

## IMPACT STATEMENT

**Legislation title:** Amend Ordinance No 127882 (1968) that vacated a portion of SW Madison Street between SW 10th Avenue and SW Park Avenue. Amendment will replace conditions and add new conditions to enable the Museum to move forward with planning for a new Rothko Pavilion. (Ordinance; amend Ordinance No. 127882)

**Contact name:** Matthew Grumm

**Contact phone:** (503) 823 - 4151

**Presenter name:** Matthew Grumm

### **Purpose of proposed legislation and background information:**

This is the third Ordinance regarding street vacation of SW Madison Street between SW 10<sup>th</sup> Avenue and SW Park Avenue. This legislation is being proposed because the Portland Art Museum has expanded offerings and programming and the current lower level connection between the Main Building and the Mark Building is not sufficient. To address these issues, the Museum has proposed development of the Rothko Pavilion.

The Rothko Pavilion will enclose the vacated portion of SW Madison and use this space to create a “cultural commons” between the buildings. The Rothko Pavilion proposal includes:

- Direct access to a new Museum café and shop
- Free admission
- Connectivity to the Museum’s 10<sup>th</sup> Ave. Streetcar frontage
- Increased access to galleries and Museum library
- Improved ADA access to the Main Building and Mark Building
- Enhanced visitor experience by making the Museum buildings more transparent with improved wayfinding.

### **Financial and budgetary impacts:**

Ordinance No. 127882, passed by the Council on August 8, 1968 authorizing the street vacation required the Portland Art Museum included conditions to require the 8-foot wide pedestrian easement be provided and maintained at the expense of the Portland Art Association. The Rothko Pavilion would be developed and maintained at the expense of the Portland Art Museum and they will bare insurance responsibility for the public passageway. This proposed legislation does not create a financial or budgetary impact.

### **Community impacts and community involvement:**

Because the Rothko Pavilion will be structurally integrated into the Museum, there are community impacts related to public access. The proposed Rothko Pavilion would:

- Reduce public access hours by an additional four to eight hours per day.
- Potentially exclude users of the space that are not utilizing it as pedestrian access between SW 10<sup>th</sup> Avenue and SW Park Avenue, patronizing Museum offerings (e.g.,

gift shop, café, etc.), or attending the Museum, as well as and/or including bicycles and animals.

Pedestrian access will be impacted by reduced hours and the potential of unclear wayfinding to enter Museum as a means to connect from SW 10<sup>th</sup> Ave. and SW Park Ave. Current pedestrian count data for the space during regular daytime hours as well as nighttime hours has not been provided.

Should the Easement area exclude bicycles, bicycle access will be impacted by eliminating access between SW 10<sup>th</sup> Ave. and SW Park Ave to connect with SW Madison Ave. People bicycling will be required to use SW Columbia St. or SW Salmon St. to travel East. SW Madison east of the vacated block is a very low traffic volume street. People traveling on SW 11<sup>th</sup> or SW 10<sup>th</sup> who are heading to destinations on SW Madison, or instead using it as a direct link to the Hawthorne Bridge, find Madison a bicycle-friendly route. SW Columbia is not a bicycle-friendly route. SW Salmon Street, though higher automobile volumes than Madison, offers the closest to a comparable experience to bicycling on SW Madison. This requires a detour of four blocks. The Hawthorne Bridge is the most heavily used bicycle route across the Willamette River in the City of Portland. In 2014, the Hawthorne Bridge had a total of 1,714,207 trips with a summer season daily average of 6,073 trips<sup>1</sup>. Data has not been provided to demonstrate bicycle use of the vacated portion of SW Madison or quantify potential impact to cyclists traveling East/West and accessing the Hawthorne Bridge.

The Downtown Neighborhood Association provided a letter of support for the proposed Rothko Pavilion. The Downtown Neighborhood Association does not support a permanent Madison Street Vacation under any other circumstances than the proposed Rothko Pavilion and under the terms that the pavilion is open and publically accessible seven days a week during business hours.

#### **Budgetary Impact Worksheet**

##### **Does this action change appropriations?**

- ☐ **YES:** Please complete the information below.  
☒ **NO:** Skip this section

<b>Fund</b>	<b>Fund Center</b>	<b>Commitment Item</b>	<b>Functional Area</b>	<b>Funded Program</b>	<b>Grant</b>	<b>Sponsored Program</b>	<b>Amount</b>

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<sup>1</sup> Portland Bicycle Count Report 2013-2014

**ORDINANCE No.      REFERRED TO COMMISSIONER OF PUBLIC AFFAIRS**

Amend ordinance that vacated a portion of SW Madison St between SW 10<sup>th</sup> Ave and SW Park Ave to replace and add new conditions and grant an easement to enable the Portland Art Museum to plan for a new Rothko Pavilion (Ordinance; amend Ordinance No. 127882)

The City of Portland ordains:

Section 1. The Council finds:

1. Ordinance No. 127882, passed by the City Council (the "Council") on August 8, 1968, vacated a portion of SW Madison Street between the east line of SW 10<sup>th</sup> Avenue and west line of SW Park Avenue, under certain conditions.
2. The purpose of Ordinance 127882 was to create an open pedestrian sculpture mall for display of outdoor art sculptures from the Portland Art Museum (the "Museum"). The street vacation allowed the Portland Art Association to create an attractive outdoor area as a benefit to the public.
3. One of the conditions required an 8-foot wide pedestrian easement be provided and maintained and remain open to the public at all times.
4. Ordinance No. 156895 passed by the Council on December 27, 1984 amended conditions (b) and (c) of Ordinance 127882 to allow closure of the pedestrian connection during night hours, from 11:00 pm to 7:00 am and provide security during the hours of closure. The reason for limiting public access during night time hours was due to vandalism. It was determined that night time closures would not adversely affect the public interest.
5. The Museum operates two historic buildings – the Main Building and the Mark Building, formerly the Masonic Temple. The two buildings are separated by a courtyard and the 8-foot pedestrian connection. For the Museum patrons, there is an internal lower level connector between buildings.
6. Because of limited access between the two buildings as well as a desire to increase educational and programmatic offerings, the Museum is proposing to develop the Rothko Pavilion (the "Pavilion"), which includes a structure that will enclose the 8-foot wide pedestrian connection between SW Park and SW 10<sup>th</sup> Avenues.
7. The Pavilion will continue to provide ground level public access and connectivity between SW Park and SW 10<sup>th</sup> Avenues. To maintain adequate security for the two museum buildings, the hours the pedestrian connection is open for public use may need to be limited. Any further limitation will leave adequate opportunity for public access between SW 10<sup>th</sup> and Park Avenues and will not adversely affect the

affect the public's interest.

8. Due to the enclosed nature of the Pavilion and the potential security concerns associated with the increased museum access the Pavilion will provide, the pedestrian connection between SW Park and SW 10<sup>th</sup> Avenues may be limited to only pedestrian use. Bicycles and animals may be excluded from the Pavilion.
9. Enclosure of this area would allow the Museum to enhance the visitor experience, expand access to museum programming, provide additional connectivity between the Main Building and Mark Building, and create an engaging walkway integrating works of art.
10. Condition (d) of Ordinance No. 127882 reserves a blanket easement for any utilities that may be present within the vacated area. The City has no present or future need to locate public facilities in the area, and is willing to release the reserved utility easement.
11. To reflect these changes to the pedestrian connection, the Museum will grant to the City and record the public access easement for the pedestrian connection required by Ordinance No. 127882 between SW Park and SW 10<sup>th</sup> Avenues and assume responsibility for maintenance and indemnity for this connection.
12. To enable the Museum to move forward with planning for the Pavilion, the Council is willing to amend Ordinance No. 127882, as amended by Ordinance No. 156895 so long as the Museum fulfills the requirement of Ordinance no. 127882 by conveying and recording the pedestrian access easement consistent with that ordinance

NOW, THEREFORE, the Council directs:

- A. Ordinance No. 127882, as amended by Ordinance No. 156895, is hereby further amended to replace conditions (b) and (c) and add new conditions, and delete condition (d), as follows:
  - a. The Museum will grant to the City and record a minimum 8-foot wide public pedestrian access easement (the "Easement") between SW 10<sup>th</sup> and Park Avenues as required by condition (a) of Ordinance No. 127882. The Easement will be in substantially the same form as attached Exhibit A and incorporated by reference and must be recorded prior to the release of the Museum's Pavilion building permit. The Easement terms may limit the hours the public pedestrian access is open to the public as determined necessary for security purposes and may relocate the pedestrian connection in a way that leaves adequate opportunity for public access between SW 10<sup>th</sup> and SW Park Avenues.
  - b. The Easement area must be hard surfaced, unobstructed, and a minimum of 8-feet wide.

- c. The Easement area must include clear wayfinding with no visual obstruction.
  - d. The Easement area must be accessible to all people and all improvements to it must comply with the Americans with Disabilities Act of 1990.
  - e. The Pavilion design shall be subject to a Historic Resource Review by the Historic Landmarks Commission as provided by Title 33 (Planning and Zoning) of the City Code.
  - f. The Portland Art Museum will (A) be responsible for maintaining the public connection through the Rothko Pavilion, continuously and without interruption; (B) hold harmless and indemnify the City and its officers, agents and employees from any and all claims, demands, actions and suits related to maintenance, operation, property damage or personal injury arising out of the use of the public connection; and (C) continuously obtain and maintain in full force, at its expense, public liability and property damage insurance coverage in the amounts provided by Oregon statute or law as to maximum liability that may be imposed on Oregon cities. The insurance must name the City, its officers, agents and employees as additional insureds. Coverage must be primary and non-contributory with any other insurance and self-insurance; and (D) provide to the City proof of insurance, specifying all additional insureds (or loss payees), through certificates of insurance, along with applicable endorsements, subject to approval as to form by the City Attorney as to the requirements specified in (C).
  - g. The Museum will comply fully with the conditions of this Ordinance within two years of the date this Ordinance is adopted or request an extension to comply from Council. If the Museum fails to do so, the Council may repeal this Ordinance at its sole discretion.
- B. Except as amended herein, all other provisions of Ordinance No. 127882 shall remain in full force and effect.

Passed by the Council:

Commissioner Dan Saltzman  
 Prepared by: Matt Grumm: tlck  
 Date Prepared: March 21, 2017

**Mary Hull Caballero**

Auditor of the City of Portland  
 By

Deputy



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Agenda No.  
**ORDINANCE**

Title

Amend ~~Ordinance No 127882 (1968)~~ that vacated a portion of SW Madison Street between SW 10th Avenue and SW Park Avenue. ~~Amendment~~ <sup>to</sup> will replace conditions and add new conditions to enable the Museum to ~~move forward with planning~~ <sup>Portland Art</sup> for a new Rothko Pavilion. (Ordinance; amend Ordinance No. 127882)

and  
grant  
an  
easement

<b>INTRODUCED BY</b> Commissioner: <b>Dan Saltzman</b>	CLERK USE: DATE FILED <u>APR 11 2017</u>
<b>COMMISSIONER APPROVAL</b> Mayor—Finance & Administration - Wheeler Position 1/Utilities - Fritz Position 2/Works - Fish Position 3/Affairs - Saltzman Position 4/Safety - Eudaly	Mary Hull Caballero Auditor of the City of Portland  By:  Deputy
<b>APPROVAL</b> Submitted by: Commissioner: Dan Saltzman	<b>ACTION TAKEN:</b>  <b>APR 20 2017 REFERRED TO COMMISSIONER OF PUBLIC AFFAIRS</b>
Prepared by: Matt Grumm Date Prepared: 04/17/2017	
Impact Statement Completed <input type="checkbox"/> Amends Budget <input type="checkbox"/>	
<b>City Auditor Office Approval:</b> required for Code Ordinances	
<b>City Attorney Approval:</b>  required for contract, code, easement, franchise, charter, Comp Plan	
Council Meeting Date <b>04/20/2017</b>	

<b>AGENDA</b>  <b>TIME CERTAIN X</b> <b>Start time: 2:00pm</b>  <b>Total amount of time needed: 2 hours</b> (for presentation, testimony and discussion)
<b>CONSENT</b> <input type="checkbox"/>
<b>REGULAR</b> <input type="checkbox"/> <b>Total amount of time needed:</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. Eudaly	4. Eudaly		
Wheeler	Wheeler		