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191481

Ordinance

## Vacate portions of SE Grand Ave and SE Tenino St subject to certain conditions and reservations (VAC-10130)

Passed

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 from Diana J. Richardson and David S. Stoner (the "Petitioners") on March 9, 2018 to vacate portions of SE Grand Avenue and SE Tenino Street as described on Exhibits 1A, 1B, 1C, and 1D and depicted on Exhibits 2A, 2B, 2C, and 2D(the "Street Area"). The Street Area was originally acquired in the duly recorded Plat of "Town of Sellwood", recorded on July 14, 1882, Multnomah County Plat Records.
2. 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 the City Auditor's Office on January 8, 2020.
3. The petition states that the reason for the vacation is that the public right-of-way segments included already have a number of constraints that severely limit their use for surface transportation purposes. SE Tenino is a dead end, one block segment of street that terminates abruptly at the Oregon Pacific Railroad. In addition, there is an approximately sixteen-foot vertical difference between the grade of the railroad and the grade of the street. The SE Grand Avenue segments are currently unusable for street purposes due to their close proximity to the east end of the Sellwood Bridge structure, elevation changes with the land, and use of the adjacent street areas by both the Oregon Pacific Railroad and the Springwater Corridor multiuse path. In addition, this street area is currently impassable for pedestrians and bicyclists since it is dominated by invasive plants. The vacation of these areas will provide for vehicle parking and access for the existing auto repair shop, consolidate property and increase floor

Introduced by

[Commissioner Mingus Mapps](#)

Bureau

[Transportation](#)

Contact

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Requested Agenda Type

Regular

Date and Time Information

Requested Council Date

October 11, 2023

area ratio and broaden development options, and provide for easier maintenance of the ridge abutting the eastside of the Springwater Corridor.

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 Director of the Planning and Sustainability Commission, as provided in the Bureau Director's Report, dated June 29, 2023 and on file with the Office of the City Auditor (the "Auditor") and PBOT.
5. 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 public notice signs have been physically posted at the Street Area.
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. Vacating the Street Area does not interfere with reasonable access to the waterfront pursuant to City Charter 1-104 and public access is maintained nearby at both SE Spokane Street and at Sellwood Riverfront Park.
8. 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 Exhibits 1A, 1B, 1C, and 1D and depicted on Exhibits 2A, 2B, 2C, and 2D attached and incorporate by reference.

All together containing 22,792 square feet, more or less.

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

1. PBOT Development Review has required the following:

- a. The Petitioners will reduce the SE Tenino Street vacation area by 3 feet to accommodate frontage improvements along the west side of SE 6<sup>th</sup> Avenue, including a curb located 32-ft from the face of curb on the east side of the street and either a 7-foot wide or a 15-ft wide sidewalk corridor (0.5-ft curb, 8-ft public stormwater facility if

required by the City, 6-ft sidewalk, and a 0.5-ft frontage zone). *Exhibits 1B, 1C, 2B, and 2C reflect the revision to the Street Area necessary to comply with this requirement.*

AND

- b. The construction permit applicant shall complete the Concept Review phase of the Public Works process (30%) and a bonding/contract must be in place prior to recording of the Ordinance.
2. PBOT Permit Engineering has required the Petitioners to obtain, or cause their designee to obtain, approval for public works plans to permanently close SE Tenino Street where it intersects with SE 6<sup>th</sup> Avenue and pay all costs for constructing a curb and sidewalk or driveway, in accordance with the requirements of the City Engineer.
- a. To ensure the completion of the required street improvements, the Petitioners shall provide, or cause their designee to provide, to the City Engineer a Performance Guarantee, unless construction is completed prior to the recording of the Ordinance. The Petitioners acknowledge 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.

AND

- b. The Petitioners agree to authorize the City to complete the required street improvements at the Petitioner's cost, whether by using the Performance Guarantee or by other means of payment, in the event that the City Engineer, at their sole discretion, determines that the improvements are not being made as required in a reasonable time after recordation of the Ordinance.

AND

- c. The Petitioners or their designee will obtain the necessary permits to complete the required improvements before commencing construction of them.
3. The Bureau of Development Services has required the following:
- a. A street vacation cannot cause existing lots to lose street frontage in conformance with Zoning Code requirements. A replat review is required to remedy the potential for future land-locked lots being created from the historically platted

lots abutting existing rights-of-ways. Lots 5, 6, and 7 of Block 4 and Lots 6, 7, and 8 of Block 5, Sellwood must be consolidated into one or more parcels that will continue to have street frontage after the Street Vacation is recorded. The replat must be recorded prior to or concurrent with the Ordinance.

*AND*

- b. The current owner of the parcel currently addressed as 530 SE Tenino Street will apply for and complete the process of readdressing this property off of one of the abutting public rights-of-way that will remain upon completion of this street vacation.

4. The Bureau of Environmental Services ("BES") owns and maintains certain improvements within the Street Area. As a condition of street vacation approval, the Petitioners will grant sewer easements to the City, to the satisfaction of BES. The Petitioners will grant the following:

- a. A 20-foot wide easement centered over the existing 12-inch combined sewer located in SE Tenino Street;

*AND*

- b. A 20-foot wide easement centered over the existing 32-inch combined sewer located in SE Grand Avenue to the north of SE Tenino Street;

*AND*

- c. An easement of variable width (up to a maximum of 20-feet wide) over the 12-inch sanitary-only sewer in SE Grand Avenue to the south of SE Tenino Street to ensure BES has 10 feet of access on both sides of the existing pipe, to the satisfaction of the BES Director or designee.

*OR*

Alternatively, BES will support abandonment of this public sewer main. If abandoned, the southern portion (currently in use to serve the building at 530 SE Tenino) would be converted to private ownership and private maintenance responsibility. If abandonment is the preferred option and is completed, no easement to BES will be required. The Petitioners will bear all costs associated with abandonment.

The locations of the easements must be determined based on field-verified and surveyed locations of the sewer

infrastructure described above, to be provided by the Petitioners. The sewer easement documents will be in substantially the same form as Exhibit 3 and Exhibit 4 and will be recorded concurrently with the Ordinance.

5. 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 Northwest Natural and CenturyLink/LUMEN. Subject to Paragraph b.7. 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.
6. Notwithstanding Condition b.5. and except for Conditions b.4.a., b.4.b., and b.4.c., 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.
7. 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.
8. City costs associated with processing the street vacation petition shall be paid in full before the City records this Ordinance.
9. 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. 6753.

## Documents and Exhibits

 [Exhibits 1 - 4](#)

2.92 MB

(<https://www.portland.gov/sites/default/files/council-documents/2023/6753-ordinance-exhibits.pdf>)

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  
October 11, 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 portions of SE Grand Avenue and SE Tenino Street (the “Street Area”), as recommended in the Bureau Director Report.
- On January 8, 2020, the Office of the City Auditor certified a petition for the vacation of the Street Area, with the petition initiated by Diana J. Richardson and David S. Stoner (the “Petitioners”).
- The petition stated that the reason for the vacation is that the public right-of-way segments included already have a number of constraints that severely limit their use for surface transportation purposes.

- 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 is above the high end of this range and is estimated (with moderate confidence) to be approximately \$30,000.
- 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 9TR000001358. These expenses are occurring in FY 05-06 through FY 23-24.
- 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 the Petitioners will likely need to reduce the building footprint on their property development plans to fit within the 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 January 26, 2021. 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

n/a

## Agenda Items

816 Regular Agenda in [September 27, 2023 Council Agenda](https://www.portland.gov/council/agenda/2023/9/27)  
(<https://www.portland.gov/council/agenda/2023/9/27>)

Passed to second reading

Passed to second reading October 11, 2023 at 9:30 a.m.

862 Regular Agenda in [October 11, 2023 Council Agenda](https://www.portland.gov/council/agenda/2023/10/11)  
(<https://www.portland.gov/council/agenda/2023/10/11>)

Passed

Commissioner Mingus Mapps Yea

Commissioner Carmen Rubio Absent

Commissioner Dan Ryan Yea

Commissioner Rene Gonzalez Yea

Mayor Ted Wheeler Yea