

ORDINANCE No. 190314

*Authorize the Bureau of Environmental Services to acquire certain permanent and temporary property rights necessary for construction of the NW Aspen Combined Sewer Extension Project No. E10953, 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 NW Aspen Combined Sewer Extension 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 the BES's Nonconforming Sewer Conversion Program which aims to connect all properties to the public sewer system. This Project will extend 420 linear feet of combined mainline sewer and will connect to five individual properties. To achieve this, the line will need to extend through two properties located at 2102 and 2024 NW Aspen Avenue, therefore requiring permanent sewer easements and temporary easements for support of construction. Due to steep terrain, construction access will be achieved via 3454 NW Thurman Street, by way of a separate temporary easement.
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 1 through 9 attached to this Ordinance and by this reference incorporated herein.
6. The City must acquire possession of these property interests by June 1, 2021 so construction of the Project can begin on schedule.
7. The Bureau's level of confidence in the cost estimates for the Project is high. Funds are available in the Sewer System Operating Fund, FY 2020-2021 Budget, BES Project No. E10953.

NOW, THEREFORE, the Council directs:

- a. That it is hereby declared that it is necessary to acquire the property interests described and depicted in Exhibits 1 through 9 attached 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 the attached Exhibits 1 through 9. 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 within the attached Exhibits 1 through 9.
- 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 2020-2021 Budget, BES Project No. E10953.

- h. The Commissioner-in-Charge and the City 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 delay in property acquisition may result in a delay in construction and impact the overall project completion; therefore, this Ordinance shall be in full force and effect from and after its passage by the Council.

Passed by the Council: March 3, 2021

Commissioner Mingus Mapps
Prepared by: Joe Dvorak, P.E.
Date prepared: January 27, 2021

Cost object – E10953

Mary Hull Caballero
Auditor of the City of Portland

By *Megan Lehman*

Deputy

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Agenda No.
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<p style="text-align: center;">INTRODUCED BY Commissioner/Auditor: Commissioner Mingus Mapps</p>	<p>CLERK USE: DATE FILED <u>February 23, 2021</u></p>
<p style="text-align: center;">COMMISSIONER APPROVAL</p> <p>Mayor—Finance & Administration - Wheeler</p> <p>Position 1/Utilities - Rubio</p> <p>Position 2/Works - Ryan</p> <p>Position 3/Affairs - Hardesty</p> <p>Position 4/Safety - Mapps</p>	<p style="text-align: center;">Mary Hull Caballero Auditor of the City of Portland</p> <p>By: <u>Megan Lehman</u> Deputy</p>
<p style="text-align: center;">BUREAU APPROVAL</p> <p>Bureau: Environmental Services Bureau Head: Michael Jordan</p> <p>Prepared by: Joe Dvorak, P.E. Date Prepared: 1/27/2021</p> <p>Impact Statement Completed <input checked="" type="checkbox"/> Amends Budget <input type="checkbox"/></p> <p>Portland Policy Document If "Yes" requires City Policy paragraph stated in document. Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p> <p>City Auditor Office Approval: required for Code Ordinances</p> <p>City Attorney Approval: Eric Shaffner required for contract, code, easement, franchise, comp plan, charter</p> <p>Council Meeting Date March 3, 2021</p>	<p>ACTION TAKEN:</p>

<p style="text-align: center;">AGENDA</p> <p>TIME CERTAIN <input type="checkbox"/> Start time: _____</p> <p>Total amount of time needed: _____ (for presentation, testimony and discussion)</p> <p>CONSENT <input type="checkbox"/></p> <p>REGULAR <input checked="" type="checkbox"/> Total amount of time needed: 10 Minutes (for presentation, testimony and discussion)</p>	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="width: 30%;">FOUR-FIFTHS AGENDA</th> <th colspan="2">COMMISSIONERS VOTED AS FOLLOWS:</th> </tr> <tr> <th></th> <th style="width: 20%;">YEAS</th> <th style="width: 20%;">NAYS</th> </tr> <tr> <td>1. Rubio</td> <td style="text-align: center;">✓</td> <td></td> </tr> <tr> <td>2. Ryan</td> <td style="text-align: center;">✓</td> <td></td> </tr> <tr> <td>3. Hardesty</td> <td style="text-align: center;">✓</td> <td></td> </tr> <tr> <td>4. Mapps</td> <td style="text-align: center;">✓</td> <td></td> </tr> <tr> <td>Wheeler</td> <td style="text-align: center;">✓</td> <td></td> </tr> </table>	FOUR-FIFTHS AGENDA	COMMISSIONERS VOTED AS FOLLOWS:			YEAS	NAYS	1. Rubio	✓		2. Ryan	✓		3. Hardesty	✓		4. Mapps	✓		Wheeler	✓	
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