urban Forestry has required that any future landscape plans for the Street Area be reviewed for tree related issues and approved by the Urban Forestry Division.
8. Bureau of Technology Services, Corporate GIS has required TriMet to contact CenturyLink/LUMEN to have the location address in their records updated to match the current address of 4110 NE Halsey Street. *TriMet is currently working to remove the public pay phone from this location. Removal of this phone and the closing the related CenturyLink/LUMEN account may be used as an alternative to this condition.*
9. 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.11**. 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.

10. Notwithstanding Condition **b.9.** and except for Conditions **b.1.**, **b.3.iv.**, **b.6.i.**, and **b.6.ii.**, 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.
11. 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.
12. City costs associated with processing the street vacation petition shall be paid in full before the City records this Ordinance.
13. 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 Ordinance.


Section 3. Notice is given that the street vacation will not be effective until certified copies of the Ordinances have 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. 9263.


Documents and Exhibits


 [Exhibit 1](https://www.portland.gov/sites/default/files/council-documents/2023/9263-ordinance-exhibit-1.pdf) (https://www.portland.gov/sites/default/files/council-documents/2023/9263-ordinance-exhibit-1.pdf) 145.4 KB

 [Exhibit 2](https://www.portland.gov/sites/default/files/council-documents/2023/9263-ordinance-exhibit-2.pdf) (https://www.portland.gov/sites/default/files/council-documents/2023/9263-ordinance-exhibit-2.pdf) 226.94 KB

 [Exhibit 3](https://www.portland.gov/sites/default/files/council-documents/2023/9263-ordinance-exhibit-3.pdf) (https://www.portland.gov/sites/default/files/council-documents/2023/9263-ordinance-exhibit-3.pdf) 182 KB

 [Exhibit 4](https://www.portland.gov/sites/default/files/council-documents/2023/9263-ordinance-exhibit-4.pdf) (https://www.portland.gov/sites/default/files/council-documents/2023/9263-ordinance-exhibit-4.pdf) 393.23 KB

 [Exhibit 5](https://www.portland.gov/sites/default/files/council-documents/2023/9263-ordinance-exhibit-5.pdf) (https://www.portland.gov/sites/default/files/council-documents/2023/9263-ordinance-exhibit-5.pdf) 378.83 KB

 [Exhibit 6](https://www.portland.gov/sites/default/files/council-documents/2023/9263-ordinance-exhibit-6.pdf) (https://www.portland.gov/sites/default/files/council-documents/2023/9263-ordinance-exhibit-6.pdf) 392.64 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
May 10, 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 42nd Avenue south of NE Halsey Street (the "Street Area"), as recommended in the Bureau Director Report.
- The vacation request has been initiated by the City of Portland through the Bureau of Transportation and the Office of the Mayor.
- Completion of this street vacation will allow for greater design flexibility, as well as the creation of additional affordable housing units, during TriMet's planned redevelopment of their abutting property.
- Upon completion of the street vacation process, the Street Area will remain under public ownership and will continue to be managed and maintained by TriMet.

- 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 \$30,000.
- Fees paid by TriMet 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.
- 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. TriMet would then need to revise their improvement plans for the Street Area in order to meet City Code related to improvements located within the public right-of-way. This work would delay the construction of the planned improvements and would likely reduce the number of housing units that can be constructed on their abutting property.

Community Impacts and Community Involvement

- Vacation proceedings have been City initiated without a petition or consent of property owners in accordance with ORS 271.130 (Vacation on Council's own motion) and notice to surrounding property owners shall be given as provided by ORS 271.110 (Notice of hearing). As an additional requirement of the state statute, the notice of the public hearing has been published in the Daily Journal of Commerce and has physically posted public notice signs at 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 Planning & Sustainability Commission ("PSC") advertised and then held a public hearing on March 8, 2022. 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

PBOT operates street vacation as a cost recovery program, with net zero budget impact.

Agenda Items

354 Four-Fifths Agenda in [May 3, 2023 Council Agenda](https://www.portland.gov/council/agenda/2023/5/3)
(<https://www.portland.gov/council/agenda/2023/5/3>)

Passed to second reading

Passed to second reading May 10, 2023 at 9:30 a.m.

370 Regular Agenda in [May 10, 2023 Council Agenda](https://www.portland.gov/council/agenda/2023/5/10)
(<https://www.portland.gov/council/agenda/2023/5/10>)

Passed

Commissioner Dan Ryan Yea

Commissioner Rene Gonzalez Yea

Commissioner Mingus Mapps Yea

Commissioner Carmen Rubio Yea

Mayor Ted Wheeler Yea