

ORDINANCE No. 186132

*Approve an agreement with David C. Bakke and Cindy D. Conley to increase the pending lien amount for the property at 11040 NE Marx St by \$109,083.32 to construct additional street, sidewalk, and stormwater improvements to NE Marx St from 400 feet east of NE 109th Ave to 284 feet west of NE 112th Ave, and adjust pending lien amounts at 10930 and 10940 NE Marx St due to property consolidation in the NE 112th Ave and Marx St Local Improvement District (Hearing; Ordinance; C-10043)

The City of Portland ordains:

Section 1. The Council finds:

1. The Council approved Resolution No. 36899 on January 25, 2012 initiating local improvement district formation proceedings for the NE 112th Avenue & Marx Street LID (LID).
2. The Council approved Ordinance No. 185190 on March 7, 2012 forming the NE 112th Avenue & Marx Street LID, with no remonstrance received from any property owner against formation of the LID.
3. David C. Bakke and Cindy D. Conley-Bakke (also known as Cindy D. Conley) signed an Extra Work Authorization Agreement (hereafter "EWAA") in the amount of \$109,083.32 on May 30, 2013 requesting that 104 feet of their property frontage at 11040 NE Marx Street on the south side of NE Marx St be improved. Mr. Bakke and Ms. Conley-Bakke own two properties participating in the LID and only the pending lien amount of their easternmost property is affected by this Ordinance. This EWAA was previously approved as to form by the City Attorney and is attached as Exhibit A. This EWAA includes a waiver of remonstrance which will be effective upon Council passage of this Ordinance, and the EWAA also grants the City necessary temporary property rights to construct the improvements.
4. The scope change in Finding No. 3 constitutes a major scope change and requires City Council approval because only half street improvements were planned to the north side of NE Marx St per Finding 8b and Exhibit B of Ordinance No. 185190. Passage of this Ordinance will result in this property receiving street, sidewalk and stormwater improvements as previously planned for the north side of NE Marx St per the original scope of the project as established at LID formation.
5. Passage of this Ordinance will provide assurance of performance per Section 17.24.055 of City Code for 11040 NE Marx Street. Assurance of performance is not provided for 11030 NE Marx Street; an EWAA was prepared for the property owners' consideration for this property, but was not signed. Frontage improvements for the property at 11030 NE Marx Street will be designed and constructed only if the owners of this property sign a separate and subsequent EWAA approved as to form by the City Attorney.

6. Existing fire hydrant spacing is inadequate on the north side of NE Marx Street to support redevelopment of the property at 11040 NE Marx Street due to a NE Marx Street right-of-way width of 80 feet and a lot depth of 330 feet. A new fire hydrant will be installed on the south side of NE Marx Street at a location acceptable to the Bureau of Fire & Rescue to ensure adequate fire suppression capacity and to avoid impacting the newly-constructed street. This new fire hydrant will also benefit adjacent and nearby properties.
7. Additional interest has been expressed by other property owners in expanding the scope of the planned improvements for the NE 112th & Marx LID via the potential separate and subsequent EWAA's to potentially improve some of the following:
 - a. NE Marx Street from the east right-of-way line of NE 109th Avenue to 400 feet east of the east right-of-way line of NE 109th Avenue; and/or
 - b. NE Marx Street from 284 feet west of the west right-of-way line of NE 112th Avenue to the west right-of-way line of NE 112th Avenue; and/or
 - c. NE 112th Avenue from 764 feet north of the north right-of-way line of NE Marx Street to the south right-of-way line of NE Deering Drive.
8. The LID Administrator recommends that the requirement for a hearing under Section 17.08.080 of City Code be deemed to have been met upon Council passage of this Ordinance should the owner(s) of any properties meeting the criteria in Finding No. 7 subsequently desire to have some or all of their frontage(s) improved, provided that these properties are located within the boundary of the NE 112th & Marx LID. The LID boundary is not being amended by this Ordinance.
9. As of January 9, 2012 three (3) properties were under the common ownership of Oleg & Julia Lupekha as shown in Exhibit B:
 - a. Property with State ID #1N2E22BA 4200, tax account R647320080, property ID #R235813, legal description PARKROSE & RPLT, BLOCK 96, LOT A&B TL 4200, no pending lien number, addressed as 10930 NE Marx Street, with a pending lien amount of zero at LID formation. This property was not referenced within Ordinance No. 185190 because it was outside the LID boundary.
 - b. Property with State ID #1N2E22BA 4300, tax account R647320060, property ID #R235812, legal description PARKROSE & RPLT, BLOCK 96, LOT A TL 4300, pending lien #151399, also addressed as 10930 NE Marx Street, with a pending lien amount of \$4,963.67 as approved at LID formation per Exhibit A, Exhibit C, and Exhibit F of Ordinance No. 185190.

- c. Property with State ID #1N2E22BA 4400, tax account R647320050, property ID #R235811, legal description PARKROSE & RPLT, BLOCK 96, LOT A TL 4400, pending lien #151398, addressed as 10940 NE Marx Street, with a pending lien amount of \$5,791.38 as approved at LID formation per Exhibit A, Exhibit C, and Exhibit F of Ordinance No. 185190.
10. As of May 27, 2013 the three (3) properties referenced in Finding No. 9 had been consolidated into a single property with State ID #1N2E22BA 4300, tax account R647320060, property ID #R235812, legal description PARKROSE & RPLT, BLOCK 96, LOT A&B TL 4300, pending lien #151399, addressed as 10930 NE Marx Street. It is necessary to adjust these properties' pending lien amounts into a single pending lien amount due to the completed property consolidation.
11. A Type II environmental review must be completed before construction commences on this LID, so it is highly desirable to expedite execution of EWAA(s) for this project, and to avoid delays of additional Council hearing(s) to approve such EWAA(s).
12. A previous EWAA for the property at 5339 NE 112th Avenue with pending lien #151421 in the amount of \$9,611.40 for checkdam removal and streambank mitigation was executed on May 8, 2012 per directive 'j' of Ordinance No. 185190 and prior to the adoption of this Ordinance. This previously-executed EWAA increased the future estimated assessment amount from \$196,561.85 to \$206,173.25 which is not yet reflected on the pending lien amount for this property.
13. It is desirable to update the adjusted and increased pending lien amounts identified in Finding No. 3, Finding No. 9, and Finding No. 12 in the event that there is a change in ownership prior to final assessment of this LID so that the City Auditor will disclose accurate pending lien amounts to prospective purchasers, title companies, or to other interested parties.
14. The LID Administrator mailed notice of the June 26, 2013 LID scope change hearing on June 5, 2013 to the owner of each benefited property within the proposed NE 112th Avenue & Marx Street LID, including to owners of properties exempted from assessment. The owners of properties were notified of the June 26, 2013 hearing based on Multnomah County property tax records as of May 27, 2013. Each property owner was notified of the time and location of the hearing conducted by the Council, the proposed pending lien amounts as shown shaded in Exhibit D and on the map in Exhibit F, the right and manner to object to the scope change of the NE 112th Avenue & Marx Street LID, the deadline and procedure for filing remonstrances against the scope change of the NE 112th Avenue & Marx Street LID, and the amount of the estimated future assessment on benefited property; except for the increase resulting from the previously-executed EWAA as referenced in Finding No. 12 for which Council approval of this Ordinance is not required. The deadline to submit written remonstrances was at 5:00 PM on June 19, 2013.
15. Notices of the LID scope change hearing were posted within the NE 112th Avenue & Marx Street LID on June 11, 2013.

16. The LID Administrator published notice of the June 26, 2013 scope change hearing in the Daily Journal of Commerce on June 12, 2013 and on June 14, 2013.
17. Upon Council passage of this Ordinance, the combined total of all pending lien amounts will increase by \$118,694.72 from \$2,832,083.13 as shown in the shaded amounts in Exhibit C and on the map in Exhibit E to \$2,950,777.85 as shown in the shaded amounts in Exhibit D and on the map in Exhibit F. The project budget including Bureau of Transportation funding for overhead costs will also increase by \$118,694.72 from \$3,253,031.25 to \$3,371,725.97. Neither the fixed Bureau of Environmental of Services' funding of \$100,000.00 nor the Bureau of Transportation funding for overhead costs estimated at \$320,948.12 as referenced in Finding No. 13 of Ordinance No. 185190 are changed by this Ordinance.

NOW, THEREFORE, the Council directs:

- a. The City Auditor to increase the pending lien amount of pending lien number 151401 for the property at 11040 NE Marx Street by \$109,083.32 from \$8,345.87 shown in the shaded amount in Exhibit C and on the map in Exhibit E to \$117,429.19 as shown in the shaded amount in Exhibit D and as shown in the map on Exhibit F. The additional fire hydrant will be considered a project expense and its costs will not be assessed solely to this property.
- b. The City Auditor to increase the pending lien amount of pending lien number 151399 for the property addressed as 10930 NE Marx Street by \$5,791.38 from \$4,963.67 shown in Exhibit B, and in the shaded amount in Exhibit C, and on the map in Exhibit E to \$10,755.05 as shown in Exhibit B, in the shaded amount in Exhibit D, and as shown in the map on Exhibit F.
- c. The City Auditor to decrease the pending lien amount of pending lien number 151398 for the property addressed as 10930 NE Marx Street by \$5,791.38 from \$5,791.38 shown in Exhibit B, and in the shaded amount in Exhibit C, and on the map in Exhibit E to zero as shown in Exhibit B, in the shaded amount in Exhibit D. This eliminated pending lien amount is not shown on the map in Exhibit F due to previous property consolidation.
- d. The City Auditor to increase the pending lien amount of pending lien number 151421 for the property at 5339 NE 112th Avenue by \$9,611.40 from \$196,561.85 shown in the shaded amount in Exhibit C and on the map in Exhibit E to \$206,173.25 as shown in the shaded amount in Exhibit D and as shown in the map on Exhibit F.
- e. That the LID Administrator is authorized to execute additional EWAA(s) approved as to form by the City Attorney for the project limits identified in Finding No. 7 of this Ordinance, and the requirement for a subsequent hearing under Section 17.08.080 of City Code is hereby waived.

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- f. That the City Engineer is authorized but not required to construct an interim asphalt path in lieu of a sidewalk where the abutting property has an existing building which is less than 8 feet from the existing right-of-way line, and the requirement for a subsequent hearing under Section 17.08.080 of City Code is hereby waived.
 - g. The City Auditor to increase the pending lien amount(s) of any pending lien(s) affected by execution of future EWAA(s) as authorized by Directive 'e' of this Ordinance.
 - h. That all assessments for this LID will be imposed by a separate and subsequent ordinance, including for properties whose pending lien amounts are not changing upon Council adoption of this Ordinance.
 - i. The Bureau of Transportation and the Bureau of Environmental Services to prepare and execute a Memorandum of Understanding to provide \$100,000.00 of Bureau of Environmental Services' project funding per Finding No. 13 of Ordinance No. 185190.

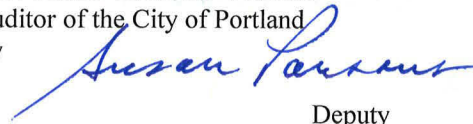
Section 2. The Council declares that an emergency exists because a delay in approval of the scope change could potentially delay completion of design of this project; therefore, this Ordinance shall be in full force and effect from and after its passage by the Council.

Passed by the Council, JUN 27 2013

Commissioner Steve Novick
Prepared by: Andrew Aebi:slg
Date Prepared: June 10, 2013

LaVonne Griffin-Valade
Auditor of the City of Portland

By


Deputy

Agenda No. **186132**
ORDINANCE NO.

with David C. Bakke and Cindy D. Conley Title

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INTRODUCED BY Commissioner/Auditor: COMMISSIONER STEVE NOVICK	CLERK USE: DATE FILED <u>JUN 21 2013</u>
COMMISSIONER APPROVAL Mayor—Finance and Administration - Hales Position 1/Utilities - Fritz Position 2/Works - Fish Position 3/Affairs - Saltzman Position 4/Safety - Novick <i>AKA nmk</i>	LaVonne Griffin-Valade Auditor of the City of Portland By: <u><i>[Signature]</i></u> Deputy
BUREAU APPROVAL Bureau: Bureau of Transportation Group Manager: Greg Jones Development & Capital Program Prepared by: Andrew Aebi:slg Date Prepared: 6-10-13 <i>AHA 6/12/13</i>	ACTION TAKEN:
Financial Impact & Public Involvement Statement Completed <input checked="" type="checkbox"/> Amends Budget <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 JUNE 26, 2013	
City Auditor Office Approval: required for Code Ordinances	
City Attorney Approval: required for contract, code, easement, franchise, comp plan, charter	

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

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. Novick	4. Novick <input checked="" type="checkbox"/>	
Hales	Hales <input checked="" type="checkbox"/>	