

154218

ORDINANCE No. 154218

An Ordinance authorizing an agreement between Moller's Nursery, Inc., and the City of Portland by and through the Bureaus of Water Works and Parks, providing for joint use of property on Lusted Hill in east Multnomah County for the purpose of growing trees, and declaring an emergency.

The City of Portland ordains:

Section 1. The Council finds:

1. An agreement providing for joint use of about 94 acres of City-owned property on Lusted Hill has been drafted, and is attached to the original only of this ordinance as "Exhibit A", and by this reference is made a part hereof.
2. This City-owned property is not currently needed for public use and it is estimated that it will not be needed in the next five years.
3. The Bureau of Water Works and Bureau of Parks would like to extend and modify an existing agreement authorizing joint use of this property with Moller's Nursery.
4. Said joint use will benefit both the Bureau of Parks and Moller's Nursery, Inc.
5. Moller's Nursery, Inc. will pay no rent for use of the property, but instead will perform certain maintenance and care for trees planted and owned by the Bureau of Parks.
6. It is in the public interest to enter into an agreement to accomplish the purposes set forth in the attached "Exhibit A".

NOW, THEREFORE, the Council directs:

- a. The Mayor and Commissioner of Public Affairs are hereby authorized to accept and execute an agreement substantially in accordance with the attached "Exhibit A".

Section 2. The Council further directs that an emergency exists because a delay may hamper the timely planting and cultivation of trees; therefore, this ordinance shall be in force and effect from and after its passage by the Council.

Passed by the Council, FEB 2 1983

Mayor Ivancie
January 18, 1983
D. Pestes:jb

Attest:

JEWEL LANSING
Auditor of the City of Portland

BY *[Signature]* DEPUTY

Calendar No. 289

ORDINANCE No. 154218

Title

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THE COMMISSIONERS VOTED AS FOLLOWS:		
	Yeas	Nays
JORDAN	/	
LINDBERG	/	
SCHWAB	/	
STRACHAN	/	
IVANCIE	/	

FOUR-FIFTHS CALENDAR	
JORDAN	
LINDBERG	
SCHWAB	
STRACHAN	
IVANCIE	

Filed JAN 27 1983

JEWEL LANSING
Auditor of the CITY OF PORTLAND

By *Jordan* Deputy

INTRODUCED BY	
MAYOR IVANCIE	

NOTED BY THE COMMISSIONER	
Affairs	
Finance and Administration	<i>FJI</i>
Safety	
Utilities	
Works	

BUREAU APPROVAL	
Bureau:	WATER WORKS
Prepared By:	Date:
D. Pestes:jb	January 19, 1983
Budget Impact Review:	
<input type="checkbox"/> Completed	<input checked="" type="checkbox"/> Not required
Bureau Head	<i>[Signature]</i>
	Cathy Goebel, Administrator

CALENDAR	
Consent	X Regular

NOTED BY	
City Attorney	
City Auditor	
City Engineer	

AMENDMENT TO LAND USE PERMIT

The parties to this Amendment to Land Use Permit are THE CITY OF PORTLAND (City) by and through its Bureau of Water Works (Water Works) and its Bureau of Parks (Parks) and MOLLER'S NURSERY, INC., an Oregon corporation, (Moller's).

City has granted to Moller's by and through Water Works use of a fifty-seven (57) acre parcel of property hereinafter referred to as Tax Lot 98, more fully described as:

The Southwest one-quarter of the Southeast one-quarter; and the South one-half of the Northwest one-quarter of the Southeast one-quarter of Section 22, Township 1 South, Range 4 East, Willamette Meridian, in the County of Multnomah and State of Oregon; EXCEPTING therefrom that Parcel conveyed to The Mount Hood Railway and Power Company, in deed recorded January 12, 1911 in Book 525 page 113; ALSO EXCEPTING therefrom the parcel conveyed to Multnomah Central Railway Company in deed recorded September 30, 1912 in Book 594 page 377; and SUBJECT to the rights of the public in and to that portion of the above property lying within the limits of Dodge Park Boulevard and Carpenter Lane.

Moller's permit to use said property will expire by its terms January 1, 1984.

Moller's desires to continue its use of Tax Lot 98 and to use that part of certain property owned by the City by and through Parks consisting of approximately thirty-seven (37) acres, more or less, hereinafter referred to as Tax Lot 82, more fully described as:

All that part of the East one half of the Southeast quarter of Section 22, Township 1 South, Range 4 East, Willamette Meridian, in the County of Multnomah, and State of Oregon, lying south of the south line of Dodge Park Blvd., except the west 150 feet of the south 350 feet thereof.

not in use by Parks and to maintain that portion of Tax Lot 82 used by Parks in accordance with the terms hereof.

City and Moller's hereby agree as follows:

I

USE PERMIT TERM AND EXTENSION

1.1 City grants permission to Moller's beginning on the effective date hereof and ending January 1, 1988, to use all of Tax Lot 98 and so much of Tax Lot 82 as is not used by Parks. Moller's use of said property is limited to the growing of trees and activities customarily related thereto.

1.2 The term of this Use Permit may be extended for a five-year [5] period every two years beginning January 1, 1985, and renewable January 1 of every odd numbered year thereafter. By example, should the parties mutually agree, said Permit may be extended January 1, 1985 to expire January 1, 1990.

II

MAINTENANCE OF TAX LOT 82

2.1 Parks will manage the property not subject to the permit to Moller's use and be responsible for all operations which take place thereon.

2.2 All trees purchased by Parks for placement at Tax Lot 37 will be planted by Parks employees.

2.3 All pruning of trees owned by City will be the responsibility of Parks.

2.4 Parks will provide Moller's with any chemicals, fertilizers and sprays necessary to the completion of Moller's duties hereunder.

2.5 Parks is to be notified prior to any application of fertilizer or spray material by calling Gary Grayson at 248-4489.

2.6 Moller's will be responsible for spraying of Parks trees. Moller's shall apply a dormant spray of lime sulphur incorporated with a spray to control mildew and other sprays as needed, consistent with good commercial nursery practices.

2.7 Moller's shall sidedress Parks' trees with Ammonium Sulfate, 21-0-0, or such other material as may be

provided by City, six (6) to ten (10) inches from trunks of trees, using five hundred (500) pounds per acre, consistent with good commercial nurserymen practices.

2.8 Moller's will be responsible for irrigation of the Park Bureau trees as needed consistent with good commercial nursery practices and shall be held liable for any loss to any established trees by reason of its failure to so irrigate.

III

IMPROVEMENTS

3.1 City and Moller's agree that no buildings or structures will be constructed upon the above property without the written consent of Water Works.

IV

POSSESSION

4.1 Water Works will have the right to retake possession from Moller's of all or part of the property at any time such action may appear to Water Works to be in the public's interest, for construction of water facilities, without liability for loss, injury, damage, of any nature whatsoever.

4.2 Parks will continue to lease and maintain from Water Works that portion of the property not used by construction of water facilities. Upon the expiration of this Amendment, or prior thereto if the premises are vacated before that date, Parks shall clean up the area upon which any materials have been piled and stored and shall leave the same in clean and slightly condition at the expense of Parks.

V

PROHIBITION AGAINST TRANSFER OF RIGHTS

5.1 Moller's will not assign or transfer any rights granted by this permit.

VI

CONTINGENCY FUNDED

6.1 Parks will pay the sum of Two Hundred Dollars (\$200.00) per year to Water Works as a contingency fund.

VII

INSURANCE

7.1 Moller's will defend, indemnify and hold harmless City from any claim, loss, or liability arising in whole or in part out of its activities for the use permitted herein and will, prior to commencement of this permit, file with the City Auditor, an insurance policy for personal injury and property damage with a single limit of Three Hundred Thousand Dollars (\$300,000) or equivalent. The policy will name City, its officers, agents and employees as additional insureds, shall carry a cross-liability provision as approved by City and shall provide for thirty (30) days notice of cancellation.

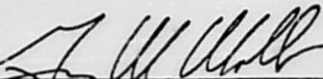
VIII

AGREEMENT AND EFFECTIVE DATE

8.1 The parties hereto agree to the terms and conditions of this Amendment to Land Use Permit between Moller's and City (by and through Water Works and Parks) effective this _____ day of _____, 1982.

MOLLER'S NURSERY, INC., an Oregon corporation

By



President

CITY OF PORTLAND

By

Mayor

By

Commissioner of Public Affairs