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191117

Emergency Ordinance

***Create a local improvement district to construct street, sidewalk, and stormwater improvements in the SE 89th Ave and Taylor St Local Improvement District (Hearing; C-10072)**

Passed

Amended by Council

The City of Portland ordains:

Section 1. The Council finds:

1. The Council adopted Resolution No. 37589 on October 12, 2022, declaring its intent to initiate local improvement district formation proceedings and establishing the name of the local improvement district as the SE 89th Avenue & Taylor Street Local Improvement District ("LID").
2. The record related to the adoption of Resolution No. 37589 is incorporated into the record of this Ordinance except that no part of the record of Resolution No. 37589 shall be considered a remonstrance for purposes of Section 17.08.070 of City Code, nor for purposes of Section 9-403 of the City Charter.
3. The Bureau of Revenue & Financial Services mailed notice of the December 7, 2022, LID formation hearing on November 17, 2022 to the owners of the benefited properties within the proposed SE 89th Avenue & Taylor Street LID. The property owners were notified of the time and location of the hearing conducted by Council, the total estimated project costs, the right and manner to object to the formation of the SE 89th Avenue & Taylor Street LID, the deadline and procedure for filing a remonstrance against the formation of the SE 89th Avenue & Taylor Street LID, and the amount of the estimated future assessment on benefited properties as set forth in Exhibit A. The deadline to submit a written remonstrance was at 5:00 PM on December 1, 2022.
4. Notices of the LID formation hearing were posted within the SE 89th Avenue & Taylor Street LID on November 17, 2022.

Introduced by

[Commissioner Jo Ann Hardesty](#)

Bureau

[Transportation](#)

Contact

Andrew Aebi

Local Improvement District
Administrator & Project
Manager

✉ andrew.aebi@portlandoregon.gov

📞 [503-823-5648](tel:503-823-5648)

Requested Agenda Type

Regular

Date and Time Information

Requested Council Date

December 14, 2022

5. The LID Administrator published notice of the December 7, 2022, LID Formation Hearing in the Daily Journal of Commerce on November 21, 2022, and on November 23, 2022.
6. The general character and scope of the improvement as originally proposed is to remove the existing dirt, gravel, curb and/or hard surface; grade the street to its proper subgrade; construct an asphaltic concrete street with an aggregate base; construct stormwater drainage facilities including pipes, inlets and maintenance access holes; construct curb and sidewalk as shown in Exhibit B; and plant street trees except where the existing tree canopy is deemed sufficient by the City Forester.
7. The typical sections shown in Exhibit B reflect a full reconstruction of SE 89th Avenue. SE Taylor Street and SE 92nd Avenue improvements are generally limited to infill curb and sidewalk, and curb ramp replacement as needed, without full street reconstruction.
8. Widths, alignments and lengths of the project may be modified during the preparation of plans and specifications by the City Engineer.
9. The SE 89th Avenue improvements as originally proposed will be constructed from the south property line of 1179 SE 89th Avenue on the west side of the street and from the north property line of 1231 SE 92nd Avenue on the east side of the street to the north right-of-way line SE Taylor Street, plus any transition work on abutting street segments, intersections, and/or adjacent property determined to be necessary by the City Engineer.
10. The SE Taylor Street improvements as originally proposed will be constructed from the west right-of-way line of SE 89th Avenue to the west right-of-way line of SE 92nd Avenue, plus any transition work on abutting street segments, intersections, and/or adjacent property determined to be necessary by the City Engineer.
11. The SE 92nd Avenue improvements will be constructed from the south right-of-way line of SE Taylor Street to the north property line of 1231 SE 92nd Avenue, plus any transition work on abutting street segments, intersections, and/or adjacent property determined to be necessary by the City Engineer.
12. The boundary of the SE 89th Avenue & Taylor Street LID as originally proposed includes the properties as shown in the map Exhibit C.
13. The LID Administrator's estimated cost of designing, constructing and financing the improvements as originally proposed is \$1,478,312 as shown in Exhibit D, not including the cost of utility relocation that may be required at utilities' expense. The LID Administrator's estimate is based on the Engineer's Estimate of February 3, 2022 as contained in Exhibit E. The LID Administrator's level of confidence in

the cost estimate for this project as of the filing date of this Ordinance is "Low" per Exhibit A of Resolution No. 36430 adopted by Council on July 26, 2006 given that project specifications are preliminary.

14. The estimated amount of the future assessment for the SE 89th Avenue & Taylor Street LID as originally proposed is \$1,150,910 and properties would be assessed on a square footage basis for City-owned properties providing \$815,476 in funding within Assessment Zone 'A' and on an equal shares basis for privately-owned properties providing \$335,434 in funding with the LID in Assessment Zone 'B'.
15. The LID Administrator has analyzed the financial feasibility of the SE 89th Avenue & Taylor Street LID and has made a finding that the collective bonding capacity of benefiting properties is sufficient to minimize the City's financial risk associated with this project.
16. The remonstrance level is evaluated in Exhibit F. Council retains jurisdiction over the formation of the SE 89th Avenue & Taylor Street LID because the total remonstrance level is less than the 60% threshold established by Section 9-403 of the City Charter.
17. The parcels of land within the SE 89th Avenue & Taylor Street LID will receive special benefit from the project in the amounts set forth in Exhibits A and I.
18. The Council has considered the remonstrances made by the owner of properties to be benefited by the SE 89th Avenue & Taylor Street LID project, and adopts the summary of remonstrances and findings as set forth in Exhibit G.
19. Passage of this Ordinance will constitute an assurance of performance as allowed by Section 17.24.055 B.5 of City Code.
20. Assessments for LIDs are not subject to the property tax limitation established by Article XI, Section 11b of the Oregon Constitution.
21. Pursuant to City Code, assessments for the SE 89th Avenue & Taylor Street LID will be imposed by a separate and subsequent ordinance.
22. There are existing flooding issues at the intersection of SE 89th Avenue & Main Street due to the lack of existing stormwater infrastructure at this location south of the SE 89th & Taylor LID boundary.

NOW, THEREFORE, the Council directs:

- A. The SE 89th Avenue & Taylor Street LID is hereby created as shown in Exhibit C and the SE 89th Avenue & Taylor Street LID includes the properties to be benefited in the amounts identified in Exhibits A and I with the Bureau of Revenue & Financial Services directed to update pending lien records to reflect the

apportionment shown in Exhibit I in lieu of the apportionment shown in Exhibit C.

- B. Assurance of performance for nonexempt properties identified in Exhibit I is provided upon Council passage of this Ordinance per Section 17.24.055 of City Code.
- C. The properties' owners' estimated share of costs is as shown in Exhibit I. Costs for any necessary utility relocation shall be allocated per Subsection 17.16.100 of City Code as well as per the Final Procedures for Allocation of Utility Relocation Costs adopted on June 5, 2002.
- D. The City Engineer shall prepare plans and specifications for the improvement with the west curb and west sidewalk eliminated from SE 89th Avenue notwithstanding the typical section shown for SE 89th Avenue as shown in Exhibit B. SE 89th Avenue shall be built with a flush curb parallel to the centerline of SE 89th Avenue to preserve the newly-constructed pavement, which will be removed and replaced by a traditional height curb under future public works permitting (PWP) projects. Property owners will fund all PWP costs including new curb, new sidewalk, and widening of SE 89th Avenue.
- E. Properties shall be assessed on a zoned square footage basis for City-owned properties and on an equal shares basis for residential properties with 97.145755% of costs apportioned to Assessment Zone 'A' for City-owned properties and 2.854245% of costs apportioned to Assessment Zone 'B' for residential properties.
- F. Procurement Services within the Bureau of Revenue and Financial Services shall advertise for bids, prepare a contract, and award the contract through a competitive bid process. The improvements may be constructed in whole or in part by the City of Portland, or the City of Portland may seek bids for any portion of the SE 89th Avenue & Taylor Street LID project, including the LID improvement being constructed in combination with the Berrydale Park construction contract. The manner in which the improvements are constructed will be at the sole discretion of the City Engineer.
- G. The Bureau of Revenue & Financial Services shall obtain interim financing to pay for SE 89th Avenue & Taylor Street LID project costs prior to bonding.
- H. PBOT is authorized to make expenditures for this project per Finding No. 12 and per Exhibit D, and the Bureau of Revenue & Financial Services is authorized to reimburse such expenditures

from the LID Fund.

- I. The LID Administrator is authorized to negotiate Extra Work Agreements with any owner of property or properties not owned by Portland Parks & Recreation to finance the design and construction of frontage improvements provided that:
 1. The City Engineer has determined the additional work to be technically feasible; and
 2. An Extra Work Agreement for property or properties abutting the additional improvement(s) have been approved as to form by the City Attorney; and
 3. The LID boundary is amended by Council to add the property not currently included in Exhibit H, but this boundary amendment will not be subject to a hearing notwithstanding Section 17.08.080 of City Code.
- J. The requirement for a hearing per Code Section 17.08.080 is waived in the event that existing sidewalk on SE 92nd Avenue is deemed to be adequate and need not be replaced; however, this shall not affect the apportionment of costs between assessment zones as set forth in Directive E of this Ordinance.
- K. PBOT and the Bureau of Environmental Services (BES) are not directed to explore the financial feasibility of forming a separate and subsequent LID per Finding No. 22 of this Ordinance.
- L. In the event of any conflict between Binding City Policy ENB-6.02 and Code Chapter 17.08, Code Chapter 17.08 shall prevail.
- M. In the event of any conflict between Binding City Policy ENB-6.02 and this Ordinance, this Ordinance shall prevail.
- N. If any finding or directive within this Ordinance conflicts with Resolution No. 37589, the finding or directive within this Ordinance shall prevail.
- O. Code Section 17.08.070.B.1 is waived to provide an additional day for remonstrances to be received from property owners.
- P. Per the scope amendment adopted by Council, the project limits in Finding No. 9 and Finding No. 10 are amended so that frontage improvements will be constructed only for Berrydale Park and for

9020 SE Taylor Street.

- Q. Per the scope amendment adopted by Council, the total project cost in Finding No. 13 is amended from \$1,478,312 to \$1,047,838 reflecting a reduction in construction costs from Exhibit E resulting from the reduced project scope.
- R. Per the scope amendment adopted by Council, total project funding in Finding No. 14 is amended from \$1,478,312 to \$1,047,838 reflecting the elimination of all but one residential assessment and the elimination of pavement preservation funding since the SE 89th & Taylor intersection will not be improved.
- S. The Council adopts the apportionment identified in Exhibit I in lieu of the apportionment proposed in Exhibit F.
- T. The Council authorizes PBOT to require frontage improvements upon development or a land use action for any property for which frontage improvements were originally proposed but were amended to be eliminated. Notwithstanding the typical section shown in Exhibit B, PBOT may require frontage improvements including curbs, sidewalk and street trees resulting in a 28'-wide or 32'-wide curb-to-curb width street to allow parking on both sides of the street.
- U. The estimated assessment amount for Pending Lien No. 174590 at 9020 SE Taylor Street is a guaranteed, not-to-exceed amount. The allocation of costs to Assessment Zone 'B' as set forth in Directive 'e' is similarly a not-to-exceed exceed percentage for Assessment Zone 'B' and may be decreased if the actual percentage of costs is determined to be lower following completion of construction. Frontage improvements benefiting 9020 SE Taylor Street may be removed from the LID construction contract at the sole discretion of the City Engineer without a hearing as otherwise required by Code Section 17.08.080.

Section 2. The Council declares that an emergency exists to provide assurance of performance under Code Section 17.24.055 for frontage improvements to enable construction of Berrydale Park as soon as possible; therefore, this Ordinance shall be in full force and effect from and after its passage by the Council.

Documents and Exhibits

 [Approved Amendments 12/14/2022](#) (155.05 Kb)

 [Amended Ordinance - strikethrough/underline version 12/14/2022](#) (151.5 Kb)

 [Approved Amendments 12/7/2022](#) (164.81 Kb)

 [Amended Ordinance - strikethrough/underline version 12/7/2022](#) (132.59 Kb)

 [Exhibit A](#) (626.05 Kb)

 [Exhibit B](#) (1.1 Mb)

 [Exhibit C](#) (684.77 Kb)

 [Exhibit D](#) (592.16 Kb)

 [Exhibit E](#) (804.19 Kb)

 [Exhibit F](#) (625.92 Kb)

 [Exhibit G - As Amended](#) (2.38 Mb)

 [Exhibit H - As Amended](#) (966.23 Kb)

 [Exhibit I - As Amended](#) (60.94 Kb)

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 as amended by Council
December 14, 2022

Auditor of the City of Portland
Mary Hull Caballero

Impact Statement

Purpose of Proposed Legislation and Background Information

- This legislation forms the SE 89th Avenue & Taylor Street LID as a prerequisite to design and construction.
- Final Council approval of the LID on December 14, 2022 would provide assurance of performance under Code Section 17.24.055 for Portland Parks & Recreation (PP&R) to begin construction of Berrydale Park, which will be a new park in East Portland.

- Portland Parks & Recreation (PP&R) is paying the majority of the cost of the LID. The LID is structured so that adjacent and nearby properties will pay only the marginal cost of building full rather than partial street improvements and adding curb and sidewalk.
- The unique geography of Berrydale Park would otherwise result in a patchwork of three noncontiguous frontage improvements if the frontages were to be improved under the public works process (PWP) in the absence of this LID. The PWP would not provide a mechanism for property owners to build the sidewalk and stormwater infrastructure desired by the neighborhood as communicated at a September 6, 2022 property owner meeting.

Financial and Budgetary Impacts

- Total project cost is \$1,478,312, which has increased by \$15,476 or 1.1% since Council adoption of Resolution #37589 to widen the portion of SE 89th Avenue adjacent to Berrydale Park from 20' to 28' to accommodate parking on both sides of the street instead of on one side.
- The LID amount is \$1,135,434 including \$815,475 in Assessment Zone 'A' (Parks' properties) and \$335,434 in Assessment Zone 'B' (15 privately-owned properties). The LID amount for Assessment Zone 'A' has increased by \$15,476 or 1.9% since Council adoption of Resolution #37589 to accommodate parking on both sides of the street instead of on one side, and this increase was communicated to Portland Parks & Recreation prior to Bureau of Revenue & Financial Services providing notification of the LID Formation Hearing to all property owners.
- PBOT is contributing \$305,922 in General Transportation Revenue (GTR) including \$125,000 in pavement preservation funds, \$62,212 in sidewalk gap funding, and \$118,710 in overhead funding to defray LID costs for residential properties.
- There is no funding requested as a result of this legislation. Once the LID is formed, funding will be incorporated into the FY 2023-24 Capital Improvement Plan Requested Budget.

Community Impacts and Community Involvement

- The LID allows PP&R to proceed with design and construction of Berrydale Park.
- SE 89th Avenue lacks curbs, drainage and sidewalk facilities. The street surface is in very poor condition, with a pavement condition index rating of 23 on a zero to 100 scale and is not salvageable. The LID would completely reconstruct the street adjacent to Berrydale

Park.

- Originally a sidewalk was proposed only for the east side of SE 89th Avenue, but sidewalk is now proposed for the west side as well based on community feedback at a September 6, 2022 property owner meeting. The street width is being narrowed from 22' to 20' to minimize physical impacts and to keep all improvements within the existing right-of-way.
- New sidewalk would be built on the south side of SE Taylor Street and would be replaced as needed on the west side of SE 92nd Avenue. The new SE Taylor Street sidewalk would eliminate an east-west sidewalk gap in the neighborhood and would improve pedestrian connectivity to Berrydale Park as desired by neighborhood residents.
- Curb ramp gaps would be eliminated by this LID and would complement recent construction of existing curb ramps in this area to make them ADA-compliant.

100% Renewable Goal

Not applicable.

Budget Office Financial Impact Analysis

Approval of this ordinance would establish the formation of the 89th Ave and Taylor St. local improvement district (LID) for construction of street, sidewalk, and storm water improvements. The LID amount is \$1,135,434 and PBOT intends to contribute \$305,922 of General Transportation Revenue (GTR) to defray the cost for residential property owners. Upon approval of the LID, PBOT plans to incorporate funding into their FY2023-24 Capital Improvement Plan Requested Budget.

Agenda Items

1000 Time Certain in December 7, 2022 Council Agenda

Passed to second reading as amended

Motion to accept the amended Exhibit G: Moved by Hardesty and seconded by Wheeler. Vote not called. Motion withdrawn.

Motion to amend Ordinance, substitute Exhibit G, and accept Exhibits H & I: Moved by Hardesty and seconded by Wheeler. (Y-5)

Passed to second reading December 14, 2022 at 9:30 a.m. as amended

1063 Regular Agenda in December 14-15, 2022 Council Agenda

Passed As Amended

Motion to amend the ordinance to add Directive U and add an emergency clause to provide assurance of performance under Code Section 17.24.055 for frontage improvements to enable construction of Berrydale Park as soon as possible: Moved by Hardesty and seconded by Wheeler. (Y-5)

Commissioner Mingus Mapps Yea

Commissioner Carmen Rubio Yea

Commissioner Dan Ryan Yea

Commissioner Jo Ann Hardesty Yea

Mayor Ted Wheeler Yea