

**ORDINANCE No. 183697**

\*Transfer ownership and authorize Portland Bureau of Transportation to issue permits for modifications and active uses, including retail use, of an existing significant structure on the Portland Transit Mall at SW 6th Ave and SW Yamhill St (Ordinance)

The City of Portland ordains:

Section 1. The Council finds:

1. As part of the Regional Transportation Plan (RTP) the City and Tri-County Metropolitan Transportation District of Oregon (TRIMET) have cooperated in the construction of light rail facilities on 5<sup>th</sup> and 6<sup>th</sup> Avenues extending from NW Glisan Street to SW Jackson Street, this is known as the "Portland Transit Mall".
2. There are three existing structures located on the Portland Transit Mall located on SW Sixth Avenue and SW Yamhill adjacent to the Pioneer Courthouse that the City wishes to remain in place due to its historical value.
3. These structures were formerly the entrances and ventilation tower serving a public restroom facility, owned and managed by Portland Parks and Recreation that has been closed to public use for over thirty years.
4. The restroom facility is not suitable for public use as a restroom facility as it cannot be economically modified to meet American with Disability Act requirements and due to its subterranean location would require a full time attendant.
5. It is in the interest of the City and TRIMET that the existing structures located on SW 6<sup>th</sup> Avenue be adapted for an active use that is conducive to serving the needs of transit riders and other users of the Transit Mall such as retail or the provision of informational material in order to minimize vandalism to the structures and help energize the Portland Transit Mall.
6. Portland Mall Management Incorporated (PMMI), a 501-3C non-profit corporation, formed to provide enhanced cleaning, security and management services on the revitalized Portland Transit Mall has expressed an interest in assuming ownership of the structures and modifying the structure located on SW 6<sup>th</sup> Avenue for an active retail use and using the structure located on SW Yamhill Street at SW 6<sup>th</sup> Avenue as storage to support the active use. The ventilation tower would be maintained as a decorative historical element.
7. The Commissioner-in-Charge of Portland Parks and Recreation has agreed to the transfer of ownership of the structures to PMMI and Portland Parks and Recreation with the assistance of the City Attorney has prepared a bill of sale (Exhibit A) that transfers ownership of the structures to PMMI, subject to conditions.

NOW, THEREFORE, the Council directs:

- a. The ownership of the structures located at SW 6<sup>th</sup> Avenue and SW Yamhill Street shall be transferred to PMMI and the Commissioner-in-Charge of Portland Parks and Recreation is authorized to negotiate and execute on behalf of the City a bill of sale for the kiosks in a form approved by the City Attorney.
- b. The Portland Bureau of Transportation (PBOT) may issue permits to PMMI for modifications and improvements to the structure located on SW 6<sup>th</sup> Avenue (structure 1) needed to facilitate the use of the structure for retail sales or other active uses that are conducive to serving the needs of transit riders and other users of the Transit Mall.
- c. PBOT may issue permits to PMMI for modifications and improvements to the structure located on SW Yamhill Street (structure 2) needed to facilitate the use of the structure for storage of goods needed to support retail sales or other active uses carried out in structure 1.
- d. PBOT shall require all structural modifications and tenant improvements to the structures be reviewed by the Bureau of Development Services for compliance with building code requirements.
- e. PBOT may issue permits to PMMI for retail sales or other active uses of the structures that are conducive to serving the needs of transit riders and other users of the Transit Mall.
- f. All modifications to the 6<sup>th</sup> Avenue structure which may include protrusions such as, but not limited to service counters, doors, utility connections, awnings for rain or sun protection, shall comply with clearance standards for projections into and over the public right of way.
- g. No external storage is allowed outside of the existing footprint of the structures.
- h. Any exterior modification of the structures shall be reviewed by the Portland Design Commission whose approval of the external modifications shall be required.
- i. All modifications to the structures, both internal and external, shall be the responsibility of PMMI.
- j. PBOT may require the removal or modification of any of the structures should the public's needs require it and such removal or modification shall be at the expense of PMMI or its successors.
- k. Use of the structures shall not interfere with transit operations on the Portland Transit Mall or SW Yamhill Street, TRIMET may require the owner to require any user, tenant or lessee of the structures modify their operations as needed so as not to interfere with transit operations.
- l. Use of the structures shall not interfere with pedestrian movement on the Portland Transit Mall or SW Yamhill Street, the Portland Bureau of Transportation or Portland Police Bureau may require the owner or designated management entity to require any user, tenant or lessee

of the structures to modify their operations as needed so as not to interfere with pedestrian movement.

- m. The owner, user, tenant or lessee of the structures shall have no claim against TRIMET, the City, or any permittee of the City for any loss of business revenue or loss of investment in improvements resulting from any allowed use of the public right of way for a transportation purpose including but not limited to street or sidewalk repair, utility installation or repair, installation or repair of traffic control devices, or transit operations.
- n. No owner, user, tenant or lessee of the structures shall have any claim against TRIMET or the City for any loss of business revenue or investment in improvements resulting from TRIMET or the City enforcing any condition of this ordinance.
- o. Any signage on the structures must comply with the requirements of the Portland Sign Code as if the structure was located on private property. No freestanding signs or "A-board signs" are allowed.
- p. The owner shall be responsible for maintenance of the structures. Failure to maintain said structures, or failure to repair or replace any portion of said structures immediately upon notification from PBOT, shall be cause for PBOT to declare the structure a nuisance. PBOT may summarily abate the nuisance, initiate proceedings through the Code Hearings Officer, file civil suit or take any other action necessary to ensure the owner performs the required repairs to the structure.
- q. The owner, any user, tenant or lessee shall hold harmless, indemnify and defend the City of Portland, its officers, agents and employees from and against any and all kinds of claims for damages to persons or property (including legal fees, costs of defense and, appeals) relating to or arising from the permitted activities.
- r. PBOT may revoke any permit for use of the structures at any time in the event the public's needs require it or the owner fails to comply with the conditions of this ordinance, and no expenditure of money hereunder, lapse of time, or other act or thing shall operate as an estoppel against the City of Portland or be held to give the owner, any user, tenant or lessee any vested or other right.
- s. Upon the revocation of this ordinance by the Council, the owner shall, within 30 days, restore the structure to a condition satisfactory to the Director of Portland Parks and Recreation and restore the street area as directed by and to the satisfaction of PBOT.
- t. PMMI shall initiate application for permits needed to make the structures suitable for an active use authorized by this ordinance within 180 days of passage of this ordinance by the Council.
- u. If PMMI has not completed the alterations needed to make the structure under their control or ownership suitable for an active use within 365 days of passage by the Council of this ordinance, then the permissions granted by this ordinance shall automatically be rescinded without further Council action and provisions r. and u. shall apply.

- v. If PMMI is not able to obtain approvals and permits to make the Structure suitable for an active use then PMMI shall, at its own expense, transfer ownership in the structure to Portland Parks and Recreation.
- w. This ordinance allows PBOT to issue permits to PMMI or its contractors only and may not be transferred, assigned or otherwise conveyed.

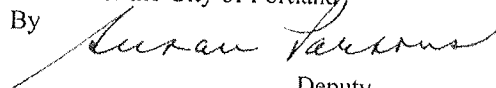
Section 2. The Council declares that an emergency exists because the passage of this ordinance is necessary before Portland Mall Management Incorporated may secure funding for the needed modifications from TRIMET and the Portland Development Commission; therefore, this Ordinance shall be in full force and effect from and after its passage by the Council.

Passed by the Council: APR 21 2010

Mayor Sam Adams  
Prepared by: Don Gardner:slg  
Date Prepared: April 1, 2010

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

By

  
Deputy

539

185738

Agenda No.  
**ORDINANCE NO.**  
Title

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<b>INTRODUCED BY</b> Commissioner/Auditor: <b>MAYOR SAM ADAMS</b> <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 <b>BUREAU APPROVAL</b> Bureau: Bureau of Transportation Group Manager: Greg Jones Development & Capital Program Other: Prepared by: Donald Gardner Date Prepared: 4-1-10 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>APRIL 21, 2010</b> <b>City Attorney Approval</b>	CLERK USE: DATE FILED <u>APR 16 2010</u> By: <u>LaVonne Griffin-Valade</u> Deputy <b>ACTION TAKEN:</b>
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<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 checked="" type="checkbox"/> <b>REGULAR</b> <input type="checkbox"/> Total amount of time needed: _____ (for presentation, testimony and discussion)
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FOUR-FIFTHS AGENDA	COMMISSIONERS VOTED AS FOLLOWS:	
	YEAS	NAYS
1. Fritz	✓	
2. Fish	✓	
3. Saltzman	✓	
4. Leonard	✓	
Adams	✓	