

## **ORDINANCE No.**

Amend Ordinance No. 127882 in order to replace certain conditions and add conditions applicable to the vacated portion of SW Madison St between SW 10<sup>th</sup> Ave and SW Park Ave (Ordinance; amend Ordinance No. 127882)

The City of Portland ordains:

Section 1. The Council finds:

1. Ordinance No. 127882, passed by the City Council (the "Council") on August 8, 1968, vacated a portion of SW Madison Street between the east line of SW 10<sup>th</sup> Avenue and west line of SW Park Avenue, under certain conditions.
2. The purpose of Ordinance 127882 was to create an open pedestrian sculpture mall for display of outdoor art sculptures from the Portland Art Museum (the "Museum"). The street vacation allowed the Portland Art Association to create an attractive outdoor area as a benefit to the public.
3. One of the conditions required an 8-foot wide pedestrian easement be provided and maintained and remain open to the public at all times.
4. Ordinance No. 156895 passed by the Council on December 27, 1984 amended conditions (b) and (c) of Ordinance 127882 to allow closure of the pedestrian connection during night hours, from 11:00 pm to 7:00 am and provide security during the hours of closure. The reason for limiting public access during night time hours was due to vandalism. It was determined that night time closures would not adversely affect the public interest.
5. The Museum operates two historic buildings – the Main Building and the Mark Building, formerly the Masonic Temple. The two buildings are separated by a courtyard and the 8-foot pedestrian connection. For the Museum patrons, there is an internal lower level connector between buildings.
6. Because of limited access between the two buildings as well as a desire to increase educational and programmatic offerings, the Museum is proposing to develop the Rothko Pavilion (the "Pavilion"), which includes a structure that will enclose the 8-foot wide pedestrian connection between SW Park and SW 10<sup>th</sup> Avenues.
7. The Pavilion will continue to provide ground level public access and connectivity between SW Park and SW 10<sup>th</sup> Avenues between the hours of 7:00 AM and 11:00 PM. Access will not be blocked in any manner and will be adequately illuminated for use in hours of darkness.
8. Enclosure of this area will allow the Museum to enhance the visitor experience,

expand access to museum programming, provide additional connectivity between the Main Building and Mark Building, and create an engaging walkway integrating works of art.

9. Condition (d) of Ordinance No. 127882 reserves a blanket easement for any utilities that may be present within the vacated area. The City has no present or future need to locate public facilities in the area, and is willing to release the reserved utility easement.
10. To reflect these changes to the pedestrian connection, the Museum will grant to the City and record the public access easement for the pedestrian connection required by Ordinance No. 127882 between SW Park and SW 10<sup>th</sup> Avenues and assume responsibility for maintenance and indemnity for this connection.
11. To enable the Museum to move forward with planning for the Pavilion, the Council is willing to amend Ordinance No. 127882, as amended by Ordinance No. 156895 so long as the Museum fulfills the requirement of Ordinance no. 127882 by conveying and recording the pedestrian access easement consistent with that ordinance

NOW, THEREFORE, the Council directs:

- a. Ordinance No. 127882, as amended by Ordinance No. 156895, is hereby further amended to replace conditions (b) and (c) and add new conditions, and delete condition (d), as follows:
  - a) The Museum will grant to the City and record a minimum 8-foot wide public pedestrian access easement (the "Easement") between SW 10<sup>th</sup> and Park Avenues as required by condition (a) of Ordinance No. 127882. The Easement will be in substantially the same form as attached Exhibit A and incorporated by reference and must be recorded prior to the release of the Museum's Pavilion building permit.
  - b) The Easement area must be hard surfaced, unobstructed, and a minimum of 8-feet wide.
  - c) The Easement area must include clear wayfinding with no visual obstruction.
  - d) The Easement area must be accessible to all people and all improvements to it must comply with the Americans with Disabilities Act of 1990.
  - e) The Pavilion design shall be subject to a Historic Resource Review by the Historic Landmarks Commission as provided by Title 33 (Planning and Zoning) of the City Code.

- f) The Portland Art Museum will (A) be responsible for maintaining the public connection through the Rothko Pavilion, continuously and without interruption; (B) hold harmless and indemnify the City and its officers, agents and employees from any and all claims, demands, actions and suits related to maintenance, operation, property damage or personal injury arising out of the use of the public connection; and (C) continuously obtain and maintain in full force, at its expense, public liability and property damage insurance coverage in the amounts provided by Oregon statute or law as to maximum liability that may be imposed on Oregon cities. The insurance must name the City, its officers, agents and employees as additional insureds. Coverage must be primary and non-contributory with any other insurance and self-insurance; and (D) provide to the City proof of insurance, specifying all additional insureds (or loss payees), through certificates of insurance, along with applicable endorsements, subject to approval as to form by the City Attorney as to the requirements specified in (C).
- g) The Museum will comply fully with the conditions of this Ordinance within two years of the date this Ordinance is adopted or request an extension from the Commissioner-in-Charge. If the Museum fails to do so, the Council may repeal this Ordinance at its sole discretion.
- b. Except as amended herein, all other provisions of Ordinance No. 127882 shall remain in full force and effect.

Passed by the Council:

Commissioner: Dan Saltzman  
Prepared by: Matt Grumm/Caitlin Reff: SP  
Date Prepared: 11/21/17

**Mary Hull Caballero**  
Auditor of the City of Portland  
By

Deputy