

ORDINANCE No. 190180

Create a local improvement district to construct street, sidewalk, stormwater, sanitary sewer and water main improvements in the NW Park Ave and Johnson - Kearney Sts Local Improvement District (Hearing; Ordinance; C-10069)

The City of Portland ordains:

Section 1. The Council finds:

1. The Council adopted Resolution No. 37505 on September 16, 2020, declaring its intent to initiate local improvement district formation proceedings and establishing the name of the local improvement district as the NW Park Avenue and Johnson – Kearney Streets Local Improvement District (LID).
2. The record related to the adoption of Resolution No. 37505 is incorporated into the record of this Ordinance except that no part of the record of Resolution No. 37505 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 October 21, 2020 LID formation hearing on October 1, 2020 to the owners of the benefited properties within the proposed NW Park Avenue and Johnson - Kearney Streets LID. The Revenue Bureau notice for Pending Lien No. 172554 was in the amount of \$9,999,999.99 due to a limitation in the lien docket system; however, a cover notice to the property owner clarified that the expected future assessment amount will be \$10,630,826.13. The Revenue Bureau notice for Pending Lien No. 172555 was in the amount of \$8,000,000.01 due to a limitation in the lien docket system; however, a cover notice to the property owner clarified that the expected future assessment amount will be \$7,369,173.87. 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 NW Park Avenue and Johnson - Kearney Streets LID, the deadline and procedure for filing a remonstrance against the formation of the NW Park Avenue and Johnson - Kearney Streets 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 October 15, 2020.
4. Notices of the LID formation hearing were posted within the NW Park Avenue and Johnson - Kearney Streets LID on October 7, 2020.
5. The LID Administrator published notice of the October 21, 2020 LID Formation Hearing in the Daily Journal of Commerce on October 5, 2020 and on October 7, 2020.

6. The general character and scope is to remove the existing dirt, gravel and/or hard surfaces; grade the streets to their proper subgrade; construct streets with aggregate base and a combination of asphaltic concrete and plain concrete pavement; construct sanitary sewers, stormwater sewers and stormwater management facilities excluding offsite facilities; construct water mains; construct temporary asphalt sidewalks on both sides of the street; install street lighting; and plant street trees in most locations as shown in Exhibit B. NW Johnson Street will include a two-way cycle track. Four (4) new traffic signals will be installed at the intersections of NW 9th Avenue and Everett, Glisan, Johnson and Kearney Streets if approved by the City Traffic Engineer. A northbound-to-eastbound right turn lane will be installed on NW 9th Avenue at Lovejoy Street.
7. Widths, alignments and lengths of the project may be modified during the preparation of plans and specifications by the City Engineer.
8. The NW Park Avenue improvements will be constructed from the north right-of-way line of NW Hoyt Street to the south right-of-way line of NW Johnson Street plus any transition work on abutting street segments, intersections, and/or adjacent property determined to be necessary by the City Engineer.
9. The NW Johnson Street improvements will be constructed from the east right-of-way line of NW 9th Avenue to the west right-of-way line of NW Broadway / Station Way plus any transition work on abutting street segments, intersections, and/or adjacent property determined to be necessary by the City Engineer.
10. The NW Kearney Street improvements will be constructed from the east right-of-way line of NW 9th Avenue to the west right-of-way line of NW Broadway / Station Way plus any transition work on abutting street segments, intersections, and/or adjacent property determined to be necessary by the City Engineer.
11. The boundary of the NW Park Avenue and Johnson - Kearney Streets LID includes the properties as shown in the map Exhibit C.
12. The LID boundary will be amended through the final assessment ordinance for this LID if the property for which an Extra Work Agreement is executed is outside the boundary identified in Exhibit C of this Ordinance. A separate Ordinance to amend the LID boundary shall not be required.
13. The LID Administrator's estimated cost of designing, constructing and financing the improvements is \$27,557,603.09 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 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 NW Park Avenue and Johnson - Kearney Streets LID is \$23,000,000.00. Additional funding is being provided by the Portland Bureau of Transportation (PBOT) in the amount of \$4,557,603.09 in Transportation System Development Charge (TSDC) funding.
15. The LID Administrator has analyzed the financial feasibility of the NW Park Avenue and Johnson - Kearney Streets 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 NW Park Avenue and Johnson - Kearney Streets 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 NW Park Avenue and Johnson - Kearney Streets LID will receive special benefit from the project in the amounts set forth in Exhibits A and F.
18. The Council has considered the remonstrances made by the owner of properties to be benefited by the NW Park Avenue and Johnson - Kearney Streets 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 for the following improvements only, except at the sole discretion of the City Engineer:
 - a. Frontage improvements to NW Park Avenue between NW Hoyt Street and NW Johnson Street as indicated in Finding No. 8 of this Ordinance, provided that that portion of NW Park Avenue is cleared of buildings and structures and vacated of conflicting leases and uses by December 31, 2030; and
 - b. Frontage improvements to NW Johnson Street as indicated in Finding No. 9 of this Ordinance; and
 - c. Frontage improvements to NW Kearney Street as indicated in Finding No. 10 of this Ordinance.
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 NW Park Avenue and Johnson - Kearney Streets LID will be imposed by a separate and subsequent ordinance.

NOW, THEREFORE, the Council directs:

- a. The NW Park Avenue and Johnson - Kearney Streets LID is hereby created as shown in Exhibit C and the NW Park Avenue and Johnson - Kearney Streets LID includes the properties to be benefited in the amounts identified in Exhibits A and F.
- b. Assurance of performance for properties identified in Exhibit A is provided upon Council passage of this Ordinance per Section 17.24.055 of City Code subject to the limitations explained by Finding No. 19 of this Ordinance.
- c. 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.
- d. The City Engineer shall prepare plans and specifications for the improvement consistent with the approved United States Postal Service (USPS) Master Plan preliminary engineering plans.
- e. Properties shall be assessed on a zoned square footage basis with the LID providing funding of \$23,000,000.00 as shown in Exhibit B with 78.26086957% of funding of project costs up to \$23,000,000 from Assessment Zone 'A' up to the amount of \$18,000,000.00 and 21.73913043% of funding of project costs up to \$23,000,000 from Assessment Zone 'B' up to the amount of \$5,000,000.00; PBOT TSDC revenue funding 100% of project costs between \$23,000,000 and \$27,557,603.09. Costs above \$27,557,603.09 will be apportioned in the manner identified in Directives 'l' through 'n' of this Ordinance.
- 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 NW Park Avenue and Johnson - Kearney Streets LID project. 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 NW Park Avenue and Johnson - Kearney Streets LID project costs prior to bonding.
- h. PBOT is authorized to make expenditures for this project per Finding No. 13 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 to finance design and construct permanent sidewalks in lieu of interim asphalt sidewalks without a hearing notwithstanding Section 17.08.080 of City Code provided that:
 - i. The City Engineer has determined the additional work to be technically feasible; and
 - ii. An Extra Work Agreement for property or properties abutting the additional improvement(s) have been approved as to form by the City Attorney.

- j. The LID Administrator is authorized to negotiate Extra Work Agreements to finance, design and construct improvements to assets that will not be owned or maintained by the City without a hearing notwithstanding Section 17.08.080 of City Code provided that:
 - i. The City Engineer has determined the additional work to be technically feasible; and
 - ii. An Extra Work Agreement for properties or properties abutting the additional improvement been approved as to form by the City Attorney.

- k. The requirement for a hearing per Code Section 17.08.080 is waived if (a) the area needed to construct NW Park Avenue between NW Hoyt Street and NW Johnson Street is not cleared of buildings and structures and vacated of conflicting leases and uses by December 31, 2030 and (b) the LID Administrator has provided written notice to owners of property subsequent to this date that construction of NW Park Avenue will be removed from the scope of the LID. However, in such an instance, benefiting properties will still be assessed for design costs.

- l. The requirement for a hearing per Code Section 17.08.080 of this Ordinance is waived in the event that Revenue Bureau and financing costs identified in Exhibit D increase and cause total project costs to exceed \$27,557,603.09 provided that any total project costs in excess of \$27,557,603.09 are apportioned or otherwise addressed in a manner consistent with the Intergovernmental Agreement currently being negotiated between PBOT and Prosper Portland regarding the design and construction of infrastructure benefiting the Broadway Corridor area; and such Intergovernmental Agreement:
 - i. Is authorized by City Council subsequent to Council passage of this Ordinance; and
 - ii. Provides that PBOT's responsibility for any potential cost overruns will be limited to a portion of the potential cost overruns

commensurate to the percentage of PBOT SDC funding currently estimated at 16.53845973% for the project scope; and

- iii. Provides that PBOT will not be responsible for any portion of potential cost overruns comprised of greater than anticipated contaminated media removal costs beyond what was estimated prior to Council passage of Ordinance No. 190146 on September 23, 2020 and which is included in Exhibit D of this Ordinance; and
- iv. Provides that PBOT will not be responsible for an increase in financing costs beyond what is estimated in Exhibit D of this Ordinance.
- m. Code Section 17.08.110 B.4 is waived for this LID since all assessable properties are anticipated to redevelop prior to final assessment of this LID, which is not anticipated to occur prior to December 31, 2032.
- n. Due to a one-day mailing delay resulting from the COVID-19 pandemic, the application of Code Section 17.08.070 is waived to the extent necessary to allow mail notice to be provided twenty (20) days before the Council hearing and to allow for remonstrances to be received six (6) days before the Council hearing.
- o. In the event of any conflict between Binding City Policy ENB-6.02 and Code Chapter 17.08, Code Chapter 17.08 shall prevail.
- p. In the event of any conflict between Binding City Policy ENB-6.02 and this Ordinance, this Ordinance shall prevail.
- q. If any finding or directive within this Ordinance conflicts with Resolution No. 37505 or Ordinance No. 190146 involving this LID, the finding or directive within this Ordinance shall prevail.

Passed by the Council, October 28, 2020

Commissioner Chloe Eudaly / Mayor Ted Wheeler
 Prepared by: Andrew Aebi:cdb
 Date Prepared: 10/9/2020

Mary Hull Caballero

Auditor of the City of Portland

By *Keelan McClymont*
 Deputy

Create a local improvement district to construct street, sidewalk, stormwater, sanitary sewer and water main improvements in the NW Park Ave and Johnson - Kearney Sts Local Improvement District (Hearing; Ordinance; C-10069)

INTRODUCED BY Commissioner/Auditor: Chloe Eudaly & Ted Wheeler	CLERK USE: DATE FILED <u>10/13/20</u>
COMMISSIONER APPROVAL Mayor—Finance & Administration - Wheeler Position 1/Utilities - Fritz Position 2/Works - Ryan Position 3/Affairs - Hardesty Position 4/Safety - Eudaly BUREAU APPROVAL Bureau: PBOT Bureau Head: Christopher Warner Prepared by: Andrew Aebi Date Prepared: 9/30/20 Impact Statement Completed <input checked="" type="checkbox"/> Amends Budget <input type="checkbox"/> Portland Policy Document If "Yes" requires City Policy paragraph stated in document. Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> City Auditor Office Approval: required for Code Ordinances City Attorney Approval: required for contract, code, easement, franchise, comp plan, charter Council Meeting Date 10/21/20	Mary Hull Caballero Auditor of the City of Portland Keelan McClymont Deputy ACTION TAKEN: October 21, 2020 Passed to Second Reading October 28, 2020 at 9:30 a.m.

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: 20 min. (for presentation, testimony and discussion)

FOUR-FIFTHS AGENDA	COMMISSIONERS VOTED AS FOLLOWS:		
		YEAS	NAYS
1. Fritz	1. Fritz	✓	
2. Ryan	2. Ryan	✓	
3. Hardesty	3. Hardesty	✓	
4. Eudaly	4. Eudaly	✓	
Wheeler	Wheeler	✓	