

ORDINANCE No. 187591 As Amended

*Vacate a portion of SE Harrison St east of SE 3rd Ave subject to certain conditions and reservations (Hearing; Ordinance; VAC-10106)

The City of Portland ordains:

Section 1. The Council finds:

1. On October 9, 2015, the Bureau of Transportation received a petition from the Office of Management and Finance ("OMF" or "Petitioner") for the vacation of a portion of SE Harrison St east of SE 3rd Ave. Therefore, pursuant to ORS 271.130 and City Code 17.84.065, the City initiated the vacation proceedings on its own motion.
2. The petition states that the reason for the vacation is to assemble the street area to OMF's adjoining property.
3. The vacation is in conformance with the City of Portland's Comprehensive Plan and is consistent with recommendations made by the City Engineer, as provided in the City Engineer's Report, dated December 23, 2015 and on file with the Office of the City Auditor and the Bureau of Transportation.
4. Approval of the street vacation will not affect the functional performance of the current street system network.
5. The existing bicycle and pedestrian connection to the south of the vacation area will not be affected by the proposed vacation.
6. 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 area 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. PSC held a hearing on December 15, 2015 and voted to recommend denial of the proposed vacation due to the City's policy to retain and support industrial uses in the Central Eastside industrial sanctuary. An existing business uses the right-of-way, in conjunction with a portion of the OMF parcel north of the right-of-way, for the delivery of industrial chemicals and for a secondary emergency egress.

9. Since the PSC hearing additional evidence has come to light that:
 - a. OMF can maintain beneficial use of its property and still provide 15 foot-wide access for trucks along part of the northern edge of its property and 10 feet of buffered emergency egress along the entire northern edge of the property.
 - b. A tractor and trailer with combined length of up to 75 feet will be able use the 15 foot-wide access.
 - c. The 10-foot-wide buffer is sufficient to provide emergency egress.
 - d. The City will retain the existing guard-railed, concrete way between SE 3rd and SE Martin Luther King, referenced above in paragraph 5, which runs just south of the SE Harrison right-of-way, then turning 90 degrees north along the NE MLK right-of-way, and then providing access to the stop for the A Loop Portland Street Car and the 30E Tri-Met Estacada Express Bus.
 - e. No part of the existing guard-railed, concrete way is within the SE Harrison right-of-way to be vacated.
 - f. Because the portion of SE Harrison right-of-way to be vacated is blocked at its east end by topographic constraints and an ODOT viaduct and blocked on its west end by Union Pacific Railways, it cannot be practicably developed as part of the City's circulation system for automobiles, trucks or emergency vehicles; the non-development of such a short stub of right-of-way will not have any significant effect on the functional classification, level of service, travel patterns on the adjoining streets, or total vehicle miles traveled within the City.
 - g. The existing guard-railed, concrete way, south of the SE Harrison right-of-way to be vacated, provides superior pedestrian and bicycle travel, including access to transit. An alternative way confined to the SE Harrison right-of-way would be steeper than the existing way and would abruptly penetrate the rail on the viaduct at a point where there is a curve with limited sight distance for motorists.
 - h. In light of this additional evidence, and for the reasons stated in Exhibit 3, the Council concludes:
 - i. There is no longer any existing or future need for the right of way;
 - ii. Established street patterns will not be significantly interrupted by vacation of the right-of-way;
 - iii. The functional classifications of nearby streets will be maintained; and
 - iv. The concerns expressed by the PSC regarding the need to support existing industrial uses are adequately addressed by these additional facts and reasons.
 - v. The requested street vacation is consistent with the City's Comprehensive Plan.
10. Other procedural requirements of ORS 271 and City Code 17.84.065 have been complied with, and the Council having held a public hearing, finds no objections were made or filed hereto pursuant to ORS 271.130, and notwithstanding the PSC's recommendation, it is in the public interest that said street be vacated.

NOW, THEREFORE, the Council directs:

- a. The supplemental findings and conclusions contained herein and in Exhibit 3 are hereby adopted and by this reference incorporated as if set out verbatim.

- b. The following described street area is hereby vacated:

As described on Exhibit 1 and depicted on Exhibit 2 attached hereto and by this reference made a part hereof.

Contains 9,229 square feet, more or less.

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

1. **Bureau of Transportation, Permit Engineering.** The Petitioner will a) permanently close SE Harrison Street where it intersects with SE 3rd Avenue; b) pay all costs to remove curb returns (north and south) and concrete gutter; c) pay for constructing City standard curb and sidewalk corridor (4 foot minimum furnishing zone and 6 foot wide concrete sidewalk), in accordance with the requirements of the City Engineer. Petitioner will also perform other incidental work that may be necessary, such as, but not limited to, tree and brush removal, asphalt paving, sign relocation, and utility / street light pole relocation.

- i) To ensure the completion of the required street improvements, the Petitioner shall provide to the City Engineer, a Performance Guarantee, in the form of a Memorandum of Understanding. The Petitioner acknowledges that the Performance Guarantee indicated is a preliminary estimate subject to change, and agrees to provide additional guarantee and/or fees as required by the City Engineer.

- ii) The Petitioner agrees to authorize the Bureau of Transportation to complete the required street improvements at the Petitioner's cost, in the event that the City Engineer, at his sole discretion, determines that the improvements are not being made as required in a reasonable time.

- iii) The Petitioner agrees to obtain the necessary permits to complete the required improvements.

2. **Bureau of Environmental Services.**

- i) The Bureau of Environmental Services owns and maintains certain improvements within the street area to be vacated. Subject to Paragraph 5 below, as a condition of street vacation approval, the Petitioner will agree to the reservation of a public sewer easement to cover the east 35 feet of the vacated street area. This will be accomplished through a "springing easement" to be effective if City sells, transfers, or conveys the property. A Declaration of Covenant to Reserve Future Sewer Easement, in substantially the same format as Exhibit 4, will be executed and recorded concurrently with this vacation Ordinance.

- ii) Petitioner will determine whether the sanitary sewer and lateral line in SE Harrison are active or not. If the lines are not active, Petitioner will accept ownership of the facilities in their current condition and will transfer ownership of the facilities if the property is ever sold. (This would be accomplished in the conveyance document.) If the lines are active, prior to or at the time of any sale, Petitioner will either 1) grant an easement to the abutting property owner, in a form satisfactory to BES, for the existing facilities or 2) relocate the lateral line to a location and in a manner approved by BES.
- 3. 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 Portland General Electric. Subject to Paragraph 5 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 Petitioner and owner(s) of the utilities.
- 4. Notwithstanding c(3) and except for c(2), 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.
- 5. 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.
- 6. City costs associated with processing the street vacation are being directly billed to OMF, SAP IO #7TRMF0000043, FY 2015/16.
- 7. In the event the Petitioner fails 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.
- 8. The City shall work in good faith towards a reasonable engineering design to accommodate the delivery of chemicals to East Side Plating.

Section 2. Petitioner 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 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.

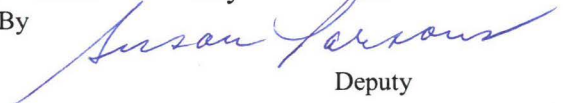
Section 4. After the prerequisites to recording the Ordinance have been met, the City Auditor shall return a certified copy of this Ordinance and the acceptance thereof, to the Right-of-Way Acquisition Section, Bureau of Transportation, which shall, at the expense of the Petitioner, file with the recorder, 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. The Right-of-Way Acquisition Section shall return the recorded Ordinance to the Auditor and retain a copy in RWA File No. 8030.

Section 5. The Council declares an emergency exists because any further delay in the vacation of this property no longer needed for street purposes would harm the public welfare. Therefore this ordinance shall be in full force and effect from and after its passage by the Council.

Passed by the Council, FEB 18 2016

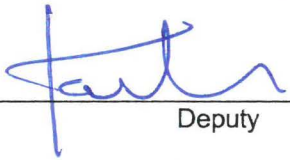
Commissioner Steve Novick
Prepared by: Karl Arruda: ck
Date Prepared: December 28, 2015

Mary Hull Caballero
Auditor of the City of Portland
By


Deputy

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 Agenda No. **ORDINANCE NO. 187591** As Amended
 Title

Vacate a portion of SE Harrison St east of SE 3rd Ave subject to certain conditions and reservations (Hearing; Ordinance; VAC-10106)

<p>INTRODUCED BY Commissioner/Auditor: COMMISSIONER STEVE NOVICK</p>	<p>CLERK USE: DATE FILED <u>JAN 26 2016</u></p>
<p>COMMISSIONER APPROVAL</p> <p>Mayor—Finance and Administration - Hales</p> <p>Position 1/Utilities - Fritz</p> <p>Position 2/Works - Fish</p> <p>Position 3/Affairs - Saltzman</p> <p>Position 4/Safety – Novick</p>	<p style="text-align: center;">Mary Hull Caballero Auditor of the City of Portland</p> <p>By:  Deputy</p>
<p>BUREAU APPROVAL</p> <p>Bureau: Transportation Development, Permitting & Transit Group Manager: Christine Leon Division Mgr: Alex Bejarano Assistant Director: Maurice Henderson <i>1/11/16</i></p> <p>Prepared by: Karl Arruda: ck <i>KA</i> Date Prepared: December 28, 2015 Supervisor: Dave McElDowney <i>DM</i></p>	<p>ACTION TAKEN:</p> <p style="font-size: 1.2em;">FEB 04 2016 <i>RESCHEDULED TO</i> FEB 18 2016 2 P.M. <i>TIME CERTAIN</i></p>
<p>Impact Statement Completed <input checked="" type="checkbox"/> Amends Budget <input type="checkbox"/></p>	
<p>Portland Policy Document If "Yes" requires City Policy paragraph stated in document. Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>	
<p>City Auditor Office Approval: required for Code Ordinances</p>	
<p>City Attorney Approval: required for contract, code, easement, franchise, comp plan, charter <i>bf</i></p>	
<p>Council Meeting Date February 4, 2016</p>	

AGENDA
<p>TIME CERTAIN <input checked="" type="checkbox"/> <i>1 of 3</i> Start time: 2:00 pm Total amount of time needed: 2 hours (for presentation, testimony and discussion)</p>
<p>CONSENT <input type="checkbox"/></p>
<p>REGULAR <input type="checkbox"/> Total amount of time needed: _____ (for presentation, testimony and discussion)</p>

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