

ORDINANCE No. 189746 As Amended

* Authorize the Bureau of Environmental Services to acquire certain permanent and temporary property rights necessary for construction of the SW Capitol Hwy Stormwater Improvements Project No. E10939 through the exercise of the City's Eminent Domain Authority (Ordinance)

The City of Portland ordains:

Section 1. The Council finds:

1. The City of Portland may exercise the power of eminent domain pursuant to Section 9-108 of the City Charter when deemed necessary by the City Council to accomplish public purposes for which the City has responsibility, provided that power is exercised in accordance with the eminent domain procedures established by Oregon Revised Statutes Chapter 35 (Eminent Domain; Public Acquisition of Property), including those procedures that apply to notification, valuation, negotiation, relocation, and early possession if necessary.
2. The City of Portland has the responsibility to provide sewage and stormwater collection and treatment services to accommodate the City's current and future needs and to protect public health, water quality and the environment.
3. The BES project known as the SW Capitol Hwy Stormwater Improvements Project ("the Project") has been planned in accordance with appropriate engineering standards for the construction, maintenance, or improvement of the City's sewer infrastructure in a way that minimizes property damage, promotes healthy ecosystems and safeguards the environment.
4. The Project is part of a multi-agency coordination effort including Portland Bureau of Transportation ("PBOT", project number T00595) and Portland Water Bureau ("PWB", project number W02292) and will include multi-modal transportation, sewer collection, conveyance and treatment, and water system improvements. The BES component of the Project will build approximately 7,500 linear feet of stormwater collection and conveyance systems and four regional stormwater treatment facilities with combined contributing drainage areas totaling approximately 49 acres.
5. To accomplish the Project's goals set forth above and to construct the Project as designed, the City must acquire the property interests described and depicted in Exhibits A through V: R/W #8600-1, R/W #8600-2, #8600-3, R/W #8600-4, R/W #8600-5, and R/W #8600-6 attached to this Ordinance and by this reference incorporated herein.
6. The City must acquire possession of these property interests by January 1, 2020 so construction of the Project can begin on schedule.
7. All affected property owners have been contacted and informed as to the City's need for certain private property rights related to the Project. All affected property owners have been invited to attend the reading of this agenda item.

NOW, THEREFORE, the Council directs:

- a. That it is hereby declared that it is necessary to acquire the property interests described and depicted in Exhibit A through Exhibit V to this Ordinance for the Project, for which the City is authorized by law to acquire property, and that the Project has been planned, designed, located, and will be constructed in a manner that will be most compatible with the greatest public good and the least private injury.
- b. That the Director of BES or designee and the City Attorney are each authorized to acquire the necessary property interests described herein for the Project under the eminent domain authority of the City, including filing an action to acquire said property interests or negotiating just compensation with property owners within available project budget funds. The Director of BES or designee and the City Attorney are each further authorized to enter into obligations agreements with property owners to address construction management concerns within available Project budget funds.
- c. That the power of eminent domain is hereby exercised with respect to each of the interests in property described and depicted in Exhibit A through Exhibit V. Each is acquired subject to payment of just compensation and subject to procedural requirements of Oregon law.
- d. That BES staff and the Office of the City Attorney are authorized to compensate property owners and other persons-in-interest for each acquisition. In the event that no satisfactory compensation agreement can be reached, the City may commence and prosecute such condemnation proceedings as may be necessary to finally determine just compensation or any other issue appropriate to be determined by a court in connection with the acquisition. This authorization is not intended to expand the jurisdiction of any court to decide matters determined or determinable by the City Council.
- e. That BES is authorized to determine the continuing necessity or propriety of the acquisition authorized by this Ordinance, its quantity, quality, or locality, and to reduce or abandon any acquisition described and depicted in Exhibit A through Exhibit V.
- f. There is hereby authorized the creation of a fund in the amount estimated to be the just compensation for each interest in the property which, if necessary, shall be deposited with the clerk of the court where an action is commenced.
- g. The costs incurred in connection with the acquisition authorized herein shall be charged to the Sewer System Operating Fund, FY 2019-2020 Budget, BES Project No. E10939.L65.

- h. The Commissioner-in-Charge and the Auditor are hereby authorized to pay for the property rights from the Sewer System Operating Fund Budget when demand is presented and approved by the proper authority.

Section 2. The Council declares that an emergency exists because it is in the public interest to get this done as quickly as possible; therefore, this ordinance shall be in full force and effect from and after its passage by Council.

Passed by the Council: **OCT 23 2019**
Commissioner Nick Fish

Prepared by: Ruben Gonzalez, Lisa Moscinski
Date prepared: August 26, 2019

Cost object – E10939.L65

Mary Hull Caballero
Auditor of the City of Portland

By



Deputy

Agenda No.
ORDINANCE NO. 189746 As Amended
Title

*Authorize the Bureau of Environmental Services ("BES") to acquire certain permanent and temporary property rights necessary for construction of the SW Capitol Hwy Stormwater Improvements Project through the exercise of the City's Eminent Domain Authority, BES Project No. E10939 (Ordinance)

INTRODUCED BY Commissioner/Auditor: FISH	CLERK USE: DATE FILED OCT 08 2019
COMMISSIONER APPROVAL Mayor—Finance and Administration - Wheeler Position 1/Utilities - Fritz Position 2/Works - Fish Some Position 3/Affairs - Hardesty Position 4/Safety - Eudaly	Mary Hull Caballero Auditor of the City of Portland By: <u><i>[Signature]</i></u> Deputy ACTION TAKEN:
BUREAU APPROVAL Bureau: Environmental Services Bureau Head: Michael Jordan <i>[Signature]</i> Prepared by: Ruben Gonzalez, P.E. Lisa Moscinski <i>[Signature]</i> Date Prepared: August 26, 2019 <i>[Signature]</i> OCT 16 2019	Rescheduled to October 23, 2019 at 9:30 AM
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"/>	
City Auditor Office Approval:	
City Attorney Approval: <i>[Signature]</i>	
Council Meeting Date Oct 16 2019	

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: 15 minutes (for presentation, testimony and discussion)

FOUR-FIFTHS AGENDA	COMMISSIONERS VOTED AS FOLLOWS:	
	YEAS	NAYS
1. Fritz	✓	
2. Fish	✓	
3. Hardesty	✓	
4. Eudaly	✓	
Wheeler	_____	