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191522

Emergency Ordinance

***Authorize Bureau of Transportation to acquire certain temporary rights necessary for construction of the SW 45th Drive Landslide Abatement Project through 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 Section 9-108 of the City Charter and in accordance with Eminent Domain procedures provided for in ORS Chapter 35 (Eminent Domain; Public Acquisition of Property), including those procedures that apply to notification, valuation, negotiation, relocation and early possession if necessary, when the exercise of such power is deemed necessary by the City Council to accomplish public purposes for which the City has responsibility.
2. The City of Portland has the responsibility of providing safe transportation routes for commerce, convenience and to adequately serve the traveling public.
3. The project known as SW 45th Drive Landslide Abatement Project (the "Project") has been planned in accordance with appropriate engineering standards for the construction, maintenance, or improvement of said transportation infrastructure such that property damage is minimized, transportation promoted, and travel safeguarded.
4. In February of 2017, heavy rains and saturated soil caused a shallow landslide at SW 45th Avenue and Orchid Street. New infrastructure is required to mitigate the resulting slope instability. The SW 45th Drive Landslide Abatement Project will construct a new retaining wall to mitigate the landslide risk.
5. To accomplish the Project set forth above, it is necessary to acquire the following property interests described and depicted in Exhibits 1

Introduced by

[Commissioner Mingus Mapps](#)

Bureau

[Transportation](#)

Contact

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Right of Way Agent III

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Requested Agenda Type

Regular

Date and Time Information

Requested Council Date

November 15, 2023

Time Requested

15 minutes

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

6. All affected property owners have been contacted and informed as to the City's need for certain private property rights related to completion of the Projects. All affected property owners have been invited, by mailing, to attend the reading of this agenda item.

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 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 which will be most compatible with the greatest public good and the least private injury.
- B. That the Director of the Bureau of Transportation or designee and/or City Attorney are authorized to acquire necessary temporary rights for the Project under the Eminent Domain Authority of the City, including filing an action to acquire the property interests described herein or negotiating just compensation with property owners within available project budget funds. The Director of the Bureau of Transportation or designee and/or the City Attorney are 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 the Bureau of Transportation's staff and the Office of the City Attorney are authorized to attempt to agree with the owner and other persons in interest as to the compensation to be paid for each acquisition, and, in the event that no satisfactory agreement can be reached, to 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 above or determinable by the City Council.
- E. That the Bureau of Transportation 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 in Exhibits 1 through 4.
- 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 Mayor and Auditor are hereby authorized to pay for the property rights from the Transportation 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.

Documents and Exhibits

 [Exhibits 1 - 4](#)

639.63 KB

(<https://www.portland.gov/sites/default/files/council-documents/2023/exhibits-1-4-002.pdf>)

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
November 15, 2023

Auditor of the City of Portland
Simone Rede

Impact Statement

Purpose of Proposed Legislation and Background Information

- The City of Portland may exercise the power of eminent domain pursuant to Section 9-108 of the City Charter and in accordance with Eminent Domain procedures provided for in ORS Chapter 35 (Eminent Domain; Public Acquisition of Property), including those procedures that apply to notification, valuation, negotiation, relocation and early possession if necessary, when the exercise of such power is deemed necessary by the City Council to accomplish public purposes for which the City has responsibility.
- The City of Portland has the responsibility of providing safe transportation routes for commerce, convenience and to adequately serve the traveling public.
- In February of 2017, heavy rains and saturated soil caused a shallow landslide at SW 45th Avenue and Orchid Street. New infrastructure is required to mitigate the resulting slope instability. The SW 45th Drive Landslide Abatement Project (the "Project") will construct a new

retaining wall to mitigate the landslide risk.

- To accomplish the Project set forth above, it is necessary to acquire the following property interests described and depicted in Exhibits 1 through 4, attached to this Ordinance and, by this reference incorporated herein.
- All affected property owners have been contacted and informed as to the City's need for certain private property rights related to completion of the Projects. All affected property owners have been invited, by mailing, to attend the reading of this agenda item.

Financial and Budgetary Impacts

- Property values associated with the property acquisitions have not yet been quantified since negotiations are not completed; however, an estimate for the right of way phase has been budgeted in the Transportation Operating Fund. The level of confidence for the estimate is low to moderate.
- Funds are available in the Transportation Operating Fund Budget, FY 2023-24 Budget, SAP #T00679. The funding source is the General Transportation Revenue (GTR).
- This legislation does not affect staffing levels nor result in a new or modified financial obligation or benefit now or in the future.
- If City Council does not approve the ordinance, construction of the Project will not be feasible as planned, due to lack of property rights needed to make the improvements.

Community Impacts and Community Involvement

- The Project team has sent mailings and developed a website to keep community members up to date regarding this project.
- Pedestrian, bike and transit projects are typically non-controversial and supported by neighbors and the broader community.

100% Renewable Goal

N/A

Agenda Items

962 Regular Agenda in [November 15, 2023 Council Agenda](https://www.portland.gov/council/agenda/2023/11/15)
(<https://www.portland.gov/council/agenda/2023/11/15>)

Passed

Commissioner Mingus Mapps Yea

Commissioner Carmen Rubio Yea

Commissioner Dan Ryan Yea

Commissioner Rene Gonzalez Yea

Mayor Ted Wheeler Yea