

ORDINANCE NO. 189934

Authorize Portland Water Bureau to acquire necessary easements for construction of the Corrosion Control Improvements Project through negotiation or the exercise of the City's eminent domain authority (Ordinance)

The City of Portland ordains:

Section 1. The Council finds:

1. The City may exercise the power of eminent domain pursuant to ORS 223.005 through ORS 223.020 and 223.105, ORS 225.020(2), and 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 has the responsibility to provide high quality water and stewardship of the City's water infrastructure including implementation of safety improvements which benefit City employees and the public.
3. The Corrosion Control Improvements Project (Project) has been planned in accordance with appropriate engineering standards for construction, maintenance, and improvement of the City's water infrastructure in a way that minimizes property damage and protects the health and safety of City employees and the public. The Project has been planned and located in a manner which is most compatible with the greatest public good and least private injury.
4. The Project will design and construct a corrosion control treatment facility at the Water Bureau's Lusted Hill Facility. The Project will include a new building to house the new corrosion control treatment system, a new utility water pump station, and associated piping and support systems.
5. The Project is necessary and is part of the Water Bureau's ongoing efforts to minimize the corrosion of lead in household plumbing and it is also required to meet the Oregon Health Authority's compliance schedule with completion of the corrosion control treatment facility by April 30, 2022.
6. To construct the Project, it is necessary for the City to acquire the easements described and depicted in Exhibits A through H attached to this Ordinance and incorporated by this reference.
7. The cost to acquire the easements will be determined by appraisals that will comply with the requirements of ORS Chapter 35, Eminent Domain; Public Acquisition of Property.

8. The cost to acquire the Project property rights will be determined by appraisals that will comply with the requirements of ORS Chapter 35, Eminent Domain; Public Acquisition of Property. Funding for the Project is available in the Water Fund in the FY 2019-20 and FY 2020-21 Budgets.

NOW, THEREFORE, the Council directs:

- a. That the above recitals and findings shall form an integral part of this Ordinance and shall have the same force and effects as if they were adopted as an ordinance.
- b. That it is necessary for the preservation of economic well-being, public health, public safety, and public welfare of the City of Portland and members of the public served by the City that the City commence the acquisition process for the easements necessary for the Project. The City is authorized by law to acquire the easements, and 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.
- c. That subject to payment of just compensation and the procedural requirements of Oregon law, the Water Bureau Chief Engineer or their designee, consultants, agents and the City Attorney are authorized to acquire the easements through negotiation or through the exercise of the City's eminent domain authority to the extent negotiations fail, as discussed herein.
- d. That the Water Bureau Chief Engineer or their designee, consultants, agents, and the City Attorney may negotiate and authorize payment of just compensation and enter agreements with property owners to address construction management concerns within available project budget funds.
- e. That if no satisfactory compensation agreement can be negotiated, the Water Bureau and the City Attorney 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 of the easements.
- f. That the Water Bureau Chief Engineer and the City Attorney are authorized to retain any experts necessary to examine, survey, conduct tests upon and take samples from the subject properties, pursuant to the requisite procedures for pre-condemnation entry on the subject properties (ORS 35.220).
- g. That the Water Bureau Chief Engineer and the City Attorney are authorized to retain outside counsel necessary to assist with pre-condemnation work, negotiations with the subject property owners, and condemnation litigation, if necessary.
- h. That this authorization is not intended to expand the jurisdiction of any court to decide matters determined or determinable by the City Council.

- i. That upon trial or any suit or action instated to acquire the subject property interests, the attorneys acting for and on behalf of the City are authorized to make such stipulation, agreement or admission as in their judgment may be for the best interest of the City and to take possession of the Property as appropriate in their judgment, without necessity of further Council approval.
- j. That there is hereby authorized the creation of a fund in the amount estimated to be the just compensation for the easements which, if necessary, will be deposited with the clerk of the court where a condemnation action is commenced.
- k. That the Water Bureau Chief Engineer or their designee is hereby authorized to pay for the resulting obligations or agreements related to the Easements from the Water Fund when demand is presented.

Passed by the Council: **April 22, 2020**

Mary Hull Caballero

Auditor of the City of Portland

By *Keelan McClymont*

Deputy

Commissioner Amanda Fritz Prepared
by: David Peters, P.E. Date Prepared:
February 19, 2020

~~26~~ 320
 Agenda No.
ORDINANCE NO. 189934
 Title

✓ Authorize the City of Portland, on behalf of the Portland Water Bureau, to acquire necessary easements for construction of the Corrosion Control Improvements Project through negotiation or the exercise of the City's eminent domain authority (Ordinance)

INTRODUCED BY Commissioner/Auditor: Amanda Fritz	CLERK USE: DATE FILED <u>MAR 10 2020</u>
COMMISSIONER APPROVAL Mayor—Finance & Administration - Wheeler Position 1/Utilities - Fritz <i>[Signature]</i> Position 2/Works - Fritz 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: April 15, 2020 Passed to Second Reading April 22, 2020 at 9:30 a.m.
BUREAU APPROVAL Bureau: Water Bureau Head: Michael P. Stuhr, PE <i>[Signature]</i> Prepared by: David Peters Date Prepared: February 19, 2020	
Impact 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 type="checkbox"/>	
City Auditor Office Approval: required for Code Ordinances	
✓ City Attorney Approval: required for contract, code, easement, franchise, comp plan, charter <i>[Signature]</i>	
Council Meeting Date <u>April 15, 2020</u>	

AGENDA

TIME CERTAIN
 Start time: _____
 Total amount of time needed: _____
 (for presentation, testimony and discussion)

CONSENT

REGULAR
 Total amount of time needed: 15 minutes
 (for presentation, testimony and discussion)

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