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Ordinance

Authorize Bureau of Environmental Services to acquire certain permanent and temporary property rights necessary for construction of the Carolina Trunk Sewer Rehabilitation through exercise of the City’s eminent domain authority (BES Project E11004)

Passed

The City of Portland ordains:

Section 1. The Council finds:

1. The City may exercise the power of eminent domain pursuant to Section 9-108 of the City Charter when deemed necessary by the 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 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 Carolina Trunk Sewer Rehabilitation 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 Project aims to repair the aging and deteriorated sewer pipes to reduce sewer collection system risk, improve sewer service reliability, and protect public health, properties, and the environment. The project will replace 1,600 feet of deteriorated large diameter sewer mains.

Introduced by

[Commissioner Mingus Mapps](#)

Bureau

[Environmental Services](#)

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Requested Agenda Type

Consent

Date and Time Information

Requested Council Date
June 26, 2024


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 34 attached to this Ordinance, and by this reference incorporated herein.
6. The City must acquire possession of these property interests by January 9, 2025, 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 2024-2025 Budget, BES Project No. E11004.

NOW, THEREFORE, the Council directs:

- A. 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.
- B. 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 34. Each is acquired subject to payment of just compensation and subject to the procedural requirements of Oregon law.
- C. 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.
- D. 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 34.
- E. That, in accordance with ORS 35.265, BES is authorized to create a fund in the amount estimated to be the just compensation for the Property Interests which, if necessary, shall be deposited with the clerk of the court where a condemnation action is commenced.
- F. The costs incurred in connection with the acquisition authorized herein shall be charged to the Sewer System Operating Fund, FY 2024-2025 Budget, BES Project No. E11004.

G. The Mayor and 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

 [Exhibits 1-34](https://www.portland.gov/sites/default/files/council-documents/2024/rw-9643-exhibits-numerical.pdf) (https://www.portland.gov/sites/default/files/council-documents/2024/rw-9643-exhibits-numerical.pdf) 5.72 MB

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
June 26, 2024

Auditor of the City of Portland
Simone Rede

Impact Statement

Purpose of Proposed Legislation and Background Information

The purpose of the proposed legislation is to authorize the Bureau of Environmental Services (BES) to acquire certain permanent and temporary property rights, as described in Exhibits 1 through 34, for the replacement of 1,600 feet of deteriorated large diameter sewer mains as part of the Carolina Trunk Sewer Rehabilitation Project (the "Project") through the exercise of the City's Eminent Domain Authority.

A total of six (6) permanent easements are needed where a new pipe alignment is being established on or in close proximity to private property. Easements will provide the City with legal rights to operate and maintain the sewer system. A total of eleven (11) temporary construction easements are needed for the project. The temporary construction easements will provide room for construction access and equipment during construction and the ability to maintain plantings into the future.

Financial and Budgetary Impacts

The cost of acquiring the needed property rights will be determined by PBOT during the Eminent Domain process. Funds are available in the Sewer System Operating Fund, FY 2024-2025 Budget, Bureau of Environmental Services WBS E11004.

The proposed legislation will not create, eliminate, or re-classify and positions now or in the future.

Community Impacts and Community Involvement

BES staff has discussed the proposed project with the property owners over the course of the past year. The property owners appear supportive of the proposed work. Continued outreach by BES Public Involvement and PBOT Right of Way staff will continue to coordinate schedules, obtain access to the properties and finalize easement agreements.

The construction contract documents will require the Contractor to restore all affected areas that are disturbed during construction.

100% Renewable Goal

This project will neither increase or decrease the City's total energy use.

This project neither contributes nor takes away for the City's goal of meeting 100 percent community-wide energy needs with renewable energy by 2050.

Budget Office Financial Impact Analysis

BES has the resources for this project in E10576 with \$24.7 million planned in FY 2024-25. The bureau estimates that 1-2% of this budget for next year will be for property acquisition, depending on how the project progresses, which would be a range of \$247,000 to \$494,000. PBOT will be making the evaluation for the property value during the eminent domain process.

Document History

Item 549 Consent Agenda in [June 20, 2024 Council Agenda](https://www.portland.gov/council/agenda/2024/6/19) (<https://www.portland.gov/council/agenda/2024/6/19>)

City Council

Passed to second reading

Passed to second reading June 26, 2024 at 9:30 a.m.

Item 581 Consent Agenda in [June 26, 2024 Council Agenda](https://www.portland.gov/council/agenda/2024/6/26) (<https://www.portland.gov/council/agenda/2024/6/26>)

City Council

Passed

Commissioner Dan Ryan Yea

Commissioner Rene Gonzalez Absent

Commissioner Mingus Mapps Yea

Commissioner Carmen Rubio Yea

Mayor Ted Wheeler Yea