

ORDINANCE No. 184348 As Amended

Vacate a portion of SW Whitaker St west of SW Moody Ave subject to certain conditions and reservations (Hearing; Ordinance; VAC-10068)

The City of Portland ordains:

Section 1. The Council finds:

1. On February 25, 2010 the Office of the City Auditor certified a petition for the vacation of a portion of SW Whitaker Street west of SW Moody Avenue, with the petition initiated by Tim Small, the owner of adjoining property.
2. The petition states that the reason for the vacation is to consolidate property for development.
3. The vacation is in conformance with the City of Portland's Comprehensive Plan and is consistent with recommendations made by the City Engineer and Planning Commission, as provided in the City Engineer's Report, dated October 1, 2010 and on file with the Office of the City Auditor and the Bureau of Transportation.
4. In accordance with ORS 271.100, 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.
5. 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 that said street be vacated.

NOW, THEREFORE, the Council directs:

- a. The following described street area, as depicted on the attached Exhibit 1, is hereby vacated:

All that portion of SW Whitaker Street lying between the east line of that portion of SW Whitaker Street vacated per Ordinance No. 128413, passed by Portland City Council January 22, 1969 and 2.00 west of the southeast corner of Lot 4, Block 122, "Caruthers Addition to the City of Portland" extended southerly to a point 2.00 feet west of the northeast corner of Lot 1, Block 138 "Caruthers Addition to the City of Portland".

- b. The vacation of the above-described street area is granted subject to the following conditions and reservations:
 1. The Petitioner will permanently close their half of SW Whitaker Street where it intersects with SW Moody Avenue, and pay all costs for constructing a curb and sidewalk or driveway, in accordance with the requirements of the City Engineer. Vacation must be complete by December 31, 2010, if not, revocable permit

number 2010-125940 shall remain in force and the applicant must secure a lease covering use of the street area through PBOT.

- i) To ensure the completion of the required street improvements, the Petitioner shall provide to the City Engineer, Street Systems Management Section, a performance guarantee in the form of a surety bond, letter of credit, set-aside account, cash, or other form of surety, subject to approval by the City Attorney. The Petitioner acknowledges 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.
 - ii) The Petitioner will authorize the City to complete the required street improvements at the Petitioner's cost, in the event that the City Engineer, at his sole discretion, determines that the improvements are not being made as required in a reasonable time.
 - iii) Upon completion of the required improvements by the Petitioner, and acceptance by the City Engineer, the Petitioner shall guarantee maintenance of the improvements for two (2) years following the date of project acceptance. The maintenance guarantee may be satisfied by the performance guarantee, or by substitution of other surety acceptable to the City Attorney and equal to 20% of the performance guarantee. Upon acceptance by the City of a 20% maintenance guarantee, the street improvements performance guarantee will be released.
 - iv) Prior to the issuance of a Certificate of Completion by the City Engineer, fees collected by the City in association with street closure work will be reconciled with actual City costs, with Petitioner to receive from or pay to the City the net difference. In the event of non-payment by the Petitioner, the street improvement performance bond will be used to reimburse City costs. Use of the performance bond by the City will not preclude the City from billing to and collecting from the Petitioner those costs incurred by the City that were in excess of the performance bond.
 - v) The street vacation must be completed by December 31, 2010. If it is not, revocable permit #2010-125940 TR shall remain in force and the applicant must secure a lease covering use of the requested street area through the Bureau of Transportation, Right-of-Way Acquisition.
2. Petitioner will grant a 30 foot wide Public Sewer Easement and Encroachment Agreement to the City of Portland over the north half of the vacated street area for the maintenance, operation, repair, reconstruction, replacement and enlargement of the existing public sewer facility. The Public Sewer Easement and Encroachment Agreement shall be in substantially in the same form as the attached Exhibit 2.

3. In accordance with ORS 271.120 and City of Portland policy, the street vacation 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.
4. Notwithstanding b3 and except for b2, this Ordinance will serve as a full release of City interests in the street vacation 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. 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 one year of Council adopting this Ordinance, City Council may repeal the Ordinance at its sole discretion.

Section 2. Petitioner shall file with the City Auditor, in form approved by the City Attorney, a document in writing, accepting the terms and conditions of the Ordinance.

Section 3. Notice is given that the street vacation will not be effective until a certified copy of the vacating Ordinance has been recorded by the City in Multnomah County Deed Records. Prerequisites to recording the vacating Ordinance are that 30 days have passed after final Council passage of the Ordinance, that all conditions of the vacating Ordinance have been met, and that all vacation costs have been paid.

Section 4. After the prerequisites to recording the Ordinance have been met, the City Auditor shall return a certified copy of this Ordinance and the acceptance thereof, to the Right-of-Way Acquisition Section, Bureau of Transportation, 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. The Right-of-Way Acquisition Section shall return the recorded Ordinance to the Auditor.

Passed by the Council,

JAN 05 2011

Mayor Sam Adams
Prepared by: Lance D. Lindahl
November 29, 2010
RW # 7181

LAVONNE GRIFFIN-VALADE

Auditor of the City of Portland

By



DEPUTY

1632 - 36

Agenda No. **184348** As Amended
ORDINANCE NO.
 Title

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 (Hearing; Ordinance; VAC-10068)

<p>INTRODUCED BY Commissioner/Auditor: MAYOR SAM ADAMS</p> <p>COMMISSIONER APPROVAL</p> <p>Mayor—Finance and Administration - Adams</p> <p>Position 1/Utilities - Fritz</p> <p>Position 2/Works - Fish</p> <p>Position 3/Affairs - Saltzman</p> <p>Position 4/Safety - Leonard</p> <p>BUREAU APPROVAL</p> <p>Bureau: Bureau of Transportation Group Manager: Greg Jones Development & Capital Program</p> <p>Other: <i>Greg Jones</i></p> <p>Prepared by: Lance Lindahl:slg Date Prepared: November 29, 2010</p> <p>Financial Impact Statement Completed <input checked="" type="checkbox"/> Amends Budget <input type="checkbox"/> Not Required <input type="checkbox"/></p> <p>Portland Policy Document If "Yes" requires City Policy paragraph stated in document. Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p> <p>Council Meeting Date December 15, 2010</p> <p>City Attorney Approval</p>	<p>CLERK USE: DATE FILED DEC 10 2010</p> <p style="text-align: right;">LaVonne Griffin-Valade Auditor of the City of Portland</p> <p>By: <i>[Signature]</i> Deputy</p> <p>ACTION TAKEN:</p> <p>DEC 15 2010 PASSED TO SECOND READING As Amended JAN 05 2011 9:30 A.M.</p>
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AGENDA
<p>TIME CERTAIN <input type="checkbox"/></p> <p>Start time: _____</p> <p>Total amount of time needed: _____ (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: 5 MIN (for presentation, testimony and discussion)</p>

FOUR-FIFTHS AGENDA	COMMISSIONERS VOTED AS FOLLOWS:	
	YEAS	NAYS
1. Fritz	1. Fritz <input checked="" type="checkbox"/>	
2. Fish	2. Fish <input checked="" type="checkbox"/>	
3. Saltzman	3. Saltzman <input checked="" type="checkbox"/>	
4. Leonard	4. Leonard <input checked="" type="checkbox"/>	
Adams	Adams <input checked="" type="checkbox"/>	