

## ORDINANCE No. 183458

\*Authorize a major encroachment to Portland State University to construct, use and maintain a below grade tunnel in the public right-of-way of SW Montgomery St and SW 10<sup>th</sup> Ave at the intersection of SW Montgomery St and SW 10<sup>th</sup> Ave. (Ordinance)

The City of Portland ordains:

Section I. The Council finds:

1. Portland State University, a franchised utility in the City of Portland, has requested approval of an encroachment request for an underground tunnel beneath the public right-of-way at the intersection of SW Montgomery St and SW 10<sup>th</sup> Ave. The encroachment is adjacent to the parcels having State Identification Numbers: 1S1E04AD 9100  
1S1E04AD 8900  
1S1E04AD 8700
2. The Encroachments in the Public Right-of-Way policy (Bureau of Planning, 1982) requires review by the City Engineer with a report to Council for Major Encroachments in the Right-of-Way.
3. The attached City Engineer's report recommends findings in support of the encroachment request subject to certain conditions.

NOW THEREFORE, the Council directs:

- a. The findings in the attached City Engineer's report are adopted, See Exhibit A.
- b. The City Engineer to grant a revocable permit to Portland State University to construct, use and maintain a below grade tunnel in the public right of way of the intersection of SW Montgomery St and SW 10<sup>th</sup> Ave, as located in the City Engineer's report, attached to and by reference made a part of this Ordinance, subject to the following conditions:
  - (1) This permit is for the use of the street area only, and shall not exempt the permittee from obtaining any license or permit required by the City Code or Ordinances for any act to be performed under this permit, nor shall this permit waive the provisions of any City Code, Ordinance, or the City Charter, except as herein stated.
  - (2) This permit is revocable by the City Engineer at any time in the event the public's need requires it, or the permittee fails to comply with the conditions of this permit, and no expenditure of money hereunder, lapse of time, or other act or thing shall operate as an estoppel against the City of Portland, or be held to give the permittee any vested or other right. Upon the expiration of this permit, or upon its sooner revocation by the City Engineer, the permittee shall, within 30 days, remove said

installations from the street area and restore the street area as directed by and to the satisfaction of the City Engineer.

- (3) The permittee shall hold the City of Portland, its officers, agents, and employees free and harmless from any claims for damages to persons or property, including legal fees and costs of defending any actions or suits, including any appeals, which may result from the permitted activity.
- (4) This permit is personal to the permittee and may not be transferred, assigned or otherwise conveyed, and will require insurance with limits of coverage that will meet the maximum requirements for liability of a public body as set forth in ORS 30.260 through 30.300, or as it may be required by subsequent amendment and naming the City, its officers, agents and employees as additional insured. Said insurance to be kept in full force and effect at all times. This permit is automatically revoked without further action by the City Engineer if this insurance is permitted to lapse, is canceled, or for any other reason becomes inoperative.
- (5) The permittee shall be liable to any person who is injured or otherwise suffers damage by reason of the permittee's failure to keep any structure located in the portion of the street area covered by this permit in safe condition and good repair. Furthermore, permittee shall be liable to the City of Portland, its officers, agents and employees, for any judgment or expense incurred or paid by the City its officers, agents or employees, by reason of the existence of any structure in the street area covered by this permit.
- (6) The permittee shall reimburse the City for the cost of filing a copy of this permit with the Elections and Records Division of Multnomah County.
- (7) The permittee shall enter into a lease agreement with the City for use of space in the public right-of-way.
- (8) The tunnel shall be constructed in substantial compliance with preliminary plans that have been submitted by the applicant and reviewed by the City.
- (9) The applicant shall construct the tunnel to accommodate the structural demands of the public roadway built above the facility in a manner acceptable to the City of Portland Bureau of Transportation.
- (10) Maintenance of the tunnel shall be the sole responsibility of the permittee. Failure to maintain the tunnel shall void the encroachment approval and shall require the permittee to restore the right of way to the satisfaction of the City Engineer.
- (11) Failure to maintain a franchise agreement with the City of Portland shall be construed as an abandonment of the tunnel and the permittee shall be required to restore the public right of way to the satisfaction of the City Engineer.

- (12) This encroachment approval is specific to construction of the connecting utility tunnels on private property and is voided if the connecting utility tunnels are not constructed
- (13) Repair, maintenance and installation of existing or future utility facilities in the right-of-way may require permittee to reconstruct, move or remove the tunnel authorized by this permit at the permittee's cost. To protect underground facilities, the permittee shall comply with the requirements of OAR 952-001-0010 through 952-001-0090. Utilities shall be notified and have an opportunity to locate their facilities at least two days prior to commencing work allowed under this permit.
- (14) The permit for this installation shall not become effective until the permittee becomes a member of the Utilities Notification Center system per OAR 952-001-0010 through 952-001-0090, and remains a member in good standing. All future private owners, permittees, assignees or heirs to this permit shall be bound by this condition. Failure to remain a member in good standing with the Utility Notification system, or its successor, shall be cause for immediate revocation of this permit, without further action by the City Engineer.
- (15) Permittee will maintain a minimum of 3 feet of cover over the private tunnel within the right-of-way and shall install utility marking tape in the trench over the tunnel to provide additional warning of its existence. All installations and street reconstruction shall be in conformance with the Standard Construction Specifications of the Department of Public Works and the Department of Public Utilities of the City of Portland, Oregon and with Title 17 of the Code of the City of Portland.
- (16) The permittee must incorporate applicable erosion control measures referenced in Chapter 17.38.050 of the Code of the City of Portland.
- (17) The permittee shall provide the City Engineer with a final revised and complete set of plans after construction of the utility tunnel. The plans shall accurately represent the utility tunnel as built, show the exact location of all installations in the right-of-way and be certified by the approved inspector to be true and accurate.
- (18) No modification shall be made to any installation authorized under this permit without prior approval from the City Engineer. Failure to maintain the utility tunnel in conformance with the approved plans or repair to or modification of the utility tunnel without obtaining prior approval from the City Engineer shall cause immediate revocation of this permit without further action by the City Engineer. Within 30 days of revocation, the permittee shall remove the utility tunnel from the street area and restore the street area to the satisfaction of the City Engineer.
- (19) The permittee shall be responsible for maintenance of the street area disturbed for installation of the tunnel. Failure to maintain said street area, or failure to repair or

replace any portion of said street area immediately upon notification from the Office of the City Engineer, shall be cause for the City Engineer to declare the tunnel a nuisance. The City Engineer may summarily abate the nuisance, initiate proceedings through the Code Hearings Officer, file civil suit or take any other action necessary to ensure the permittee, transferee or assignee performs the required repairs to the public right-of-way.

- (20) Before installation begins, the permittee shall obtain the Traffic Engineer's requirements for hours of work, traffic control, and the placing of necessary signs and barricades.

Section 2. The Council declares that an emergency exists because construction is in progress for the tunnels on PSU Property permitted under building permits issued by the Bureau of Development Services and the tunnel in the public right-of-way is the connecting link between on property segments; therefore, this Ordinance shall be in full force and effect from and after its passage by Council.

Passed by the Council.

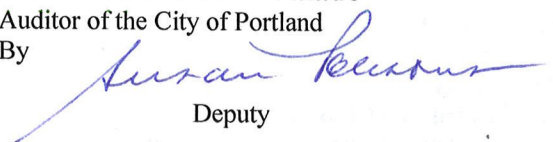
JAN 13 2010

Mayor Sam Adams  
Prepared by: Kurt Krueger: tb:slg  
Date Prepared: December 16, 2009

**La Vonne Griffin – Valade**

Auditor of the City of Portland

By

  
Deputy

Agenda No. **183458**  
**ORDINANCE NO.**  
 Title

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<b>INTRODUCED BY</b> Commissioner/Auditor: <b>MAYOR SAM ADAMS</b>	CLERK USE: DATE FILED <u>JAN 08 2010</u>
<b>COMMISSIONER APPROVAL</b> <i>Commissioner for Mayor Adams</i> Mayor—Finance and Administration - Adams Position 1/Utilities - Fritz Position 2/Works - Fish Position 3/Affairs - Saltzman Position 4/Safety - Leonard	LaVonne Griffin-Valade Auditor of the City of Portland  By: <u><i>[Signature]</i></u> Deputy  <b>ACTION TAKEN:</b>
<b>BUREAU APPROVAL</b> Bureau: Bureau of Transportation Group Manager: Greg Jones Development & Capital Program Other: <i>[Signature]</i>	
Financial Impact Statement Completed <input checked="" type="checkbox"/> Amends Budget <input type="checkbox"/> Not Required <input type="checkbox"/>	
Portland Policy Document If "Yes" requires City Policy paragraph stated in document. Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	
Council Meeting Date <b>January 13, 2010</b>	
<b>City Attorney Approval</b>	

<b>AGENDA</b>
<b>TIME CERTAIN</b> <input type="checkbox"/> Start time: _____  Total amount of time needed: _____ (for presentation, testimony and discussion)
<b>CONSENT</b> <input checked="" type="checkbox"/>
<b>REGULAR</b> <input type="checkbox"/> Total amount of time needed: _____ (for presentation, testimony and discussion)

FOUR-FIFTHS AGENDA	COMMISSIONERS VOTED AS FOLLOWS:	
	YEAS	NAYS
1. Fritz	1. Fritz <input checked="" type="checkbox"/>	
2. Fish	2. Fish <input checked="" type="checkbox"/>	
3. Saltzman	3. Saltzman <input checked="" type="checkbox"/>	
4. Leonard	4. Leonard <input checked="" type="checkbox"/>	
Adams	Adams <input checked="" type="checkbox"/>	