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# 191094

Ordinance

## Authorize the Portland Water Bureau to acquire certain permanent and temporary property rights necessary for construction of the Bull Run Filtration Projects through negotiation or the exercise of the City’s Eminent Domain Authority

Passed

The City of Portland ordains:

Section 1. The Council finds:

1. The City of Portland may exercise the power of eminent domain pursuant to ORS 223.005 through ORS 223.020 and 223.105, 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 Portland Water Bureau has the responsibility to provide high-quality water and stewardship of the City’s water infrastructure, including implementation of safety improvements which benefit the public and City employees.
3. Resolution No. 37460 directed the Portland Water Bureau to plan, design, and construct the Bull Run Filtration Projects (Projects), which includes the Bull Run Filtration Facility Project and the Bull Run Filtration Pipelines Project, to protect public health and comply with the Environmental Protection Agency’s Long-Term 2 Enhanced Surface Water Treatment Rule. The filtration facility is being designed on 95 acres of City-owned property located in east Multnomah County, and new pipelines are being designed to connect the facility to the existing water system.
4. The Projects have been planned in accordance with appropriate engineering standards for the construction, maintenance, and improvement of the City’s water infrastructure in a way that minimizes property damage and protects the health and safety of

### Introduced by

[Commissioner Mingus Mapps](#)

### Bureau

[Water](#)

### Contact

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### Requested Agenda Type

Regular

### Date and Time Information

**Requested Council Date**  
December 7, 2022

City employees and the public. The Projects have been planned, designed, and located in a manner that is most compatible with the greatest public good and least private injury.

5. To accomplish the Projects' goals and to construct the Projects as designed, it is necessary for the City to acquire the permanent and temporary property rights described and depicted in Attachment 1A through Attachment 12B (Subject Property Interests) attached to this Ordinance as Exhibit A and incorporated by reference.
6. The Subject Property Interests are needed and required for the public purpose of completing the Projects, including, but not limited to complying with the Environmental Protection Agency's Long-Term 2 Enhanced Surface Water Treatment Rule. Acquisition of the Subject Property Interests is in the public's interest.
7. The cost to acquire the Subject Property Interests will be determined by appraisals that will comply with the requirements of ORS Chapter 35, Eminent Domain, Public Acquisition of Property.
8. Funding for the Projects is available in the Water Fund in the FY 2022-2023 Budget.

NOW, THEREFORE, the Council directs:

- A. The above recitals and findings shall form an integral part of the Ordinance and shall have the same force and effect as if they were adopted as an ordinance. The foregoing statement of authority, purpose and need are reaffirmed herein. It is necessary for the preservation of public health, economic well-being, public safety, and public welfare of the City and members of the public served by the City that the City commence the acquisition process described herein and that is necessary for the Projects. The City is authorized by law to acquire the Subject Property Interests, and the Projects have been planned, designed, located and will be constructed in a manner that will be most compatible with the greatest public good and least private injury.
- B. Subject to payment of just compensation and the procedural requirements of Oregon law, the Portland Water Bureau Director, Chief Engineer, or their designee, and the City Attorney are authorized to acquire the Subject Property Interests for the Projects through negotiation or through the exercise of the City's eminent domain authority to the extent negotiations fail, as discussed herein.
- C. The Portland Water Bureau Director, Chief Engineer, or their designee, and the City Attorney may negotiate and authorize payment of just compensation and are further authorized to enter into agreements with owners and/or interest holders of the Subject Property Interests to address construction management concerns within available Project budget funds.
- D. The Portland Water Bureau Director, Chief Engineer, or their designee, and the City Attorney are further authorized to offer owners and/or tenants of the Subject Property Interests the

- relocation benefits they are entitled to under federal and Oregon law within available Project budget funds.
- E. The power of eminent domain is hereby authorized with respect to each of the Subject Property Interests, as needed.
  - F. The Portland Water Bureau Director, Chief Engineer, or their designee, consultants, agents, and the City Attorney are authorized to attempt to agree with the owners of the Subject Property Interests and other interest holders as to the compensation to be paid for the acquisitions. In the event that no satisfactory compensation agreement can be reached, the City may commence and prosecute such condemnation proceedings, and hereafter with no further action on the part of the City, as may be necessary to determine just compensation or any other issue appropriate to be determined by a court in connection with the acquisition.
  - G. This authorization is not intended to expand the jurisdiction of any court to decide matters determined or determinable by the City Council.
  - H. The Portland Water Bureau 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 the acquisition of any portion of the Subject Property Interests.
  - I. The Portland Water Bureau Director, Chief Engineer and the City Attorney are authorized to retain counsel necessary to assist with pre-condemnation work, negotiations with the owners or interest holders of the Subject Property Interests, and condemnation litigation, if necessary.
  - J. 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 Subject Property Interests as appropriate in their judgment, without further Council approval.
  - K. In accordance with ORS 35.265, the Portland Water Bureau is hereby authorized to create a fund in the amount estimated to be the just compensation for the Subject Property Interests which, if necessary, shall be deposited with the clerk of the court where a condemnation action is commenced.
  - L. The Portland Water Bureau Director, Chief Engineer, or their designee, is hereby authorized to pay for the resulting obligations, agreements, or relocation benefits for the Projects from the Water Fund when demand is presented and approved by the proper authorities.
  - M. The Mayor and Auditor are hereby authorized to draw and deliver checks chargeable to the Water Fund when demand is presented and approved by the proper authorities.

## Documents and Exhibits

 [Exhibit A](#) (4.93 Mb)

An ordinance when passed by the Council shall be signed by the Auditor. It shall be carefully filed and preserved in the custody of the Auditor (City Charter Chapter 2 Article 1 Section 2-122)

Passed by Council  
December 7, 2022

Auditor of the City of Portland  
Mary Hull Caballero

## Impact Statement

### Purpose of Proposed Legislation and Background Information

City of Portland (City) Resolution No. 37460 directed the Portland Water Bureau to plan, design, and construct the Bull Run Filtration Projects (Projects) which include the Bull Run Filtration Facility Project and the Bull Run Filtrations Pipeline Project, to protect public health and comply with the Environmental Protection Agency's Long-Term 2 Enhanced Surface Water Treatment Rule. The Projects include a planned water filtration facility on 95 acres of City-owned property and related pipelines to connect the facility to the existing water system. The purpose of the proposed legislation is to authorize the Portland Water Bureau to acquire certain permanent and temporary easements needed to construct the designed Projects.

The Projects' designs prioritize using existing City-owned property and public rights-of-way where feasible. Permanent easements, including water pipeline, water pipeline tunnel, water facility (inter-tie), and access easements, are needed for new pipelines and supporting utilities that will connect the facility to the existing water system, and to provide required emergency access from a nearby right-of-way. Temporary construction easements are needed to provide additional working area and access during construction and will terminate after the Projects are complete. There are no other suitable options to connect Project facilities without acquiring easements.

The Projects use federal Water Infrastructure Finance and Innovation Act (WIFIA) funds. As a result, the City must follow federal and state processes for property rights acquisition. The first step in the process is to obtain authority from Council to acquire the necessary property rights. This authority will enable the Portland Water Bureau to make offers to purchase the property rights, negotiate terms and compensation with owners, and if necessary, acquire the property rights through the condemnation process.

The proposed legislation complies with federal and state laws and processes governing property acquisition for federally funded projects.

## **Financial and Budgetary Impacts**

The primary costs associated with the legislation are compensation for the easements, relocation expenses, and consultant fees for property acquisition, appraisal, and legal services. These costs are discussed briefly below.

Compensation offered for each property interest will be based on an appraisal prepared by a certified appraiser and independently reviewed by another certified appraiser. Federal and state laws require the City to offer no less than the appraised value for each property interest acquired. The City may negotiate reasonable compensation and terms with owners after offers have been made. If the City is unable to negotiate reasonable and timely acquisition terms for any necessary property right, compensation may be determined by a court through the condemnation process.

Consultant fees for property acquisition, appraisals, and some legal fees will be determined on a per parcel basis. Additional legal fees may be incurred to support condemnation processes on an as needed basis. Legal costs may be significant if it becomes necessary to acquire some or all the easements through the condemnation process.

The Project budgets include a combined \$6,600,000 to acquire property rights for the facility access and pipelines. Funds will be made available in the Water Fund FY 2022-2023 Budget (W02229 and W02563).

Other long-term costs may include property management, maintenance, and security; however, no changes to staffing levels or contract services are anticipated because of the legislation.

## **Community Impacts and Community Involvement**

The Portland Water Bureau has several public engagement tools dedicated to the Projects, which are supported by Portland Water Bureau staff and through contract services. The Portland Water Bureau uses the Projects' websites, social media, press releases, the Annual Water Quality Report, bill inserts, postcards, and newsletters throughout the Projects as well as engaging the community at outreach meetings and events.

Additionally, each property owner affected by the legislation has been notified in writing of the Portland Water Bureau's intent to acquire an interest in their property. The Portland Water Bureau has met with and communicated with each property owner by phone and mail on multiple occasions to understand their needs and complete the necessary field

investigations to inform the project design and reduce impacts. Each owner has been informed of the date and time of the hearing when Council will consider the legislation.

### **100% Renewable Goal**

The legislation does not affect the City's total energy use or the City's renewable energy use.

### **Agenda Items**

#### **992 Regular Agenda in [November 30, 2022 Council Agenda](#)**

Passed to second reading

Passed to second reading December 7, 2022 at 9:30 a.m.

#### **1027 Regular Agenda in [December 7, 2022 Council Agenda](#)**

Passed

Commissioner Mingus Mapps Yea

Commissioner Carmen Rubio Yea

Commissioner Dan Ryan Yea

Commissioner Jo Ann Hardesty Yea

Mayor Ted Wheeler Yea