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191741

Ordinance

Vacate portions of NE Winchell St and NE Mallory Ave subject to certain conditions and reservations (VAC-10137)

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 Reworks Inc. (the "Petitioner") on January 13, 2020 to vacate portions of NE Winchell Street and NE Mallory Avenue as depicted on **Exhibit 1** (the "Street Area"). The portion of SE Winchell Street being vacated was originally acquired in Resolution 23380, recorded May 12, 1948. The portion of NE Mallory Avenue being vacated was originally acquired in the duly recorded Plat of Loves Addition, recorded on August 8, 1908, Multnomah County Plat Records.
2. On March 16, 2022, PBOT RWA certified that all abutters and the requisite number of property owners signed the petition pursuant to ORS 271.080.
3. The petition states that the reason for the vacation is to consolidate property, to allow the abutting industrial property to function more efficiently, and to remove confusion and unnecessary City obligation.
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 Commission, as provided in the Bureau Director Report, dated April 3, 2024 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 near the Street Area.

Introduced by

[Commissioner Mingus Mapps](#)

Bureau

[Transportation](#)

Contact

Lance Lindahl

Right of Way Agent II

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Requested Agenda Type

Regular

Date and Time Information

Requested Council Date

May 29, 2024

6. In accordance with ORS 271.190, the Port of Portland provided written approval of the proposed vacation since the area to be vacated lies within 5,000 feet of the harbor line.
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:

All that portion of NE Winchell Street lying east of NE Rodney Avenue, said area being approximately 82 feet long by 20 feet wide, containing approximately 1,640 square feet;

AND

all that portion of NE Mallory Avenue lying north of NE Baldwin Street and south of the Union Pacific Railroad, said area being approximately 213 feet long by 50 feet wide, containing approximately 10,650 square feet.

Both as depicted on **Exhibit 1**, all together containing 12,290 square feet, more or less.

- B. The vacation of the Street Area is granted subject to the following conditions:
 1. Bureau of Environmental Services ("BES") has required that easements be granted to the City for maintenance and access to existing public sewer infrastructure, to the satisfaction of BES. Said easements may be located outside of the vacation area on adjacent property currently owned by General Assembly LLC. Petitioner will pay all costs associated with releasing existing easements and the granting of new easements as required by BES.

BES has required the following:

- a. A sewer easement will be granted to the City for the maintenance of existing public sewer infrastructure located within NE Winchell Street. The easement document will be in substantially the same form as **Exhibit 2** attached and will be recorded concurrently with the Ordinance.

AND

- b. A sewer easement will be granted to the City for the maintenance of existing public sewer infrastructure within

NE Mallory Avenue. Said easement will be the full width of the existing right-of-way, starting 10 feet south of maintenance hole AAJ158 and continuing north. Said easement will be 20 feet wide and centered over the existing 12-inch combined sewer pipe for the portion starting 10 feet south of maintenance hole AAJ158 and continuing south. The easement document will be in substantially the same form as **Exhibit 2** attached and will be recorded concurrently with the Ordinance.

AND

- c. A permanent BES access easement will be granted to the City to provide for driving access to the existing infrastructure within NE Mallory Avenue. The easement document will be in substantially the same form as **Exhibit 3** attached and will be recorded concurrently with the Ordinance.
2. 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 B.3. 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.
3. Notwithstanding Condition B.2. and except for Condition B.1.a., B.2.b, and B.2.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.

4. 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.
5. City costs associated with processing the street vacation petition shall be paid in full before the City records this Ordinance.
6. In the event the Petitioner fails to fully comply with the above conditions within six months of Council adopting this Ordinance, Council may repeal this Ordinance at its sole discretion.


Section 2. Petitioner and General Assembly LLC shall file with PBOT, 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. 9195.

Documents and Exhibits

 [Exhibit 1 \(https://www.portland.gov/sites/default/files/council-documents/2024/exhibit-1.pdf\)](https://www.portland.gov/sites/default/files/council-documents/2024/exhibit-1.pdf) 518.19 KB

 [Exhibit 2 \(https://www.portland.gov/sites/default/files/council-documents/2024/exhibit-2.pdf\)](https://www.portland.gov/sites/default/files/council-documents/2024/exhibit-2.pdf) 198.7 KB

 [Exhibit 3 \(https://www.portland.gov/sites/default/files/council-documents/2024/exhibit-3.pdf\)](https://www.portland.gov/sites/default/files/council-documents/2024/exhibit-3.pdf) 175.17 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
May 29, 2024

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 NE Winchell Street and NE Mallory Avenue (the “Street Area”), as recommended in the Bureau Director Report.
- On January 20, 2020, Reworks Inc. (the “Petitioner”), represented by Aaron Blake, initiated a petition to vacate the Street Area.
- On March 16, 2022, Portland Bureau of Transportation (“PBOT”), Right-of-Way Acquisition certified said petition as complete.
- The stated purpose of the street vacation is to consolidate property, to allow the abutting industrial property to function more efficiently, and to remove confusion and unnecessary City obligation.
- Upon completion of the street vacation process, the Street Area will revert back to the abutting property parcels currently owned by General Assembly LLC.
- 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 at the high end of this range and is estimated (with moderate confidence) to be approximately \$20,000.
- 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 9TR000002940. These expenses are occurring in FY 20-21 through FY 23-24.
- This legislation does not affect staffing levels nor will it 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. This would complicate and likely delay future industrial expansion of the abutting properties owned by General Assembly LLC.

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, notice of the public hearing has been published in the Daily Journal of Commerce and public notice signs have been physically posted near the Street Area.
- City Bureaus, government agencies, public utilities and affected neighborhood and business associations provided comments for the Street Area. PBOT did not receive any objections to the vacation request.
- Planning Commission ("PC") advertised and then held a public hearing on September 12, 2023. 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 PC ultimately recommended approval of the vacation request to City Council.
- There does not appear to be any other impact 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

- Not Applicable

Budget Office Financial Impact Analysis

This action authorizes vacation of portions of NE Winchell St and NE Mallory Ave to consolidate property, to allow the abutting industrial property to function more efficiently. Street vacation is a cost recovery program paid by the petitioner, with this vacation estimated at roughly \$20,000.

Document History

Item 415 Regular Agenda in [May 22, 2024 Council Agenda](https://www.portland.gov/council/agenda/2024/5/22)
(<https://www.portland.gov/council/agenda/2024/5/22>)

City Council

Passed to second reading

Passed to second reading May 29, 2024 at 9:30 a.m.

Item 451 Regular Agenda in [May 29-30, 2024 Council Agenda](https://www.portland.gov/council/agenda/2024/5/29)
(<https://www.portland.gov/council/agenda/2024/5/29>)

City Council

Passed

Commissioner Dan Ryan Yea

Commissioner Rene Gonzalez Absent

Commissioner Mingus Mapps Yea

Commissioner Carmen Rubio Yea

Mayor Ted Wheeler Yea