

July 28, 2021

## MEMORANDUM

**To:** Transportation and Utilities Committee  
**From:** Lish Whitson, Analyst  
**Subject:** Council Bill 120135: ARE District Energy Tunnel Term Permit

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On August 4, 2021, the Transportation and Utilities Committee (Committee) will consider and may vote on [Council Bill \(CB\) 120135](#), which would grant final approval for a significant structure term permit to ARE-Seattle No. 33, LLC (ARE) to build, operate and maintain private utility tunnels under city streets for a district energy system in South Lake Union, Council District 7.

The tunnels would collect waste heat from Seattle Public Utilities' wastewater system and deliver it to buildings on three blocks planned and under development by ARE. The tunnels would run below Dexter Avenue N and Roy Street. They would connect four office and laboratory buildings being built by ARE, including the planned development on the Mercer Megalock.

Conceptual approval for the district energy system was granted under [Resolution 31980](#) in December 2020.<sup>1</sup> The Seattle Department of Transportation has negotiated the provisions of the term permit consistent with the conditions of Resolution 31980. CB 120135 would grant approval for an initial fifteen year term, which can be renewed once for a total term of up to thirty years.

This memorandum summarizes the term permit approval process and describes the conditions of approval under CB 120135.

### Significant Structure Term Permits

A significant structure is a structure that has “a long anticipated duration of encroachment, impede the City's or public's flexibility in the use of the public place, or are necessary for the functioning of other property of the permittee.” Examples include tunnels below streets that provide utility, pedestrian or vehicular access; public art placed in right-of-way; and overhead structures attached to buildings. SMC Chapter 15.65 establishes the procedures and criteria for approval of term permits for significant structures.

Recently, the City has granted approval for a fifteen-year term, renewable one time for a total term of thirty years.

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<sup>1</sup> Since Resolution 31980 was adopted, McKinstry Company has transferred all rights and ownership of the district energy system to ARE-Seattle No. 33, LLC.

[SMC 15.65.040.C](#) identifies ten issues that are considered when reviewing whether approve a significant structure:

1. Adequacy of horizontal, vertical, and other clearances;
2. View blockage and impacts due to reduction of natural light;
3. Construction review is at 60% conceptual approval;
4. Interruption or interference with existing streetscape or other street amenities;
5. Effect on pedestrian activity;
6. Effect on commerce and enjoyment of neighboring land uses;
7. Availability of reasonable alternatives;
8. Effect on traffic and pedestrian safety;
9. Accessibility for the elderly and handicapped; and
10. The public benefit mitigation elements provided by the proposal, to the extent required based on the nature of the structure.

Once the Director of the Seattle Department of Transportation (SDOT) reviews the term permit petition, the SDOT Director transmits a recommendation to the City Council for conceptual approval. The Council's review of the proposal considers the ten items noted above in order to determine whether the structure is in the public interest and no reasonable alternative to the structure exists. The Council may provide conceptual approval, conditional conceptual approval or deny the term permit through a resolution.

If SDOT determines that the construction plans are consistent with the Council's approval or conditional approval, SDOT forwards a bill to the City Council for its final decision to grant or deny the application for a proposed new structure permit based on its consistency with the conditional approval.

### **ARE District Energy**

ARE proposes to build private utility tunnels under the intersection of Dexter Avenue N and Roy Street and under Dexter Avenue N, north of Mercer Street. The tunnels would be used to extract waste heat from municipal wastewater and distribute it between buildings located at 601 Dexter Avenue N, 701 Dexter Avenue N, and 800 Mercer Street in South Lake Union, District 7. Each of these sites is being developed for office and laboratory uses, including the Mercer Megablock site (800 Mercer Street), which the City is in the process of selling to ARE.

CB 120135 would grant a fifteen-year significant structure term permit for the ARE District Energy project. Resolution 31980 placed the following conditions that the permit seeker would need to meet prior to receiving a term permit:

- (1) Provide engineering and utility plans for additional review and permitting by the Seattle Department of Transportation (SDOT), which the Director will circulate to other City departments and any public and private utilities affected by the installation of ARE District Energy;
- (2) Provide a surety bond, covenant agreement, and public liability insurance naming the City as an additional insured or self-insurance, as approved by the City's Risk Manager;
- (3) Pay all City permit fees;
- (4) Obtain all necessary permits;
- (5) Maintain and inspect the ARE District Energy system; and
- (6) Commit to removing the ARE District Energy system and restoring the right-of-way to in as good condition for public use as existed prior to construction of the ARE District Energy system and in at least as good condition in all respects as the abutting portions of the public place, as required by SDOT right-of-way restoration standards, upon expiration of the term permit or at the direction of the Director or City Council, in accordance with provisions of the term permit ordinance.

ARE has met conditions (1) through (4). Provisions in CB 120135 would ensure that ARE would meet conditions (5) and (6) if the district energy system is built.

### **Next Steps**

If the Committee recommends approval of CB 120135 at its August 4, 2021 meeting, it could be considered by the City Council as early as August 9.

cc: Dan Eder, Interim Director  
Aly Pennucci, Policy and Budget Manager