

## **ORDINANCE No. 190422**

Authorize Bureau of Environmental Services to acquire certain permanent and temporary property rights necessary for construction of the South Portland – Burlingame Phase 2 Sewer Rehab project through the exercise of the City's Eminent Domain Authority Project No. E11080 (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 South Portland – Burlingame Phase 2 Sewer Rehab ("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 South Portland – Burlingame Phase 2 Sewer Rehab is part of the Large-Scale Sewer Rehabilitation Program. The Project is primarily in the South Portland and Burlingame neighborhoods of South and Southwest Portland. The Project includes approximately 17 work sites, and the Project area is limited by Interstate-5 to the West, the Willamette River to the East, S Bancroft St to the North, and approximately to the South, SW Taylors Ferry Rd. The Project involves the design and rehabilitation of approximately 7,300 linear feet (LF) of 8-inch to 30-inch combined and sanitary sewer pipe. Sewers in the Project area were installed between 1900 and 1959, and range in depth from about 3 to 26 feet. While most Project pipes are in the public right-of-way (ROW), several segments require work in easements.

Designed methods of construction include open-cut excavation, cured-in-place pipe (CIPP), jacking and auger boring, and pipe bursting for whole-pipe repair. Spot repairs for mainline sections will use open-cut excavation. Some pipe segments rehabilitated with CIPP will also require open-cut spot repairs. Service laterals will be rehabilitated with either open-cut excavation or CIPP.

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 4 attached to this Ordinance and by this reference incorporated herein.

6. The City must acquire possession of these property interests by February 1, 2022 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 2021-2022 and FY 2022-2023 Budgets, BES Project No. E11080.

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 4 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 Exhibits 1 through 4. 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 Exhibits 1 through 4.
- f. Exhibits 1 through 4 hereby authorize 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 2021-2022 Budget, BES Project No. E11080.

- h. The Mayor 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.

Passed by the Council: May 26, 2021  
Commissioner Mingus Mapps  
Prepared by: Joe Dvorak, P.E.  
Date prepared: 3/10/2021

**Mary Hull Caballero**  
Auditor of the City of Portland  
By *Megan Lehman*

Cost object – E11080

Deputy

390  
~~385~~  
 Agenda No.  
**ORDINANCE NO. 190422**  
 Title

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| <p style="text-align: center;"><b>INTRODUCED BY</b><br/>         Commissioner/Auditor:<br/> <b>Commissioner Mingus Mapps</b></p>   | <p>CLERK USE: DATE FILED <u>May 11, 2021</u></p>   |
| <p style="text-align: center;"><b>COMMISSIONER APPROVAL</b></p>  | <p style="text-align: center;">Mary Hull Caballero<br/>         Auditor of the City of Portland</p> <p>By: <u>Keelan McClymont</u> <small>Digitally signed by Keelan McClymont<br/>         Date: 2021.05.12 00:34:43 -07'00'</small><br/>         Deputy</p> <p><b>ACTION TAKEN:</b><br/>         May 19, 2021 Passed to Second Reading May 26, 2021 at 9:30 am</p> |
| <p>Mayor—Finance &amp; 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 <small>Digitally signed by Mingus Mapps<br/>         Date: 2021.05.04 10:35:41 -07'00'</small></p>  |  |
| <p style="text-align: center;"><b>BUREAU APPROVAL</b></p>  |  |
| <p>Bureau: Environmental Services<br/>         Bureau Head: <u>Michael Jordan</u> <small>Digitally signed by Michael Jordan<br/>         Date: 2021.05.04 06:59:31 -07'00'</small></p>   |  |
| <p>Prepared by: <u>Joe Dvorak, P.E.</u><br/>         Date Prepared: <u>4/15/2021</u></p>   |  |
| <p>Impact Statement<br/>         Completed <input checked="" type="checkbox"/> Amends Budget <input type="checkbox"/></p>  |  |
| <p>Portland Policy Document<br/>         If "Yes" requires City Policy paragraph stated in document.<br/>         Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p>  |  |
| <p><b>City Auditor Office Approval:</b><br/>         required for Code Ordinances</p>  |  |
| <p><b>City Attorney Approval:</b> <u>Eric Shaffner</u> <small>Digitally signed by Eric Shaffner<br/>         Date: 2021.05.03 12:05:49 -07'00'</small><br/>         required for contract, code, easement, franchise, comp plan, charter</p> |  |
| <p>Council Meeting Date<br/> <u>May 19, 2021</u></p>   |  |

**AGENDA**

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

**CONSENT**

**REGULAR**   
**Total amount of time needed:** \_\_\_\_\_ 10 Minutes  
 (for presentation, testimony and discussion)

| FOUR-FIFTHS AGENDA | COMMISSIONERS VOTED AS FOLLOWS: |      |
|--------------------|---------------------------------|------|
|                    | YEAS                            | NAYS |
| 1. Rubio           | ✓                               |      |
| 2. Ryan            | ✓                               |      |
| 3. Hardesty        | ✓                               |      |
| 4. Mapps           | ✓                               |      |
| Wheeler            | ✓                               |      |