

## **ORDINANCE No.**

Amend street vacation ordinance 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 for the Rothko Pavilion at Portland Art Museum (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:

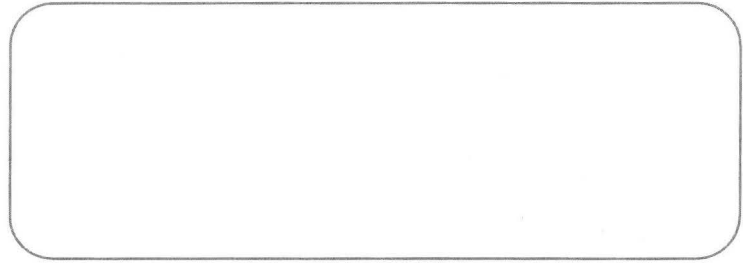
Commissioner: Dan Saltzman  
Prepared by: Matt Grumm/Caitlin Reff: SP  
Date Prepared: 11/21/17

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

Deputy

**Grantor's Name and Address:**

Portland Art Association  
1219 SW Park Avenue  
Portland, OR 97205



**PUBLIC ACCESS EASEMENT**

KNOW ALL PERSONS BY THESE PRESENTS, that **The Oregon Art Institute** an Oregon nonprofit corporation, ("Grantor"), for good and valuable non-monetary consideration, the receipt whereof is hereby acknowledged, hereby grants unto the City of Portland, a municipal corporation of the State of Oregon, ("Grantee"), a perpetual access easement (this "Easement") for public use for the purpose of ingress and egress through, over and across the following described parcel (the "Easement Area"):

As described on Exhibit A and depicted on Exhibit B attached and incorporated by reference.

**IT IS UNDERSTOOD:**

- A. Grantor permits public rights of access and movement for pedestrians within and through the Easement Area as though said access and movement existed within a public right-of-way.
- B. No building shall be erected within the Easement Area without the prior written consent of the Grantee's Engineer.
- C. Grantor represents and warrants that it has the authority to grant this Easement and that the Easement Area is free from all liens and encumbrances that would materially affect the easement grant, except as set forth herein, and that it will defend the Grantee against the lawful claims and demands of all persons whomsoever with respect to any liens or encumbrances that would materially affect the easement grant, except as set forth herein.

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R/W # 8314

1S1E04AA TL 6300

After Recording Return to:

Dee A. Walker, City of Portland

1120 SW 5th Avenue, 8th Floor

Portland, OR 97204

Tax Statement shall be sent to: No Change



- D. Grantor agrees that the consideration recited herein is just compensation for the property or property rights conveyed, which includes damages to Grantor's remaining property, if any, resulting from the acquisition or use of said property or property rights.
- E. This Easement herein granted does not convey any right, title or interest to the Easement Area, except as stated herein.
- F. This Easement herein granted is not a dedication of public right-of-way and it is understood and agreed that the Grantee, by accepting this Easement, is not accepting any liability for taxes, assessments, or other governmental charges relating to the property.
- G. Grantor herein assumes responsibility for construction, reconstruction, maintenance and repair of the Easement Area as though said facilities existed within a public right-of-way.
- H. The Grantor, its successors and assigns, agree to defend, indemnify and hold harmless the Grantee, its officers, agents, and employees against all liabilities, damages, losses, claims, demands, actions, and suits (including attorney fees and costs) resulting from the presence or release of hazardous substances onto or from the Easement Area. This provision shall not apply to a release of hazardous substances onto or from the Easement Area caused by the officers, agents or employees of the Grantee. Any action taken pursuant to this provision shall not constitute an admission of liability or waiver of any defenses to liability.
- I. Grantor shall be liable for any and all damages to any person who is injured or otherwise suffers damage resulting from the defective condition of any facilities within the Easement Area, or by reason of Grantor's failure to keep such facilities in safe condition and good repair. Grantor shall defend, indemnify, and hold Grantee, its officers, agents and employees harmless from any and all liability or claims for damages to persons or property which may arise or result from Grantor's failure to maintain, construct, reconstruct and repair said facilities.
- J. Grantor reserves all development rights appurtenant to the Easement Area for the Grantor and Grantor's heirs, successors, and assigns. This reservation of development rights includes, but is not limited to, the right to use the Easement Area for building setbacks, lot coverage, density calculations, and stormwater/pervious area.

IN WITNESS WHEREOF, the Grantor above named, has hereunto set its hand this

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_

\*

State of OREGON

County of \_\_\_\_\_

This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_\_\_,  
by \_\_\_\_\_(name) as \_\_\_\_\_(title) on  
behalf of the Portland Art Association.

\_\_\_\_\_  
Notary Public for OREGON

My Commission expires \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

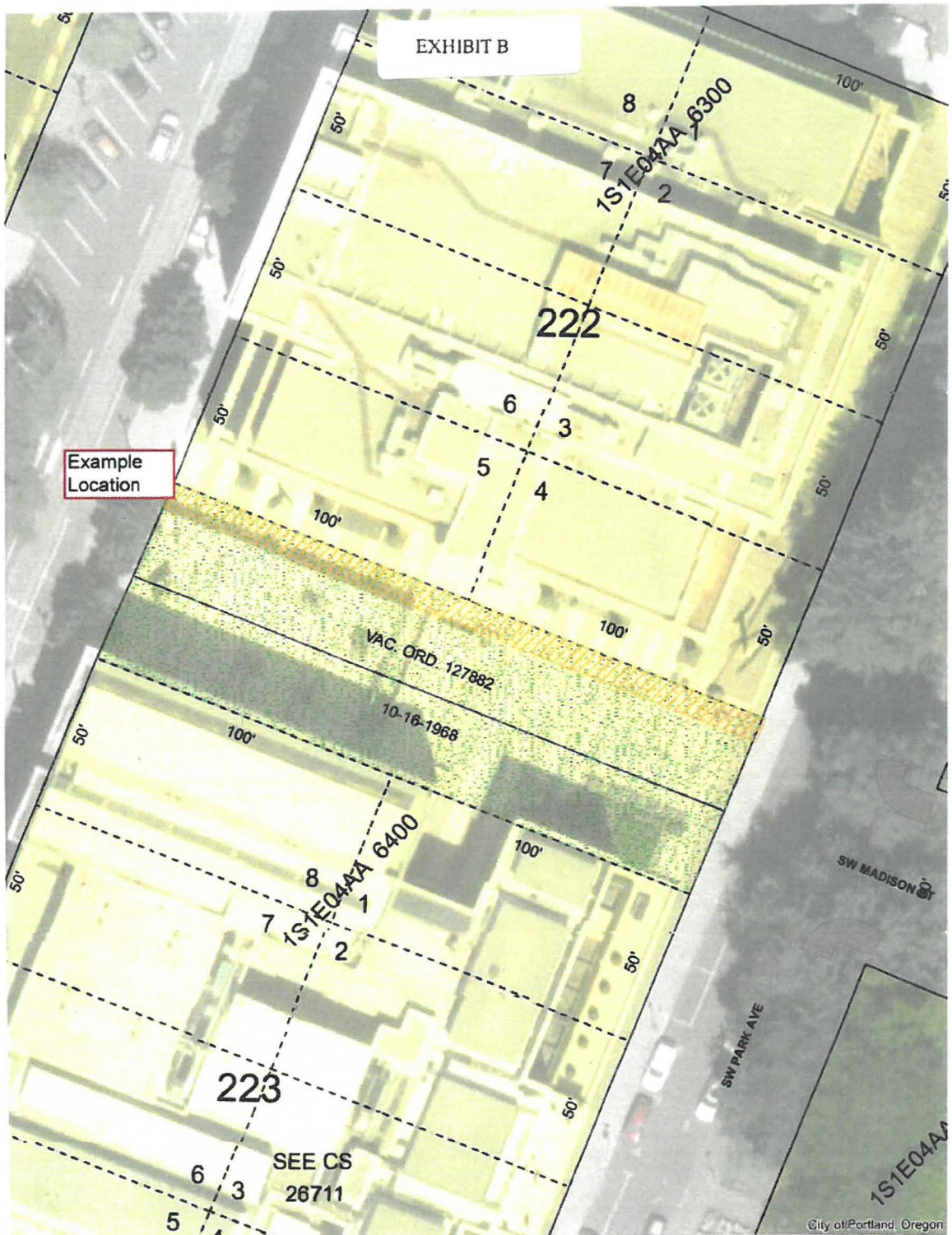
APPROVED:

\_\_\_\_\_  
Bureau Director or designee

8314\Public Access Esmt

## **EXHIBIT A**

(Legal description to be inserted)





## IMPACT STATEMENT

**Legislation title:** 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)

**Contact name:** Matthew Grumm

**Contact phone:** (503) 823 - 4151

**Presenter name:** Matthew Grumm

**Purpose of proposed legislation and background information:**

This is the third Ordinance regarding street vacation of SW Madison Street between SW 10<sup>th</sup> Avenue and SW Park Avenue. This legislation is being proposed because the Portland Art Museum has expanded offerings and programming and the current lower level connection between the Main Building and the Mark Building is not sufficient. To address these issues, the Museum has proposed development of the Rothko Pavilion.

The Rothko Pavilion will enclose the vacated portion of SW Madison and use this space to create a “cultural commons” between the buildings. The Rothko Pavilion proposal includes:

- Direct access to a new Museum café and shop
- Free admission
- Connectivity to the Museum’s 10<sup>th</sup> Ave. Streetcar frontage
- Increased access to galleries and Museum library
- Improved ADA access to the Main Building and Mark Building
- Enhanced visitor experience by making the Museum buildings more transparent with improved wayfinding.

**Financial and budgetary impacts:**

Ordinance No. 127882, passed by the Council on August 8, 1968 authorizing the street vacation required the Portland Art Museum included conditions to require the 8-foot wide pedestrian easement be provided and maintained at the expense of the Portland Art Association. The Rothko Pavilion would be developed and maintained at the expense of the Portland Art Museum and they will bare insurance responsibility for the public passageway. This proposed legislation does not create a financial or budgetary impact.

**Community impacts and community involvement:**

Because the Rothko Pavilion will be structurally integrated into the Museum, there are community impacts related to public access. The proposed Rothko Pavilion would:

- Potentially exclude users of the space that are not utilizing it as pedestrian access between SW 10<sup>th</sup> Avenue and SW Park Avenue, patronizing Museum offerings (e.g., gift shop, café, etc.), or attending the Museum.
- Pedestrian access could be impacted by the potential of unclear wayfinding to enter Museum as a means to connect from SW 10<sup>th</sup> Ave. and SW Park Ave. Current

- pedestrian count data for the space during regular daytime hours as well as nighttime hours has not been provided.
- Bicycles will not be excluded from the space, but it is likely that a bicycle would need to be walked through the enclosed space. Reducing bicycle access between SW 10th Ave. and SW Park Ave to connect with SW Madison Ave could have negative impacts. Those who are heading to destinations on SW Madison or using it as a direct link to the Hawthorne Bridge find Madison a bicycle-friendly route. The Hawthorne Bridge is the most heavily used bicycle route across the Willamette River in the City of Portland. In 2014, the Hawthorne Bridge had a total of 1,714,207 trips with a summer season daily average of 6,073 trips. Data has not been provided to demonstrate bicycle use of the vacated portion of SW Madison or quantify potential impact to cyclists traveling East/West and accessing the Hawthorne Bridge

### Budgetary Impact Worksheet

Does this action change appropriations?

☐ YES: Please complete the information below

☒ NO: Skip this section

Fund	Fund Center	Commitment Item	Functional Area	Funded Program	Grant	Sponsored Program	Amount