



SEATTLE CITY COUNCIL

Legislative Summary

CB 118734

Record No.: CB 118734

Type: Ordinance (Ord)

Status: Passed

Version: 1

Ord. no: Ord 125090

In Control: City Clerk

File Created: 06/13/2016

Final Action: 07/29/2016

Title: AN ORDINANCE granting SP Greenwood LLC permission to construct and maintain a public art installation on a portion of 1st Avenue Northwest, southwest of the intersection with Northwest 85th Street, for a ten-year term, renewable for two successive ten-year terms; specifying the conditions under which this permit is granted; and providing for the acceptance of the permit and conditions.

Date

Notes:

Filed with City Clerk:

Mayor's Signature:

Sponsors: O'Brien

Vetoed by Mayor:

Veto Overridden:

Veto Sustained:

Attachments:

Drafter: amy.gray@seattle.gov

Filing Requirements/Dept Action:

History of Legislative File

Legal Notice Published:

Yes

No

Ver- sion:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
1	Mayor	07/05/2016	Mayor's leg transmitted to Council	City Clerk			
	Action Text:		The Council Bill (CB) was Mayor's leg transmitted to Council. to the City Clerk				
	Notes:						
1	City Clerk	07/05/2016	sent for review	Council President's Office			
	Action Text:		The Council Bill (CB) was sent for review. to the Council President's Office				
	Notes:						
1	Council President's Office	07/08/2016	sent for review	Sustainability and Transportation Committee			
	Action Text:		The Council Bill (CB) was sent for review. to the Sustainability and Transportation Committee				
	Notes:						

Legislative Summary Continued (CB 118734)

- 1 Full Council 07/18/2016 referred Sustainability and Transportation Committee
- 1 Sustainability and Transportation Committee 07/19/2016 pass Pass
Action Text: The Committee recommends that Full Council pass the Council Bill (CB).
Notes:
In Favor: 3 Chair O'Brien, Vice Chair Johnson, Member Sawant
Opposed: 0
- 1 Full Council 07/25/2016 passed Pass
Action Text: The Council Bill (CB) was passed by the following vote, and the President signed the Bill:
In Favor: 8 Councilmember Burgess, Councilmember González, Council President Harrell, Councilmember Herbold, Councilmember Johnson, Councilmember Juarez, Councilmember O'Brien, Councilmember Sawant
Opposed: 0
- 1 City Clerk 07/26/2016 submitted for Mayor's signature Mayor
Action Text: The Council Bill (CB) was submitted for Mayor's signature. to the Mayor
Notes:
- 1 Mayor 07/29/2016 Signed
Action Text: The Council Bill (CB) was Signed.
Notes:
- 1 Mayor 07/29/2016 returned City Clerk
Action Text: The Council Bill (CB) was returned. to the City Clerk
Notes:
- 1 City Clerk 07/29/2016 attested by City Clerk
Action Text: The Ordinance (Ord) was attested by City Clerk.
Notes:
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CITY OF SEATTLE

ORDINANCE 125090

COUNCIL BILL 118734

AN ORDINANCE granting SP Greenwood LLC permission to construct and maintain a public art installation on a portion of 1st Avenue Northwest, southwest of the intersection with Northwest 85th Street, for a ten-year term, renewable for two successive ten-year terms; specifying the conditions under which this permit is granted; and providing for the acceptance of the permit and conditions.

WHEREAS, SP Greenwood LLC has applied for permission to construct and maintain a public art installation on a portion of 1st Avenue Northwest, southwest of the intersection with Northwest 85th Street; approximately twenty-three feet south of the tangent curb alignment of Northwest 85th Street; and

WHEREAS, SP Greenwood LLC consulted with the Greenwood Community Council on the public art installation; SP Greenwood LLC presented the public art installation to the Public Art Advisory Committee on July 28, 2016, and the Public Art Advisory Committee recommended approval; and

WHEREAS, by Resolution 31629, the City granted conceptual approval to SP Greenwood LLC for the installation and maintenance of the public art installation on a portion of 1st Avenue Northwest, southwest of the intersection with Northwest 85th Street; and

WHEREAS, the adoption of this ordinance is the culmination of the approval process for the public art installation to legally occupy a portion of the public right-of-way; NOW,

THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. **Permission.** Subject to the terms and conditions of this ordinance, The City of Seattle ("City") grants permission (also referred to in this ordinance as a permit) to SP

1 Greenwood LLC, and its successors and assigns as approved by the Director of the Seattle
2 Department of Transportation ("Director") according to Section 14 of this ordinance (the party
3 named above and each such approved successor and assign is referred to as "Permittee"), to
4 construct and maintain a public art installation, including all related appurtenances ("public art
5 installation"), adjacent in whole or in part to the property legally described as:

6 LOTS 9 THROUGH 15, INCLUSIVE; BLOCK 1, GREENWOOD PARK ADDITION
7 TO THE CITY OF SEATTLE, ACCORDING TO THE PLAT THEREOF RECORDED IN
8 VOLUME 15 OF PLATS, PAGE 80, IN KING COUNTY, WASHINGTON.
9

10 The public art installation footprint is 154.4 square feet and is 28' 10" tall.

11 Section 2. **Term.** The permission granted to Permittee is for a term of ten years starting
12 on the effective date of this ordinance and ending at 11:59 p.m. on the last day of the tenth year.
13 Upon written application made by the Permittee at least 180 days before expiration of the term,
14 the Director or the City Council may renew the permit twice, each time for a successive ten-year
15 term, subject to the right of the City to require the removal of the public art installation or to
16 revise by ordinance any of the terms and conditions of the permission granted by this ordinance.
17 The total term of the permission, including renewals, shall not exceed 30 years. The Permittee
18 shall submit any application for a new permission no later than 180 days prior to the expiration
19 of the then-existing term.

20 Section 3. **Protection of utilities.** The permission granted is subject to the Permittee
21 bearing the expense of any protection, support, or relocation of existing utilities deemed
22 necessary by the owners of the utilities, and the Permittee being responsible for any damage to
23 the utilities due to the construction, repair, reconstruction, maintenance, operation, or removal of
24 the public art installation and for any consequential damages that may result from any damage to
25 utilities or interruption in service caused by any of the foregoing.

1 Section 4. **Removal for public use or for cause.** The permission granted is subject to use
2 of the street right-of-way or other public place (collectively, public place) by the City and the
3 public for travel, utility purposes, and other public uses or benefits. The City expressly reserves
4 the right to deny renewal, or terminate the permission at any time prior to expiration of the initial
5 term or any renewal term, and require the Permittee to remove the public art installation, or any
6 part thereof or installation on the public place, at the Permittee's sole cost and expense in the
7 event that:

8 (a) the City Council determines by ordinance that the space occupied by the public
9 art installation is necessary for any public use or benefit or that the public art installation
10 interferes with any public use or benefit; or

11 (b) the Director determines that use of the public art installation has been abandoned;
12 or

13 (c) the Director determines that any term or condition of this ordinance has been
14 violated, and the violation has not been corrected by the Permittee by the compliance date
15 after a written request by the City to correct the violation (unless a notice to correct is not
16 required due to an immediate threat to the health or safety of the public).

17 A City Council determination that the space is needed for, or the public art installation interferes
18 with, a public use or benefit is conclusive and final without any right of the Permittee to resort to
19 the courts to adjudicate the matter.

20 Section 5. **Permittee's obligation to remove and restore.** If the permission granted is
21 not renewed at the expiration of a term, or if the permission expires without an application for a
22 new permission being granted, or if the City terminates the permission, then within 90 days after
23 the expiration or termination of the permission, or prior to any earlier date stated in an ordinance

1 or order requiring removal of the public art installation, the Permittee shall, at its own expense,
2 remove the public art installation and all of the Permittee's equipment and property from the
3 public place and replace and restore all portions of the public place that may have been disturbed
4 for any part of the public art installation in as good condition for public use as existed prior to
5 construction of the public art installation and in at least as good condition in all respects as the
6 abutting portions of the public place as required by Seattle Department of Transportation
7 (SDOT) right-of-way restoration standards.

8 Failure to remove the public art installation as required by this section is a violation of
9 Chapter 15.90 of the Seattle Municipal Code (SMC) or successor provision; however,
10 applicability of Chapter 15.90 does not eliminate any remedies available to the City under this
11 ordinance or any other authority. If the Permittee does not timely fulfill its obligations under this
12 section, the City may in its sole discretion remove the public art installation and restore the
13 public place at the Permittee's expense, and collect such expense in any manner provided by law.

14 Upon the Permittee's completion of removal and restoration in accordance with this
15 section, or upon the City's completion of the removal and restoration and the Permittee's
16 payment to the City for the City's removal and restoration costs, the Director shall then issue a
17 certification that the Permittee has fulfilled its removal and restoration obligations under this
18 ordinance. Upon prior notice to the Permittee and entry of written findings that it is in the public
19 interest, the Director may, in the Director's sole discretion, conditionally or absolutely excuse the
20 Permittee from compliance with all or any of the Permittee's obligations under this section.

21 Section 6. **Repair or reconstruction.** The public art installation shall remain the
22 exclusive responsibility of the Permittee and the Permittee shall maintain the public art
23 installation in good and safe condition for the protection of the public. The Permittee shall not

1 reconstruct or repair the public art installation except in strict accordance with plans and
2 specifications approved by the Director. The Director may, in the Director's judgment, order the
3 public art installation reconstructed or repaired at the Permittee's cost and expense because of:
4 the deterioration or unsafe condition of the public art installation; the installation, construction,
5 reconstruction, maintenance, operation, or repair of any municipally-owned public utilities; or
6 for any other cause.

7 **Section 7. Failure to correct unsafe condition.** After written notice to the Permittee and
8 failure of the Permittee to correct an unsafe condition within the time stated in the notice, the
9 Director may order the public art installation be removed at the Permittee's expense if the
10 Director deems that the public art installation has become unsafe or creates a risk of injury to the
11 public. If there is an immediate threat to the health or safety of the public, a notice to correct is
12 not required.

13 **Section 8. Continuing obligations.** Notwithstanding termination or expiration of the
14 permission granted, or closure or removal of the public art installation, the Permittee shall remain
15 bound by all of its obligations under this ordinance until the Director has issued a certification
16 that the Permittee has fulfilled its removal and restoration obligations under Section 5 of this
17 ordinance. Notwithstanding the issuance of that certification, the Permittee shall continue to be
18 bound by the obligations in Section 9 of this ordinance and shall remain liable for any unpaid
19 fees assessed under Section 17 of this ordinance.

20 **Section 9. Release, hold harmless, indemnification, and duty to defend.** The
21 Permittee, by accepting the terms of this ordinance, releases the City, its officials, officers,
22 employees, and agents from any and all claims, actions, suits, liability, loss, costs, expense,
23 attorneys' fees, or damages of every kind and description arising out of or by reason of the public

1 art installation or this ordinance, including but not limited to claims resulting from injury,
2 damage, or loss to the Permittee or the Permittee's property.

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

10 (a) the existence, condition, construction, reconstruction, modification, maintenance,
11 operation, use, or removal of the public art installation or any portion thereof, or the use,
12 occupation, or restoration of the public place or any portion thereof by the Permittee or any other
13 person or entity;

14 (b) anything that has been done or may at any time be done by the Permittee by reason of
15 this ordinance; or

16 (c) the Permittee failing or refusing to strictly comply with every provision of this
17 ordinance; or arising out of or by reason of the public art installation or this ordinance in any
18 other way.

19 If any suit, action, or claim of the nature described above is filed, instituted, or begun
20 against the City, the Permittee shall upon notice from the City defend the City, with counsel
21 acceptable to the City, at the sole cost and expense of the Permittee, and if a judgment is
22 rendered against the City in any suit or action, the Permittee shall fully satisfy the judgment
23 within 90 days after the action or suit has been finally determined, if determined adversely to the

1 City. If it is determined by a court of competent jurisdiction that Revised Code of Washington
2 (RCW) 4.24.115 applies to this ordinance, then in the event claims or damages are caused by or
3 result from the concurrent negligence of the City, its agents, contractors, or employees, and the
4 Permittee, its agents, contractors, or employees, this indemnity provision shall be valid and
5 enforceable only to the extent of the negligence of the Permittee or the Permittee's agents,
6 contractors, or employees.

7 Section 10. **Insurance.** For as long as the Permittee exercises any permission granted by
8 this ordinance and until the Director has issued a certification that the Permittee has fulfilled its
9 removal and restoration obligations under Section 5 of this ordinance, the Permittee shall obtain
10 and maintain in full force and effect, at its own expense, insurance and/or self-insurance that
11 protects the Permittee and the City from claims and risks of loss from perils that can be insured
12 against under commercial general liability (CGL) insurance policies in conjunction with:

- 13 (a) construction, reconstruction, modification, operation, maintenance, use, existence, or
14 removal of the public art installation or any portion thereof, as well as restoration of
15 any disturbed areas of the public place in connection with removal of the public art
16 installation;
- 17 (b) the Permittee's activity upon or the use or occupation of the public place described in
18 Section 1 of this ordinance; and
- 19 (c) claims and risks in connection with activities performed by the Permittee by virtue of
20 the permission granted by this ordinance.

21 Minimum insurance requirements are CGL insurance written on an occurrence form at least as
22 broad as the Insurance Services Office (ISO) CG 00 01. The City requires insurance coverage to
23 be placed with an insurer admitted and licensed to conduct business in Washington State or with

1 a surplus lines carrier pursuant to chapter 48.15 RCW. If coverage is placed with any other
2 insurer or is partially or wholly self-insured, such insurer(s) or self-insurance is subject to
3 approval by the City's Risk Manager.

4 Minimum limits of liability shall be \$2,000,000 per Occurrence; \$4,000,000 General
5 Aggregate; \$2,000,000 Products/Completed Operations Aggregate, including Premises
6 Operation; Personal/Advertising Injury; Contractual Liability. Coverage shall include the "City
7 of Seattle, its officers, officials, employees and agents" as additional insureds for primary and
8 non-contributory limits of liability subject to a Separation of Insureds clause.

9 Within 60 days after the effective date of this ordinance, the Permittee shall provide to
10 the City, or cause to be provided, certification of insurance coverage including an actual copy of
11 the blanket or designated additional insured policy provision per the ISO CG 20 12 endorsement
12 or equivalent. The insurance coverage certification shall be delivered or sent to the Director or to
13 SDOT at an address as the Director may specify in writing from time to time. The Permittee shall
14 provide a certified complete copy of the insurance policy to the City promptly upon request.

15 If the Permittee is self-insured, a letter of certification from the Corporate Risk Manager
16 may be submitted in lieu of the insurance coverage certification required by this ordinance, if
17 approved in writing by the City's Risk Manager. The letter of certification must provide all
18 information required by the City's Risk Manager and document, to the satisfaction of the City's
19 Risk Manager, that self-insurance equivalent to the insurance requirements of this ordinance is in
20 force. After a self-insurance certification is approved, the City may from time to time
21 subsequently require updated or additional information. The approved self-insured Permittee
22 must provide 30 days' prior notice of any cancellation or material adverse financial condition of

1 its self-insurance program. The City may at any time revoke approval of self-insurance and
2 require the Permittee to obtain and maintain insurance as specified in this ordinance.

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

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

13 Section 12. **Performance bond.** Within 60 days after the effective date of this ordinance,
14 the Permittee shall deliver to the Director for filing with the City Clerk a sufficient bond
15 executed by a surety company authorized and qualified to do business in the State of Washington
16 that is: in the amount of \$25,000, and conditioned with a requirement that the Permittee shall
17 comply with every provision of this ordinance and with every order the Director issues under this
18 ordinance. The Permittee shall ensure that the bond remains in effect until the Director has issued
19 a certification that the Permittee has fulfilled its removal and restoration obligations under
20 Section 5 of this ordinance. An irrevocable letter of credit approved by the Director in
21 consultation with the City Attorney’s Office may be substituted for the bond. In the event that
22 the Permittee assigns or transfers the permission granted by this ordinance, the Permittee shall

1 maintain in effect the bond or letter of credit required under this section until the Director has
2 approved the assignment or transfer pursuant to Section 14 of this ordinance.

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

9 Section 14. **Consent for and conditions of assignment or transfer.** The permission
10 granted by this ordinance shall not be assignable or transferable by operation of law; nor shall the
11 Permittee transfer, assign, mortgage, pledge or encumber the same without the Director's
12 consent, which the Director shall not unreasonably refuse. The Director may approve assignment
13 or transfer of the permission granted by this ordinance to a successor entity only if the successor
14 or assignee has accepted in writing all of the terms and conditions of the permission granted by
15 this ordinance; has provided, at the time of the acceptance, the bond and certification of
16 insurance coverage required under this ordinance; and has paid any fees due under Section 17 of
17 this ordinance. Upon the Director's approval of an assignment or transfer, the rights and
18 obligations conferred on the Permittee by this ordinance shall be conferred on the successors and
19 assigns. Any person or entity seeking approval for an assignment or transfer of the permission
20 granted by this ordinance shall provide the Director with a description of the current and
21 anticipated use of the public art installation.

22 Section 15. **Inspection fees.** The Permittee shall, as provided by SMC Chapter 15.76 or
23 successor provision, pay the City the amounts charged by the City to inspect the public art

1 installation during construction, reconstruction, repair, annual safety inspections, and at other
2 times deemed necessary by the City. An inspection or approval of the public art installation by the
3 City shall not be construed as a representation, warranty, or assurance to the Permittee or any other
4 person as to the safety, soundness, or condition of the public art installation. Any failure by the
5 City to require correction of any defect or condition shall not in any way limit the responsibility or
6 liability of the Permittee.

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

9 (a) describes the physical dimensions and condition of all load-bearing elements;

10 (b) describes any damages or possible repairs to any element of the public art
11 installation;

12 (c) prioritizes all repairs and establishes a timeframe for making repairs; and

13 (d) is stamped by a professional structural engineer licensed in the State of
14 Washington.

15 In the event of a natural disaster or other event that may have damaged the public art installation,
16 the Director may require that additional reports be submitted by a date established by the
17 Director. The Permittee has the duty of inspecting and maintaining the public art installation.
18 The responsibility to submit structural inspection reports periodically or as required by the
19 Director does not waive or alter any of the Permittee's other obligations under this ordinance.
20 The receipt of any reports by the Director shall not create any duties on the part of the Director.
21 Any failure by the Director to require a report, or to require action after receipt of any report,
22 shall not waive or limit the obligations of the Permittee.

1 Section 17. **Annual fee.** Beginning on the effective date of this ordinance, and annually
2 thereafter, the Permittee shall promptly pay to the City, upon statements or invoices issued by the
3 Director, a minimum fee of \$140.00 as established by the Street Use Permit Fee Schedule, or an
4 annual fee established by the term permit fee methodology, whichever is higher, adjusted
5 annually thereafter for the privileges granted by this ordinance.

6 Adjustments to the annual fee shall be made in accordance with a term permit fee
7 schedule adopted by the City Council and may be made every year. In the absence of a schedule,
8 the Director may only increase or decrease the previous year's fee to reflect any inflationary
9 changes so as to charge the fee in constant dollar terms. This adjustment will be calculated by
10 adjusting the previous year's fee by the percentage change between the two most recent year-end
11 values available for the Consumer Price Index for the Seattle-Tacoma-Bremerton Area, All
12 Urban Consumers, All Products, Not Seasonally Adjusted. All payments shall be made to the
13 City Finance Director for credit to the Transportation Operating Fund.

14 Section 18. **Compliance with other laws.** Permittee shall construct, maintain and operate
15 the public art installation in compliance with all applicable federal, state, County and City laws
16 and regulations. Without limitation, in all matters pertaining to the public art installation, the
17 Permittee shall comply with the City's laws prohibiting discrimination in employment and
18 contracting including the Seattle Fair Employment Practices Ordinance, SMC Chapter 14.04, and
19 the Fair Contracting Practices code, SMC Chapter 14.10 (or successor provisions).

20 Section 19. **Acceptance of terms and conditions.** The Permittee shall deliver to the
21 Director its written signed acceptance of the terms of this ordinance within 60 days after the
22 effective date of this ordinance. The Director shall file the written acceptance with the City
23 Clerk. If no such acceptance is received within that 60-day period, the privileges conferred by

1 this ordinance shall be deemed declined or abandoned and the permission granted deemed lapsed
2 and forfeited and the Permittee shall, at its own expense, remove the public art installation and
3 all of the Permittee's equipment and property and replace and restore all portions of the public
4 place as provided in Section 5 of this ordinance.


5 Section 20. **Obligations run with the Property.** The obligations and conditions
6 imposed on the Permittee by and through this ordinance are covenants that run with the land and
7 bind subsequent owners of the property adjacent to the public art installation and legally
8 described in Section 1 of this ordinance (the "Property"), regardless of whether the Director has
9 approved assignment or transfer of the permission granted herein to such subsequent owner(s).
10 At the request of the Director, Permittee shall provide to the Director a current title report
11 showing the identity of all owner(s) of the Property and all encumbrances on the Property. The
12 Permittee shall, within 60 days of the effective date of this ordinance, and prior to conveying any
13 interest in the Property, deliver to the Director upon a form to be supplied by the Director, a
14 covenant agreement imposing the obligations and conditions set forth in this ordinance, signed
15 and acknowledged by the Permittee and any other owner(s) of the Property and recorded with the
16 King County Recorder's Office. The Director shall file the recorded covenant agreement with the
17 City Clerk. The covenant agreement shall reference this ordinance by its ordinance number. At
18 the request of the Director, Permittee shall cause encumbrances on the Property to be
19 subordinated to the covenant agreement.

20 Section 21. **Section titles.** Section titles are for convenient reference only and do not
21 modify or limit the text of a section.
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Section 22. This ordinance shall take effect and be in force 30 days after its approval by the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.

Passed by the City Council the 25th day of July, 2016, and signed by me in open session in authentication of its passage this 25th day of July, 2016.




President _____ of the City Council

Approved by me this 28th day of July, 2016.



Edward B. Murray, Mayor

Filed by me this 29th day of July, 2016.



Monica Martinez Simmons, City Clerk

