Legislation Details (With Text)

File #:	CB 119007 **Version:** 1	**Name:**	CB 119007
Type:	Ordinance (Ord)	**Status:**	Passed
		In control:	City Clerk
On agenda:	7/17/2017		
Final Action:	7/21/2017	**Ord. No.**	Ord 125351
Title:	AN ORDINANCE granting Bike Path 1, LLC permission to operate and maintain a portion of an existing one-story commercial building on a portion of Northeast 45th Street, west of 38th Avenue Northeast, 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.		
Sponsors:	Mike O'Brien		
Indexes:			
Attachments:	1. Summary and Fiscal Note, 2. Summary Att A – Bike Path 1, LLC Area Map, 3. Summary Att B – Annual Fee Assessment Summary, 4. Presentation (7/7/17), 5. Signed Ordinance 125351, 6. Affidavit of Publication		

Date	Ver.	Action By	Action	Result
7/21/2017	1	City Clerk	attested by City Clerk	
7/21/2017	1	Mayor	Signed	
7/21/2017	1	Mayor	returned	
7/19/2017	1	City Clerk	submitted for Mayor's signature	
7/17/2017	1	City Council	passed	Pass
7/7/2017	1	Sustainability and Transportation Committee	pass	Pass
6/26/2017	1	City Council	referred	
6/16/2017	1	Council President's Office	sent for review	
6/13/2017	1	City Clerk	sent for review	
6/13/2017	1	Mayor	Mayor's leg transmitted to Council	

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL _____

AN ORDINANCE granting Bike Path 1, LLC permission to operate and maintain a portion of an existing one-story commercial building on a portion of Northeast 45th Street, west of 38th Avenue Northeast, 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, Bike Path 1, LLC has applied for permission to operate and maintain a portion of

an existing one-story commercial building on a portion of Northeast 45th Street, west of 38th Avenue Northeast; and

WHEREAS, Bike Path 1, LLC owns an existing commercial structure that occupies approximately 310 square feet of a portion of Northeast 45th Street, west of 38th Avenue Northeast; 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 Bike Path 1, LLC, and its successors and assigns as approved by the Director of the Seattle Department of Transportation (Director) according to Section 14 of this ordinance (the party named above and each such approved successor and assign is referred to as "Permittee"), to operate and maintain an existing one-story commercial building, including all related appurtenances (collectively referred to as "existing building encroachment"), adjacent in whole or in part to the property legally described as:

THAT PORTION OF THE BURLINGTON NORTHERN, INC'S FORMER RIGHT OF WAY FOR ITS SUMAS BRANCH IN THE SW QUARTER OF THE SW QUARTER I SECTION 10, TOWNSHIP 25 NORTH, RANGE 4 EAST, W.M., IN KING COUNTY, WASHINGTON LYING BETWEEN LINES CONCENTRIC WITH AND DISTANT RESPECTIVELY 9 FEET AND 50 FEET SOUTHERLY, MEASURED RADIALLY, FROM THE CENTERLINE OF GRANTOR'S MAIN TRACK FOR SAID BRANCH AS NOW CONSTRUCTED AND BETWEEN LINES EXTENDING RADIALLY FROM SAID CENTERLINE FROM POINTS THEREIN DISTANT 381.1 FEET AND 456.1 FEET EASTERLY MEASURED ALONG SAID CENTERLINE FROM THE WEST LINE OF SAID SECTION 10.

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

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

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

(a) the City Council determines by ordinance that the space occupied by the existing building encroachment is necessary for any public use or benefit or that existing building encroachment interferes with any public use or benefit; or

(b) the Director determines that use of the existing building encroachment has been abandoned; or

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

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

Section 5. **Permittee's obligation to remove and restore.** If the permission granted is not renewed at the expiration of a term, or if the permission expires without an application for a new permission being granted,

or if the City terminates the permission, then within 90 days after the expiration or termination of the permission, or prior to any earlier date stated in an ordinance or order requiring removal of the existing building encroachment, the Permittee shall, at its own expense, remove the existing building encroachment and all of the Permittee's equipment and property from the public place and replace and restore all portions of the public place that may have been disturbed for any part of the existing building encroachment in as good condition for public use as existed prior to construction of the existing building encroachment and in at least as good condition in all respects as the abutting portions of the public place as required by Seattle Department of Transportation (SDOT) right-of-way restoration standards.

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

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

Section 6. **Repair or reconstruction.** The existing building encroachment shall remain the exclusive responsibility of the Permittee and the Permittee shall maintain the existing building encroachment in good and safe condition for the protection of the public. The Permittee shall not reconstruct or repair the existing building encroachment except in strict accordance with plans and specifications approved by the Director. The Director

may, in the Director's judgment, order the existing building encroachment reconstructed or repaired at the Permittee's cost and expense because of: the deterioration or unsafe condition of the existing building encroachment the installation, construction, reconstruction, maintenance, operation, or repair of any municipally-owned public utilities; or for any other cause.

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

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

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

The Permittee agrees to at all times defend, indemnify, and hold harmless the City, its officials, officers, employees, and agents from and against all claims, actions, suits, liability, loss, costs, expense, attorneys' fees, or damages of every kind and description, excepting only damages that may result from the sole negligence of the City, that may accrue to, be asserted by, or be suffered by any person or property including, without

limitation, damage, death, or injury to members of the public or to the Permittee's officers, agents, employees, contractors, invitees, tenants, tenants' invitees, licensees, or successors and assigns, arising out of or by reason of:

(a) the existence, condition, construction, reconstruction, modification, maintenance, operation, use, or removal of the existing building encroachment or any portion thereof, or the use, occupation, or restoration of the public place or any portion thereof by the Permittee or any other person or entity;

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

(c) the Permittee failing or refusing to strictly comply with every provision of this ordinance; or arising out of or by reason of the existing building encroachment or this ordinance in any other way.

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

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

conjunction with:

(a) construction, reconstruction, modification, operation, maintenance, use, existence, or removal of the existing building encroachment or any portion thereof, as well as restoration of any disturbed areas of the public place in connection with removal of the existing building encroachment;

(b) the Permittee's activity upon or the use or occupation of the public place described in Section 1 of this ordinance; and

(c) claims and risks in connection with activities performed by the Permittee by virtue of the permission granted by this ordinance.

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

Minimal limits of liability shall be: General Liability: $2,000,000 combined single limit per occurrence for bodily injury, personal injury, and property damage, and $4,000,000 aggregate limit. CG 00 01 current edition, including Products and Completed Operations covering Commercial General Liability. Coverage shall name the "City of Seattle, its elected and appointed officers, officials, employees and agents" as additional insureds for primary and non-contributory limits of liability subject to a Separation of Insureds clause.

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

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

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

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

Section 12. **Performance bond.** Within 60 days after the effective date of this ordinance, the Permittee shall deliver to the Director for filing with the City Clerk a sufficient bond executed by a surety company authorized and qualified to do business in the State of Washington that is: in the amount of $140,000, and conditioned with a requirement that the Permittee shall comply with every provision of this ordinance and with every order the Director issues under this ordinance. The Permittee shall ensure that the bond remains in effect until the Director has issued a certification that the Permittee has fulfilled its removal and restoration

obligations under Section 5 of this ordinance. An irrevocable letter of credit approved by the Director in consultation with the City Attorney's Office may be substituted for the bond. In the event that the Permittee assigns or transfers the permission granted by this ordinance, the Permittee shall maintain in effect the bond or letter of credit required under this section until the Director has approved the assignment or transfer pursuant to Section 14 of this ordinance.

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

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

Section 15. **Inspection fees.** The Permittee shall, as provided by SMC Chapter 15.76 or successor provision, pay the City the amounts charged by the City to inspect the existing building encroachment during construction, reconstruction, repair, annual safety inspections, and at other times deemed necessary by the City.

An inspection or approval of the existing building encroachment by the City shall not be construed as a representation, warranty, or assurance to the Permittee or any other person as to the safety, soundness, or condition of the existing building encroachment. Any failure by the City to require correction of any defect or condition shall not in any way limit the responsibility or liability of the Permittee.

Section 16. **Inspection reports.** Within 60 days after the effective date of this ordinance, the Permittee shall submit to the Director, or to SDOT at an address specified by the Director, an inspection report that:

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

(b) describes any damages or possible repairs to any element of the existing building encroachment;

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

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

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

Section 17. **Annual fee.** Beginning on the effective date of this ordinance, and annually thereafter, the Permittee shall promptly pay to the City, upon statements or invoices issued by the Director, an annual fee of $2,582.53 or as adjusted annually thereafter, for the privileges granted by this ordinance.

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

between the two most recent year-end values available for the Consumer Price Index for the Seattle-Tacoma-Bremerton Area, All Urban Consumers, All Products, Not Seasonally Adjusted. All payments shall be made to the City Finance Director for credit to the Transportation Operating Fund.

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

Section 19. **Acceptance of terms and conditions.** The Permittee shall deliver to the Director its written signed acceptance of the terms of this ordinance within 60 days after the effective date of this ordinance. The Director shall file the written acceptance with the City Clerk. If no such acceptance is received within that 60-day period, the privileges conferred by this ordinance shall be deemed declined or abandoned and the permission granted deemed lapsed and forfeited and the Permittee shall, at its own expense, remove the existing building encroachment and all of the Permittee's equipment and property and replace and restore all portions of the public place as provided in Section 5 of this ordinance.

Section 20. **Obligations run with the Property.** The obligations and conditions imposed on the Permittee by and through this ordinance are covenants that run with the land and bind subsequent owners of the property adjacent to the existing building encroachment and legally described in Section 1 of this ordinance (the "Property"), regardless of whether the Director has approved assignment or transfer of the permission granted herein to such subsequent owner(s). At the request of the Director, Permittee shall provide to the Director a current title report showing the identity of all owner(s) of the Property and all encumbrances on the Property. The Permittee shall, within 60 days of the effective date of this ordinance, and prior to conveying any interest in the Property, deliver to the Director upon a form to be supplied by the Director, a covenant

agreement imposing the obligations and conditions set forth in this ordinance, signed and acknowledged by the Permittee and any other owner(s) of the Property and recorded with the King County Recorder's Office. The Director shall file the recorded covenant agreement with the City Clerk. The covenant agreement shall reference this ordinance by its ordinance number. At the request of the Director, Permittee shall cause encumbrances on the Property to be subordinated to the covenant agreement.

Section 21. **Section titles.** Section titles are for convenient reference only and do not modify or limit the text of a section.

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 _____ day of _____, 2017, and signed by me in open session in authentication of its passage this _____ day of _____, 2017.

_____

President _____ of the City Council

Approved by me this _____ day of _____, 2017.

_____

Edward B. Murray, Mayor

Filed by me this _____ day of _____, 2017.

_____

Monica Martinez Simmons, City Clerk

(Seal)