

ORDINANCE No. 185190 As Amended

Create a local improvement district to construct street and stormwater improvements in the NE 112th Ave and Marx St Local Improvement District (Hearing; Ordinance; C-10043)

The City of Portland ordains:

Section 1. The Council finds:

1. The Council adopted Resolution No. 36899 on January 25, 2012, declaring its intent to initiate local improvement district formation proceedings and establishing the name of the local improvement district as the NE 112th Avenue & Marx Street Local Improvement District. In the event of any finding or any directive within this Ordinance conflicting with Resolution No. 36899 involving this local improvement district, the finding or directive within this Ordinance shall prevail.
2. The references to case/file number 2010-183-065-00-00-CC as a “code compliance case” in the seventh and eighth paragraphs of Resolution No. 36899 should instead have been “land use case.”
3. Except as noted in Finding No. 2 of this Ordinance, the record related to the adoption of Resolution No. 36899 is incorporated into the record of this Ordinance. No part of the record of Resolution No. 36899 shall be considered a remonstrance for purposes of Section 17.08.070 of City Code, or for purposes of Section 9-403 of the City Charter.
4. The City Auditor mailed notice of the February 29, 2012 local improvement district formation hearing on February 8, 2012 to the owners of the benefited properties within the proposed NE 112th Avenue & Marx Street Local Improvement District. 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 NE 112th Avenue & Marx Street Local Improvement District, the deadline and procedure for filing remonstrances against the formation of the NE 112th Avenue & Marx Street Local Improvement District, and the amount of the estimated future assessment on benefited properties as set forth in Exhibit A (attached to the original only). The deadline to submit written remonstrances was at 5:00 PM on February 22, 2012.
5. Notices of the local improvement district formation hearing were posted within the NE 112th Avenue & Marx Street Local Improvement District on February 15, 2012.
6. The Local Improvement District Administrator published notice of the February 29, 2012 local improvement district formation hearing in the Daily Journal of Commerce on February 15, 2012 and on February 16, 2012.

7. The improvements will be constructed on NE 112th Avenue from the south right-of-way line of NE Marx Street (south project limit) to the north property line of 5415 NE 112th Avenue (north project limit) and on NE Marx Street from the east right-of-way line of NE 109th Avenue (west project limit) to the east right-of-way line of NE 112th Avenue (east project limit), plus any transition work on abutting street segments, intersections, and/or adjacent properties determined to be necessary by the City Engineer.
8. The general character and scope of the improvement is to remove the existing dirt, gravel and/or hard surface; grade streets to their proper subgrade; construct an asphaltic concrete street with an aggregate base; construct stormwater drainage facilities primarily consisting of stormwater planters or swales and storm sewer to an outfall at the Whitaker Slough; construct sidewalks on both sides of NE 112th Avenue but only on the north side of NE Marx Street; and plant street trees on both sides of NE 112th Avenue but only on the north side of NE Marx Street, with no improvements being made on the south side of NE Marx Street between NE 109th Avenue and NE 112th Avenue. Typical sections for the planned improvements are shown in Exhibit B, except:
 - a. The NE 112th Avenue cul-de-sac will be built later upon redevelopment of the two abutting properties on the west side of NE 112th Avenue (currently addressed as 5439 NE 112th Avenue and 5445 NE 112th Avenue) after completion of this LID; and
 - b. The south half of NE Marx Street will be built later upon redevelopment of the abutting properties on the south of NE Marx Street between NE 109th Avenue and NE 112th Avenue.
9. There is an existing monitoring point at the Whitaker Slough drainageway east of NE 112th Avenue. It is anticipated that this monitoring point will not be affected by construction of the project provided that no new stormwater is being discharged from the new culvert to be installed underneath NE 112th Avenue or into the drainageway upstream of this new culvert.
10. The existing culvert underneath NE 112th Avenue will be replaced as part of this project to accommodate the widening of NE 112th Avenue. The Bureau of Transportation and the Bureau of Environmental Services anticipate that the elevation of the bottom of this new upsized culvert will not be lower than the elevation of the existing culvert.
11. Widths, alignments and lengths of the project may be modified during the preparation of plans and specifications by the City Engineer.
12. The boundaries of the NE 112th Avenue & Marx Street Local Improvement District shall include the properties as shown in Exhibit C.
13. The Local Improvement District Administrator's estimated cost of designing, constructing and financing the improvements is \$3,253,031.26 as shown in Exhibit D. The Local Improvement District Administrator's estimate is based on the Engineer's

Estimate as contained in Exhibit E. The Local Improvement District 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. The estimated amount of the future assessment for the NE 112th Avenue & Marx Street Local Improvement District is \$2,832,083.13. Additional funding is being provided by the Bureau of Environmental Services in the estimated amount of \$100,000.00 and by the Bureau of Transportation in the estimated amount of \$320,948.13. The Bureau of Environmental Services' contribution is fixed at \$100,000.00 with the LID and the Bureau of Transportation sharing direct and overhead costs, respectively, for project costs above \$100,000.00.

14. The Local Improvement District Administrator has analyzed the financial feasibility of the NE 112th Avenue & Marx Street Local Improvement District and has made a finding that the collective bonding capacity of benefiting properties is sufficient so as to minimize the City of Portland's financial risk associated with this project. The collective real market valuation of benefiting properties included in the NE 112th Avenue & Marx Street Local Improvement District is \$8,240,250 for a collective valuation to estimated assessment ratio of 2.9 : 1 as shown in Exhibit F.
15. The remonstrance level is evaluated in Exhibit F. Council retains jurisdiction over the formation of the NE 112th Avenue & Marx Street Local Improvement District because the total remonstrance level is less than the 60% threshold established by Section 9-403 of the City Charter.
16. The parcels of land within the NE 112th Avenue & Marx Street Local Improvement District will receive special benefit from the project in the amounts set forth in Exhibits A and F.
17. The Council has considered the remonstrances made by owners of properties to be benefited by the NE 112th Avenue & Marx Street Local Improvement District project, and adopts the summary of remonstrances and findings as set forth in Exhibit G.
18. Passage of this Ordinance provides assurance of performance for required street and stormwater frontage improvements on NE 112th Avenue from NE Marx Street to the north property line of 5415 NE 112th Avenue per Section 17.24.055 of City Code, but not for NE 112th Avenue from the north property line of 5415 NE 112th Avenue to NE Deering Drive, which will be the sole future financial responsibility for the owners of 5439 NE 112th Avenue and 5445 NE 112th Avenue.
19. The Bureau of Fire and Rescue confirmed approval of a cul-de-sac or hammerhead turnaround not being part of the scope of this LID on February 14, 2012.
20. Passage of this Ordinance provides assurance of performance for required street and stormwater frontage improvements on the north side of NE Marx Street from NE 109th Avenue to NE 112th Avenue, but not for the south side of NE Marx Street from NE 109th Avenue to NE 112th Avenue, which will be the sole future financial responsibility for the owners of 10908 NE Marx Street, 10930 NE Marx Street, 10940 NE Marx Street,

11004 NE Marx Street, 11020-11038 NE Marx Street, 11040 NE Marx Street, 11120 NE Marx Street, and 11150 NE Marx Street.

21. The scope of the NE 112th & Marx LID does not currently include extension of sanitary sewer service to benefit properties abutting NE 112th Avenue north of NE Marx Place not currently served by sanitary sewer from NE 112th Avenue. One or more Extra Work Agreement(s) may be negotiated to provide new sanitary sewer service to properties on NE 112th Avenue north of NE Marx Place if technically feasible, and these costs shall be apportioned only to properties whose owners sign Extra Work Agreement(s) in lieu of to all properties financially participating in the NE 112th & Marx LID. A hearing under Section 17.08.080 will not be required if the cost of designing and constructing the new sanitary sewer service is borne entirely by property owners voluntarily electing to bear this additional cost via the execution of one or more Extra Work Agreement(s).
 22. The scope of the NE 112th & Marx LID does not currently include removal of checkdams and providing streambank mitigation adjacent to NE 112th Avenue at 5339 NE 112th Avenue in resolution of most conditions of land use case #2011-103374-000-00-LU. The estimated cost of this work is less than \$10,000 and would provide benefit to the project in advance of culvert replacement by removing this work from the critical path of the project schedule. This work may be financed by the LID but would be managed by the Bureau of Environmental Services. The Bureau of Development Services confirmed on February 8, 2012 that assurance of performance is required only for construction, not for monitoring or maintenance. Assurance of performance will be provided under Section 17.24.055.B.5 of City Code upon passage of this Ordinance and is contingent upon subsequent completion of the following:
 - i. Execution of an Extra Work Agreement between the Local Improvement Administrator and the property owner; and
 - ii. Execution of a Memorandum of Understanding between the Bureau of Transportation and the Bureau of Environmental Services; and
 - iii. Recording of land use case #2011-103374-000-00-LU with Multnomah County by the property owner.
 23. Assessments for local improvement districts are not subject to the property tax limitation established by Article XI, Section 11b of the Oregon Constitution.
 24. Pursuant to City Code, assessment for the NE 112th Avenue & Marx Street Local Improvement District will be imposed by a separate and subsequent ordinance.
- NOW, THEREFORE, the Council directs:
- a. The NE 112th Avenue & Marx Street Local Improvement District is hereby created as shown in Exhibit C and the NE 112th Avenue & Marx Street Local Improvement District includes the properties to be benefited in the amounts identified in Exhibits A and F.

- b. The properties owners' estimated share of costs is as shown in Exhibit F. 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.
- c. The properties shall be assessed on a square footage basis on a zoned basis, with property owners abutting either side of NE 112th Avenue or the north side of NE Marx Street being assessed 98.39% of LID costs currently estimated at \$2,786,360.55 and properties abutting the south side of Marx Street being assessed 1.61% of LID costs currently estimated at \$45,722.58 for a total estimated LID cost of \$2,832,083.13.
- d. The City Engineer shall prepare plans and specifications for the improvement.
- e. The City Engineer shall arrange for construction of the local improvement project.
- f. Procurement Services within the Bureau of Internal Business 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 NE 112th Avenue & Marx Street Local Improvement District project. The manner in which the improvements are constructed is at the sole discretion of the City Engineer.
- g. The City Auditor shall obtain interim financing to pay for NE 112th Avenue & Marx Street Local Improvement District project costs prior to bonding.
- h. The Director of the Bureau of Transportation and the City Auditor are hereby authorized to draw and deliver checks chargeable to the Transportation Fund, AU 159 when demand is presented and approved by the proper authorities.
- i. The Local Improvement District Administrator is authorized to negotiate agreements with owners of multiple properties within the boundaries of this LID under common ownership to voluntarily reallocate assessments to maximize valuation to assessment ratios in advance of bonding.
- j. The Local Improvement District Administrator is authorized to negotiate and execute Extra Work Agreements to design and construct the work identified in Findings No. 21 and 22 of this Ordinance.

Passed by the Council,

MAR 07 2012

Mayor Sam Adams

Prepared by: Andrew Aebi:slg

Date Prepared: February 24, 2012

LaVonne Griffin-Valade

Auditor of the City of Portland

By

Susan Parsons
Deputy

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Agenda No. **185190** As Amended
ORDINANCE NO.
 Title

Create a local improvement district to construct street and stormwater improvements in the NE 112th Ave and Marx St Local Improvement District (Hearing; Ordinance; C-10043)

INTRODUCED BY Commissioner/Auditor: MAYOR SAM ADAMS	CLERK USE: DATE FILED <u>FEB 24 2012</u>
COMMISSIONER APPROVAL Mayor—Finance and Administration - Adams <i>[Signature]</i> 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: <i>[Signature]</i> Deputy
BUREAU APPROVAL Bureau: Bureau of Transportation Group Manager: Greg Jones Development & Capital Program Other: <i>[Signature]</i> Prepared by: Andrew Aebi:slg Date Prepared: February 23, 2012 <i>HA 2/29/12</i>	ACTION TAKEN: FEB 29 2012 PASSED TO SECOND READING As Amended MAR 07 2012
Financial Impact & Public Involvement 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 FEBRUARY 29, 2012	
City Attorney Approval	

AGENDA TIME CERTAIN <input type="checkbox"/> Start time: _____ Total amount of time needed: _____ (for presentation, testimony and discussion)
CONSENT <input type="checkbox"/>
REGULAR <input checked="" type="checkbox"/> Total amount of time needed: 10 MIN (for presentation, testimony and discussion)

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