



[Home](#) / [Council Documents](#)

191565

Ordinance

Vacate a portion of NE 24th Ave south of NE Columbia Blvd subject to certain conditions and reservations (VAC-10136)

Passed

The City of Portland ordains:

Section 1. The Council finds:

1. Portland Bureau of Transportation ("PBOT"), Right-of-Way Acquisition ("RWA") received a request from James Brady (the "Petitioner"), being represented by Robin Scholetzky of UrbanLens Planning LLC on March 19, 2021 to vacate a portion of NE 24th Ave. south of NE Columbia Blvd. 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 Bk. 917, Pg. 385 recorded on April 30, 1923, Multnomah County 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 PBOT RWA on February 28, 2022.
3. The petition states that the reason for the vacation is in order to allow flexibility for future development of a new building. The street vacation request bisects the Petitioner's property.
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 Report, dated September 27, 2022, 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 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

Introduced by

[Commissioner Mingus Mapps](#)

Bureau

[Transportation](#)

Contact

Kevin Balak

Right of Way Agent III

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Requested Agenda Type

Regular

Date and Time Information

Requested Council Date

December 20, 2023

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 19,023 square feet, more or less.

- B. The vacation of the Street Area is granted subject to the following conditions:
 1. PBOT Transportation Planning and PBOT Development Review has required the following:

The City will retain the north 12.00 feet of NE 24th Avenue for future sidewalk and driveway improvements along NE Columbia Boulevard. This condition has been met by revising **Exhibit 1** and **Exhibit 2** to exclude this area from the Street Area.

2. PBOT Development Review and PBOT Permit Engineering have required the following:

- a. PBOT will approve 30% Concept Plans.

AND

- b. a public surety bond will be in place for the future construction of a 12-foot-wide pedestrian corridor and driveway along that portion of NE Columbia Blvd to the immediate north of the Street Area.

The Petitioner is responsible for all expenses related to meeting these conditions.

3. PBOT Transportation Systems Management has required the following:

- a. The Petitioner will design and install eastbound white dotted lane line markings and two-way left turn pavement markings on NE Columbia Blvd to connect the markings across the vacated NE 24th Ave intersection.

AND

- b. The Petitioner will remove and dispose of the existing street name signs, dead end signs, and post at the vacated NE 24th Ave. intersection.

4. PBOT Right-of-Way Management and Permitting has required the following:

The owners of the properties currently addressed as 2310, 2320-2330, 2420, and 2600 NE Columbia Blvd are required to dedicate approximately 5 feet along their NE Columbia Boulevard frontages for future sidewalk improvements. The Petitioner will provide the City with professionally prepared legal descriptions and exhibit maps, at the Petitioner's expense, describing and depicting the areas to be dedicated in order to establish a 12-foot-wide sidewalk corridor. The dedication will be in substantially the same form as attached **Exhibit 3** and will be recorded concurrently with the Ordinance.

5. Bureau of Environmental Services ("BES") owns and maintains certain improvements within the Street Area. As a condition of street vacation approval, BES has required the following:

- a. Property owners will grant a 20-foot-wide public sewer easement to the City of Portland centered over an existing 8-inch sanitary sewer facility in substantially the same form as **Exhibit 4** attached. This easement will be offset, with 12 feet on one side of the pipe and 8 feet on the other. The easement document for said easement will be recorded concurrently with the Ordinance.

AND

- b. BES requires clear and unobstructed access to the maintenance hole ARA644 at all times for regular operations, maintaining and sampling. Property owners will mark with paint a 9-foot by 18-foot space over this hole as "No Parking" and a "No Parking" sign will be installed in close proximity to the striped area to the satisfaction of BES. The 9-foot by 18-foot space can be configured with the longer dimension running north/south or east/west, however the sewer hole must fall within that space.

6. Union Pacific Railroad ("UPRR") provides rail services to Amalgamated Sugar via a spur track that is owned by Amalgamated Sugar and located within the Street Area. As a condition of street vacation approval, UPRR has required the following:

- a. That a 20ft-wide easement be created from NE Columbia Blvd. south to the UPRR right-of-way, and centered in the

Street Area. Douglas E. McQuown and Amalgamated Sugar will each grant a 10ft-wide non-exclusive easement to Union Pacific for access to the railroad spur track in substantially the same form as **Exhibit 5** attached.

AND

- b. An exclusive access easement will be granted by Douglas E. McQuown to Amalgamated Sugar for the continued operation of the existing rail spur track in substantially the same form as **Exhibit 6** attached.
7. 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 Century Link. 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.
 8. Notwithstanding Condition **b.7.**, 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.
 9. 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.
 10. City costs associated with processing the street vacation petition shall be paid in full before the City records this Ordinance.

11. 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. 9251.


Documents and Exhibits


 [Exhibit 1](https://www.portland.gov/sites/default/files/council-documents/2023/exhibit-1_1.pdf) (https://www.portland.gov/sites/default/files/council-documents/2023/exhibit-1_1.pdf) 286.97 KB

 [Exhibit 2](https://www.portland.gov/sites/default/files/council-documents/2023/exhibit-2_0.pdf) (https://www.portland.gov/sites/default/files/council-documents/2023/exhibit-2_0.pdf) 498.54 KB

 [Exhibit 3](https://www.portland.gov/sites/default/files/council-documents/2023/exhibit-3_0.pdf) (https://www.portland.gov/sites/default/files/council-documents/2023/exhibit-3_0.pdf) 814.98 KB

 [Exhibit 4](https://www.portland.gov/sites/default/files/council-documents/2023/exhibit-4_0.pdf) (https://www.portland.gov/sites/default/files/council-documents/2023/exhibit-4_0.pdf) 751.18 KB

 [Exhibit 5](https://www.portland.gov/sites/default/files/council-documents/2023/9251-ordinance-exhibit-5-uprr-access-easement.pdf) (https://www.portland.gov/sites/default/files/council-documents/2023/9251-ordinance-exhibit-5-uprr-access-easement.pdf) 485.72 KB

 [Exhibit 6](https://www.portland.gov/sites/default/files/council-documents/2023/9251-ordinance-exhibit-6-amalgamated-sugar-access-easement.pdf) (https://www.portland.gov/sites/default/files/council-documents/2023/9251-ordinance-exhibit-6-amalgamated-sugar-access-easement.pdf) 593.55 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
December 20, 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 NE 24th Ave south of NE Columbia Blvd. (the “Street Area”), as recommended in the Bureau Director Report.
- On February 28, 2022, PBOT Right-of-Way Acquisition certified a petition for the vacation of a portion of NE 24th Avenue south of NE Columbia Blvd, with the petition initiated by James Brady (the “Petitioner”).
- The petition stated that the reason for the vacation is to allow flexibility for future development of a new building. The street vacation request bisects the Petitioner’s property.
- 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 in the middle of this range and is estimated with moderate confidence to be approximately \$14,000. 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 9TR000002989. These expenses are occurring in FY 21-22, 22-23 and 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.

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 process.

100% Renewable Goal

N/A

Budget Office Financial Impact Analysis

The street vacation process has no net financial implications for PBOT, as the applicant is responsible for all associated costs upfront.

Agenda Items

1043 Regular Agenda in [December 13, 2023 Council Agenda](https://www.portland.gov/council/agenda/2023/12/13)
(<https://www.portland.gov/council/agenda/2023/12/13>)

Passed to second reading

Passed to second reading December 20, 2023 at 9:30 a.m.

**1076 Regular Agenda in [December 20, 2023 Council Agenda](https://www.portland.gov/council/agenda/2023/12/20)
(<https://www.portland.gov/council/agenda/2023/12/20>)**

Passed

Commissioner Mingus Mapps Yea

Commissioner Dan Ryan Yea

Commissioner Rene Gonzalez Yea

Commissioner Carmen Rubio Yea

Mayor Ted Wheeler Absent