

March 9, 2022

## MEMORANDUM

**To:** Transportation & Seattle Public Utilities Committee  
**From:** Lish Whitson, Analyst  
**Subject:** East Howe Street Parking Term Permit

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On March 15, 2022, the Transportation & Seattle Public Utilities Committee (Committee) will receive a briefing on a bill that would grant final approval to BSOP 1, LLC (BSOP) to occupy part of the right-of-way at E Howe Street and Fairview Avenue E in Eastlake (Council District 4) for private parking. The bill is attached to this memorandum as Attachment 1.

Conditional conceptual approval for the term permit was granted under [Resolution 31988](#) on March 10, 2021. The Seattle Department of Transportation (SDOT) has negotiated the provisions of the term permit consistent with the conditions of Resolution 31988. The proposed bill would approve the permit for an initial 15-year term, which could be renewed once for a total term of up to 30 years.

This memorandum summarizes the term permit approval process and describes the conditions of approval under the proposed bill.

### Significant Structure Term Permits

[Seattle Municipal Code Chapter 15.65](#) establishes the procedures and criteria for approval of term permits for significant structures. 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; privately-maintained public plazas located in the right-of-way; and overhead structures attached to buildings.

The City’s current practice is to grant approval for a 15-year term, renewable one time for a total term of 30 years.

SMC 15.65.040.C identifies ten issues that are considered when reviewing whether to 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 percent 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 SDOT reviews the term permit petition and determines that approval is appropriate, SDOT transmits a recommendation to the City Council for conceptual approval. Council's review of the proposal considers the ten items noted above 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.

Conceptual approval allows the petitioner to proceed with developing final construction plans. If SDOT determines that the construction plans are consistent with the Council's approval or conditional approval, SDOT forwards a bill to the Council for its final decision to grant or deny the application for a proposed new structure permit. Council's decision to grant or deny the application must be grounded in whether the final plans are consistent with the conditional approval.

### **East Howe Street Parking Area**

BSOP, the owner of an office building at 1910 Fairview Avenue E, proposes to construct 16 private parking spaces and four public parking spaces in the E Howe Street right-of-way east of Fairview Avenue E. The private parking spaces would be used by the tenants of 1910 Fairview E between 6 AM and 8 PM on weekdays. All 20 spaces would be available to the public after 8 PM, on weekends, and on holidays. In exchange for the use of the right-of-way, BSOP has contributed \$500,000 toward the construction of a public plaza adjacent to the parking, and commits to maintaining the plaza area. The plaza has been designed and will be constructed in coordination with the East Howe Street Plaza Steering Committee, a neighborhood organization.

E Howe Street between Fairview Avenue E and Eastlake Avenue E is not developed for street purposes. Adjacent to Eastlake, the right-of-way has been developed with a pedestrian plaza in exchange for a subterranean street vacation. In the middle of the block, a set of stairs connects the Eastlake street grade with the Fairview street grade, 20 feet below Eastlake. The public plaza would include a sloped walkway, small overlook, retaining wall, seat wall, railings and planted areas adjacent to Fairview. A diagram (Attachment 2) shows the proposed locations of the parking spaces and plaza.

East of Eastlake, E Howe Street passes through the I-5 Colonnade Park and connects Eastlake to Capitol Hill. The planned plaza would complete pedestrian connections from Fairview Avenue E to 15th Avenue E, at the north end of Lake View Cemetery.

SDOT has determined that BSOP has met the following conditions from Resolution 31988, and recommends that the Council adopt the bill, granting final approval for a term permit to BSOP for private parking in the E Howe Street right-of-way:

1. Provide engineering and utility plans for additional review and permitting by SDOT, which the Director will circulate to other City departments and any public and private utilities affected by the installation of the Private Parking Area;
2. Continue to work with the [East Howe Street Plaza] Steering Committee to address the comments from the Seattle Design Commission and other City departments on the design and implementation of the public plaza, including signage for the Private Parking Area that is consistent with City policies on restricted parking areas;
3. 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;
4. Pay all City permit fees;
5. Obtain all necessary permits;
6. Contribute \$500,000 for the construction of the public plaza and provide ongoing maintenance of the public plaza for the duration of the Private Parking Area term permit and any subsequent Private Parking Area term permits;
7. Maintain and inspect the Private Parking Area; and
8. Remove the Private Parking Area and restore the right-of-way to in as good condition for public use as existed before constructing the Private Parking Area 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 the provisions of the term permit ordinance.

BSOP has met conditions 1 through 5. Provisions in the bill would ensure that BSOP would meet conditions 6 through 8 if the bill is adopted.

### **Next Steps**

The Committee is anticipated to consider and may vote on the proposed bill at its April 5 meeting. The bill could be considered by the City Council as early as April 12.

### **Attachments**

1. Proposed bill to approve the East Howe Street Term Permit
2. Proposed East Howe Street parking area

cc: Aly Pennucci, Deputy Director  
Yolanda Ho, Lead Analyst

Amy Gray  
SDOT E Howe Private Parking Area ORD  
D5

**CITY OF SEATTLE**

**ORDINANCE \_\_\_\_\_**

**COUNCIL BILL \_\_\_\_\_**

..title

AN ORDINANCE granting BSOP 1, LLC, permission to construct, maintain, and operate a private parking area on East Howe Street, east of Fairview Avenue East, for a 15-year term, renewable for one successive 15-year term; specifying the conditions under which this permit is granted; and providing for the acceptance of the permit and conditions.

..body

WHEREAS, BSOP 1, LLC, applied for permission to construct, operate, and maintain a private

parking area for 16 vehicles in unopened right-of-way on East Howe Street, east of Fairview Avenue East in the Eastlake neighborhood (“Private Parking Area”); and

WHEREAS, BSOP 1, LLC, and the East Howe Steps Plaza Steering Committee (“Steering Committee”) entered into a Memorandum of Understanding agreeing that BSOP 1, LLC will contribute up to \$500,000 for the construction of a public plaza in unopened East Howe Street right-of-way, as supported by the Department of Neighborhoods (“Public Plaza”), and BSOP 1, LLC will provide on-going maintenance of the Public Plaza for the term of this ordinance; and

WHEREAS, the obligations of the ordinance remain in effect after the ordinance term expires until the encroachment is removed, or BSOP 1, LLC is relieved of the obligations by the Seattle Department of Transportation Director, or the Seattle City Council passes a new ordinance to renew the permission granted; and

WHEREAS, the Seattle City Council adopted Resolution 31988 and conceptually approved the Private Parking Area, and BSOP 1, LLC has met the obligations described in this resolution; and

1 WHEREAS, the adoption of this ordinance is the culmination of the approval process for the  
2 Private Parking Area to legally occupy a portion of the public right-of-way, and the  
3 adopted ordinance is considered to be the permit; NOW, THEREFORE,

4 **BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

5 Section 1. **Permission.** Subject to the terms and conditions of this ordinance, the City of  
6 Seattle (“City”) grants permission (also referred to in this ordinance as a permit) to BSOP 1,  
7 LLC, and its successors and assigns as approved by the Director of the Seattle Department of  
8 Transportation (“Director”) according to Section 14 of this ordinance (the party named above  
9 and each such approved successor and assign is referred to as the “Permittee”), to construct,  
10 maintain, and operate a private parking area for 16 vehicles on unopened right-of-way on East  
11 Howe Street, east of Fairview Avenue East (collectively referred to as “Private Parking Area”),  
12 adjacent in whole or in part to the property legally described as:

13 THAT PORTION OF GOVERNMENT LOT 5 IN SECTION 20, TOWNSHIP 25  
14 NORTH, RANGE 4 EAST, W.M., AND OF BLOCKS 60 AND 61 OF LAKE UNION  
15 SHORELANDS, AS SHOWN ON THE OFFICIAL MAPS ON FILE IN THE OFFICE  
16 OF THE COMMISSIONER OF PUBLIC LANDS, AT OLYMPIA, WASHINGTON  
17 AND OF VACATED YALE AVENUE NORTH, AS VACATED BY ORDINANCE  
18 NO. 52765 OF THE CITY OF SEATTLE, KING COUNTY, WASHINGTON,  
19 DESCRIBED AS FOLLOWS:

20  
21 BEGINNING AT THE SOUTHEAST CORNER OF SAID BLOCK 60;

22  
23 THENCE SOUTH 89°59'43" WEST 32.40 FEET;

24  
25 THENCE NORTH 49°59'21" WEST 96.511 FEET;

26  
27 THENCE NORTH 40°00'39" EAST 79.429 FEET, MORE OR LESS, TO A POINT 173  
28 FEET SOUTH 00°26'03" WEST FROM THE SOUTHERLY LINE OF EAST  
29 NEWTON STREET;

30  
31 THENCE SOUTH 89°59'33" EAST, ALONG A LINE PARALLEL WITH AND 173  
32 FEET SOUTH OF SAID SOUTHERLY LINE TO THE SOUTHWESTERLY LINE OF  
33 YALE PLACE EAST;  
34

1           THENCE SOUTHEASTERLY, ALONG SAID SOUTHWESTERLY LINE, 149.82  
2           FEET;

3  
4           THENCE SOUTHWESTERLY, AT RIGHT ANGLES TO SAID YALE PLACE EAST,  
5           61.25 FEET;

6  
7           THENCE SOUTH 40°58'05.5" WEST 32 FEET, MORE OR LESS, TO THE  
8           NORTHERLY LINE OF EAST HOWE STREET;

9  
10          THENCE SOUTH 89°59'43" WEST, ALONG SAID NORTHERLY LINE, 78.29 FEET  
11          TO THE SOUTHWEST CORNER OF SAID BLOCK 61;

12  
13          THENCE NORTHWESTERLY IN A STRAIGHT LINE TO THE POINT OF  
14          BEGINNING;

15  
16          TOGETHER WITH THAT PORTION OF YALE PLACE EAST, AS VACATED BY  
17          ORDINANCE NO. 52992 OF THE CITY OF SEATTLE, WHICH UPON VACATION,  
18          ATTACHED TO SAID PREMISES BY OPERATION OF LAW.  
19

20           Construction and operation of the Private Parking Area will provide 16 private parking  
21 stalls in East Howe Street, east of Fairview Avenue North. The Private Parking Area shall be  
22 restricted to the public during the hours of 6:00 a.m. to 8:00 p.m. on all non-City of Seattle  
23 holiday weekdays ("Restricted Hours") as approved in the Street Improvement Permit Record  
24 SUSIPX333667. BSOP 1, LLC will provide \$500,000 for the construction of a Public Plaza in  
25 unopened right-of-way in East Howe Street. BSOP 1, LLC will be responsible for maintaining  
26 the Public Plaza for the term of this ordinance.

27           Section 2. **Term.** The permission granted to the Permittee is for a term of 15 years  
28 starting on the effective date of this ordinance and ending at 11:59 p.m. on the last day of the  
29 fifteenth year. Upon written application made by the Permittee at least one year before  
30 expiration of the term, the Director or the City Council may renew the permit once, for a  
31 successive 15-year term, subject to the right of the City to require the removal of the Private  
32 Parking Area, or to revise by ordinance any of the terms and conditions of the permission

1 granted by this ordinance. The total term of the permission, including renewals, shall not exceed  
2 30 years. The Permittee shall submit any application for a new permission no later than one year  
3 before the then-existing term expires. Any new application would be subject to the fees and  
4 criteria in place at the time of the new application.

5       **Section 3. Protection of utilities.** The permission granted is subject to the Permittee  
6 bearing the expense of any protection, support, or relocation of existing utilities deemed  
7 necessary by the owners of the utilities, and the Permittee being responsible for any damage to  
8 the utilities due to the construction, repair, reconstruction, maintenance, operation, or removal of  
9 the Private Parking Area and for any consequential damages that may result from any damage to  
10 utilities or interruption in service caused by any of the foregoing.

11       **Section 4. Removal for public use or for cause.** The permission granted is subject to use  
12 of the street right-of-way or other public place (collectively, public place) by the City and the  
13 public for travel, utility purposes, and other public uses or benefits. The City expressly reserves  
14 the right to deny renewal, or terminate the permission at any time before expiration of the initial  
15 term or any renewal term, and require the Permittee to remove the Private Parking Area or any  
16 part thereof or installation on the public place, at the Permittee's sole cost and expense if:

17       A. The City Council determines by ordinance that the space occupied by the Private  
18 Parking Area is necessary for any public use or benefit or that the Private Parking Area interferes  
19 with any public use or benefit; or

20       B. The Director determines that use of the Private Parking Area has been abandoned; or

21       C. The Director determines that any term or condition of this ordinance has been violated,  
22 and the violation has not been corrected by the Permittee by the compliance date after a written

1 request by the City to correct the violation (unless a notice to correct is not required due to an  
2 immediate threat to the health or safety of the public).

3 A City Council determination that the space is needed for, or the Private Parking Area  
4 ~~interferes~~ with, a public use or benefit is conclusive and final without any right of the Permittee  
5 to resort to the courts to adjudicate the matter.

6 Section 5. **Permittee's obligation to remove and restore.** If the permission granted is  
7 not renewed at the expiration of a term, or if the permission expires without an application for a  
8 new permission being granted, or if the City terminates the permission, then within 90 days after  
9 the expiration or termination of the permission, or prior to any earlier date stated in an ordinance  
10 or order requiring removal of the Private Parking Area, the Permittee shall, at its own expense,  
11 remove the signage designating the Private Parking Area and all of the Permittee's equipment  
12 and property from the public place and replace and restore all portions of the public place that  
13 may have been disturbed for any part of the Private Parking Area in as good condition for public  
14 use as existed prior to constructing the Private Parking Area, which the Parties acknowledge is  
15 currently improved with parking, and in at least as good condition in all respects as the abutting  
16 portions of the public place as required by Seattle Department of Transportation (SDOT) right-  
17 of-way restoration standards.

18 Failure to remove the Private Parking Area as required by this section is a violation of  
19 Chapter 15.90 of the Seattle Municipal Code (SMC) or successor provision; however,  
20 applicability of Chapter 15.90 does not eliminate any remedies available to the City under this  
21 ordinance or any other authority. If the Permittee does not timely fulfill its obligations under this  
22 section, the City may in its sole discretion remove the Private Parking Area and restore the  
23 public place at the Permittee's expense and collect such expense in any manner provided by law.

1           Upon the Permittee’s completion of removal and restoration in accordance with this  
2 section, or upon the City’s completion of the removal and restoration and the Permittee’s  
3 payment to the City for the City’s removal and restoration costs, the Director shall issue a  
4 certification that the Permittee has fulfilled its removal and restoration obligations under this  
5 ordinance. Upon prior notice to the Permittee and entry of written findings that it is in the public  
6 interest, the Director may, in the Director’s sole discretion, conditionally or absolutely excuse the  
7 Permittee from compliance with all or any of the Permittee’s obligations under this section.

8           **Section 6. Repair or reconstruction.** The Private Parking Area shall remain the  
9 exclusive responsibility of the Permittee and the Permittee shall maintain the Private Parking  
10 Area in good and safe condition for the protection of the public. The Permittee shall not  
11 reconstruct or repair the Private Parking Area except in strict accordance with plans and  
12 specifications approved by the Director. The Director may, in the Director’s judgment, order the  
13 Private Parking Area reconstructed or repaired at the Permittee's cost and expense because of the  
14 deterioration or unsafe condition of the Private Parking Area; because of the installation,  
15 construction, reconstruction, maintenance, operation, or repair of any municipally-owned public  
16 utilities; or for any other cause.

17           **Section 7. Failure to correct unsafe condition.** After written notice to the Permittee and  
18 failure of the Permittee to correct an unsafe condition within the time stated in the notice, the  
19 Director may order the Private Parking Area be closed or removed at the Permittee’s expense if  
20 the Director deems that the Private Parking Area has become unsafe or creates a risk of injury to  
21 the public. If there is an immediate threat to the health or safety of the public, a notice to correct  
22 is not required.

1           Section 8. **Continuing obligations.** Notwithstanding the termination or expiration of the  
2 permission granted, or removal of the Private Parking Area, the Permittee shall remain bound by  
3 all of its obligations under this ordinance until the Director has issued a certification that the  
4 Permittee has fulfilled any removal and restoration obligations established by the City, or the  
5 Seattle City Council passes a new ordinance to renew the permission granted and/or establishes a  
6 new term. Notwithstanding the issuance of that certification, the Permittee shall continue to be  
7 bound by the obligations in Section 9 and Section 21 of this ordinance and shall remain liable for  
8 any unpaid fees assessed under Sections 15 and 17 of this ordinance.

9           Section 9. **Release, hold harmless, indemnification, and duty to defend.** The  
10 Permittee, by accepting the terms of this ordinance, releases the City, its officials, officers,  
11 employees, and agents from any and all claims, actions, suits, liability, loss, costs, expense,  
12 attorneys' fees, or damages of every kind and description arising out of or by reason of the  
13 Private Parking Area, or this ordinance, including but not limited to claims resulting from injury,  
14 damage, or loss to the Permittee or the Permittee's property.

15           The Permittee agrees to at all times defend, indemnify, and hold harmless the City, its  
16 officials, officers, employees, and agents from and against all claims, actions, suits, liability,  
17 loss, costs, expense, attorneys' fees, or damages of every kind and description, excepting only  
18 damages that may result from the sole negligence of the City, that may accrue to, be asserted by,  
19 or be suffered by any person or property including, without limitation, damage, death or injury to  
20 members of the public or to the Permittee's officers, agents, employees, contractors, invitees,  
21 tenants, tenants' invitees, licensees, or successors and assigns, arising out of or by reason of:

22           A. The existence, condition, construction, reconstruction, modification, maintenance,  
23 operation, use, or removal of the Private Parking Area or any portion thereof, or the use,

1 occupation, or restoration of the public place or any portion thereof by the Permittee or any other  
2 person or entity;

3 B. Anything that has been done or may at any time be done by the Permittee by reason of  
4 this ordinance; or

5 C. The Permittee failing or refusing to strictly comply with every provision of this  
6 ordinance; or arising out of or by reason of the Private Parking Area, or this ordinance in any  
7 other way.

8 If any suit, action, or claim of the nature described above is filed, instituted, or begun  
9 against the City, the Permittee shall upon notice from the City defend the City, with counsel  
10 acceptable to the City, at the sole cost and expense of the Permittee, and if a judgment is  
11 rendered against the City in any suit or action, the Permittee shall fully satisfy the judgment  
12 within 90 days after the action or suit has been finally determined, if determined adversely to the  
13 City. If it is determined by a court of competent jurisdiction that Revised Code of Washington  
14 (RCW) 4.24.115 applies to this ordinance, then in the event claims or damages are caused by or  
15 result from the concurrent negligence of the City, its agents, contractors, or employees, and the  
16 Permittee, its agents, contractors, or employees, this indemnity provision shall be valid and  
17 enforceable only to the extent of the negligence of the Permittee or the Permittee's agents,  
18 contractors, or employees.

19 Section 10. **Insurance.** For as long as the Permittee exercises any permission granted by  
20 this ordinance and until the Director has issued a certification that the Permittee has fulfilled its  
21 removal and restoration obligations under Section 5 of this ordinance, the Permittee shall obtain  
22 and maintain in full force and effect, at its own expense, insurance and/or self-insurance that

1 protects the Permittee and the City from claims and risks of loss from perils that can be insured  
2 against under commercial general liability (CGL) insurance policies in conjunction with:

3 A. Construction, reconstruction, modification, operation, maintenance, use, existence, or  
4 removal of the Private Parking Area or any portion thereof, as well as restoration of any  
5 disturbed areas of the public place in connection with removal of the Private Parking Area;

6 B. The Permittee's activity upon or the use or occupation of the public place described in  
7 Section 1 of this ordinance; and

8 C. Claims and risks in connection with activities performed by the Permittee by virtue of  
9 the permission granted by this ordinance.

10 Minimum insurance requirements are CGL insurance written on an occurrence form at least  
11 as broad as the Insurance Services Office (ISO) CG 00 01. The City requires insurance coverage  
12 to be placed with an insurer admitted and licensed to conduct business in Washington State or  
13 with a surplus lines carrier pursuant to chapter 48.15 RCW. If coverage is placed with any other  
14 insurer or is partially or wholly self-insured, such insurer(s) or self-insurance is subject to  
15 approval by the City's Risk Manager.

16 Minimum limits of liability shall be \$5,000,000 per Occurrence; \$10,000,000 General  
17 Aggregate; \$5,000,000 Products/Completed Operations Aggregate, including Premises  
18 Operations; Personal/Advertising Injury; Contractual Liability. Coverage shall include the "City  
19 of Seattle, its officers, officials, employees and agents" as additional insureds for primary and  
20 non-contributory limits of liability subject to a Separation of Insureds clause.

21 Within 60 days after the effective date of this ordinance, the Permittee shall provide to  
22 the City, or cause to be provided, certification of insurance coverage including an actual copy of  
23 the blanket or designated additional insured policy provision per the ISO CG 20 12 endorsement

1 or equivalent. The insurance coverage certification shall be delivered or sent to the Director or to  
2 SDOT at an address as the Director may specify in writing from time to time. The Permittee shall  
3 provide a certified complete copy of the insurance policy to the City promptly upon request.

4         If the Permittee is self-insured, a letter of certification from the Corporate Risk Manager  
5 may be submitted in lieu of the insurance coverage certification required by this ordinance, if  
6 approved in writing by the City’s Risk Manager. The letter of certification must provide all  
7 information required by the City’s Risk Manager and document, to the satisfaction of the City’s  
8 Risk Manager, that self-insurance equivalent to the insurance requirements of this ordinance is in  
9 force. After a self-insurance certification is approved, the City may from time to time  
10 subsequently require updated or additional information. The approved self-insured Permittee  
11 must provide 30 days’ prior notice of any cancellation or material adverse financial condition of  
12 its self-insurance program. The City may at any time revoke approval of self-insurance and  
13 require the Permittee to obtain and maintain insurance as specified in this ordinance.

14         In the event that the Permittee assigns or transfers the permission granted by this  
15 ordinance, the Permittee shall maintain in effect the insurance required under this section until  
16 the Director has approved the assignment or transfer pursuant to Section 14 of this ordinance.

17         Section 11. **Contractor insurance.** The Permittee shall contractually require that any  
18 and all of its contractors performing work on any premises contemplated by this permit name the  
19 “City of Seattle, its officers, officials, employees and agents” as additional insureds for primary  
20 and non-contributory limits of liability on all CGL, Automobile and Pollution liability insurance  
21 and/or self-insurance. The Permittee shall also include in all contract documents with its  
22 contractors a third-party beneficiary provision extending to the City construction indemnities and  
23 warranties granted to the Permittee.

1           **Section 12. Performance bond.** Within 60 days after the effective date of this ordinance,  
2 the Permittee shall deliver to the Director for filing with the City Clerk a sufficient bond  
3 executed by a surety company authorized and qualified to do business in the State of Washington  
4 in the amount of \$15,000, and conditioned with a requirement that the Permittee shall comply  
5 with every provision of this ordinance and with every order the Director issues under this  
6 ordinance. The Permittee shall ensure that the bond remains in effect until the Director has issued  
7 a certification that the Permittee has fulfilled its removal and restoration obligations under  
8 Section 5 of this ordinance. An irrevocable letter of credit approved by the Director in  
9 consultation with the City Attorney’s Office may be substituted for the bond. If the Permittee  
10 assigns or transfers the permission granted by this ordinance, the Permittee shall maintain in  
11 effect the bond or letter of credit required under this section until the Director has approved the  
12 assignment or transfer pursuant to Section 14 of this ordinance.

13           **Section 13. Adjustment of insurance and bond requirements.** The Director may adjust  
14 minimum liability insurance levels and surety bond requirements during the term of this  
15 permission. If the Director determines that an adjustment is necessary to fully protect the  
16 interests of the City, the Director shall notify the Permittee of the new requirements in writing.  
17 The Permittee shall, within 60 days of the date of the notice, provide proof of the adjusted  
18 insurance and surety bond levels to the Director.

19           **Section 14. Consent for and conditions of assignment or transfer.** When the Property  
20 is transferred, the permission granted by this ordinance shall be assignable and transferable by  
21 operation of law pursuant to Section 20 of this ordinance. Continued occupation of the right-of-  
22 way constitutes the Permittee’s acceptance of the terms of this ordinance, and the new owner of  
23 the Property shall be conferred with the rights and obligations of the Permittee by this ordinance.

1 Other than a transfer to a new owner of the Property, the Permittee shall not transfer, assign,  
2 mortgage, pledge or encumber the same without the Director's consent, which the Director shall  
3 not unreasonably refuse or condition. The Director may approve assignment or transfer of the  
4 permission granted by this ordinance to a successor entity only if the successor or assignee has  
5 provided, at the time of the assignment or transfer, the bond and certification of insurance  
6 coverage required under this ordinance; and has paid any fees due under Sections 15 and 17 of  
7 this ordinance. Upon the Director's approval of an assignment or transfer, the rights and  
8 obligations conferred on the Permittee by this ordinance shall be conferred on the successors and  
9 assigns. Any person or entity seeking approval for an assignment or transfer of the permission  
10 granted by this ordinance shall provide the Director with a description of the current and  
11 anticipated use of the Private Parking Area.

12       Section 15. **Inspection fees.** The Permittee shall, as provided by SMC Chapter 15.76 or  
13 successor provision, pay the City the amounts charged by the City to inspect the Private Parking  
14 Area-during construction, reconstruction, repair, annual safety inspections, and at other times  
15 deemed necessary by the City. An inspection or approval of the Private Parking Area by the City  
16 shall not be construed as a representation, warranty, or assurance to the Permittee or any other  
17 person as to the safety, soundness, or condition of the Private Parking Area. Any failure by the  
18 City to require correction of any defect or condition shall not in any way limit the responsibility  
19 or liability of the Permittee.

20       Section 16. **Inspection reports.** The Permittee shall submit to the Director, or to SDOT  
21 at an address specified by the Director, an inspection report that:

22       A. Describes the physical dimensions and condition of all load-bearing elements in the  
23 Private Parking Area;

1 B. Describes any damages or possible repairs to any element of the Private Parking Area;

2 C. Prioritizes all repairs and establishes a timeframe for making repairs; and

3 D. Is stamped by a professional structural engineer licensed in the State of Washington.

4 A report meeting the foregoing requirements shall be submitted within 60 days after the  
5 effective date of this ordinance; subsequent reports shall be submitted every two years, provided  
6 that, in the event of a natural disaster or other event that may have damaged the Private Parking  
7 Area, the Director may require that additional reports be submitted by a date established by the  
8 Director. The Permittee has the duty of inspecting and maintaining the Private Parking Area.  
9 The responsibility to submit structural inspection reports periodically or as required by the  
10 Director does not waive or alter any of the Permittee's other obligations under this ordinance.  
11 The receipt of any reports by the Director shall not create any duties on the part of the Director.  
12 Any failure by the Director to require a report, or to require action after receipt of any report,  
13 shall not waive or limit the Permittee's obligations.

14 Section 17. **Annual fee.** Beginning on the effective date of this ordinance the Permittee  
15 shall pay an Issuance Fee, and annually thereafter, the Permittee shall promptly pay to the City,  
16 upon statements or invoices issued by the Director, an Annual Renewal Fee, and an Annual Use  
17 and Occupation fee of \$25,488, or as adjusted annually thereafter, for the privileges granted by  
18 this ordinance for the Private Parking Area.

19 Adjustments to the Annual Use and Occupation Fee shall be made in accordance with a  
20 term permit fee schedule adopted by the City Council and may be made every year. In the  
21 absence of a schedule, the Director may only increase or decrease the previous year's fee to  
22 reflect any inflationary changes so as to charge the fee in constant dollar terms. This adjustment  
23 will be calculated by adjusting the previous year's fee by the percentage change between the two

1 most recent year-end values available for the Consumer Price Index for the Seattle-Tacoma-  
2 Bellevue Area, All Urban Consumers, All Products, Not Seasonally Adjusted. Permittee shall  
3 pay any other applicable fees, including fees for reviewing applications to renew the permit after  
4 expiration of the first term. All payments shall be made to the City Finance Director for credit to  
5 the Transportation Fund.

6       **Section 18. Compliance with other laws.** The Permittee shall construct, maintain, and  
7 operate the Private Parking Area in compliance with all applicable federal, state, County and  
8 City laws and regulations. Without limitation, in all matters pertaining to the Private Parking  
9 Area, the Permittee shall comply with the City’s laws prohibiting discrimination in employment  
10 and contracting including Seattle’s Fair Employment Practices Ordinance, Chapter 14.04, and  
11 Fair Contracting Practices code, Chapter 14.10 (or successor provisions).

12       **Section 19. Acceptance of terms and conditions.** The Permittee shall not commence  
13 construction of the Private Parking Area before providing evidence of insurance coverage  
14 required by Section 10 of this ordinance, the bond as required by Section 12 of this ordinance,  
15 and the covenant agreement required by Section 20 of this ordinance. Obtaining building  
16 permits from the Seattle Department of Construction and Inspections, or other applicable City-  
17 issued permits, constitutes the Permittee’s acceptance of the terms of this ordinance.

18       **Section 20. Obligations run with the Property.** The obligations and conditions  
19 imposed on the Permittee by this ordinance are covenants that run with the land and bind  
20 subsequent owners of the property adjacent to the Private Parking Area and legally described in  
21 Section 1 of this ordinance (the “Property”), regardless of whether the Director has approved  
22 assignment or transfer of the permission granted herein to such subsequent owner(s). At the  
23 request of the Director, the Permittee shall provide to the Director a current title report showing

1 the identity of all owner(s) of the Property and all encumbrances on the Property. The Permittee  
2 shall, within 60 days of the effective date of this ordinance, and prior to conveying any interest in  
3 the Property, deliver to the Director upon a form to be supplied by the Director, a covenant  
4 agreement imposing the obligations and conditions set forth in this ordinance, signed and  
5 acknowledged by the Permittee and any other owner(s) of the Property and recorded with the  
6 King County Recorder's Office. The Director shall file the recorded covenant agreement with the  
7 City Clerk. The covenant agreement shall reference this ordinance by its ordinance number. At  
8 the request of the Director, the Permittee shall cause encumbrances on the Property to be  
9 subordinated to the covenant agreement.

10       Section 21. **Maintenance of public plaza.** The Permittee shall maintain the Public  
11 Plaza for the term of the ordinance. The Public Plaza must remain open to the public 24 hours  
12 per day, 7 days a week.

13       The Permittee shall install signs for the Private Parking Area and the four public parking  
14 stalls adjacent to the Private Parking Area. The four public parking stalls will be signed as  
15 available to the public at all times. The Private Parking Area sign plan was approved by SDOT  
16 in the Street Improvement Permit Record SUSIPX333667. If any Private Parking Area sign  
17 needs to be replaced or restored at any time during the term of this ordinance, the Permittee shall  
18 obtain approval from SDOT based on the current SDOT sign standards.

19       Section 22. **Private Parking Area Permit Process.** The City shall be responsible for  
20 the review and approval of all permits within the Private Parking Area, including but not limited  
21 to any temporary public space management permits; provided however, the City shall issue all  
22 permit(s) for the use or occupancy of the Private Parking Area during the Restricted Hours in  
23 accordance with the terms of this ordinance. Applicants for any temporary use permits are

1 required to provide to SDOT a copy of the written approval from the Permittee. The Permittee  
2 shall be listed as an additional insured party on any permit issued by the City by a third party for  
3 use or occupancy of the Private Parking Area.

4           Section 23. **Section titles.** Section titles are for convenient reference only and do not  
5 modify or limit the text of a section.

1           Section 24. This ordinance shall take effect and be in force 30 days after its approval by  
2 the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it  
3 shall take effect as provided by Seattle Municipal Code Section 1.04.020.

4           Passed by the City Council the \_\_\_\_\_ day of \_\_\_\_\_, 2022,  
5 and signed by me in open session in authentication of its passage this \_\_\_\_\_ day of  
6 \_\_\_\_\_, 2022.

7 \_\_\_\_\_  
8 President \_\_\_\_\_ of the City Council

9           Approved /   returned unsigned /   vetoed this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

10 \_\_\_\_\_  
11 Bruce A. Harrell, Mayor

12           Filed by me this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

13 \_\_\_\_\_  
14 Monica Martinez Simmons, City Clerk

15 (Seal)

16  
17  
18  
19  
20

Attachments:

1910 FAIRVIEW AVE E  
SEATTLE, WA 98102

RIGHT OF WAY, TYP

RIGHT OF WAY  
CENTER LINE, TYP

1818 FAIRVIEW AVE E  
SEATTLE, WA 98102 (NAP)

FAIRVIEW AVE E.

LEGEND:

-  16 PERMIT PARKING STALLS ("PRIVATE PARKING AREA")
-  4 PUBLIC PARKING STALLS
-  EXISTING PRIVATE PARKING STALLS TO REMAIN



SCALE IN FEET

