

ORDINANCE No. 186661

Vacate a portion of N Argyle St east of N Kerby Ave subject to certain conditions and reservations (Hearing; Ordinance; VAC-10087)

The City of Portland ordains:

Section 1. The Council finds:

1. On November 1, 2012 the Bureau of Transportation (PBOT) received a request for the vacation of a portion of N. Argyle Street east of N. Kerby Avenue, from the Bureau of Environmental Services (BES) along with D. F. Morgan and Joan L. Morgan who are the owners (Owners) of the abutting property to the north and south of the proposed street vacation area.
2. The petition from BES and the Owners (Petitioners) states that the reason for the vacation is to facilitate the Owners' remedial actions required by the Oregon Department of Environmental Quality due to contamination that exists within the public right-of-way.
3. The vacation is in conformance with the City of Portland's Comprehensive Plan and is consistent with recommendations made by the City Engineer and Planning and Sustainability Commission, as provided in the City Engineer's Report, dated April 4, 2014 and on file with the Office of the City Auditor and the Bureau of Transportation.
4. 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 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 that said street be vacated.

NOW, THEREFORE, the Council directs:

- a. The following described street area, as depicted on the attached Exhibit 1, is hereby vacated:

A portion of N. Argyle Street east of N. Kerby Avenue, in the City of Portland, Multnomah County, Oregon, being all that portion of said N. Argyle Street lying between the west line of Parcel 1, Partition Plat 2006-13, extended northerly to the southwest corner of Parcel 2 of said Plat, and the east line of said Parcel 1, extended northerly to the southeast corner of said Parcel 2.

Contains 11,250 square feet, more or less.

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

1. The Owners agree to permanently close N. Argyle Street where it intersects with N. Kerby Avenue. To accomplish this, the Owners will pay a sum certain of \$15,000 to PBOT and authorize PBOT to use said funds to perform the necessary work, including constructing curbing, removing the existing street crown, and regrading the street in accordance with the requirements of the City Engineer. PBOT will obtain any necessary permits to complete the required improvements. To satisfy this condition, the Owners may choose instead to perform the required work themselves, but the Owners will be responsible for the full cost of work, agree to provide a performance guarantee to the City Engineer, and agree to obtain all necessary permits to complete the improvements.
2. On October 8, 2013, PBOT issued Temporary Encroachment Permit No. 2013-203284 TR (Permit) to the Owners to allow environmental remedial work required by DEQ to occur in the area proposed for vacation prior to the recording of the vacation ordinance. The Owners agree to comply with the conditions of the Permit.
3. Subject to Paragraph 6 below, the City reserves a temporary public sewer easement over the existing stormwater catch basin facility and stormwater within the vacated street area. The easement encumbers the west 15.00 feet of the south 15.00 feet of the area to be vacated.

This easement is reserved to provide for the maintenance, operation, inspection, repair, reconstruction, replacement, enlargement, and relocation of the existing public sewer facility and necessary appurtenances, and is reserved on the condition that no building construction, material storage, filling, grade change or tree planting will be permitted within said easement area without the prior written consent of the Director of the Bureau of Environmental Services, and further that the City or its contractors will not be responsible for damage to any improvements, including landscaping existing on the easement area, if such things are damaged or destroyed by the City or its contractors in the course of reconstruction or maintenance of the existing public sewer facility.

This temporary public sewer easement will terminate at such time as BES has completed relocation of the catch basin facility into N. Kerby Avenue adjacent to the vacation area. If necessary, BES will issue a Quitclaim Deed to acknowledge the release of this interest at BES' expense.

4. 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 Pacific Power and NW Natural. Subject to Paragraph 8 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 Owners and the owners of the utilities.

In the case of Pacific Power's overhead electrical transmission lines, the following terms and conditions will apply:

- 4a) An easement to Pacific Power for electrical transmission or distribution facilities is hereby reserved over the westerly 25.00 feet of the vacation area together with the right of Pacific Power to access the easement area from adjacent lands of Owners for all activities in connection with the purposes for which this easement is reserved; and together with the present and (without payment therefor) the future right to keep the easement area and adjacent lands clear of all brush, trees, structures, buildings and other hazards which might endanger Pacific Power's facilities or impede its activities.

At no time shall Owners place, use or permit any equipment or material of any kind that exceeds 12.00 feet in height, light any fires, place or store any flammable materials under or within the reserved easement area. Subject to the foregoing limitations, the surface of the easement area may be used for purposes not inconsistent, as determined by Pacific Power, with the purposes for which this easement is reserved.

- 5. Notwithstanding b(4) or b(4a), and except for b(3), 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.
- 6. 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.
- 7. City costs associated with processing the street vacation petition shall be paid in full before the City records this Ordinance.
- 8. In the event the Petitioners fail 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.

Section 2. Petitioners 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.

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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 property owners, 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.

Passed by the Council,

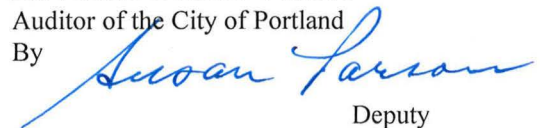
JUN 18 2014

Commissioner Steve Novick
Prepared by: Karl Arruda: slg
Date Prepared: May 12, 2014
RW # 7560

LaVonne Griffin-Valade

Auditor of the City of Portland

By



Deputy

616-661

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Agenda No. **186661**
ORDINANCE NO.
 Title

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 (Hearing; Ordinance; VAC-10087)

INTRODUCED BY Commissioner/Auditor: COMMISSIONER STEVE NOVICK	CLERK USE: DATE FILED <u>JUN 06 2014</u>
COMMISSIONER APPROVAL Mayor—Finance and Administration - Hales Position 1/Utilities - Fritz Position 2/Works - Fish Position 3/Affairs - Saltzman Position 4/Safety - Novick	LaVonne Griffin-Valade Auditor of the City of Portland By: <u></u> Deputy
BUREAU APPROVAL Bureau: Bureau of Transportation Interim Group Mgr. Christine Leon Development & Capital Program Other: Greg Jones Prepared by: Karl Arruda: slg Date Prepared: May 12, 2014	ACTION TAKEN: JUN 11 2014 PASSED TO SECOND READING JUN 18 2014 9:30 A.M.
Financial Impact & Public Involvement Statement Completed <input checked="" type="checkbox"/> Amends Budget <input type="checkbox"/>	
Portland Policy Document If "Yes" requires City Policy paragraph stated in document. Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	
Council Meeting Date June 11, 2014	
City Auditor Office Approval: required for Code Ordinances	
City Attorney Approval: required for contract, code, easement, franchise, comp plan, charter	

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

FOUR-FIFTHS AGENDA	COMMISSIONERS VOTED AS FOLLOWS:	
	YEAS	NAYS
1. Fritz	✓	
2. Fish	✓	
3. Saltzman	✓	
4. Novick	✓	
Hales	✓	