

ORDINANCE No. 189653

Vacate a portion of SW 9th Ave between SW Gibbs St and SW US Veterans Hospital Rd subject to certain conditions and reservations (Hearing; Ordinance; VAC-10123)

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 on April 23, 2018 to vacate a portion of SW 9th Avenue between SW Gibbs Street and SW US Veterans Hospital Road (the "Street Area"). The Street Area was originally acquired in the duly recorded Plat of "Portland City Homestead".
2. On October 26, 2018 the Office of the City Auditor (the "Auditor") certified a petition for the vacation of the Street Area, with the petition initiated by Yoshida Real Estate Holdings XVIII, LLC, the owner of adjoining property (the "Petitioner").
3. The petition states that the reason for the vacation is to simplify development constraints necessary for developing contiguous structures for use as a hotel.
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 Planning and Sustainability Commission, as provided in the Bureau Director's Report, dated May 1, 2019 and on file with the Auditor.
5. In accordance with ORS 271.100, the Portland City Council (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.
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 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 3,053 square feet, more or less

- b. The vacation of the Street Area is granted subject to the following conditions:

1. Portland Water Bureau ("PWB") owns and maintains certain improvements within the Street Area. As a condition of street vacation approval, the Petitioner will pay, in full, fees to: 1) Cut and plug the 8" water main in SW 9th Avenue, **AND** 2) Relocate the existing fire hydrant to the water main located in SW US Veterans Hospital Road. PWB will complete the work within a reasonable period of time after receiving payment from the Petitioner. The Petitioner, and Petitioner's 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.
2. The Bureau of Environmental Services ("BES") owns and maintains certain improvements within the Street Area. As a condition of street vacation approval, the Petitioner will grant a permanent Sewer Easement to the City, in substantially the same form as **Exhibit 3**, attached and incorporated by reference, for the existing BES pipe located within the Street Area. BES requires a 15-foot-wide easement centered over the pipe **OR** an offset easement with spacing of 5 feet on one side and 10 feet on the other. Petitioner must provide professionally prepared legal exhibits showing the BES pipe location, the easement area, and associated property lines. The Sewer Easement document will be recorded concurrently with the Ordinance.
3. 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 b5 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 b3, and except for Condition b2, 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.
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. Petitioner shall file with the Auditor, in form approved by the City Attorney, a document in writing, accepting the terms and conditions of this Ordinance.

Section 3. 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 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. 8722.

AUG 07 2019

Passed by the Council:

Commissioner Chloe Eudaly
Prepared by: Lance Lindahl
Date Prepared: June 17, 2019

Mary Hull Caballero
Auditor of the City of Portland

By



Deputy

~~730~~ 770

Agenda No.
Ordinance NO. 189653
 Title

Vacate a portion of SW 9th Ave between SW Gibbs St and SW US Veterans Hospital Rd subject to certain conditions and reservations (Hearing; Ordinance; VAC-10123)

<p>INTRODUCED BY Commissioner/Auditor: Chloe Eudaly</p>	<p>CLERK USE: DATE FILED <u>JUL 23 2019</u></p>
<p>COMMISSIONER APPROVAL</p> <p>Mayor—Finance & Administration – Wheeler</p> <p>Position 1/Utilities - Fritz</p> <p>Position 2/Works - Fish</p> <p>Position 3/Affairs - Hardesty</p> <p>Position 4/Safety - Eudaly</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: PBOT</p> <p>Group: Development Permitting & Transit</p> <p>Group Manager: Christine Leon</p> <p>Director: Chris Warner</p> <p>Prepared by: Lance Lindahl</p> <p>Supervisor: Dave McEldowney</p> <p>Date Prepared: June 17, 2019</p>	<p>ACTION TAKEN:</p> <p style="font-size: 1.2em; font-weight: bold;">JUL 31 2019 PASSED TO SECOND READING AUG 07 2019 9:30 A.M.</p>
<p>Impact Statement</p> <p>Completed <input checked="" type="checkbox"/> Amends Budget <input type="checkbox"/></p>	
<p>Portland Policy Document</p> <p>If "Yes" requires City Policy paragraph stated in document.</p> <p>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, charter, Comp Plan</p>	
<p>Council Meeting Date July 31, 2019</p>	

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

FOUR-FIFTHS AGENDA	COMMISSIONERS VOTED AS FOLLOWS:		
		YEAS	NAYS
1. Fritz	1. Fritz	✓	
2. Fish	2. Fish	✓	
3. Hardesty	3. Hardesty	✓	
4. Eudaly	4. Eudaly	✓	
Wheeler	Wheeler	✓	