

Street Vacation Manual  
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**1. Program & Purpose Overview and Estimated Costs**

The street vacation process is governed by State Statute (ORS Chapter 271.080 to 271.230), City Charter (Section 1-104), City Code (Chapter 17.84), Transportation Rule (TRN-1.06). The purpose of a street vacation is to extinguish the public’s interest in street right-of-way (“Street Area”). When Street Area is vacated, control is passed to the underlying fee owner, most often that is the abutting property owners, but not always (ORS 271.140). The reversionary interests are determined by county officials for taxing purposes, but if there are any questions as to how the street reverts, a title company or legal services may need to be engaged.

The Portland Bureau of Transportation's Right-of-Way Acquisition Section ("RWA") facilitates the street vacation process and acts as a liaison between the party requesting the vacation (the "Petitioner"), City bureaus, public agencies, and neighborhood and business associations.

The time it takes to process a street vacation request often depends on the complexity of the vacation itself. Non-complicated street vacations take close to one year, while complex vacations may take much longer. Responsiveness and action from the Petitioner play a key role in the speed of the overall process.

There are three phases to a street vacation; **Phase 1** is the Early Assistance Review ("EA") as explained in Section 2 below. The EA allows the Petitioner to obtain information from City staff to help gauge the feasibility of the request and what may be expected for requirements and expenses. **Phase 2** is the petition stage as explained in Section 3 below, where the Petitioner obtains signatures from neighbors on a petition document to gain support for their vacation request. **Phase 3** is the formal investigation as outlined in Section 5 below, where the petition is sent to internal and external sources. In this phase, vacation requests are presented to two governing bodies within the City; the Planning & Sustainability Commission ("PSC") and City Council. At these two hearings, the public is welcome to attend and voice their support or opposition to the vacation request. After hearing testimony and reviewing staff recommendations, City Council will make the final decision on whether the street vacation request is approved.

Costs vary in each phase. Phase 1 (EA Review) and Phase 2 (Petition) are flat fees as approved by City Council. Phase 1 varies depending on whether a Petitioner meets with City staff or has City staff review the request without a meeting. Phase 3 (formal investigation) activities are paid for through a cost recovery methodology that requires the Petitioner to pay for City staff time (including overhead) and expenses related to processing the street vacation. There is no charge for the land value itself. Therefore, the more complex or controversial the street vacation request is, the higher the costs are likely to be. Costs frequently range from \$8,000 to \$20,000 but can be higher. An initial fund of \$5,000 needs to be established to begin the formal investigation (Phase 3). As staff work to complete the process and funds become depleted, the Petitioner is required to submit additional drawdown funds until the street vacation process has been completed or terminated, and all expenses have been paid.

There may also be additional costs to meet any conditions placed on the street vacation, such as reconstructing the frontage improvements where the Street Area intersects with the remaining public right-of-way. Those associated cost are paid separately from the vacation process.

When the street vacation is either completed, terminated by the City, or withdrawn by the Petitioner, a reconciliation of staff costs and other administrative expenses will be made, and the remaining funds, if any, will be refunded to the Petitioner.

A successful street vacation typically results in the property being subject to taxation by the county in which it is located.

## **2. Early Assistance & Preliminary Investigation**

EA Reviews are required for all street vacation requests. It provides an early indication of any concerns or conditions that might arise for the Petitioner, as well as significant unforeseen costs that would potentially require the Petitioner to modify their request. This EA requirement may

be appealed to the Right of Way Acquisition Manager and a waiver may be granted if the street vacation request is deemed non-complex, has no development plans in the foreseeable future associated with the Street Area, and if there are no City facilities within or near the Street Area proposed for vacation. The decision of the Right of Way Acquisition Manager is final.

The EA Review consists of select City staff from the Bureau of Environmental Services, the Bureau of Development Services, the Water Bureau, and the Bureau of Transportation. City staff make a preliminary determination regarding how the proposed vacation may impact their bureau's area of responsibility and what conditions, if any, would be required should they support the vacation request. The Petitioner has the option of meeting with staff or having staff review the request without a meeting. An EA Summary Report will be compiled with Staff's comments and recommendations, then provided to the Petitioner regardless of which review is chosen.

The comments and requirements listed in the EA Summary Report are non-binding on the Bureaus. Should the Petitioner choose to move forward with the proposal, the conditions and requirements may become binding in Phase 3 of the process (see Section 5 below). At the beginning of Phase 3, RWA sends out a notification of the street vacation request to a much wider audience comprised of City workgroups who both did, and did not, participate in the EA Review, other public agencies, neighborhood and business associations, and utility companies. The workgroups who originally participated in the EA Review will do a more in-depth review of the original or revised proposal, therefore it is possible that conditions can change from those stated in the EA Review.

Regardless of a bureau's support, the Petitioner may request that the street vacation move forward in the process since City Council has the ultimate authority to approve or deny the vacation request.

RWA requests that certain steps are taken prior to applying for the EA Review:

- Talk to your neighbors that abut the Street Area you would like vacated
- Call Multnomah County Cartography at 503-988-7654 to see where the Street Area reverts
- Generate a map showing how the street reverts and attach it to the EA Application
- Contact the Neighborhood Association (NA) to see if they would support the request. To locate your local NA and its website, go to <https://www.portlandmaps.com/> Or Contact the Office of Community & Civic Life at [oni@portlandoregon.gov](mailto:oni@portlandoregon.gov) or at 503-823-4519
- Contact the Business Association, if applicable, to see if they would support the request

**TIME LIMIT:** The Petitioner has one (1) year from the date of the EA Review Summary Report to submit a completed and signed street vacation application to RWA to start Phase 2 of the process. If additional time is needed, the Petitioner may request an extension from RWA. RWA may grant a reasonable extension, at its sole discretion. If an extension is not granted, the Petitioner will need to reapply for the EA Review.

### **3. Petition and Preparation (Phase 2)**

To begin Phase 2 of the street vacation process, the Petitioner, generally an abutting property owner, must complete a street vacation application and submit it to RWA. RWA determines if

RWA staff can generate a legal description and exhibit map or if the Petitioner will need to supply a professionally prepared surveyed legal description and exhibit map reflecting the area to be vacated. Once the completed application and all requested items are provided to RWA, the Petitioner will pay the administrative fee for the petition document. Pursuant to state statute, the Petitioner must collect signatures from all property owners abutting the Street Area requested to be vacated, and the owners of not less than 2/3rds of an "Affected Area" comprised of a 200 foot by 400 foot area. The 2/3rds percentage is based on the total square footage of the Affected Area, and not on the number of distinct properties located within the Affected Area. The Petitioner will be required to sign an affidavit affirming the authenticity of the signatures (the "Affidavit").

NOTE: During Phase 2, if an abutting property is sold, the Petitioner will be required to obtain the signature of the new property owner. If a non-abutting property within the Affected Area is sold, the Petitioner will be required to obtain the signature of the new property owner if the percentage has then dropped below the required 2/3<sup>rd</sup>s threshold.

If any property within the Affected Area is owned by the City of Portland, the Petitioner will be instructed to reach the 2/3<sup>rd</sup> requirement by obtaining signatures from all other property owners within the Affected Area. If Petitioner is unable to reach the requirement (without City's signature), Petitioner can request the City to sign the petition to satisfy said requirement.

If the City owns property abutting the Street Area, the Petitioner will be instructed to obtain signatures from the other abutting property owners before requesting the City's signature on the petition.

**TIME LIMIT:** The Petitioner has six (6) months from the date the petition is sent to the Petitioner to obtain the necessary signatures and submit their completed Petition to RWA. If additional time is needed, the Petitioner may request an extension from RWA. RWA may grant a reasonable extension, at its sole discretion. If an extension is not granted, the Petitioner will need to reapply for an EA Review.

#### **4. Certification of the Petition**

Once the petition document has the necessary notarized signatures, the Petitioner will return the petition document, along with the Affidavit, to RWA. RWA will send the Petitioner an invoice for the initial funds (minimum of \$5,000) to begin Phase 3 of the process. RWA conducts a review of the petition. If RWA finds the petition to be incomplete, the Petitioner will be expected to provide the necessary requested items within the time limit in Section 3 above.

See NOTE in Section 3 above if a property is sold during this period.

RWA will strive to certify the petition within two (2) months from the date the Petition is sent to RWA, unless RWA requires additional time at no fault of the Petitioner.

#### **5. Formal Investigation**

Phase 3 of the Street Vacation Program includes a number of steps that are followed in sequential order. This includes:

- RWA sends out notices to city bureau's, public agencies, public utilities, neighborhood associations, and business associations and allows thirty (30) days for their response. Responses may be "no objection", "no objection subject to conditions", or "recommendation for denial".
- All comments are summarized by RWA in a Letter to Proceed ("LTP") and is sent to the Petitioner for review. Attached to the LTP is a Cost Report and a Summary of Comments. If the Petitioner has concerns or objects to any of the conditions contained in the Comments Summary, the Petitioner is encouraged to work directly with the department responsible for requiring the condition. RWA asks that the Petitioner keep RWA apprised of any changes to the conditions.
- The Petitioner signs and returns the LTP confirming that the conditions listed on the Comments Summary are acceptable, and that the current and projected costs are acceptable.

**TIME LIMIT:** To allow the Petitioner time to review conditions and determine the feasibility of moving forward as planned, the Petitioner has ninety (90) days to return the signed LTP to RWA. If additional time is needed, the Petitioner may request an extension from RWA. RWA may grant a reasonable extension, at its sole discretion. If an extension is not granted, the Petitioner will need to reapply for the EA Review and start the street vacation process over.

## 6. Planning & Sustainability Commission

All Street Vacation proposals are subject to review by the PSC prior to moving forward to City Council. RWA works with PBOT Planning and the Bureau of Planning and Sustainability to schedule a public hearing date. This hearing date is typically scheduled four (4) weeks out to provide notice to neighbors in the Affected Area of the public hearing date. Typically, vacation items are placed on the Consent Agenda. However, prior to the PSC hearing, RWA staff meet with select PSC members and PSC staff to explain the vacation proposal. If concerns about the vacation are raised by members of the PSC, or if RWA has received comments from the public, the vacation will be removed from the Consent Agenda and placed on the Regular Agenda. Due to a heavy workload by the PSC, if the item is placed on the Regular Agenda, the hearing may need to be pushed out to a later date.

RWA will attend the hearing. It is not necessary for the Petitioner to attend, although they are welcome to attend. At the end of the public hearing, PSC holds a vote to either recommend approval or denial of the vacation proposal. PSC may vote to recommend approval with no additional conditions; recommend approval subject to additional or revised conditions; or recommend denial.

Upon completion of PSC review process, the PBOT Planning Section will send RWA the "PSC Report and Recommendation to City Council."

**NOTE: Petitioner has the right to have the vacation proceed to City Council regardless of how the PSC votes. However, City Council typically supports the recommendations made by PSC.**

## 7. Bureau Director's Report

Upon RWA's receipt of the Report and Recommendation to City Council, RWA prepares the Bureau Director's Report (the "Report"). The Report summarizes the conditions contained in the Comments Summary and any new or revised conditions from PSC. If any easements are required to be granted as requirements of the vacation, draft copies of the easement documents will be included as a part of the Report.

A formal letter and a draft version of the Report is sent to the Petitioner for their review. The Petitioner signs and returns the Report to RWA signifying their acceptance of any additional conditions and any easement documents.

RWA then finalizes the Report and forwards it to the Bureau Director for signature. This Report then serves as PBOT's official report and recommendation to City Council on the vacation proposal. RWA will strive to draft and finalize the Report within thirty (30) days for non-complex vacation requests.

**TIME LIMIT:** The Petitioner has ninety (90) days to sign and return the letter accepting the Report. If additional time is needed, the Petitioner may request an extension from RWA. RWA may grant a reasonable extension at its sole discretion. If an extension is not granted, the Petitioner will need to reapply for the EA Review and start the street vacation process over.

## **8. City Council Hearing, Conditions, and Recording of the Ordinance**

Portland City Council is the final decision-making body for all street vacation requests within the incorporated limits of the City of Portland. Steps for the City Council are as follows:

- a) RWA drafts the Ordinance and supporting documents based on information in the Report.
- b) RWA works with the City Auditor's Office to schedule dates for the City Council hearing and vote. The first hearing date will be at least four (4) to six (6) weeks out due to public notification requirements.
- c) The public hearing is a part of the Regular Agenda and an overview presentation of the vacation proposal is given by RWA. The Petitioner may testify although not required.
- d) Typically, a week after the public hearing, the vacation proposal goes before City Council for a second time. This is referred to as the Second Reading, after which the Council will vote. No additional public testimony is taken at this time. Per City Charter Section 1-104, at least four members of City Council must vote in favor of the vacation for it to be approved.
- e) If approved by City Council, the following requirements must be met **prior to the Ordinance being recorded:**
  - (i) Thirty days must pass after the Council vote.
  - (ii) All adopted conditions of approval must be met.
  - (iii) Acceptance of the Ordinance signed by Petitioner and other parties directly affected by the vacation is returned to RWA
  - (iv) Sufficient funds to cover City costs for processing the vacation request, recording documents, and for closing the project file must be received by RWA.

RWA may send notice to Petitioner regarding outstanding conditions at the following times:

- a) six (6) months after approval of the ordinance, and every six (6) months thereafter to remind Petitioner of remaining outstanding conditions and possibility of repeal;
- b) prior proposing a repeal ordinance; (Petitioner will have thirty (30) days to contact RWA of its intent to complete the conditions);

- c) upon scheduling a City Council hearing for the repeal ordinance;
- d) after City council's decision on the repeal ordinance.

**TIME LIMIT:** Street Vacation Ordinances with no conditions other than those stated in Section 8.e.iii and iv will be subject to repeal by City Council after six (6) months of Council approval. . The Petitioner may request an extension to RWA if additional time is needed. RWA may grant a reasonable extension, at its sole discretion.

Street Vacation Ordinances with conditions of approval will be subject to repeal by City Council if conditions found in Section 8.e.ii. thru iv. have not been met within eighteen (18) months of Council approval. The Petitioner may request an extension to RWA to meet complex conditions. RWA may grant a reasonable extension, at its sole discretion.

## **9. Closing the File**

Once the ordinance and all necessary supporting documents have been recorded with the County Recorder's office, RWA will notify the Petitioner, property owners abutting the Street Area, and those City bureaus, county offices, regional and state agencies, and utilities requiring notification. RWA will obtain a final cost report, and any remaining funds submitted by the Petitioner will be refunded within sixty (60) days after receipt of the final cost report. If the final cost report reflects a balance due, the Petitioner will be required to submit the necessary funds.

## **10. Administrative Review/Appeals**

- During the vacation process, the Petitioner may request a review if they disagree with staff determinations that may have a material impact on the petition. Comments should be directed to the Right of Way Programs Supervisor or the Right of Way Acquisition Manager.
- The Petitioner may appeal City Council's final decision on the street vacation request in a circuit court.

## **11. Statute, Code and Charter Reference**

- **ORS Chapter 271 .080** through **271.230**: "Vacation"
- **ORS Chapter 227.100**: "Submission of plats for subdivisions and plans for street alternations and public buildings to commission"
- **Portland City Code Chapter 17.84**: "Street Vacations"
- **Portland City Charter Section 1-104**: "Alienability of Public Places and Property and Limitations Thereon"
- **PBOT Administrative Rule TRN-1.06** Street Vacation Program Administrative Rules

END OF MANUAL