

## **ORDINANCE No. 183522**

Designate and assign to the Portland Water Bureau property for the Fulton Pump Station, an easement for the Washington County Supply Line, and use of vacated rights of way over property currently assigned to the Bureau of Parks and Recreation (Ordinance)

### **The City of Portland ordains:**

#### Section 1. The Council finds:

1. The Portland Water Bureau (PWB) operates and maintains a facility commonly called Fulton Pump Station at 540 SW Nevada Street for the purpose of providing water to retail and wholesale customers west of the Willamette River. Originally constructed in 1912, the station has been redesigned for greater capacity four times and cannot be expanded further within the existing property limits.
2. Surrounding properties are not suitable for expansion because dense residential development makes acquisition complicated. The Fulton Pump Station is now functionally obsolete because it cannot reasonably be expanded to accommodate the additional pumps to meet present and future supply needs.
3. Alternatives for a replacement pump station location are constrained to parcels large enough to accommodate a 6000 ft<sup>2</sup> pump station and associated piping and working room, as well as proximity to the Washington County Supply Line (WCSL). Suitable parcels are limited or nonexistent due to dense development proximate to the WCSL.
4. PWB has negotiated with Portland Parks and Recreation (PP&R) for the property, easements, and working room to locate the replacement pump station in Willamette Park. Negotiations have resulted in a location and associated compensation agreeable to PWB and PP&R.
5. A legal description and sketch of the proposed pump station site are attached hereto as Exhibit A-1 and A-2. A legal description and sketch of the proposed WCSL easement are attached hereto as Exhibit B-1 and B-2. The limits of proposed work areas are depicted in the attached Exhibit C. A Memorandum of Understanding (MOU) between PWB and PP&R with respect to this project are attached hereto as Exhibit D.
6. PWB will make a lump sum payment to PP&R on or before March 31, 2010 in a sum not to exceed \$655,000. Funding is available in the FY 2009-10 Budget, project W01358.
7. This sum is inclusive of all consideration for the transfer of property rights which are the subject of this Ordinance, all fees and costs for use of PP&R property including those stipulated under Articles 11 and 12 of Non-Park Use of Park Property, Binding City Policy BCP-PRK-1.02; and the PP&R costs to participate in aesthetic design review, and public engagement, as required. This consideration does not include

costs associated with restoration of the site to the satisfaction of PP&R.

NOW, THEREFORE, the Council directs:

- 1) That certain property described and depicted on Exhibits A-1 and A-2 is hereby designated for the placement of the pump station facility and assigned to PWB for ongoing management.
- 2) An easement is hereby reserved over the property described and depicted on Exhibits B-1 and B-2, to provide for the maintenance, operation, inspection, repair, reconstruction, and replacement or enlargement of public water facilities and necessary appurtenances, subject to the following conditions:
  - a) PWB may construct only such permanent or temporary surface or underground structures within the easement as are required for PWB's water lines, underdrains, facilities and appurtenances related thereto and their inspection and maintenance. PWB's agents or employees may enter on the PP&R property within the easement area only for the purpose of constructing, reconstructing, inspecting and maintaining PWB's water lines, underdrains, facilities, and appurtenances related thereto. No surface structures will be constructed in the easement without the written consent of the Director of PP&R.
  - b) No permanent or temporary surface or underground structure or facility, including public or private utility line(s) or other improvements, shall be constructed or located within the easement without the prior written consent of the Chief Engineer of the PWB and the Director of PP&R, which consent shall not be unreasonably withheld. All construction activities and structures must comply with applicable federal, state, and local laws and regulations.
  - c) The easement area shall be kept open, accessible, and passable at all times unless the Chief Engineer of the PWB and the Director of PP&R agree in writing to the installation or construction of obstructions to accessibility.
  - d) No grade change in excess of one (1) foot in elevation shall be allowed within the easement without the prior written consent of PP&R and the Chief Engineer of the PWB, which consent shall not be unreasonably withheld.
  - e) No trees shall be planted or removed within the easement without the prior written consent of the Chief Engineer of the PWB and the Director of PP&R.
  - f) No materials shall be stored, used, manufactured or disposed of within the Water Facility Easement, except in compliance with all federal, state, and local law, provided that in no case may there be stored, used, manufactured, or disposed of within the easement any hazardous substances, or any substances or materials which constitute a public health hazard, as defined by rules of the Oregon State Health Division. No condition shall be permitted within the easement that constitutes a health hazard, as defined by rules of the Health Division. As used in

this Easement, "Hazardous Substance" means: (i) any hazardous substance as defined by the Comprehensive Environmental Response, Compensation and Liability Act, as amended from time to time; or (ii) any hazardous waste defined by the Resource Conservation and Recovery Act of 1976, as amended from time to time; or (iii) any hazardous substances as defined by Oregon Revised Statute 465.200 and/or implementing regulations of the Oregon Department of Environmental Quality; or (iv) any and all material or substance defined as hazardous pursuant to any federal, state or local laws or regulations or order; or (v) any and all material or substance which is or becomes regulated by any federal, state or local governmental authority; or (vi) any and all material or substance which contains oil, gasoline, diesel fuel or other petroleum hydrocarbons and their by-products.

- g) PWB shall within a reasonable time after completion of construction or maintenance work restore the surface of the easement to a uniform grade and to a condition satisfactory to PP&R.
  - h) In the event PP&R should sell or lease the property upon which the easement is located, the sale or lease will be subject to the restrictions and conditions described herein which will be binding upon PP&R's heirs, successors, and assigns.
  - i) PP&R shall hold PWB, its officers, employees, and agents harmless from any expense, loss, or liability, including legal fees, arising from claims for property damage or personal injury or death not caused by the PWB's facilities or PWB's activities in constructing, reconstructing, maintaining, or repairing its facilities, including from any liability imposed by law for the clean-up or damages caused by the release or disposal of hazardous substances within the easement, except for release or disposal of hazardous substances caused by PWB, its officers, employees or agents.
  - j) At least two weeks prior to the commencement of any construction or repair work within the easement, the PWB shall notify the PP&R of the intended work, including how access, security, and any other impacts of the work shall be addressed, provided that such notice is not required in the case of emergency. In the event the PWB must undertake emergency work, such notice to the PP&R shall be provided either before or after commencement of the work as the emergency reasonably allows. In all events, PWB will not unreasonably interfere with park uses of the easement area, without the written consent of PP&R.
  - k) Seventy-two hours prior to the commencement of any construction work within the easement approved pursuant to provisions of this agreement, the PP&R shall notify the PWB of the intended work.
- 3) PWB mains associated with the pump station are consistent with the rights reserved to utilities by Ordinance No. 92708 passed by Council of the City of Portland on

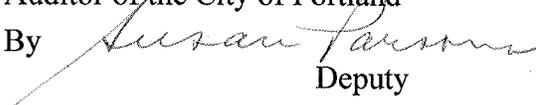
October 18, 1950 vacating portions of SW Bond Street and SW Nevada. Use of said vacated rights of way is hereby authorized for said mains.

- 4) Rights transferred to PWB with this Ordinance include the right of reasonable access over PP&R property to PWB property and easement areas.
- 5) In the event that the property and easement areas are no longer needed for PWB purposes, the unused property rights and easements will terminate and all interests in the property will revert to PP&R.
- 6) The Administrator of PWB and the Administrator of PP&R are authorized to execute on behalf of their respective Bureaus an MOU in substantially the same form as provided in Exhibit D attached hereto.

Passed by the Council, FEB 03 2010

Commissioner Leonard  
Ben Gossett  
January 11, 2010

**LaVonne Griffin-Valade**  
Auditor of the City of Portland

By   
Deputy

-148185  
 Agenda No. **183522**  
**ORDINANCE NO. 183522**  
 Title

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<b>INTRODUCED BY</b> Commissioner/Auditor: <b>Commissioner Leonard</b>	CLERK USE: DATE FILED <u>JAN 22 2010</u>
<b>COMMISSIONER APPROVAL</b> Mayor—Finance and Administration - Adams Position 1/Utilities - Fritz Position 2/Works - Fish Position 3/Affairs - Saltzman Position 4/Safety - Leonard <i>Handwritten signature</i>	LaVonne Griffin-Valade Auditor of the City of Portland  By: <u><i>Handwritten signature</i></u> Deputy
<b>BUREAU APPROVAL</b> Bureau: Portland Water Bureau Bureau Head: David Staff <i>Handwritten signature</i>  Prepared by: Ben Gossett Date Prepared: January 11, 2010	<b>ACTION TAKEN:</b>  JAN 27 2010 PASSED TO SECOND READING FEB 03 2010 9:30 A.M.
Financial Impact Statement Completed <input checked="" type="checkbox"/> Amends Budget <input type="checkbox"/> Not Required <input type="checkbox"/>	
Portland Policy Document If "Yes" requires City Policy paragraph stated in document. Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	
Council Meeting Date <b>January 27, 2010</b>	
<b>City Attorney Approval</b> <i>Handwritten signature</i>	

<b>AGENDA</b>
<b>TIME CERTAIN</b> <input type="checkbox"/> Start time: _____  Total amount of time needed: _____ (for presentation, testimony and discussion)
<b>CONSENT</b> <input type="checkbox"/>
<b>REGULAR</b> <input checked="" type="checkbox"/> Total amount of time needed: <b>15 Minutes</b> (for presentation, testimony and discussion)

FOUR-FIFTHS AGENDA	COMMISSIONERS VOTED AS FOLLOWS:		
		YEAS	NAYS
1. Fritz	1. Fritz	✓	
2. Fish	2. Fish	✓	
3. Saltzman	3. Saltzman	—	
4. Leonard	4. Leonard	✓	
Adams	Adams	✓	