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## 190615

Ordinance

### **Authorize the Bureau of Environmental Services to acquire certain temporary property rights necessary for construction of the Stark Trunk Relief Structure Project No. E11009 through the 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 when deemed necessary by the City Council to accomplish public purposes for which the City has responsibility, provided that power is exercised in accordance with the eminent domain procedures established by Oregon Revised Statutes Chapter 35 (Eminent Domain; Public Acquisition of Property), including those procedures that apply to notification, valuation, negotiation, relocation, and early possession, if necessary.
2. The City of Portland has the responsibility to provide sewage and stormwater collection and treatment services to accommodate the City's current and future needs and to protect public health, water quality and the environment.
3. The Bureau of Environmental Services ("BES") project known as the Stark Trunk Relief Structure OF37/WZ01 Project ("the Project") has been planned in accordance with appropriate engineering standards for the construction, maintenance, or improvement of the City's sewer infrastructure in a way that minimizes property damage, promotes healthy ecosystems, safeguards the environment, and is the most compatible with the greatest public good and the least private injury.
4. The Stark Trunk Relief Structure OF37/WZ01 Project is a combined sewer improvement project. This project will alleviate surface flooding at SE 3rd Avenue and SE Stark Street through the construction of a relief structure and outlet conduit. The concrete vault will be constructed on top of the existing Stark Trunk.

Introduced by

[Commissioner Mingus Mapps](#)

Bureau

[Environmental Services](#)

Prepared by

Joe Dvorak, P.E.

Date Prepared

October 14, 2021

Requested Agenda Type

Regular

Surcharged storm flows will be redirected from the Stark Trunk to the existing Outfall 37, thereby avoiding flooding in the street.

5. To accomplish the Project's goals set forth above and to construct the Project as designed, the City must acquire the property interests described and depicted in Exhibits 1 through 4 attached to this Ordinance, and by this reference incorporated herein.
6. The City must acquire possession of these property interests by May 1, 2022, so construction of the Project can begin on schedule.
7. The Bureau's level of confidence in the cost estimates for the Project is moderate. Funds are available in the Sewer System Operating Fund, FY 2021-2022 Budget, BES Project No. E11009.

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 that will be most compatible with the greatest public good and the least private injury.
- B. That the Director of BES or designee and the City Attorney are each authorized to acquire the necessary property interests described herein for the Project under the eminent domain authority of the City, including filing an action to acquire said property interests or negotiating just compensation with property owners within available project budget funds. The Director of BES or designee and the City Attorney are each 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 the procedural requirements of Oregon law.
- D. That BES staff and the Office of the City Attorney are authorized to compensate property owners and other persons-in-interest for each acquisition. In the event that no satisfactory compensation agreement can be reached, the City may 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 or determinable by the City Council.
- E. That BES 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 and depicted in Exhibits 1 through 4.
- F. In accordance with ORS 35.265, BES is hereby authorized to create 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 costs incurred in connection with the acquisition authorized herein shall be charged to the Sewer System Operating Fund, FY 2021-2022 Budget, BES Project No. E11009.

H. The Commissioner-in-Charge and the City Auditor are hereby authorized to pay for the property rights from the Sewer System Operating Fund Budget when demand is presented and approved by the proper authority.

## Documents and Exhibits

 [Exhibit 1](#) (410.71 Kb)

 [Exhibit 2](#) (384.43 Kb)

 [Exhibit 3](#) (410.79 Kb)

 [Exhibit 4](#) (375.76 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 by Council  
December 1, 2021

Auditor of the City of Portland  
Mary Hull Caballero

## Impact Statement

 [Impact Statement](#) (25.12 Kb)

## Budget Office Financial Impact Analysis

The cost of acquiring the needed property rights will be determined by an independent appraisal during the Eminent Domain process. Funds are available BES's FY 2021-22 budget in the Sewer System Operating Fund.

## Agenda Items

819 Regular Agenda in [November 17, 2021 Council Agenda](#)

Passed to second reading

Passed to second reading December 1, 2021 at 9:30 a.m.

**848 Regular Agenda in [December 1, 2021 Council Agenda](#)**

Passed

Commissioner Mingus Mapps Yea

Commissioner Carmen Rubio Yea

Commissioner Dan Ryan Yea

Commissioner Jo Ann Hardesty Yea

Mayor Ted Wheeler Yea