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# 191316

Ordinance

## Vacate a portion of N Kerby Ave south of N Halleck St subject to certain conditions and reservations (VAC-10139)

Passed

The City of Portland ordains:

Section 1. The Council finds:

- Portland Bureau of Transportation (“PBOT”), Right-of-Way Acquisition (“RWA”) received a request from Robin Howser of Howser, Steel, Inc. (the “Petitioner”), being represented by Colleen Nichols of Livermore Architecture & Engineering, Inc., on April 2, 2021 to vacate a portion of N Kerby Ave south of N Halleck St as described on **Exhibit 1** and depicted on **Exhibit 2** (the “Street Area”). The Street Area was originally acquired as public right-of-way in the duly recorded Plat of Swinton, recorded on September 18, 1908, Multnomah County Plat Records.
- 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 PBOT RWA on April 18, 2022.
- The petition states that the reason for the vacation is to consolidate property to expand the existing steel manufacturing and processing company facility. Phase 1 is currently underway to add office and manufacturing space under Building Permit No. 20-194616 CO. Phase 2 will expand strictly the manufacturing side of the business and is expected to commence upon completion of Phase 1.
- 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 January 23, 2023, and on file with the Office of the City Auditor (the “Auditor”) and PBOT.
- In accordance with ORS 271.100, the Portland City Council (the “Council”) fixed a time and place for public hearing before the Council;

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

June 7, 2023

notice was published in the Daily Journal of Commerce and notices were physically posted at the site in the area proposed for vacation.

6. 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.
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:

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

Containing 16,800 square feet, more or less.

- B. The vacation of the Street Area is granted subject to the following conditions:
  1. PBOT Development Review and PBOT Permit Engineering have required the following:
    - i) Concept approval (30%) of Public Works Permit EP659 TH1168 will occur prior to the City Council Public Hearing being scheduled. *PBOT Permit Engineering has confirmed that this requirement was met in December 2022.*
    - AND
    - ii) A public surety bond for the construction of a curb and sidewalk to be built to the immediate north of the vacation area will be in place prior to the Ordinance being recorded.
  2. Bureau of Development Services ("BDS") Land Use Services has required the Petitioner to apply for and receive approval of a replat through a Type 1x Land Use Review to consolidate all historically platted lots within the tax lots that currently front N Kerby Avenue and that will be without street frontage after the vacation is complete. The replat will be recorded prior to or concurrently with the Ordinance. BDS staff suggests consolidating the entire site, Lots 1 through 18 of Block 19 Swinton, into one platted lot through the replat process. This will

resolve all actual and potential non-conforming situations associated with 33.615.100 and with building code requirements.

3. BDS Addressing and the Bureau of Technology Services has required that all properties currently addressed off of the portion of N Kerby Avenue being vacated be readdressed off of a public right-of-way remaining after the vacation is complete.
4. The Bureau of Environmental Services (“BES”) has required a replat of historically platted lots currently fronting N Kerby Avenue in order to consolidate them with a lot or lots fronting other existing public rights-of-way, such as N Halleck Street, to ensure that the interior lots are not prevented from accessing future extensions of public services such as public sewer and stormwater after N Kerby Avenue is vacated (City Code 17.84.025.A.2 and 3). Therefore, BES also requires completion of the replat (City Code 17.84.025.B.7), and it to be recorded prior to or concurrently with the Ordinance. *Completion of BDS, Land Use Services replat condition b.2. will satisfy this requirement.*
5. Portland Water Bureau (“Water”) owns and maintains certain improvements within the Street Area. As a condition of street vacation approval, Water has required the following:
  - i) The 4” water main located within the Street Area, and the existing services connected to that main, will be transferred to the existing water main located in N Halleck Street. Unused services do not need to be relocated and can be abandoned with the main. All work will be done by Water and the Petitioner will pay all fees associated with this work. Water 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.

AND

- ii) A lot consolidation is required so that no landlocked parcels are created as a result of the street vacation. *Completion of BDS, Land Use Services replat condition b.2. will satisfy this requirement.*
6. 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, including, but not limited to those identified by Pacific Power. Subject to Paragraph **b.8.** 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 BDS, 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.

7. Notwithstanding Condition **b.6.**, 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.
8. 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.
9. City costs associated with processing the street vacation petition shall be paid in full before the City records this Ordinance.
10. 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. 9266.

## Documents and Exhibits

 [Exhibits 1 and 2 \(https://www.portland.gov/sites/default/files/council-documents/2023/9266-ordinance-exhibits-5-8-23.pdf\)](https://www.portland.gov/sites/default/files/council-documents/2023/9266-ordinance-exhibits-5-8-23.pdf) 513.71 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  
June 7, 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 N Kerby Avenue south of N Halleck Street (the "Street Area"), as recommended in the Bureau Director Report.
- On April 18, 2022, PBOT Right-of-Way Acquisition certified a petition for the vacation of a portion of N Kerby Avenue south of N Halleck Street, with the petition initiated by Robin Howser of Howser Steel, Inc. (the "Petitioner").
- The petition stated that the reason for the vacation is to consolidate property to expand the existing steel manufacturing and processing company facility.
- 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 at the low end of this range and is estimated with moderate confidence to be approximately \$8,500.

- 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 9TR000003017. These expenses are occurring in FY 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 Howser Steel will need to reduce the footprint of their expansion plans in order to fit within their existing property lines.

### 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 public notice signs have been physically posted 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 and Sustainability Commission ("PSC") advertised and then held a public hearing on September 27, 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

## Budget Office Financial Impact Analysis

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

## Agenda Items

444 Regular Agenda in [May 31-June 1, 2023 Council Agenda](https://www.portland.gov/council/agenda/2023/5/31)  
(<https://www.portland.gov/council/agenda/2023/5/31>)

Passed to second reading

Passed to second reading June 7, 2023 at 2:00 p.m.

478 Regular Agenda in [June 7-8, 2023 Council Agenda](https://www.portland.gov/council/agenda/2023/6/7)  
(<https://www.portland.gov/council/agenda/2023/6/7>)

Passed

Commissioner Dan Ryan Yea

Commissioner Rene Gonzalez Yea

Commissioner Mingus Mapps Absent

Commissioner Carmen Rubio Yea

Mayor Ted Wheeler Yea