



SEATTLE CITY COUNCIL

Transportation and Seattle Public Utilities

Agenda

Tuesday, April 5, 2022

9:30 AM

Remote Meeting. Call 253-215-8782; Meeting ID: 586 416 9164; or
Seattle Channel online.

Alex Pedersen, Chair
Dan Strauss, Vice-Chair
Lisa Herbold, Member
Tammy J. Morales, Member
Kshama Sawant, Member

Chair Info: 206-684-8804; Alex.Pedersen@seattle.gov

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<http://seattle.gov/cityclerk/accommodations>.



SEATTLE CITY COUNCIL
Transportation and Seattle Public Utilities
Agenda
April 5, 2022 - 9:30 AM

Meeting Location:

Remote Meeting. Call 253-215-8782; Meeting ID: 586 416 9164; or Seattle Channel online.

Committee Website:

<https://www.seattle.gov/council/committees/transportation-and-seattle-public-utilities>

This meeting also constitutes a meeting of the City Council, provided that the meeting shall be conducted as a committee meeting under the Council Rules and Procedures, and Council action shall be limited to committee business.

Pursuant to Washington State Governor's Proclamation No. 20-28.15 and Senate Concurrent Resolution 8402, this public meeting will be held remotely. Meeting participation is limited to access by the telephone number provided on the meeting agenda, and the meeting is accessible via telephone and Seattle Channel online.

Register online to speak during the Public Comment period at the 9:30 a.m. Transportation and Seattle Public Utilities Committee meeting at <http://www.seattle.gov/council/committees/public-comment>.

Online registration to speak at the Transportation and Seattle Public Utilities Committee meeting will begin two hours before the 9:30 a.m. meeting start time, and registration will end at the conclusion of the Public Comment period during the meeting. Speakers must be registered in order to be recognized by the Chair.

Submit written comments to Councilmember Pedersen at Alex.Pedersen@seattle.gov

Sign-up to provide Public Comment at the meeting at <http://www.seattle.gov/council/committees/public-comment>

Watch live streaming video of the meeting at <http://www.seattle.gov/council/watch-council-live>

Listen to the meeting by calling the Council Chamber Listen Line at 253-215-8782 Meeting ID: 586 416 9164

One Tap Mobile No. US: +12532158782,,5864169164#

Please Note: Times listed are estimated

A. Call To Order

B. Approval of the Agenda

C. Public Comment

D. Items of Business

1. [CB 120282](#) AN ORDINANCE vacating a portion of the alley in Block 6, A.A. Denny's Second Addition, in the block bounded by University Street, 1st Avenue, Seneca Street, and 2nd Avenue, in Downtown, and accepting a Property Use and Development Agreement, on the petition of HS 2U Owner, LLC (Clerk File 314320).

Attachments: [Ex 1 - Property Use and Development Agreement](#)

Supporting

Documents: [Summary and Fiscal Note](#)
[Summary Att A - Block 6 Vacation Area Map](#)
[Central Staff Memo](#)
[Presentation](#)

Briefing, Discussion, and Possible Vote

Presenter for Agenda Items 1 and 2: Lish Whitson, Council Central Staff

2. [CB 120281](#) 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.

Supporting

Documents:

[Summary and Fiscal Note](#)

[Summary Att A - Private Parking Area Map](#)

[Summary Att B - Street Use Annual Fee Assessment](#)

[Central Staff Memo](#)

[Presentation](#)

Briefing, Discussion, and Possible Vote

3. [CB 120290](#) AN ORDINANCE granting The Boeing Company permission to continue maintaining and operating two pedestrian tunnels under and across 16th Avenue South, 565 feet south of East Marginal Way South, and under and across East Marginal Way South, 510 feet east of 16th Avenue South; repealing Section 8 of Ordinance 123540; and providing for acceptance of the permit and conditions.

Supporting

Documents:

[Summary and Fiscal Note](#)

[Summary Att A - Boeing Tunnels Area Map](#)

[Summary Att B - Boeing Tunnels Photos](#)

[Summary Att C - Annual Fee Assessment](#)

[Central Staff Memo](#)

[Presentation](#)

Briefing, Discussion, and Possible Vote

Presenters: Amy Gray, Seattle Department of Transportation (SDOT);
Lish Whitson, Council Central Staff

4. [CB 120291](#) **AN ORDINANCE relating to rates and charges for water services of Seattle Public Utilities; revising water rates and charges for certain customers; and amending Seattle Municipal Code Section 21.04.440.**

*Supporting
Documents:* [Summary and Fiscal Note
Presentation](#)

Briefing, Discussion, and Possible Vote

Presenters: Paula Laschober and Paul Hanna, Seattle Public Utilities;
Brian Goodnight, Council Central Staff

E. Adjournment



Legislation Text

File #: CB 120282, **Version:** 1

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL _____

AN ORDINANCE vacating a portion of the alley in Block 6, A.A. Denny’s Second Addition, in the block bounded by University Street, 1st Avenue, Seneca Street, and 2nd Avenue, in Downtown, and accepting a Property Use and Development Agreement, on the petition of HS 2U Owner, LLC (Clerk File 314320).

WHEREAS, SCD 2U LLC, filed a petition under Clerk File 314320 to vacate a portion of the alley in Block 6, A.A. Denny’s Second Addition, in the block bounded by University Street, 1st Avenue, Seneca Street, and 2nd Avenue; and

WHEREAS, HS 2U Owner, LLC (“Petitioner”) is the successor in interest and the current Petitioner; and

WHEREAS, following a September 14, 2016, public hearing on the petition, the Seattle City Council (“City Council”) conditionally granted the petition on September 26, 2016; and

WHEREAS, a Property Use and Development Agreement recorded on August 27, 2021, with the King County Recorder’s Office under Recording No. 20210827002417 commits the Petitioner and their successors to fulfill ongoing public-benefit obligations required as part of the vacation; and

WHEREAS, as provided for in Section 35.79.030 of the Revised Code of Washington (RCW) and Seattle Municipal Code Chapter 15.62, the Petitioner has paid the City a vacation fee of \$3,640,000 on June 18, 2019, which is the full appraised value of the property; and

WHEREAS, the Petitioner has met all conditions imposed by the City Council in connection with the vacation petition; and

WHEREAS, vacating a portion of the alley in Block 6, A.A. Denny’s Second Addition, is in the public interest;

NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. A portion of the alley in Block 6, A.A. Denny’s Second Addition, described below, is vacated:

The portion of the alley adjacent to Lots 5 through 8, and adjacent to the south 40 feet of Lots 3 and 4 in Block 6, A.A. Denny’s Second Addition to the City of Seattle, recorded in Volume 1 of Plats, page 30, Records of King County, Washington, with is the block bounded by University Street, 1st Avenue, Seneca Street, and 2nd Avenue (Clerk File 314320).

Section 2. The Property Use and Development Agreement, King County Recording No.

20210827002417, attached as Exhibit 1 to this ordinance is accepted.

Section 3. 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 _____, 2022, and signed by me in open session in authentication of its passage this ____ day of _____, 2022.

President _____ of the City Council

Approved / returned unsigned / vetoed this ____ day of _____, 2022.

Bruce A. Harrell, Mayor

Filed by me this _____ day of _____, 2022.

Monica Martinez Simmons, City Clerk


(Seal)

Attachments:

Exhibit 1 - Property Use and Development Agreement

When Recorded, Return to:
McCullough Hill Leary, P.S.
Attn: Jessie Clawson
701 5th Avenue, Suite 6600
Seattle, WA 98104

PROPERTY USE AND DEVELOPMENT AGREEMENT

Grantor:	HS 2U Owner, LLC, a Delaware Limited Liability Company
<input type="checkbox"/> Additional on page	
Grantee:	City of Seattle
<input type="checkbox"/> Additional on page	
Legal Description (abbreviated):	LOTS 2, 3, 4, 6, 7 AND 8, BLOCK 6, A.A. DENNY'S 2 ND ADD., CITY OF SEATTLE, VOL 1, P. 30 PLATS, KING COUNTY, WASHINGTON
<input checked="" type="checkbox"/> Additional on:	Exhibit A
Assessor's Tax Parcel ID #:	1974700175, 1974700190, 1974700210
Reference Nos. of Documents Released or Assigned:	N/A

PROPERTY USE AND DEVELOPMENT AGREEMENT

THIS AGREEMENT is executed this date in favor of the City of Seattle, a municipal corporation ("City"), by HS 2U OWNER, LLC, a Delaware limited liability company ("2U").

WHEREAS, SCD 2U LLC, a predecessor in interest to 2U, filed a petition in Clerk File 314320 for the vacation of a portion of the alley adjacent to Lots 5 through 8, and adjacent to the south 40 feet of Lots 3 and 4 in Block 6, A.A. Denny's Second Addition to the City of Seattle, recorded in Volume 1 of Plats, page 30, Records of King County Washington, which petition was considered under Chapter 35.79 of the Revised Code of Washington and Chapter 15.62 of the Seattle Municipal Code; and

WHEREAS, on September 14, 2016, the Sustainability and Transportation Committee of the Seattle City Council held a public hearing on the vacation petition; and

WHEREAS, on September 26, 2016, the Seattle City Council granted preliminary approval of the vacation petition, subject to conditions; and

WHEREAS, SCD 2U LLC completed development activity authorized under the alley vacation approval before September 26, 2021;

WHEREAS, 2U is the current owner of the building and associated improvements (the "Property") existing on the land legally described on Exhibit A attached hereto (the "Land"); and

WHEREAS, 2U is executing this Property Use and Development Agreement (the "Agreement" or "PUDA") to ensure compliance with any on-going conditions of the vacation approval subsequent to passage of the vacation ordinance; and

NOW, THEREFORE, 2U covenants, bargains, and agrees on behalf of themselves, their successors, and assigns as follows:

Section 1. The conditions passed by the City Council on September 26, 2016 specified the following conditions of approval:

- A. The vacation is granted to allow the Petitioner to build a project substantially in conformity with the project presented to the City Council and for no other purpose. The project must be substantially in conformity with the proposal reviewed by the Sustainability & Transportation Committee in September of 2016.
- B. All street improvements shall be designed to City standards, as modified by these conditions to implement the public benefit requirements, and be reviewed and approved by the Seattle Department of Transportation; elements of the street improvement plan and required street improvements to be reviewed include:

Street improvement plan showing sidewalks, street trees, bike racks, street furniture, lighting, art or artist-made elements, and landscaping around the site and the off-site public benefit features, including but not limited to, these specific elements:

- Alley design and turnaround, including materials and signage;
- Setbacks and landscaping on 1st Avenue, Seneca Street, 2nd Avenue, and University; and
- Plantings, street furniture, seating or wayfinding in the right-of-way.

C. The utility issues shall be resolved to the full satisfaction of the affected utility prior to the approval of the final vacation ordinance. The Petitioner shall ensure there is no disruption in utility services for the adjacent Diller Hotel. Prior to the commencement of any development activity on the site, Petitioner shall work with the affected utilities and provide for the protection of the utility facilities. This may include easements, restrictive covenants, relocation agreements, or acquisition of the utilities, which shall be at the sole expense of the Petitioner. Utilities impacted include:

- Seattle City Light;
- Seattle Public Utilities;
- Enwave;
- King County Metro;
- Puget Sound Energy; and
- CenturyLink Communications.



D. It is expected that development activity will commence within approximately 2 years of this approval and that development activity will be completed within 5 years. In order to ensure timely compliance with the conditions imposed by the City Council the Petitioner shall provide the Seattle Department of Transportation with Quarterly Reports, following Council approval of the vacation, providing an update on the development activity, schedule, and progress on meeting the conditions. The Petitioner shall not request or be issued a Final Certificate of Occupancy (C of O) for the project until SDOT has determined that all conditions have been satisfied and all fees have been paid as applicable.

E. Access to the buildings shall be provided for as follows, changes to this proposal shall require the review of SDOT: two driveways on Seneca Street are allowed with one providing an in/out driveway to the parking garage and one providing in/out access to the truck loading dock. In addition, the remaining public alley and turnaround provide access to the Diller building.

- F. In addition to the conditions imposed through the vacation process, the project, as it proceeds through the permitting process, is subject to SEPA review and to conditioning pursuant to various City codes and through regulatory review processes including SEPA.
- G. Free speech activities such as hand billing, signature gathering, and holding signs, all without obstructing access to the space, the building, or other adjacent amenity features, and without unreasonably interfering with the enjoyment of the space by others, shall be allowed within these vacation public benefit features. While engaged in allowed activities, members of the public may not be asked to leave for any reason other than conduct that unreasonably interferes with the enjoyment of the space by others. Signage clearly identifying public access and allowed free speech activities is required at the public open space elements and shall require the review and approval of SDOT Street Vacations. Signage shall be consistent with signage provided for public amenity space, if any, on the site. Any violation of these conditions will be enforced through Chapter 15.90 of the Seattle Municipal Code.
- H. The Petitioner shall develop and maintain the public benefit elements as defined by the City Council. A Property Use and Development (PUDA) or other binding mechanism shall be required to ensure that the public benefit elements remain open and accessible to the public and shall establish the hours of public access for the various public benefit spaces, with temporary closures permitted for reasons such as maintenance, safety, or private functions and to outline future maintenance obligations of the improvements. A plan for programming and use of the art spaces shall be completed and included with the PUDA or by separate agreement that binds future building owners to the obligations of the plan. Such plan shall address program commitments and costs, outreach and engagement for disadvantaged communities, management, reporting obligations, and oversight. The plan shall make provision for a briefing and program review for the City Council at year three of operations or as determined in the plan. Signage shall be provided as described in Condition 7. The final design of the public benefit elements shall require the review and approval of SDOT Street Vacations. SDOT may request additional review by the Design Commission or Administrative Review of the implementation of the public benefit elements in the right-of-way require additional SIP review, street use permits and indemnification; public and private areas must be clearly distinguished and markers in the sidewalk shall be required. The public benefit requirements include the following features as well as corresponding development standards, including approximate square footage dimensions, which shall be outlined in the PUDA:

Public benefit chart:

Public Benefit	Location/Description	Code Req.	Public Benefit	Total	Est. Value
A. Central Plaza	Central covered plaza with seating, bike infrastructure, upgraded materials and adjacent retail, open during park hours	650 SF	5910 SF	6560 SF	\$3,368,700
B. Bike Dock	Bicycle infrastructure and laydown area	None	2520 SF	2520 SF	\$1,436,400
C. Pedestrian Amenities	Individual seats, benches, and seat steps Drinking fountain	(MUP) None	82 Seats 1 Unit	82 Seats 1 Unit	\$350,000 \$5,000
D. Event Infrastructure	Infrastructure to support events within the central plaza (electricity, water)	None			\$275,000
E. Overlook	Playful seating, site furnishings designed with children + families in mind	None	5930 SF	5930 SF	\$3,380,100
F. On-Site Trees	On-site trees	None	15 Trees	15 Trees	\$58,800
Public Benefit	Location/Description	Code Req.	Public Benefit	Total	Est. Value
G. 1 st Avenue Setback	Generous streetscape with seating, bike parking and covered walkway	None	124' x 20'	2480 SF	\$1,413,600
H. Northeast Corner Plaza Setback	Corner plaza between north end of lobby and small retail on University St.	700 SF	35' x 17'	1320 SF	\$353,400
I. Southeast Stoop Setback	Large covered seating and gathering setback from 2 nd Ave.	None	46' x 15'	690 SF	\$441,600
J ROW Planting	High quality trees, soil and irrigation within ROW	640 SF	1245 SF	1885 SF	\$55,000
K ROW Seating	Seating and benches	None	12 Seats	12 Seats	\$28,000
L ROW Bike Parking	Elegant, secure and durable bike racks within the ROW	None	15 Racks	30 Bike Stalls	\$5,250
M Performance Triangle	Flexible gallery/production/performance space provided rent-free to emerging artists	None	835 SF	835 SF	\$613,725
N The Studio	Small, visible studio for artists or musicians to perform, record and display rent-free	None	290 SF	290 SF	\$213,150
O 1 st Avenue	Hill climb assist connects 1 st	None	1	1	\$25,000

Elevator	and 2 nd Avenues and is accessible to all, open during park hours		Elevator	Elevator	
P 2 nd Avenue Elevator	See above	None	1 Elevator	1 Elevator	\$25,000
Q Bike Racks	Bike Racks (2 bikes per unit), 5 (exterior) units on site	None	5 Racks	10 Bike Stalls	\$1,750
R Electric Bike Charging Station	Incorporated into the Plaza bike infrastructure for public access	None	1 unit	1 unit	\$4,000
S Electric Bike Charging Station Fix-It repair stand	Repair + air-pump station in Plaza, visible + accessible from ROW	None	1 Unit	1 Unit	\$1,500

- I. The replacement of any of the Public Benefits shall be of similar quality in design and materials as the original. Significant changes to the streetscape or the required Public Benefits shall require prior approval by the Seattle Department of Transportation. Modified features shall maintain a substantially similar quality and character to the existing required design features.

Section 2. The development project currently on-site, as implemented by Master Use Permit number 3019177-LU, as amended, and building permits 6472029-PH and 6532759-CN, has constructed the “Public Benefits” outlined in Section 1 in the following manner, and as depicted in Exhibit B. The following Public Benefits, as constructed, are acceptable to the City:

- A. The Central Plaza was increased by 625 square feet due to changes in building setbacks, resulting in a 7,185 s.f. Central Plaza. Otherwise, the Central Plaza remains as depicted to the City Council.
- B. The 2520 s.f. Bike Dock was constructed in the manner depicted to the City Council.
- C. The drinking fountain was constructed in the Central Plaza near the southern stairs leading from 1st Avenue. The pedestrian seating opportunities were increased from 82 seats as depicted to City Council to 134 seats due to an internal decision to provide more opportunities for different types of seating and gathering within open spaces.
- D. The event infrastructure in the plaza was constructed. It consists of an electrical switch with connections to electrical power at various amperages and data, sufficient to power a small stage, associate lighting and audio/visual equipment.
- E. The 5,930 s.f. Overlook was constructed as depicted to City Council. It includes “playful” furnishings including “bouncy” flooring and family-friendly seating and elements.
- F. Fourteen on-site trees were planted, a reduction of one tree from the City Council presentation. Two smaller pine trees were replaced with one large specimen Japanese

- Maple for significant immediate impact and destination marker. The Japanese Maple is planted adjacent to the Overlook.
- G. Minor changes were made to setbacks related to the 1st Avenue Promenade. The Promenade was reduced by 893 s.f., resulting in a total promenade of 1,587 s.f. The reason for these minor changes were: (a) the public stair extended further to the west, making it more inviting for the public; (b) the retail seating area wall moved further north to help resolve ADA grade issues for access into the southwest corner retail; (c) the west façade moved slightly west to bring the retail façade closer to the street for a more enlivened streetscape; and (d) the west core façade moved closer to the street to allow for a bit more lobby space that would better activate the streetscape.
 - H. The Front Deck gained 135 s.f. due to minor building changes, but other than this minor change exists as depicted to the City Council. The final Front Deck area is 730 s.f.
 - I. The Entry Porch gained 355 s.f. but other than this minor change exists as depicted to the City Council. The final Entry Porch area is 1045 s.f.
 - J. The right-of-way planting was reduced by 354 s.f. due to SDOT direction during the Street Improvement Permit process to change the proposed tree species and layouts, which impacted the final planting bed dimensions. The final right-of-way planting area is 894 s.f.
 - K. The right-of-way seating increased from 12 seats to 28 seats (addition of 16 seats) due to an internal decision to provide additional seating and gathering opportunities in the right-of-way.
 - L. Fifteen bike racks in the right-of-way were provided, as depicted to the City Council.
 - M. At the direction of the Office of Arts and Culture and an arts programming consultant, the performance triangle was combined with the studio space so that it may function more effectively for more diverse art uses in a single, larger location. The initial idea for the performance triangle was a recording studio, but due to the volume of glass this was not acoustically possible. The previous square footages were 835 s.f. for the performance triangle, and 290 s.f. for the studio space (1125 s.f. total). With the combination of the two spaces, and the expansion, the rent-free arts space now totals 1,183 s.f., a net increase of 58 s.f.
 - N. Please see above regarding the studio space combination.
 - O. The 1st Avenue Elevator was constructed and is open during business hours.
 - P. The 2nd Avenue Elevator was constructed and is open during business hours.
 - Q. Five bike racks in the right-of-way were constructed.
 - R. One e-bike charging station was constructed.
 - S. One bike fix-it repair stand was constructed.

Section 3. A programming plan for the studio space is attached to this PUDA, as required by the City Council, as Exhibit C. The programming plan is intended to be a living document and amended or modified to ensure the art space is well-used and programmed for the life of the building. Amending the programming plan does not require amending this PUDA.

Section 4. 2U shall have the reasonable right to temporarily close, obstruct, limit access, or establish temporary hours of public access to the Public Benefits areas for: (1) construction, provided that any removed or permanently closed areas shall be replaced by 2U to

the satisfaction of the City before the area is removed or permanently closed; (2) maintenance and repair; (3) temporary use for private functions by 2U, tenants or other occupants of the Property and users of The Studio; (4) the maintenance of or security for the development or persons using the development; (5) other circumstances beyond 2U's control; or (6) as 2U reasonably deems necessary to comply with any applicable law, regulation or order.

Section 5. 2U may adopt reasonable rules and regulations regarding the use of and access to the Public Benefits. The rules and regulations shall be consistent with this Agreement. A summary of the current rules and regulations, if rules are adopted, shall be posted in several visible locations.

Section 6. Free speech activities such as passing out of leaflets or brochures, signature gathering, and individuals holding signs, all without physically obstructing access to the Property or to other adjacent amenity features, and without unreasonably interfering with the use and enjoyment of the Property, shall be allowed within the Public Benefit areas described in this Agreement. Nothing herein allows the posting of signs, painting, graffiti or pasting signs or handbills onto any improvements on the Land. 2U may remove and dispose of any signs or other property left on the Land. While lawfully engaged in allowed activities that do not interfere with use and enjoyment of the Property by others, members of the public may not be asked to leave because of their involvement with the allowed activities. Any violation of this Section may be enforced through Chapter 23.90 of the Seattle Municipal Code. Signage to this effect, as required by the City Council's conditional approval, is posted on the Property.

Section 7. This Agreement may be amended or modified by agreement between 2U and the City; provided any such amendment, per Council rules, shall be subject to approval by the City Council by ordinance. Nothing in this Agreement shall be construed as a surrender of the City's governmental powers.

Section 8. 2U reserves the right to use the Public Benefits areas for any purpose which does not interfere with the public's use rights established hereunder, including but not limited to the right to use the areas as described in this Agreement for 2U's purposes (including the right to use the areas by 2U's tenants, subtenants and other occupants), and the right to grant easements, provided the easements are consistent with the public's use rights established hereunder.

Section 9. Nothing in this Agreement shall constitute a public dedication of any portion of the Property or the Land or impose any restriction on any part of the Property or the Land other than the areas designated for the Public Benefits.

Section 10. The legal description of the Land on which the Property is located is set forth in Exhibit A to this Agreement, which is incorporated into this Agreement. An executed copy of this Agreement shall be recorded in the records of King County and the covenants contained herein shall attach to and run with title to the Property.

Section 11. This PUDA is made for the benefit of the City and the public. The City may institute and prosecute any proceeding at law or in equity to enforce this PUDA.

Section 12. If any covenant, condition, or restriction in this instrument or any portion is invalidated or voided, the invalidity or voidness shall in no way affect any other covenant, condition, or restriction.

Section 13. Upon the effective date of the vacation ordinance, 2U shall provide and thereafter maintain in full force and effect, commercial general liability insurance providing for a limit of not less than \$1,000,000 per occurrence for damages arising out of bodily injuries or death. The insurance policies obtained shall be issued by companies authorized to conduct business in Washington State and shall name the City as an additional insured. 2U shall provide evidence of insurance to the City Risk Manager at the City's reasonable request.

Section 14. 2U covenants and agrees to defend, indemnify, and hold harmless the City of Seattle, its officials, officers, employees, and agents from all liabilities, claims, causes of action, judgments, or expenses, including reasonable attorney fees and necessary litigation expenses, resulting from any actual or alleged bodily injury including death or actual or alleged damage to property arising out of or in connection with the use or occupation of the Public Benefits during the term of its building ownership. Upon any transfer of building ownership, this obligation shall be binding on all successors and assigns. The indemnification obligations under this Agreement do not apply to any liabilities, claims, causes of action, judgments or expenses resulting from bodily injury or property damage caused by the negligence or intentional acts of the public or the City, or the City's officers, employees, elected officials, agents, or subcontractors.

Section 15. This Agreement shall be binding on 2U's successors and assigns. 2U and each future owner of the Property shall be bound to this Agreement only during the period of its ownership.


[Remainder of page intentionally left blank – Signature page follows]

DATED this 19th day of August, 2021.

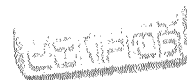
HS 2U Owner, LLC, a Delaware limited liability company

By: HS 2U JV, LLC, a Delaware limited liability company
Its: Managing Member

By: HS 2U REIT, LLC, a Delaware limited liability company
Its: Managing Member

By: 
Name: Hae Sung Jung
Title: Director

[Notary acknowledgement on attached page]



Unofficial Copy

EXHIBIT A

Legal Description of the Property

PARCEL A:

LOTS 2, 3, 6 AND 7, BLOCK 6, ADDITION TO THE TOWN OF SEATTLE AS LAID OUT BY A.A. DENNY (COMMONLY KNOWN AS A.A. DENNY'S SECOND EDITION TO THE CITY OF SEATTLE), ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 1 OF PLATS, PAGE 30, IN KING COUNTY, WASHINGTON.

EXCEPT THE NORTHEASTERLY 12 FEET THEREOF CONDEMNED IN DISTRICT COURT CAUSE NO. 7097 FOR SECOND AVENUE, AS PROVIDED BY ORDINANCE NO. 1107; ALSO

EXCEPT THE SOUTHWESTERLY 2 FEET OF LOT 2 AND THE SOUTHWESTERLY 2 FEET OF THE NORTH 20 FEET OF LOT 3 AS CONVEYED TO THE CITY OF SEATTLE FOR ALLEY PURPOSES BY DEED RECORDED UNDER RECORDING NO. 20170330000423

PARCEL B:

THE SOUTH 40 FEET OF LOT 4, ALL OF LOT 5 AND THE NORTHWESTERLY 15 FEET OF LOT 8, BLOCK 6, ADDITION TO THE TOWN OF SEATTLE AS LAID OUT BY A.A. DENNY (COMMONLY KNOWN AS A.A. DENNY'S SECOND EDITION TO THE CITY OF SEATTLE), ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 1 OF PLATS, PAGE 30, IN KING COUNTY, WASHINGTON.

EXCEPT THE SOUTHWESTERLY 9 FEET THEREOF CONDEMNED FOR THE WIDENING OF FIRST AVE AS PROVIDED BY ORDINANCE NO. 1129 OF THE CITY OF SEATTLE.

PARCEL C:

THE SOUTHEASTERLY 45 FEET OF LOT 8, BLOCK 6, ADDITION TO THE TOWN OF SEATTLE AS LAID OUT BY A.A. DENNY (COMMONLY KNOWN AS A.A. DENNY'S SECOND EDITION TO THE CITY OF SEATTLE), ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 1 OF PLATS, PAGE 30, IN KING COUNTY, WASHINGTON.

EXCEPT THE SOUTHWESTERLY 9 FEET THEREOF CONDEMNED FOR THE WIDENING OF FIRST AVE AS PROVIDED BY ORDINANCE NO. 1129 OF THE CITY OF SEATTLE.

ALLEY VACATION:

THAT PORTION OF THE ALLEY ADJACENT TO LOTS 5 THROUGH 8, AND ADJACENT TO THE SOUTH 40 FEET OF LOTS 3 AND 4, BLOCK 6, ADDITION TO THE TOWN OF SEATTLE AS LAID OUT BY A.A. DENNY (COMMONLY KNOWN AS A.A. DENNY'S SECOND ADDITION TO

THE CITY OF SEATTLE), ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 1 OF
PLATS, PAGE 30, IN KING COUNTY, WASHINGTON.

CONTAINING AN AREA OF 2,560 SQUARE FEET OR 0.0588 ACRES, MORE OR LESS.

Unofficial Copy

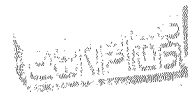


EXHIBIT B

Site depiction of public benefit areas

[see attached page]

Unofficial Copy



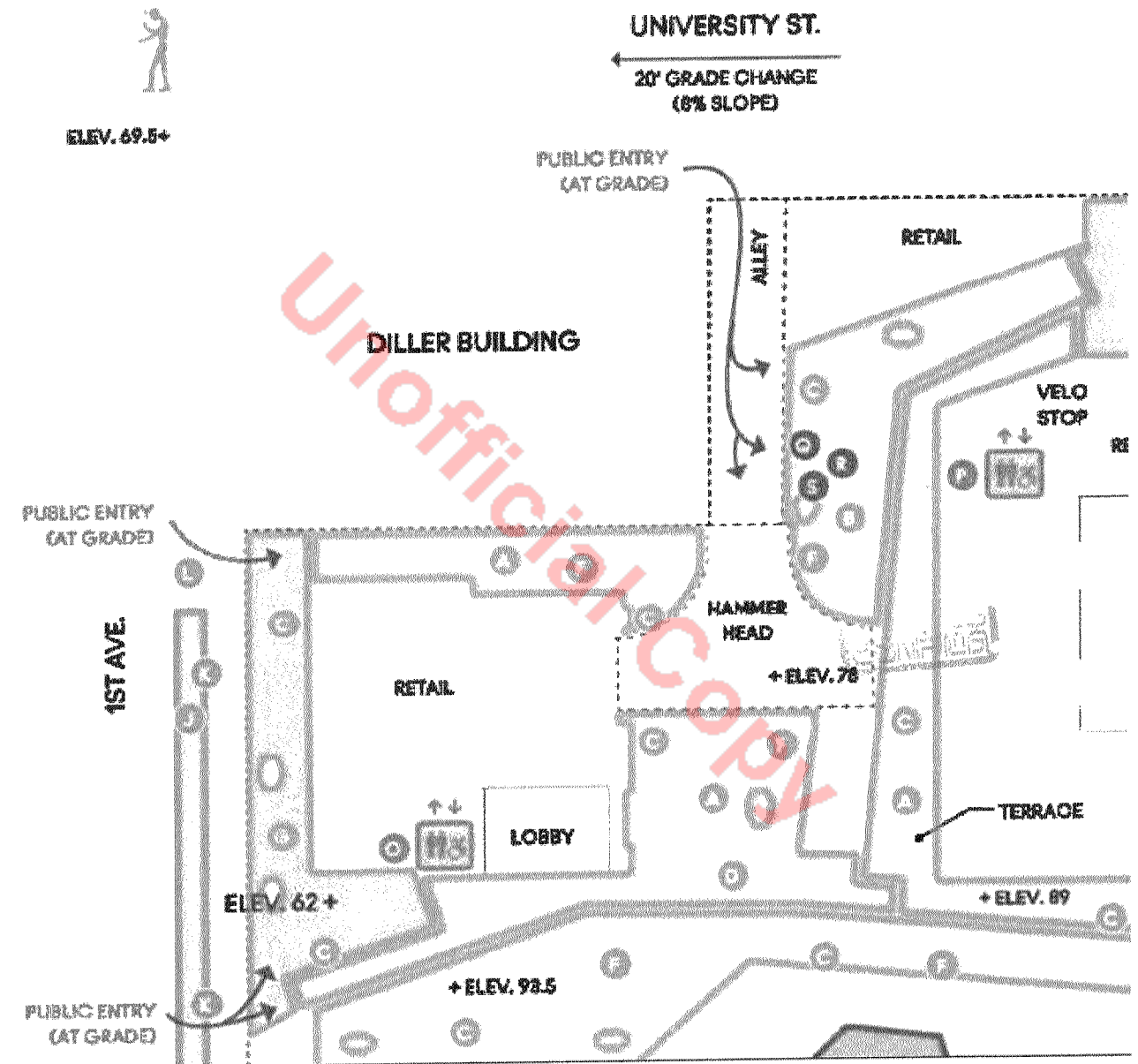


EXHIBIT C

2 + U Arts and Programming Plan

The Plan is required as part of the Public Benefit package included in the City Council's conditional approval of the alley vacation associated with the building and improvements located at 1201 2nd Avenue (the "Project") and known as 2 + U. The details of the conditional approval and associated conditions are referenced in Clerk's file 314320. As used herein, the term "Owner" means HS 2U Owner, LLC and its successors and assigns who own the Project from time to time. HS 2U Owner, LLC and each future owner of the Project shall be bound to this Plan only during the period of its ownership.

Background

Rapid development and economic growth in Seattle have displaced many affordable urban cultural spaces, especially in the Central Business District (CBD). Few downtown arts spaces remain, and the few that do are often economically out of reach for emerging artists, underserved populations, and arts organizations. The lack of access is especially pronounced for communities of color and other groups who have not historically had equitable access to the City's arts and culture infrastructure. At the same time, few new arts and cultural spaces are being developed that might add to the vibrancy and diversity of a neighborhood. This reality was communicated to Skanska early in the Project's development process by Seattle Office of Arts and Culture (OAC), Benaroya Hall, and the Seattle Art Museum (SAM). Each of these groups played an important collaborative role in helping shape the arts and cultural vision for the Project.

The Plan

To implement the Plan, Owner's predecessor-in-interest developed a concept called The Studio. The concept for The Studio as a required public benefit feature was developed to address the challenge of providing access to affordable, or even free of charge, arts and cultural space in the CBD for emerging artists and underserved communities. The Studio creates a new and innovative public-private partnership that allows public benefits to accrue to the neighborhood and larger City by creating a space that will support and empower arts and cultural activities and that can be curated and managed to provide access to a wide variety of users.

The Council's conditional approval included the requirement to develop this Plan, which includes a framework for programming The Studio. The City Council's expressed intention was that this Plan to include programming commitments and costs, outreach to disadvantaged communities, management, reporting obligations, and oversight.

The Plan is attached as an exhibit to the Property Use and Development Agreement ("PUDA") required as part of the City Council's final approval of the alley vacation for the Project. This Plan is intended to be a document that may be amended in the future independent of the PUDA and without City Council approval, subject to the amendment provisions below.

Agreement

Now, therefore, the Owner agrees to the following:

A. Program Goals/Vision. The Studio's goals, and the goals to program the Studio, include the following:

1. The Studio (as defined in Section B.1.a. below) provides a flexible space designed to meet the needs of arts and cultural users.
2. The Studio is located in a public benefits space that is visible and directly accessible from adjacent City streets.
3. The Studio is intended to support, empower, and promote local artists and cultural groups, with an emphasis on emerging artists from a diversity of backgrounds and communities.
4. The Studio will be available to artists and art groups free of charge for the life of the Project for the purposes set forth in the Property Use and Development Agreement. Users will be required to comply with the rules and regulations for The Studio and may be required to pay Owner for services provided by Owner relating to the User's usage of the space such as cleaning, set up, security and repair of any damages caused by the User or its invitees. Users may be charged a fee if they reserve The Studio and do not use The Studio during the reserved time.
5. Landlord shall provide or may contract with a third party (the "Studio Manager") who will provide regular activation of the Studio, to create synergy and connection with neighborhood and building occupants.

B. Implementation Plan / Strategies

1. Program Commitments and Costs

- a. Owner will provide the existing studio space consisting of 1,183 square feet of space at the ground floor of the Project which was designed to support vocal, dance, theater, music rehearsal activities, arts display, and community meetings (the "Studio").
- b. The Studio space includes a sprung floor to support dance events, a restroom, and other accessory spaces that support a variety of room uses.
- c. The Studio space will include a good visual connection with other on-site public benefit areas and adjacent streets.
- d. The Studio management costs and normal and customary operating expenses are covered by the Owner and are not charged back to the Studio Manager, artists, or user groups.
- e. Owner is not required to provide any equipment, supplies or security. Each user will use the Studio at its own risk and will provide its own equipment and supplies. Owner may require users to sign a standard user agreement as a condition to use of the Studio. Owner may require users to provide proof of insurance.

- f. The Studio may, but is not required to be, open outside of normal operating hours for the Project.

2. Management:

- a. Following precedent studies, workshops with local neighborhood arts organizations (Benaroya/SAM), and consultation with local arts and cultural subject matter experts, an open Request for Proposals (RFP) was developed to hire a partner organization to manage The Studio. The Studio Manager will have the following responsibilities:
 - i. Liaise with Owner and property manager regarding use, programming, and operations to ensure activation, alignment with vision, and ongoing success;
 - ii. Curate users and uses consistent with stated goals and vision of the Studio;
 - iii. Allow access to The Studio during normal building operating hours;
 - iv. Manage The Studio's day-to-day operations including access, space changeover, and staffing as-needed;
 - v. Advertise The Studio's availability to Seattle's arts and culture community, with an emphasis on emerging and underserved artists and groups;
 - vi. Solicit rolling applications for use of the Studio from Seattle's arts and culture community;
 - vii. Maintain records of Studio use as outlined under "Reporting" below; and
 - viii. Collaborate with cultural venues across Seattle to coordinate activities, identify potential users, and address areas of need.

3. Outreach and Engagement for Disadvantaged Communities: The Studio Manager will use their existing network and outreach infrastructure to be continually engaged with the local arts communities. Preferences for use of The Studio shall be given to:

- a. Uses by artists and arts organizations led by or serving communities of color, people with disabilities, LGBTQIA+ community, immigrants and refugees, youth, and seniors; and
- b. Uses that reflect a breadth of artistic genres, subject matters, communities, and messages, showcasing cultural activity that reflects the Ccity's diversity

4. Reporting: The Studio Manager shall also be responsible for creating an annual report for the Owner and, pursuant to the requirements and conditions of the Alley Vacation, a report after the third year of operations that will be submitted to the Seattle City Council. Each annual report shall be submitted by December 31.

The annual report to the Owner for use in City updates is envisioned to include, but not be limited to the following components:

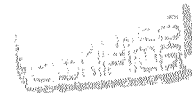
- a. Activity Summary: type, frequency, and duration of use;

- b. User Summary: list of artists/arts organizations that used the space, noting if possible; how they showcased or served emerging or underserved artists or arts organizations;
- c. Marketing Summary: outreach efforts, press, or media related items;
- d. Partnership Summary (public and private); and
- e. Lessons learned and recommended programming changes for the coming year.

Following the first 3 years of The Studio operations, a summary report shall be delivered to the City Council including:

- a. Staff briefing on how and to what extent the Studio's stated objectives have been achieved;
- b. A compilation of activity in years 1-3 with user, budget, and marketing summaries;
- c. Survey of studio users to understand the impact of The Studio; and
- d. A look ahead that identifies next steps and outline the next 3-year plan. The look ahead shall also contain an assessment on whether The Studio goals need to adapt to current community needs.

5. **Amendments to Plan.** The Plan shall, from time to time, be amended to reflect changing conditions and the relative success of the Plan's attainment of the goals stated in Section A of this document. The Owner shall obtain the approval of the Seattle Department of Transportation (SDOT) for changes to the Plan. SDOT may consult with other City Departments, such as the Department of Arts and Culture, prior to approving the Plan changes.



등부 2021 년 제 3945 호

Registered No. 2021 — 3945

인 증

NOTARIAL CERTIFICATE

위 부동산이용 및 개발합의서 에
기재된 정해성
의 대리인 정 크리스토퍼 (는)은
본 공증인의 면전에서 위 본인이
서명 한 것임을 자인하였다.

Chung Christopher
attorney-in-fact of

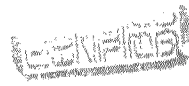
Hae Sung Jung
appeared before me and
admitted said principal's
subscription to the attached

2021 년 8 월 19 일

Property use and development
Agreement

이 사무소에서 위 인증한다.

This is hereby attested on
this 19th day of Aug. 2021
at this office

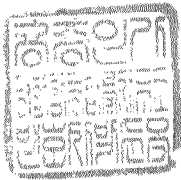


공증인가 평화합동법률사무소
소속 서울중앙지방검찰청
서울특별시 중구 을지로 80-1

PYEONG-HWA LAW AND NOTARY PUBLIC OFFICE
Belong to Seoul Central District Prosecutors' Office
80-1, Eulji-Ro, Jung-Gu, Seoul, Korea

공증담당
변호사

박 승 옥



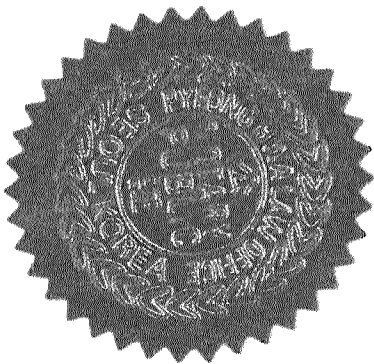
Park Sun Ok
Attorney-at-Law Park Sun Ok

This office has been authorized
by the Minister of Justice, the
Republic of Korea, to act as
Notary Public since
September 8, 1971. under
Law No. 2254



Registered No. 2021 - 3945

NOTARIAL CERTIFICATE



Unofficial Copy

PYEONG-HWA LAW AND NOTARY PUBLIC OFFICE
80-1, EULJI-RO, JUNG-GU, SEOUL, KOREA

SUMMARY and FISCAL NOTE*

Department:	Dept. Contact/Phone:	CBO Contact/Phone:
Seattle Department of Transportation	Amy Gray/206-386-4638	Christie Parker/206-684-5211

** Note that the Summary and Fiscal Note describes the version of the bill or resolution as introduced; final legislation including amendments may not be fully described.*

1. BILL SUMMARY

Legislation Title:

AN ORDINANCE vacating a portion of the alley in Block 6, A.A. Denny’s Second Addition, in the block bounded by University Street, 1st Avenue, Seneca Street, and 2nd Avenue, in Downtown, and accepting a Property Use and Development Agreement, on the petition of HS 2U Owner, LLC (Clerk File 314320).

Summary and Background of the Legislation:

This Council Bill completes the vacation process for the portion of the alley in Block 6, A.A. Denny’s Second Addition, in the block bounded by University Street, 1st Avenue, Seneca Street, and 2nd Avenue in Downtown, on the petition of HS 2U Owner, LLC.

The Petitioner sought the vacation for the development of an office tower on a consolidated block. Following a September 14, 2016 public hearing on the petition, the City Council conditionally granted the petition.

2. CAPITAL IMPROVEMENT PROGRAM

Does this legislation create, fund, or amend a CIP Project? ___ Yes X No

3. SUMMARY OF FINANCIAL IMPLICATIONS

Does this legislation amend the Adopted Budget? ___ Yes X No

Does the legislation have other financial impacts to The City of Seattle that are not reflected in the above, including direct or indirect, short-term or long-term costs?

The petitioner paid a vacation fee of \$3.64 million on June 18, 2019.

Are there financial costs or other impacts of *not* implementing the legislation?

This legislation will complete the vacation process. The Petitioner has met all the conditions imposed by the City Council. By not implementing this legislation, the City could be in violation of its obligations, which could have financial implications.

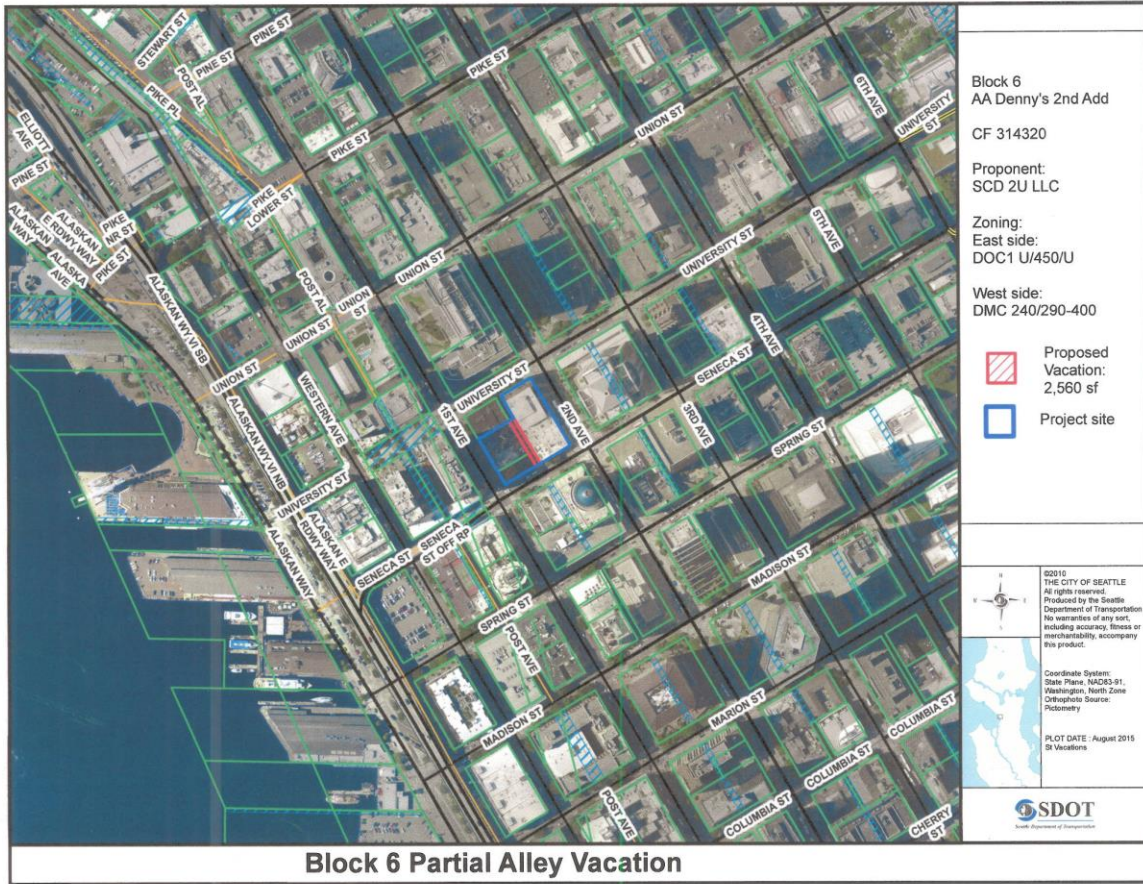
4. OTHER IMPLICATIONS

- a. **Does this legislation affect any departments besides the originating department?**
No.
- b. **Is a public hearing required for this legislation?**
No.
- c. **Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation?**
No.
- d. **Does this legislation affect a piece of property?**
Yes, it completes the vacation of the portion of the alley in Block 6, A.A. Denny's Second Addition.
- e. **Please describe any perceived implication for the principles of the Race and Social Justice Initiative. Does this legislation impact vulnerable or historically disadvantaged communities? What is the Language Access plan for any communications to the public?**
SDOT has not identified any Race and Social Justice Initiative implications related to the legislation.
- f. **Climate Change Implications**
- 1. Emissions: Is this legislation likely to increase or decrease carbon emissions in a material way?**
N/A
 - 2. Resiliency: Will the action(s) proposed by this legislation increase or decrease Seattle's resiliency (or ability to adapt) to climate change in a material way? If so, explain. If it is likely to decrease resiliency in a material way, describe what will or could be done to mitigate the effects.**
N/A
- g. **If this legislation includes a new initiative or a major programmatic expansion: What are the specific long-term and measurable goal(s) of the program? How will this legislation help achieve the program's desired goal(s)?**
N/A

Summary Attachments:

Summary Attachment A - Block 6 Vacation Area Map

Block 6 Vacation Area Map



March 9, 2022

MEMORANDUM

To: Transportation & Seattle Public Utilities Committee
From: Lish Whitson, Analyst
Subject: 2&U Alley Vacation

On March 15, 2022, the Transportation & Seattle Public Utilities Committee (Committee) will receive a briefing on a proposed bill that would grant final approval for the vacation of the southern half of the alley in the block bounded by 1st and 2nd avenues and Seneca and University streets in Downtown Seattle (Council District 7). Council conditional approval of the vacation was granted on September 26, 2016, through [Clerk File \(CF\) 314320](#). The bill is attached to this memorandum as Attachment 1.

Approval of the vacation facilitated the development of [2&U](#), a 38-story office tower on three-quarters of the block. A four-story brick building, the Diller Building, remains on a quarter of the block and abuts the portion of the alley that remains. Attachment 2 provides a diagram of the block.

The Council's decision at this point is to determine whether the project has satisfied the conditions of CF 314320. If those conditions have been met, the Council should approve the bill.

Street Vacation Process

The Street Vacation process, as laid out in the City Council's Street Vacation Policies ([Resolution 31809](#)), includes three Council reviews of a project. Soon after a property owner submits a petition to vacate right-of-way, the Council may choose to hold an early public forum or briefing to learn about the proposal and provide early feedback. After receiving this early feedback, City departments, the Seattle Design Commission, and other interested parties review the petition and provide recommendations. The Seattle Department of Transportation (SDOT) compiles and transmits their recommendations to the City Council alongside a recommendation from the SDOT Director to the City Council.

Once the Council receives this recommendation, the Council holds a public hearing and reviews the petition. At this point, the Council decides (1) whether to grant the petition, and (2) if the Council determines that the vacation is appropriate, it decides which conditions should be placed on the vacation. This conditional approval allows the petitioner to build in the right-of-way and to complete their project.

Once the project is complete, SDOT confirms that the conditions have been met and transmits a bill to finalize the vacation to Council. At this phase of Council's review, the Council's role is to

determine that the conditions have been met. Passage of the bill allows for the official transfer of ownership of the right-of-way to the petitioner.

Review of Vacation Conditions

The vacation conditions included in CF 314320 included eight conditions. These conditions require that:

1. The project be built substantially as presented to the Council;
2. Street improvements must be designed to City standards and reviewed by SDOT;
3. Any utilities that run through the alley are relocated and there may not be disruptions to utility service to the remaining building abutting the portion of the alley to remain;
4. Development should begin within two years of approval and be completed within five years of approval;
5. Access to the 2&U building and the Diller Building shall be provided as shown to the Council;
6. Additional review and conditioning would be required under the State Environmental Policy Act (SEPA) and City codes and regulations;
7. Free speech activities must be allowed in public spaces on site and signage must indicate to the public that those activities are allowed; and
8. The project must provide and maintain the following public benefit features for the life of the building:

Table 1: PUBLIC BENEFITS AS PROPOSED

	Public Benefit	Location/ Description	Code Reqt.	Public Benefit	Total	Estimated Value
OPEN SPACE (Including Programming Commitment)						
A	Central Plaza	Central covered plaza with seating, bike infrastructure, upgraded materials and adjacent retail, open during park hours	650 SF	5,910 SF	6,560 SF	\$3,368,700
B	Bike Dock	Bicycle infrastructure and laydown area	None	2,520 SF	2,520 SF	\$1,436,400
C	Pedestrian Amenities	Individual seats, benches, and seat steps	None	82 Seats	82 Seats	\$350,000
		Drinking fountain	None	1 Unit	1 Unit	\$5,000
D	Event Infrastructure	Infrastructure to support events within the central plaza (electricity, water)	None			\$275,000
E	Overlook	Playful seating, site furnishings designed with children + families in mind	None	5,930 SF	5,930 SF	\$3,380,100
F	On-Site Trees	On-site trees	None	15 Trees	15 Trees	\$58,800
TOTAL:						\$8,874,000

	Public Benefit	Location/ Description	Code Req.	Public Benefit	Total	Estimated Value
SETBACKS						
G	1st Avenue Setback	Generous streetscape with seating, bike parking and covered walkway	None	124' x 20'	2,480 SF	\$1,413,600
H	Northeast Corner Plaza Setback	Corner plaza between north end of lobby and small retail on University St.	700 SF	35' x 17'	1,320 SF	\$353,400
I	Southeast Stoop Setback	Large covered seating and gathering setback from 2nd Ave.	None	46' x 15'	690 SF	\$441,600
					TOTAL:	\$2,208,600
RIGHT-OF-WAY (ROW) IMPROVEMENTS						
J	ROW Planting	High quality trees, soil and irrigation within ROW	640 SF	1,245 SF	1,885 SF	\$55,000
K	ROW Seating	Seating and benches	None	12 Seats	12 Seats	\$28,000
L	ROW Bike Parking	Elegant, secure and durable bike racks within the ROW	None	15 Racks	30 Bike Stalls	\$5,250
					TOTAL:	\$88,250
ARTS AND CULTURE SPACES (Including Programming Commitment)						
M	Performance Triangle	Flexible gallery/production/performance space provided rent free to emerging artists	None	835 SF	835 SF	\$613,725
N	The Studio	Small, visible studio for artists or musicians to perform, record and display rent free	None	290 SF	290 SF	\$213,150
					TOTAL:	1,125 SF \$826,875
HILL CLIMB ASSIST						
O	1st Avenue Elevator	Hill climb assist connects 1st and 2nd Avenues and is accessible to all, open during park hours	None	Elevator	1	\$25,000
P	2nd Avenue Elevator	See above	None	Elevator	1	\$25,000
					TOTAL:	\$50,000
BICYCLE INFRASTRUCTURE						
Q	Bike Racks	Bike Racks (2 bikes per unit), 5 (exterior) units on site	None	5 Racks	10 Bike Stalls	\$1,750
R	Electric Bike Charging Station	Incorporated into the Plaza bike infrastructure for public access	None	1 Unit	1 Unit	\$4,000
S	Electric Bike Charging Station Fix It Repair Stand	Repair + air-pump station in Plaza, visible + accessible from ROW	None	1 Unit	1 Unit	\$1,500
					TOTAL:	\$7,250
					TOTAL ESTIMATED VALUE OF PUBLIC BENEFIT:	\$12,054,975

According to CF 314320, the project must be “substantially in conformity with the project presented to the City Council” during the Council’s review of the petition. There were changes to some of the proposed public benefits as the project’s final design was completed. The Property Use and Development Agreement (PUDA) that has been recorded to ensure the permanent provision of these public benefit features (Attachment 2) describes these changes as follows:

Table 2: PUBLIC BENEFITS AS PROVIDED

	Public Benefit	Location/ Description	Code Req.	Public Benefit	Total	Notes
OPEN SPACE						
A	Central Plaza	Central covered plaza with seating, bike infrastructure, upgraded materials and adjacent retail, open during park hours	650 SF	5,910 <u>6,535</u> SF	6,560 <u>7,185</u> SF	Increased 625 SF due to changes in setbacks
* * *						
C	Pedestrian Amenities	Individual seats, benches, and seat steps		82 <u>134</u> Seats	82 <u>134</u> Seats	Voluntarily increased by 52 seats
* * *						
F	On-Site Trees	On-site trees	None	15 <u>14</u> Trees	15 <u>14</u> Trees	A mature Japanese maple replaced two smaller pine trees that were in the original design
SETBACKS						
G	1st Avenue Setback	Generous streetscape with seating, bike parking and covered walkway	None	2,480 <u>1,587</u> SF	2,480 <u>1,587</u> SF	Decreased 893 SF due to a more prominent public staircase, adjustments for ADA access, and moving retail spaces closer to the street front
H	Northeast Corner Plaza Setback	Corner plaza between north end of lobby and small retail on University St.	700 SF	1,320 <u>1,455</u> SF	1,320 <u>1,455</u> SF	Increased 135 SF due to minor building changes
I	Southeast Stoop Setback	Large covered seating and gathering setback from 2nd Ave.	None	690 <u>1,045</u> SF	690 <u>1,045</u> SF	Increased 355 SF due to minor building changes
RIGHT-OF-WAY (ROW) IMPROVEMENTS						
J	ROW Planting	High quality trees, soil and irrigation within ROW	640 SF	1,245 <u>891</u> SF	1,885 <u>1,531</u> SF	Direction from SDOT during Street Improvement Permit (SIP) review reduced planting area by 354 SF. No change to number of street trees.

	Public Benefit	Location/ Description	Code Req.	Public Benefit	Total	Notes
K	ROW Seating	Seating and benches	None	12 28 Seats	12 28 Seats	Voluntarily increased
* * *						
ARTS AND CULTURE SPACES (Including Programming Commitment)						
M	Performance Triangle	Flexible gallery/production/ performance space provided rent free to emerging artists	None	835 <u>1,183</u> SF	835 <u>1,183</u> SF	The Performance Space was enlarged by 348 instead of providing a separate recording studio at the recommendation of the Office of Arts and Culture and an arts programming consultant
N	The Studio	Small, visible studio for artists or musicians to perform, record and display rent free	None	290 SF	290 SF	See above, a single larger space was determined to be more useful than two smaller spaces
* * *						

The combination of these changes increases publicly accessible open space on the site, increases the seating available to the public, and increases the amount of rent-free performance space available for emerging artists. The number of trees on site is reduced by one and on-street planting areas are also reduced without impacting the number of street trees provided.

SDOT has reviewed the project as built and the PUDA and has determined that the project substantively meets all vacation conditions and recommends approval of the bill.

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 2&U alley vacation
2. Location of the 2&U alley vacation
3. Recorded Property Use and Development Agreement

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

Amy Gray
SDOT Block 6 2 & U Vacation ORD
D1b

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL _____

..title

AN ORDINANCE vacating a portion of the alley in Block 6, A.A. Denny’s Second Addition, in the block bounded by University Street, 1st Avenue, Seneca Street, and 2nd Avenue, in Downtown, and accepting a Property Use and Development Agreement, on the petition of HS 2U Owner, LLC (Clerk File 314320).

..body

WHEREAS, SCD 2U LLC, filed a petition under Clerk File 314320 to vacate a portion of the alley in Block 6, A.A. Denny’s Second Addition, in the block bounded by University Street, 1st Avenue, Seneca Street, and 2nd Avenue; and

WHEREAS, HS 2U Owner, LLC (“Petitioner”) is the successor in interest and the current Petitioner; and

WHEREAS, following a September 14, 2016, public hearing on the petition, the Seattle City Council (“City Council”) conditionally granted the petition on September 26, 2016; and

WHEREAS, a Property Use and Development Agreement recorded on August 27, 2021, with the King County Recorder’s Office under Recording No. 20210827002417 commits the Petitioner and their successors to fulfill ongoing public-benefit obligations required as part of the vacation; and

WHEREAS, as provided for in Section 35.79.030 of the Revised Code of Washington (RCW) and Seattle Municipal Code Chapter 15.62, the Petitioner has paid the City a vacation fee of \$3,640,000 on June 18, 2019, which is the full appraised value of the property; and

WHEREAS, the Petitioner has met all conditions imposed by the City Council in connection with the vacation petition; and

WHEREAS, vacating a portion of the alley in Block 6, A.A. Denny’s Second Addition, is in the public interest; NOW, THEREFORE,

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

2 Section 1. A portion of the alley in Block 6, A.A. Denny’s Second Addition, described
3 below, is vacated:

4 The portion of the alley adjacent to Lots 5 through 8, and adjacent to the south 40 feet of
5 Lots 3 and 4 in Block 6, A.A. Denny’s Second Addition to the City of Seattle, recorded
6 in Volume 1 of Plats, page 30, Records of King County, Washington, with is the block
7 bounded by University Street, 1st Avenue, Seneca Street, and 2nd Avenue (Clerk File
8 314320).

9 Section 2. The Property Use and Development Agreement, King County Recording No.
10 20210827002417, attached as Exhibit 1 to this ordinance is accepted.

1 Section 3. 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

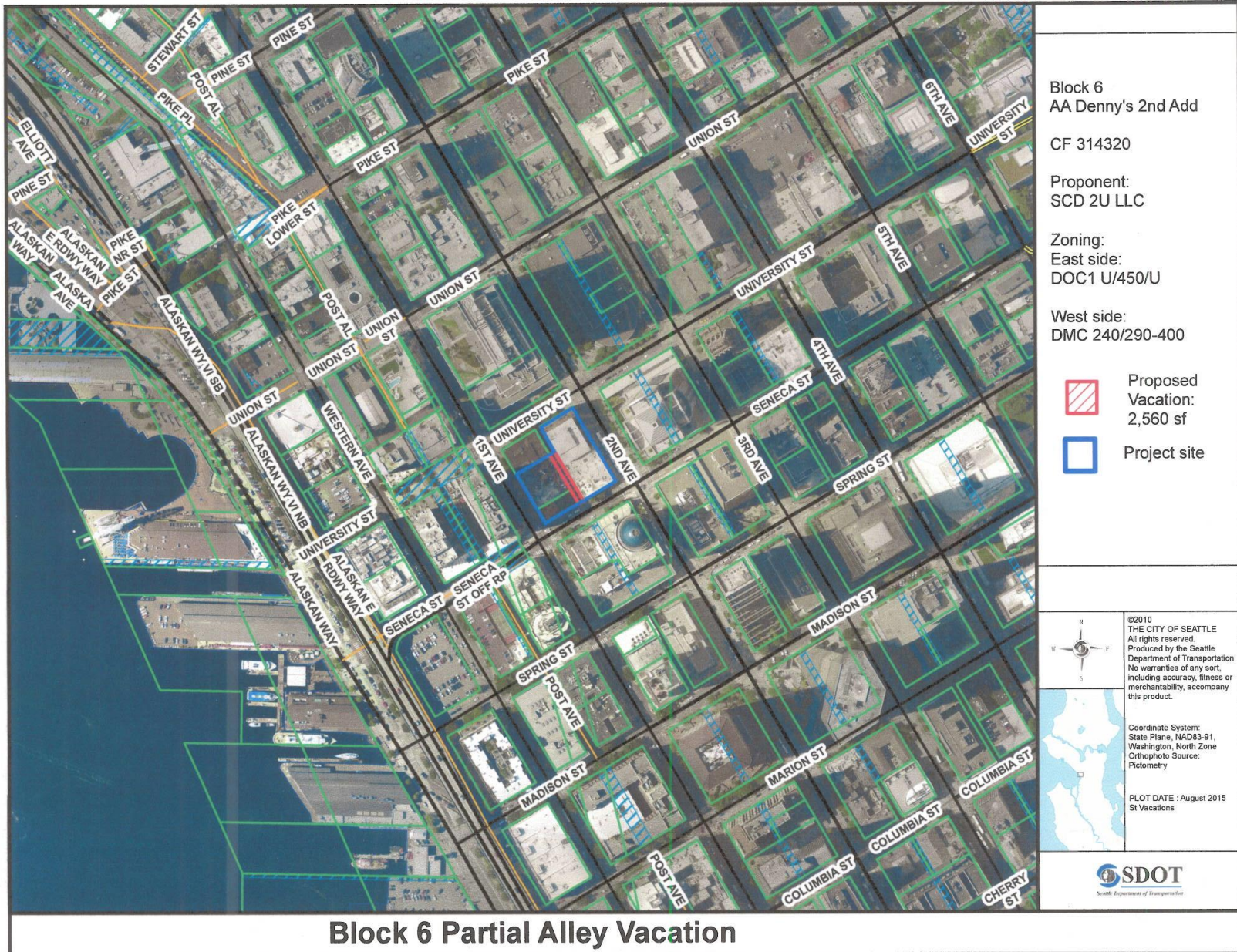
12 Filed by me this _____ day of _____, 2022.

13 _____
14 Monica Martinez Simmons, City Clerk

15 (Seal)


16
17 Attachments:
18 Exhibit 1 - Property Use and Development Agreement
19

Attachment 2: Location of the 2&U alley vacation



When Recorded, Return to:
McCullough Hill Leary, P.S.
Attn: Jessie Clawson
701 5th Avenue, Suite 6600
Seattle, WA 98104

PROPERTY USE AND DEVELOPMENT AGREEMENT

Grantor:	HS 2U Owner, LLC, a Delaware Limited Liability Company
<input type="checkbox"/> Additional on page	
Grantee:	City of Seattle
<input type="checkbox"/> Additional on page	
Legal Description (abbreviated):	LOTS 2, 3, 4, 6, 7 AND 8, BLOCK 6, A.A. DENNY'S 2 ND ADD., CITY OF SEATTLE, VOL 1, P. 30 PLATS, KING COUNTY, WASHINGTON
<input checked="" type="checkbox"/> Additional on:	Exhibit A
Assessor's Tax Parcel ID #:	1974700175, 1974700190, 1974700210
Reference Nos. of Documents Released or Assigned:	N/A

PROPERTY USE AND DEVELOPMENT AGREEMENT

THIS AGREEMENT is executed this date in favor of the City of Seattle, a municipal corporation ("City"), by HS 2U OWNER, LLC, a Delaware limited liability company ("2U").

WHEREAS, SCD 2U LLC, a predecessor in interest to 2U, filed a petition in Clerk File 314320 for the vacation of a portion of the alley adjacent to Lots 5 through 8, and adjacent to the south 40 feet of Lots 3 and 4 in Block 6, A.A. Denny's Second Addition to the City of Seattle, recorded in Volume 1 of Plats, page 30, Records of King County Washington, which petition was considered under Chapter 35.79 of the Revised Code of Washington and Chapter 15.62 of the Seattle Municipal Code; and

WHEREAS, on September 14, 2016, the Sustainability and Transportation Committee of the Seattle City Council held a public hearing on the vacation petition; and

WHEREAS, on September 26, 2016, the Seattle City Council granted preliminary approval of the vacation petition, subject to conditions; and

WHEREAS, SCD 2U LLC completed development activity authorized under the alley vacation approval before September 26, 2021;

WHEREAS, 2U is the current owner of the building and associated improvements (the "Property") existing on the land legally described on Exhibit A attached hereto (the "Land"); and

WHEREAS, 2U is executing this Property Use and Development Agreement (the "Agreement" or "PUDA") to ensure compliance with any on-going conditions of the vacation approval subsequent to passage of the vacation ordinance; and

NOW, THEREFORE, 2U covenants, bargains, and agrees on behalf of themselves, their successors, and assigns as follows:

Section 1. The conditions passed by the City Council on September 26, 2016 specified the following conditions of approval:

- A. The vacation is granted to allow the Petitioner to build a project substantially in conformity with the project presented to the City Council and for no other purpose. The project must be substantially in conformity with the proposal reviewed by the Sustainability & Transportation Committee in September of 2016.
- B. All street improvements shall be designed to City standards, as modified by these conditions to implement the public benefit requirements, and be reviewed and approved by the Seattle Department of Transportation; elements of the street improvement plan and required street improvements to be reviewed include:

Street improvement plan showing sidewalks, street trees, bike racks, street furniture, lighting, art or artist-made elements, and landscaping around the site and the off-site public benefit features, including but not limited to, these specific elements:

- Alley design and turnaround, including materials and signage;
- Setbacks and landscaping on 1st Avenue, Seneca Street, 2nd Avenue, and University; and
- Plantings, street furniture, seating or wayfinding in the right-of-way.

C. The utility issues shall be resolved to the full satisfaction of the affected utility prior to the approval of the final vacation ordinance. The Petitioner shall ensure there is no disruption in utility services for the adjacent Diller Hotel. Prior to the commencement of any development activity on the site, Petitioner shall work with the affected utilities and provide for the protection of the utility facilities. This may include easements, restrictive covenants, relocation agreements, or acquisition of the utilities, which shall be at the sole expense of the Petitioner. Utilities impacted include:

- Seattle City Light;
- Seattle Public Utilities;
- Enwave;
- King County Metro;
- Puget Sound Energy; and
- CenturyLink Communications.



D. It is expected that development activity will commence within approximately 2 years of this approval and that development activity will be completed within 5 years. In order to ensure timely compliance with the conditions imposed by the City Council the Petitioner shall provide the Seattle Department of Transportation with Quarterly Reports, following Council approval of the vacation, providing an update on the development activity, schedule, and progress on meeting the conditions. The Petitioner shall not request or be issued a Final Certificate of Occupancy (C of O) for the project until SDOT has determined that all conditions have been satisfied and all fees have been paid as applicable.

E. Access to the buildings shall be provided for as follows, changes to this proposal shall require the review of SDOT: two driveways on Seneca Street are allowed with one providing an in/out driveway to the parking garage and one providing in/out access to the truck loading dock. In addition, the remaining public alley and turnaround provide access to the Diller building.

- F. In addition to the conditions imposed through the vacation process, the project, as it proceeds through the permitting process, is subject to SEPA review and to conditioning pursuant to various City codes and through regulatory review processes including SEPA.
- G. Free speech activities such as hand billing, signature gathering, and holding signs, all without obstructing access to the space, the building, or other adjacent amenity features, and without unreasonably interfering with the enjoyment of the space by others, shall be allowed within these vacation public benefit features. While engaged in allowed activities, members of the public may not be asked to leave for any reason other than conduct that unreasonably interferes with the enjoyment of the space by others. Signage clearly identifying public access and allowed free speech activities is required at the public open space elements and shall require the review and approval of SDOT Street Vacations. Signage shall be consistent with signage provided for public amenity space, if any, on the site. Any violation of these conditions will be enforced through Chapter 15.90 of the Seattle Municipal Code.
- H. The Petitioner shall develop and maintain the public benefit elements as defined by the City Council. A Property Use and Development (PUDA) or other binding mechanism shall be required to ensure that the public benefit elements remain open and accessible to the public and shall establish the hours of public access for the various public benefit spaces, with temporary closures permitted for reasons such as maintenance, safety, or private functions and to outline future maintenance obligations of the improvements. A plan for programming and use of the art spaces shall be completed and included with the PUDA or by separate agreement that binds future building owners to the obligations of the plan. Such plan shall address program commitments and costs, outreach and engagement for disadvantaged communities, management, reporting obligations, and oversight. The plan shall make provision for a briefing and program review for the City Council at year three of operations or as determined in the plan. Signage shall be provided as described in Condition 7. The final design of the public benefit elements shall require the review and approval of SDOT Street Vacations. SDOT may request additional review by the Design Commission or Administrative Review of the implementation of the public benefit elements in the right-of-way require additional SIP review, street use permits and indemnification; public and private areas must be clearly distinguished and markers in the sidewalk shall be required. The public benefit requirements include the following features as well as corresponding development standards, including approximate square footage dimensions, which shall be outlined in the PUDA:

Public benefit chart:

Public Benefit	Location/Description	Code Req.	Public Benefit	Total	Est. Value
A. Central Plaza	Central covered plaza with seating, bike infrastructure, upgraded materials and adjacent retail, open during park hours	650 SF	5910 SF	6560 SF	\$3,368,700
B. Bike Dock	Bicycle infrastructure and laydown area	None	2520 SF	2520 SF	\$1,436,400
C. Pedestrian Amenities	Individual seats, benches, and seat steps	(MUP)	82 Seats	82 Seats	\$350,000
	Drinking fountain	None	1 Unit	1 Unit	\$5,000
D. Event Infrastructure	Infrastructure to support events within the central plaza (electricity, water)	None			\$275,000
E. Overlook	Playful seating, site furnishings designed with children + families in mind	None	5930 SF	5930 SF	\$3,380,100
F. On-Site Trees	On-site trees	None	15 Trees	15 Trees	\$58,800
Public Benefit	Location/Description	Code Req.	Public Benefit	Total	Est. Value
G. 1 st Avenue Setback	Generous streetscape with seating, bike parking and covered walkway	None	124' x 20'	2480 SF	\$1,413,600
H. Northeast Corner Plaza Setback	Corner plaza between north end of lobby and small retail on University St.	700 SF	35' x 17'	1320 SF	\$353,400
I. Southeast Stoop Setback	Large covered seating and gathering setback from 2 nd Ave.	None	46' x 15'	690 SF	\$441,600
J ROW Planting	High quality trees, soil and irrigation within ROW	640 SF	1245 SF	1885 SF	\$55,000
K ROW Seating	Seating and benches	None	12 Seats	12 Seats	\$28,000
L ROW Bike Parking	Elegant, secure and durable bike racks within the ROW	None	15 Racks	30 Bike Stalls	\$5,250
M Performance Triangle	Flexible gallery/production/performance space provided rent-free to emerging artists	None	835 SF	835 SF	\$613,725
N The Studio	Small, visible studio for artists or musicians to perform, record and display rent-free	None	290 SF	290 SF	\$213,150
O 1 st Avenue	Hill climb assist connects 1 st	None	1	1	\$25,000

Elevator	and 2 nd Avenues and is accessible to all, open during park hours		Elevator	Elevator	
P 2 nd Avenue Elevator	See above	None	1 Elevator	1 Elevator	\$25,000
Q Bike Racks	Bike Racks (2 bikes per unit), 5 (exterior) units on site	None	5 Racks	10 Bike Stalls	\$1,750
R Electric Bike Charging Station	Incorporated into the Plaza bike infrastructure for public access	None	1 unit	1 unit	\$4,000
S Electric Bike Charging Station Fix-It repair stand	Repair + air-pump station in Plaza, visible + accessible from ROW	None	1 Unit	1 Unit	\$1,500

- I. The replacement of any of the Public Benefits shall be of similar quality in design and materials as the original. Significant changes to the streetscape or the required Public Benefits shall require prior approval by the Seattle Department of Transportation. Modified features shall maintain a substantially similar quality and character to the existing required design features.

Section 2. The development project currently on-site, as implemented by Master Use Permit number 3019177-LU, as amended, and building permits 6472029-PH and 6532759-CN, has constructed the “Public Benefits” outlined in Section 1 in the following manner, and as depicted in Exhibit B. The following Public Benefits, as constructed, are acceptable to the City:

- A. The Central Plaza was increased by 625 square feet due to changes in building setbacks, resulting in a 7,185 s.f. Central Plaza. Otherwise, the Central Plaza remains as depicted to the City Council.
- B. The 2520 s.f. Bike Dock was constructed in the manner depicted to the City Council.
- C. The drinking fountain was constructed in the Central Plaza near the southern stairs leading from 1st Avenue. The pedestrian seating opportunities were increased from 82 seats as depicted to City Council to 134 seats due to an internal decision to provide more opportunities for different types of seating and gathering within open spaces.
- D. The event infrastructure in the plaza was constructed. It consists of an electrical switch with connections to electrical power at various amperages and data, sufficient to power a small stage, associate lighting and audio/visual equipment.
- E. The 5,930 s.f. Overlook was constructed as depicted to City Council. It includes “playful” furnishings including “bouncy” flooring and family-friendly seating and elements.
- F. Fourteen on-site trees were planted, a reduction of one tree from the City Council presentation. Two smaller pine trees were replaced with one large specimen Japanese

- Maple for significant immediate impact and destination marker. The Japanese Maple is planted adjacent to the Overlook.
- G. Minor changes were made to setbacks related to the 1st Avenue Promenade. The Promenade was reduced by 893 s.f., resulting in a total promenade of 1,587 s.f. The reason for these minor changes were: (a) the public stair extended further to the west, making it more inviting for the public; (b) the retail seating area wall moved further north to help resolve ADA grade issues for access into the southwest corner retail; (c) the west façade moved slightly west to bring the retail façade closer to the street for a more enlivened streetscape; and (d) the west core façade moved closer to the street to allow for a bit more lobby space that would better activate the streetscape.
 - H. The Front Deck gained 135 s.f. due to minor building changes, but other than this minor change exists as depicted to the City Council. The final Front Deck area is 730 s.f.
 - I. The Entry Porch gained 355 s.f. but other than this minor change exists as depicted to the City Council. The final Entry Porch area is 1045 s.f.
 - J. The right-of-way planting was reduced by 354 s.f. due to SDOT direction during the Street Improvement Permit process to change the proposed tree species and layouts, which impacted the final planting bed dimensions. The final right-of-way planting area is 894 s.f.
 - K. The right-of-way seating increased from 12 seats to 28 seats (addition of 16 seats) due to an internal decision to provide additional seating and gathering opportunities in the right-of-way.
 - L. Fifteen bike racks in the right-of-way were provided, as depicted to the City Council.
 - M. At the direction of the Office of Arts and Culture and an arts programming consultant, the performance triangle was combined with the studio space so that it may function more effectively for more diverse art uses in a single, larger location. The initial idea for the performance triangle was a recording studio, but due to the volume of glass this was not acoustically possible. The previous square footages were 835 s.f. for the performance triangle, and 290 s.f. for the studio space (1125 s.f. total). With the combination of the two spaces, and the expansion, the rent-free arts space now totals 1,183 s.f., a net increase of 58 s.f.
 - N. Please see above regarding the studio space combination.
 - O. The 1st Avenue Elevator was constructed and is open during business hours.
 - P. The 2nd Avenue Elevator was constructed and is open during business hours.
 - Q. Five bike racks in the right-of-way were constructed.
 - R. One e-bike charging station was constructed.
 - S. One bike fix-it repair stand was constructed.

Section 3. A programming plan for the studio space is attached to this PUDA, as required by the City Council, as Exhibit C. The programming plan is intended to be a living document and amended or modified to ensure the art space is well-used and programmed for the life of the building. Amending the programming plan does not require amending this PUDA.

Section 4. 2U shall have the reasonable right to temporarily close, obstruct, limit access, or establish temporary hours of public access to the Public Benefits areas for: (1) construction, provided that any removed or permanently closed areas shall be replaced by 2U to

the satisfaction of the City before the area is removed or permanently closed; (2) maintenance and repair; (3) temporary use for private functions by 2U, tenants or other occupants of the Property and users of The Studio; (4) the maintenance of or security for the development or persons using the development; (5) other circumstances beyond 2U's control; or (6) as 2U reasonably deems necessary to comply with any applicable law, regulation or order.

Section 5. 2U may adopt reasonable rules and regulations regarding the use of and access to the Public Benefits. The rules and regulations shall be consistent with this Agreement. A summary of the current rules and regulations, if rules are adopted, shall be posted in several visible locations.

Section 6. Free speech activities such as passing out of leaflets or brochures, signature gathering, and individuals holding signs, all without physically obstructing access to the Property or to other adjacent amenity features, and without unreasonably interfering with the use and enjoyment of the Property, shall be allowed within the Public Benefit areas described in this Agreement. Nothing herein allows the posting of signs, painting, graffiti or pasting signs or handbills onto any improvements on the Land. 2U may remove and dispose of any signs or other property left on the Land. While lawfully engaged in allowed activities that do not interfere with use and enjoyment of the Property by others, members of the public may not be asked to leave because of their involvement with the allowed activities. Any violation of this Section may be enforced through Chapter 23.90 of the Seattle Municipal Code. Signage to this effect, as required by the City Council's conditional approval, is posted on the Property.

Section 7. This Agreement may be amended or modified by agreement between 2U and the City; provided any such amendment, per Council rules, shall be subject to approval by the City Council by ordinance. Nothing in this Agreement shall be construed as a surrender of the City's governmental powers.

Section 8. 2U reserves the right to use the Public Benefits areas for any purpose which does not interfere with the public's use rights established hereunder, including but not limited to the right to use the areas as described in this Agreement for 2U's purposes (including the right to use the areas by 2U's tenants, subtenants and other occupants), and the right to grant easements, provided the easements are consistent with the public's use rights established hereunder.

Section 9. Nothing in this Agreement shall constitute a public dedication of any portion of the Property or the Land or impose any restriction on any part of the Property or the Land other than the areas designated for the Public Benefits.

Section 10. The legal description of the Land on which the Property is located is set forth in Exhibit A to this Agreement, which is incorporated into this Agreement. An executed copy of this Agreement shall be recorded in the records of King County and the covenants contained herein shall attach to and run with title to the Property.

Section 11. This PUDA is made for the benefit of the City and the public. The City may institute and prosecute any proceeding at law or in equity to enforce this PUDA.

Section 12. If any covenant, condition, or restriction in this instrument or any portion is invalidated or voided, the invalidity or voidness shall in no way affect any other covenant, condition, or restriction.

Section 13. Upon the effective date of the vacation ordinance, 2U shall provide and thereafter maintain in full force and effect, commercial general liability insurance providing for a limit of not less than \$1,000,000 per occurrence for damages arising out of bodily injuries or death. The insurance policies obtained shall be issued by companies authorized to conduct business in Washington State and shall name the City as an additional insured. 2U shall provide evidence of insurance to the City Risk Manager at the City's reasonable request.

Section 14. 2U covenants and agrees to defend, indemnify, and hold harmless the City of Seattle, its officials, officers, employees, and agents from all liabilities, claims, causes of action, judgments, or expenses, including reasonable attorney fees and necessary litigation expenses, resulting from any actual or alleged bodily injury including death or actual or alleged damage to property arising out of or in connection with the use or occupation of the Public Benefits during the term of its building ownership. Upon any transfer of building ownership, this obligation shall be binding on all successors and assigns. The indemnification obligations under this Agreement do not apply to any liabilities, claims, causes of action, judgments or expenses resulting from bodily injury or property damage caused by the negligence or intentional acts of the public or the City, or the City's officers, employees, elected officials, agents, or subcontractors.

Section 15. This Agreement shall be binding on 2U's successors and assigns. 2U and each future owner of the Property shall be bound to this Agreement only during the period of its ownership.


[Remainder of page intentionally left blank – Signature page follows]

DATED this 19th day of August, 2021.

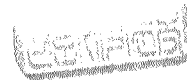
HS 2U Owner, LLC, a Delaware limited liability company

By: HS 2U JV, LLC, a Delaware limited liability company
Its: Managing Member

By: HS 2U REIT, LLC, a Delaware limited liability company
Its: Managing Member

By: 
Name: Hae Sung Jung
Title: Director

[Notary acknowledgement on attached page]



Unofficial Copy

EXHIBIT A

Legal Description of the Property

PARCEL A:

LOTS 2, 3, 6 AND 7, BLOCK 6, ADDITION TO THE TOWN OF SEATTLE AS LAID OUT BY A.A. DENNY (COMMONLY KNOWN AS A.A. DENNY'S SECOND EDITION TO THE CITY OF SEATTLE), ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 1 OF PLATS, PAGE 30, IN KING COUNTY, WASHINGTON.

EXCEPT THE NORTHEASTERLY 12 FEET THEREOF CONDEMNED IN DISTRICT COURT CAUSE NO. 7097 FOR SECOND AVENUE, AS PROVIDED BY ORDINANCE NO. 1107; ALSO

EXCEPT THE SOUTHWESTERLY 2 FEET OF LOT 2 AND THE SOUTHWESTERLY 2 FEET OF THE NORTH 20 FEET OF LOT 3 AS CONVEYED TO THE CITY OF SEATTLE FOR ALLEY PURPOSES BY DEED RECORDED UNDER RECORDING NO. 20170330000423

PARCEL B:

THE SOUTH 40 FEET OF LOT 4, ALL OF LOT 5 AND THE NORTHWESTERLY 15 FEET OF LOT 8, BLOCK 6, ADDITION TO THE TOWN OF SEATTLE AS LAID OUT BY A.A. DENNY (COMMONLY KNOWN AS A.A. DENNY'S SECOND EDITION TO THE CITY OF SEATTLE), ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 1 OF PLATS, PAGE 30, IN KING COUNTY, WASHINGTON.

EXCEPT THE SOUTHWESTERLY 9 FEET THEREOF CONDEMNED FOR THE WIDENING OF FIRST AVE AS PROVIDED BY ORDINANCE NO. 1129 OF THE CITY OF SEATTLE.

PARCEL C:

THE SOUTHEASTERLY 45 FEET OF LOT 8, BLOCK 6, ADDITION TO THE TOWN OF SEATTLE AS LAID OUT BY A.A. DENNY (COMMONLY KNOWN AS A.A. DENNY'S SECOND EDITION TO THE CITY OF SEATTLE), ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 1 OF PLATS, PAGE 30, IN KING COUNTY, WASHINGTON.

EXCEPT THE SOUTHWESTERLY 9 FEET THEREOF CONDEMNED FOR THE WIDENING OF FIRST AVE AS PROVIDED BY ORDINANCE NO. 1129 OF THE CITY OF SEATTLE.

ALLEY VACATION:

THAT PORTION OF THE ALLEY ADJACENT TO LOTS 5 THROUGH 8, AND ADJACENT TO THE SOUTH 40 FEET OF LOTS 3 AND 4, BLOCK 6, ADDITION TO THE TOWN OF SEATTLE AS LAID OUT BY A.A. DENNY (COMMONLY KNOWN AS A.A. DENNY'S SECOND ADDITION TO

THE CITY OF SEATTLE), ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 1 OF
PLATS, PAGE 30, IN KING COUNTY, WASHINGTON.

CONTAINING AN AREA OF 2,560 SQUARE FEET OR 0.0588 ACRES, MORE OR LESS.

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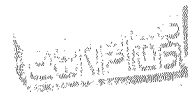


EXHIBIT B

Site depiction of public benefit areas

[see attached page]

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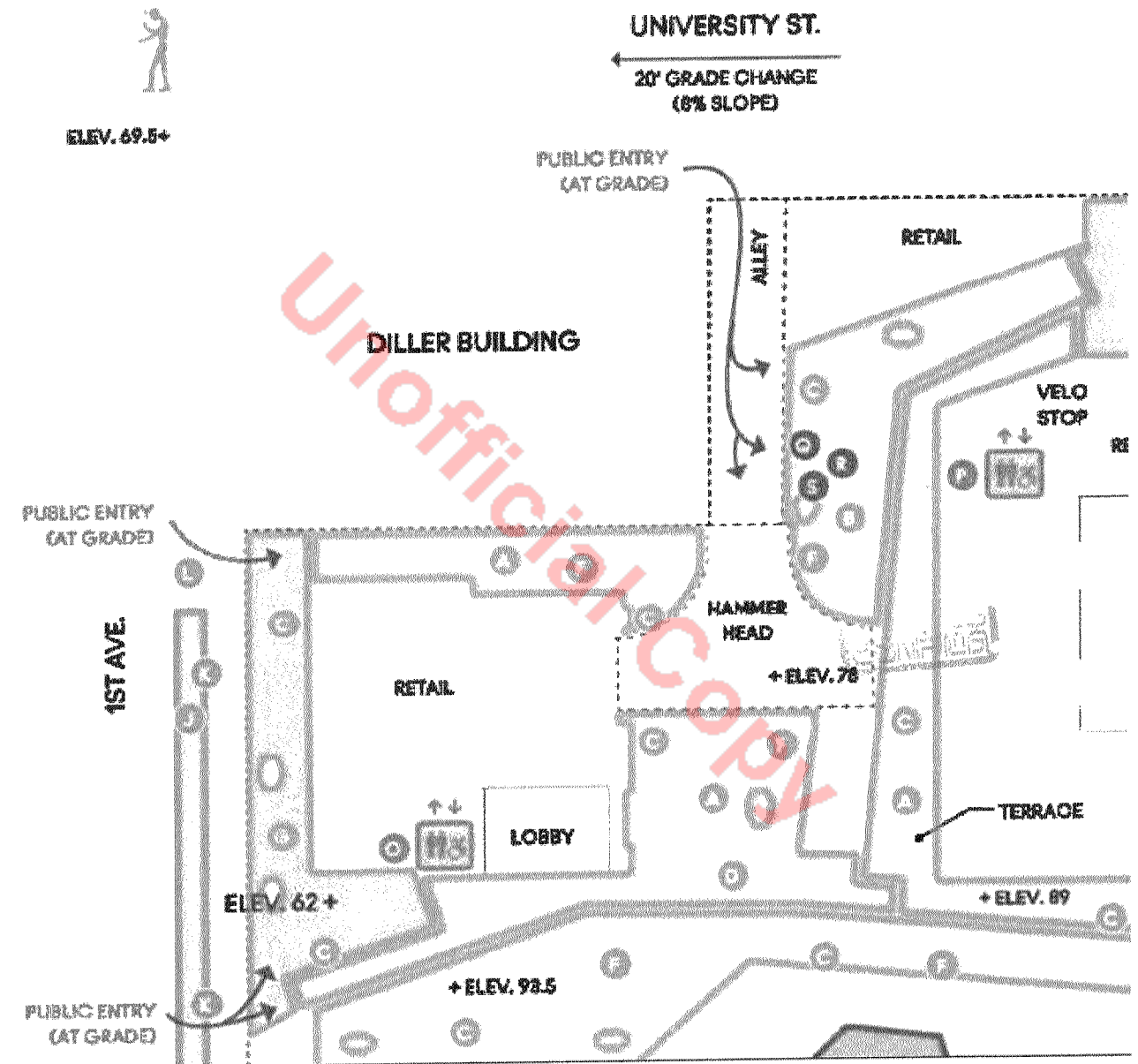


EXHIBIT C

2 + U Arts and Programming Plan

The Plan is required as part of the Public Benefit package included in the City Council's conditional approval of the alley vacation associated with the building and improvements located at 1201 2nd Avenue (the "Project") and known as 2 + U. The details of the conditional approval and associated conditions are referenced in Clerk's file 314320. As used herein, the term "Owner" means HS 2U Owner, LLC and its successors and assigns who own the Project from time to time. HS 2U Owner, LLC and each future owner of the Project shall be bound to this Plan only during the period of its ownership.

Background

Rapid development and economic growth in Seattle have displaced many affordable urban cultural spaces, especially in the Central Business District (CBD). Few downtown arts spaces remain, and the few that do are often economically out of reach for emerging artists, underserved populations, and arts organizations. The lack of access is especially pronounced for communities of color and other groups who have not historically had equitable access to the City's arts and culture infrastructure. At the same time, few new arts and cultural spaces are being developed that might add to the vibrancy and diversity of a neighborhood. This reality was communicated to Skanska early in the Project's development process by Seattle Office of Arts and Culture (OAC), Benaroya Hall, and the Seattle Art Museum (SAM). Each of these groups played an important collaborative role in helping shape the arts and cultural vision for the Project.

The Plan

To implement the Plan, Owner's predecessor-in-interest developed a concept called The Studio. The concept for The Studio as a required public benefit feature was developed to address the challenge of providing access to affordable, or even free of charge, arts and cultural space in the CBD for emerging artists and underserved communities. The Studio creates a new and innovative public-private partnership that allows public benefits to accrue to the neighborhood and larger City by creating a space that will support and empower arts and cultural activities and that can be curated and managed to provide access to a wide variety of users.

The Council's conditional approval included the requirement to develop this Plan, which includes a framework for programming The Studio. The City Council's expressed intention was that this Plan to include programming commitments and costs, outreach to disadvantaged communities, management, reporting obligations, and oversight.

The Plan is attached as an exhibit to the Property Use and Development Agreement ("PUDA") required as part of the City Council's final approval of the alley vacation for the Project. This Plan is intended to be a document that may be amended in the future independent of the PUDA and without City Council approval, subject to the amendment provisions below.

Agreement

Now, therefore, the Owner agrees to the following:

A. Program Goals/Vision. The Studio's goals, and the goals to program the Studio, include the following:

1. The Studio (as defined in Section B.1.a. below) provides a flexible space designed to meet the needs of arts and cultural users.
2. The Studio is located in a public benefits space that is visible and directly accessible from adjacent City streets.
3. The Studio is intended to support, empower, and promote local artists and cultural groups, with an emphasis on emerging artists from a diversity of backgrounds and communities.
4. The Studio will be available to artists and art groups free of charge for the life of the Project for the purposes set forth in the Property Use and Development Agreement. Users will be required to comply with the rules and regulations for The Studio and may be required to pay Owner for services provided by Owner relating to the User's usage of the space such as cleaning, set up, security and repair of any damages caused by the User or its invitees. Users may be charged a fee if they reserve The Studio and do not use The Studio during the reserved time.
5. Landlord shall provide or may contract with a third party (the "Studio Manager") who will provide regular activation of the Studio, to create synergy and connection with neighborhood and building occupants.

B. Implementation Plan / Strategies

1. Program Commitments and Costs

- a. Owner will provide the existing studio space consisting of 1,183 square feet of space at the ground floor of the Project which was designed to support vocal, dance, theater, music rehearsal activities, arts display, and community meetings (the "Studio").
- b. The Studio space includes a sprung floor to support dance events, a restroom, and other accessory spaces that support a variety of room uses.
- c. The Studio space will include a good visual connection with other on-site public benefit areas and adjacent streets.
- d. The Studio management costs and normal and customary operating expenses are covered by the Owner and are not charged back to the Studio Manager, artists, or user groups.
- e. Owner is not required to provide any equipment, supplies or security. Each user will use the Studio at its own risk and will provide its own equipment and supplies. Owner may require users to sign a standard user agreement as a condition to use of the Studio. Owner may require users to provide proof of insurance.

- f. The Studio may, but is not required to be, open outside of normal operating hours for the Project.

2. Management:

- a. Following precedent studies, workshops with local neighborhood arts organizations (Benaroya/SAM), and consultation with local arts and cultural subject matter experts, an open Request for Proposals (RFP) was developed to hire a partner organization to manage The Studio. The Studio Manager will have the following responsibilities:
 - i. Liaise with Owner and property manager regarding use, programming, and operations to ensure activation, alignment with vision, and ongoing success;
 - ii. Curate users and uses consistent with stated goals and vision of the Studio;
 - iii. Allow access to The Studio during normal building operating hours;
 - iv. Manage The Studio's day-to-day operations including access, space changeover, and staffing as-needed;
 - v. Advertise The Studio's availability to Seattle's arts and culture community, with an emphasis on emerging and underserved artists and groups;
 - vi. Solicit rolling applications for use of the Studio from Seattle's arts and culture community;
 - vii. Maintain records of Studio use as outlined under "Reporting" below; and
 - viii. Collaborate with cultural venues across Seattle to coordinate activities, identify potential users, and address areas of need.

3. Outreach and Engagement for Disadvantaged Communities: The Studio Manager will use their existing network and outreach infrastructure to be continually engaged with the local arts communities. Preferences for use of The Studio shall be given to:

- a. Uses by artists and arts organizations led by or serving communities of color, people with disabilities, LGBTQIA+ community, immigrants and refugees, youth, and seniors; and
- b. Uses that reflect a breadth of artistic genres, subject matters, communities, and messages, showcasing cultural activity that reflects the City's diversity

4. Reporting: The Studio Manager shall also be responsible for creating an annual report for the Owner and, pursuant to the requirements and conditions of the Alley Vacation, a report after the third year of operations that will be submitted to the Seattle City Council. Each annual report shall be submitted by December 31.

The annual report to the Owner for use in City updates is envisioned to include, but not be limited to the following components:

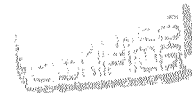
- a. Activity Summary: type, frequency, and duration of use;

- b. User Summary: list of artists/arts organizations that used the space, noting if possible; how they showcased or served emerging or underserved artists or arts organizations;
- c. Marketing Summary: outreach efforts, press, or media related items;
- d. Partnership Summary (public and private); and
- e. Lessons learned and recommended programming changes for the coming year.

Following the first 3 years of The Studio operations, a summary report shall be delivered to the City Council including:

- a. Staff briefing on how and to what extent the Studio's stated objectives have been achieved;
- b. A compilation of activity in years 1-3 with user, budget, and marketing summaries;
- c. Survey of studio users to understand the impact of The Studio; and
- d. A look ahead that identifies next steps and outline the next 3-year plan. The look ahead shall also contain an assessment on whether The Studio goals need to adapt to current community needs.

5. **Amendments to Plan.** The Plan shall, from time to time, be amended to reflect changing conditions and the relative success of the Plan's attainment of the goals stated in Section A of this document. The Owner shall obtain the approval of the Seattle Department of Transportation (SDOT) for changes to the Plan. SDOT may consult with other City Departments, such as the Department of Arts and Culture, prior to approving the Plan changes.



등부 2021 년 제 3945 호

Registered No. 2021 — 3945

인 증

NOTARIAL CERTIFICATE

위 부동산이용 및 개발합의서 에
기재된 정해성
의 대리인 정 크리스토퍼 (는)은
본 공증인의 면전에서 위 본인이
서명 한 것임을 자인하였다.

Chung Christopher
attorney-in-fact of

Hae Sung Jung
appeared before me and
admitted said principal's
subscription to the attached

2021 년 8 월 19 일

Property use and development
Agreement

이 사무소에서 위 인증한다.

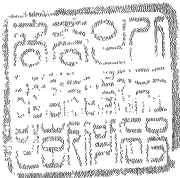
This is hereby attested on
this 19th day of Aug. 2021
at this office

공증인가 평화합동법률사무소
소속 서울중앙지방검찰청
서울특별시 중구 을지로 80-1

PYEONG-HWA LAW AND NOTARY PUBLIC OFFICE
Belong to Seoul Central District Prosecutors' Office
80-1, Eulji-Ro, Jung-Gu, Seoul, Korea

공증담당
변호사

박 승 옥



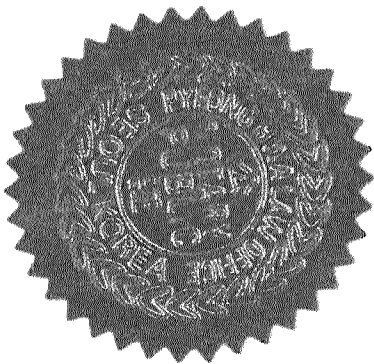
Park Sun Ok
Attorney-at-Law Park Sun Ok

This office has been authorized
by the Minister of Justice, the
Republic of Korea, to act as
Notary Public since
September 8, 1971. under
Law No. 2254



Registered No. 2021 - 3945

NOTARIAL CERTIFICATE



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PYEONG-HWA LAW AND NOTARY PUBLIC OFFICE
80-1, EULJI-RO, JUNG-GU, SEOUL, KOREA

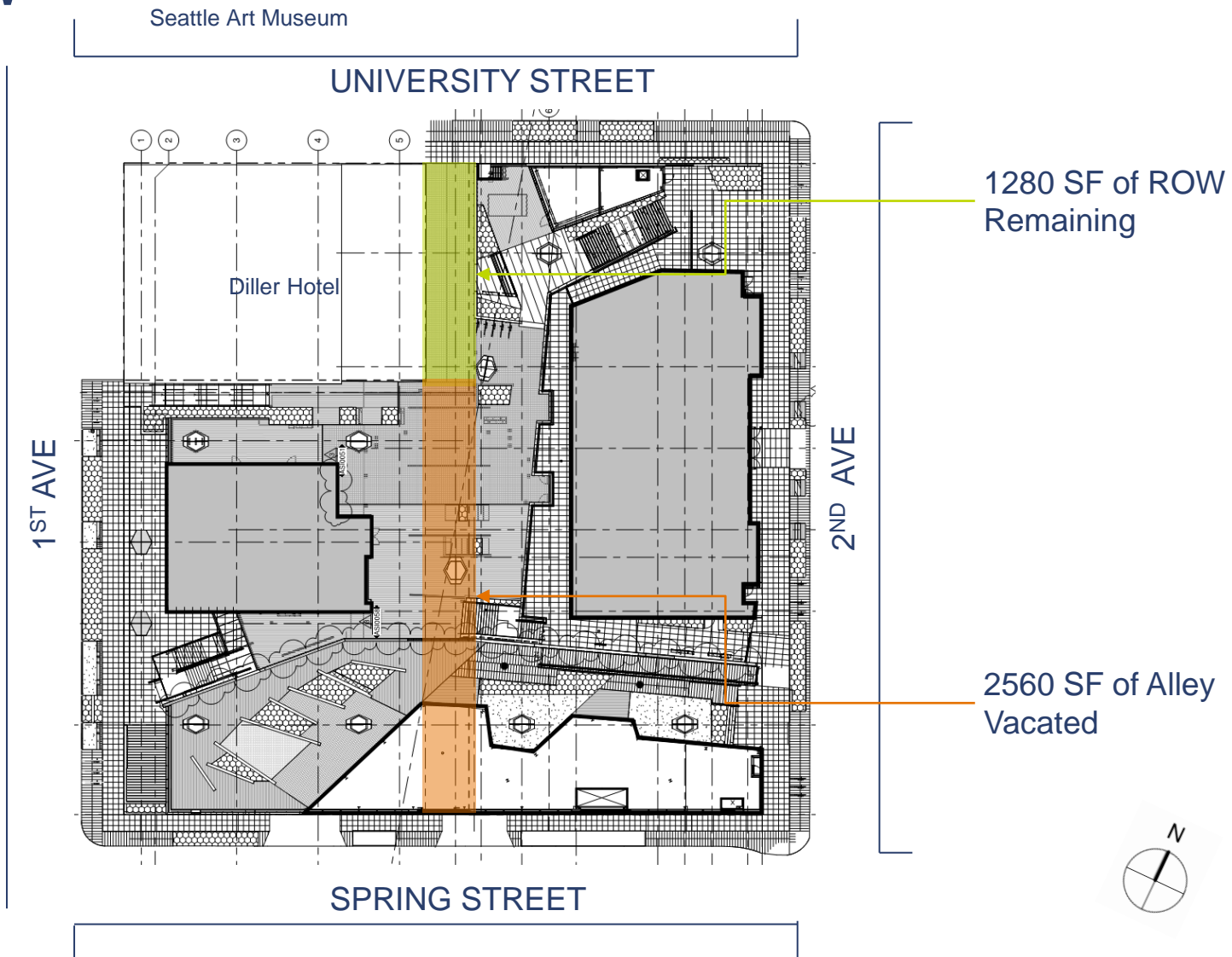
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Transportation and Seattle Public Utilities Committee March 15, 2022

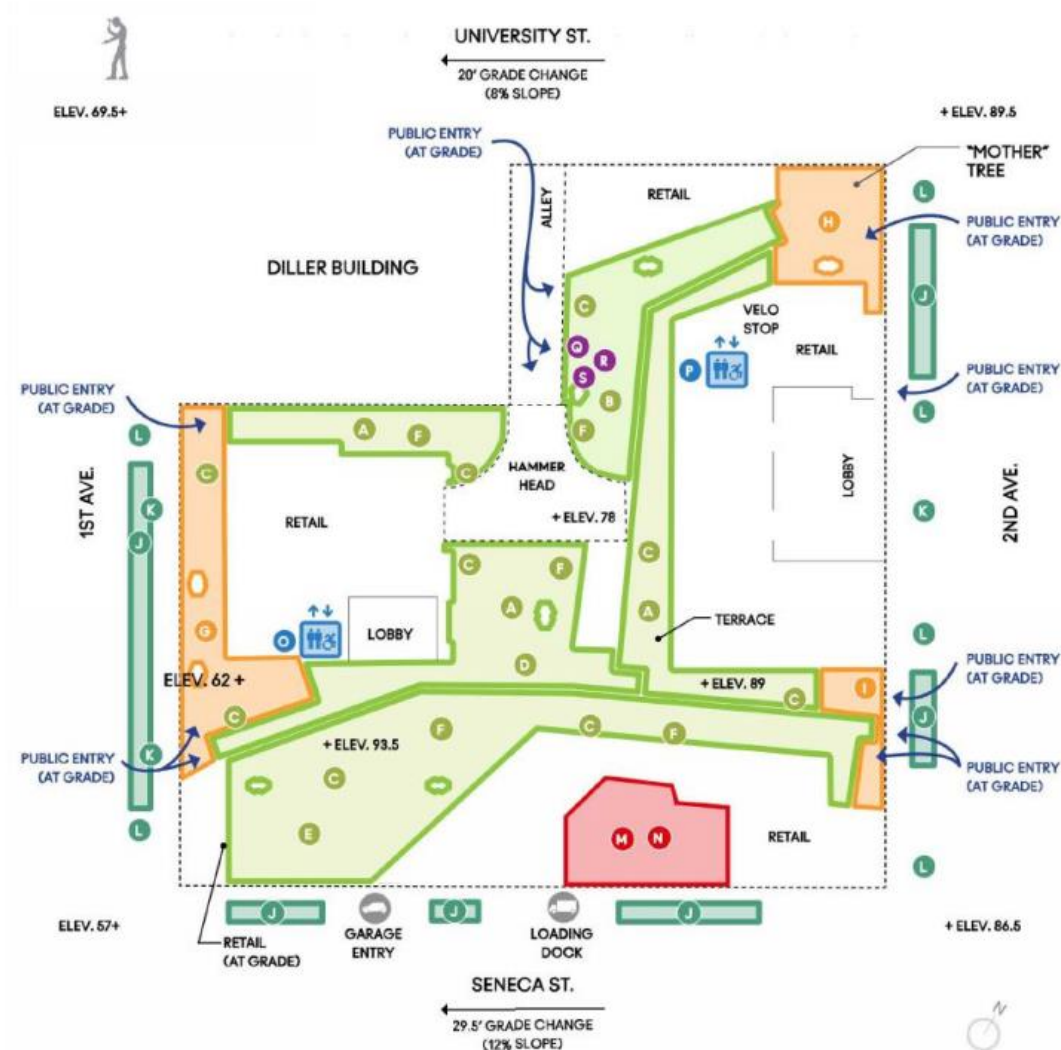
- Location: 1201 2nd Avenue
- Alley Vacation Clerk File: 314320 Alley Vacation
- Report Author: Charlie Foushee, Skanska Commercial Development



Overview



Summary of Public Benefit Elements



- Open Space
- Setbacks
- Right of Way Improvements
- Arts & Cultural Space
- Hill Climb Assist
- Bicycle Infrastructure

Summary of Public Benefit Elements

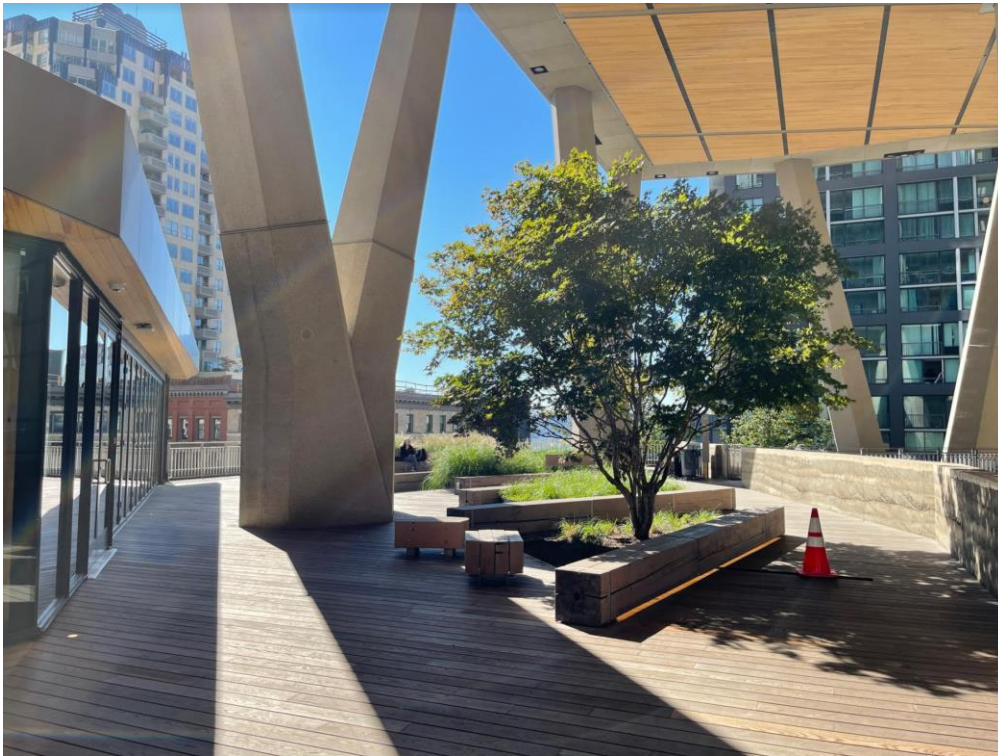
Item	Original Qty.	Current Qty.	Delta	Change due to
Open Space				
A Central plaza	6560 SF	7185 SF	+625 SF	Changes in setbacks.
B Bike Dock	2520 SF	2520 SF	-	-
C Seating and Drink Fntn.	82 seats	134 seats	+52 seats	Decision to provide more opportunities for diverse seating and gathering within the open spaces.
D Event Infrastructure	Plaza	Plaza	-	-
E Overlook	5930 SF	5930 SF	-	-
F On-Site Trees	15 trees	14 trees	-1 trees	Replaced 2 small pine trees with 1 large specimen Japanese Maple for significant immediate impact and destination marker.
Setbacks				
G 1st Avenue Promenade	2480 SF	1587 SF	-893 SF	1. The public stair extended further to the west, making it more inviting. 2. The retail seating area wall slid further north to help resolve ADA grading constraints to get access into the SW corner retail. 3. The west façade moved slightly west to bring the retail façade closer to the street, creating a more interesting streetscape. 4. The west core façade shifted closer to the street to gain some lobby space, making it more active/closer to the ROW.
H Front Deck	595 SF	730 SF	+135 SF	
I Entry Porch	690 SF	1045 SF	+355 SF	
Right of Way Improvements				
J ROW Planting	1248 SF	894 SF	-354 SF	SDOT direction during the SIP process to change tree species and layout, impacting the resulting planting bed dimensions.
K ROW Seating	12 seats	28 seats	+16 seats	Decision to provide more opportunities for seating and gathering within the ROW.
L ROW Bike Parking	15 racks	15 racks	-	-
Arts and Culture Spaces				
M Perform. Triangle (interior)	835 SF	1183	+58 SF	The combination of the two original spaces was the result of a programming consultant recommendation that the space would function more effectively for diverse uses in a single, larger location.
N The Studio (interior)	290 SF	(combined)	(combined)	
Hill Climb Assist				
O 1st Avenue Elevator	1	1	-	-
P 2nd Avenue Elevator	1	1	-	-
Bicycle Infrastructure				
Q Bike Racks	5	5	-	-
R E-Bike Charging Station	1	1	-	-
S Fix It Repair Stand	1	1	-	-

Open Space - Level 2 Central Plaza



Includes: Central Plaza, Bike Dock, Seating, Drinking Fountain, Event Infrastructure, On-Site Trees

Open Space – Level 3 Lookout



Includes: Overlook area, On-Site Trees, Seating

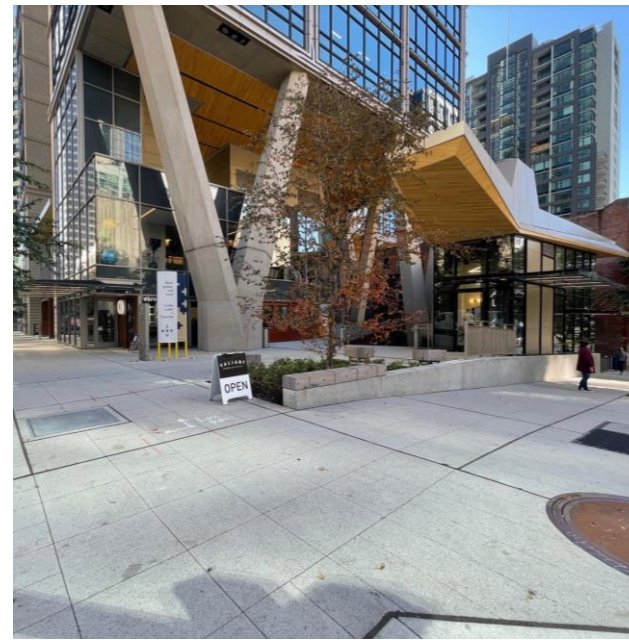
Setbacks



1st Ave. Promenade - Grand Staircase mid-block looking east showing building setbacks, public stair and seating.



1st Ave. Promenade – Mid-block looking NE towards Diller Building showing setbacks, public stair and seating.



2nd Ave/University Front Deck including seating, on-site trees and planting



2nd Ave SE corner Entry Porch and typical wayfinding signage that can be found at each main entry point into the main plaza.

ROW Improvements



1st Ave with Bike Parking, Benches and Plantings



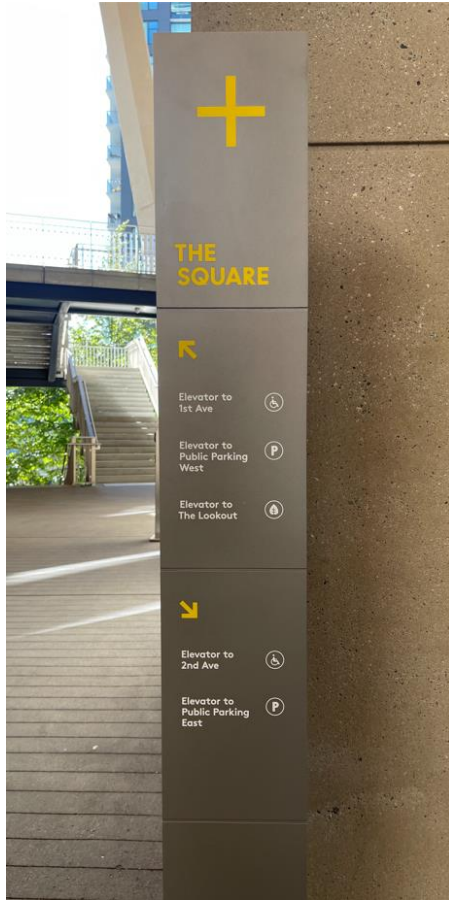
2nd Ave with Bike Parking, Benches and Plantings

Arts and Cultural Space – The Studio



1,183 SF of performance space free for emerging artists, currently operated by Shunpike. It's visually connected to both Seneca St and The Square. Since opening in August 2020, The Studio has hosted over 50+ individuals and groups.

Hill Climb Assist



Wayfinding Signage



Elevator to Second Ave



Elevator to First Ave

Bicycle Infrastructure



Bike Racks/Bike Charging



Fix it Repair Stand

Thank You. Questions?



Legislation Text

File #: CB 120281, **Version:** 1

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL _____

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.

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

WHEREAS, the adoption of this ordinance is the culmination of the approval process for the Private Parking

Area to legally occupy a portion of the public right-of-way, and the adopted ordinance is considered to be the permit; 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 BSOP 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 the “Permittee”), to construct, maintain, and operate a private parking area for 16 vehicles on unopened right-of-way on East Howe Street, east of Fairview Avenue East (collectively referred to as “Private Parking Area”), adjacent in whole or in part to the property legally described as:

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

BEGINNING AT THE SOUTHEAST CORNER OF SAID BLOCK 60;

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

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

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

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

THENCE SOUTHEASTERLY, ALONG SAID SOUTHWESTERLY LINE, 149.82 FEET;

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

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

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

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

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

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

Section 2. **Term.** The permission granted to the Permittee is for a term of 15 years starting on the effective date of this ordinance and ending at 11:59 p.m. on the last day of the fifteenth year. Upon written application made by the Permittee at least one year before expiration of the term, the Director or the City Council may renew the permit once, for a successive 15-year term, subject to the right of the City to require the removal of the Private Parking Area, 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 one year before the then-existing term expires. Any new application would be subject to the fees and criteria in place at the time of the new application.

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 the Private Parking Area 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 before expiration of the initial term or any renewal term, and require the Permittee to remove the Private Parking Area or any part thereof or installation on the public place, at the Permittee's sole cost and expense if:

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

B. The Director determines that use of the Private Parking Area 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 Private Parking Area ~~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 Private Parking Area, the Permittee shall, at its own expense, remove the signage designating the Private Parking Area 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 Private Parking Area in as good condition for

public use as existed prior to constructing the Private Parking Area, which the Parties acknowledge is currently improved with parking, 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 Private Parking Area 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 Private Parking Area 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 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 Private Parking Area shall remain the exclusive responsibility of the Permittee and the Permittee shall maintain the Private Parking Area in good and safe condition for the protection of the public. The Permittee shall not reconstruct or repair the Private Parking Area except in strict accordance with plans and specifications approved by the Director. The Director may, in the Director's judgment, order the Private Parking Area reconstructed or repaired at the Permittee's cost and expense because of the deterioration or unsafe condition of the Private Parking Area; because of 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 Private Parking Area be closed or removed at the Permittee's expense if the Director deems that the Private Parking Area 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 the termination or expiration of the permission granted, or removal of the Private Parking Area, 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 any removal and restoration obligations established by the City, or the Seattle City Council passes a new ordinance to renew the permission granted and/or establishes a new term. Notwithstanding the issuance of that certification, the Permittee shall continue to be bound by the obligations in Section 9 and Section 21 of this ordinance and shall remain liable for any unpaid fees assessed under Sections 15 and 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 Private Parking Area, 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 Private Parking Area 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 Private Parking Area, 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 Private Parking Area or any portion thereof, as well as restoration of any disturbed areas of the public place in connection with removal of the Private Parking Area;

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.

Minimum limits of liability shall be \$5,000,000 per Occurrence; \$10,000,000 General Aggregate; \$5,000,000 Products/Completed Operations Aggregate, including Premises Operations; Personal/Advertising Injury; Contractual Liability. Coverage shall include the "City of Seattle, its 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 in the amount of \$15,000, 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. If 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.** When the Property is transferred, the permission granted by this ordinance shall be assignable and transferable by operation of law pursuant to Section 20 of this ordinance. Continued occupation of the right-of-way constitutes the Permittee's acceptance of the terms of this ordinance, and the new owner of the Property shall be conferred with the rights and obligations of the Permittee by this ordinance. Other than a transfer to a new owner of the Property, the Permittee shall not transfer, assign, mortgage, pledge or encumber the same without the Director's consent, which the Director shall not unreasonably refuse or condition. 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 provided, at the time of the assignment or transfer, the bond and certification of insurance coverage required under this ordinance; and has paid any fees due under Sections 15 and 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 Private Parking Area.

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 Private Parking Area during construction, reconstruction, repair, annual safety inspections, and at other times deemed necessary by the City. An inspection or approval of the Private Parking Area 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

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

A report meeting the foregoing requirements shall be submitted within 60 days after the effective date of this ordinance; subsequent reports shall be submitted every two years, provided that, in the event of a natural disaster or other event that may have damaged the Private Parking Area, 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 Private Parking Area. 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 Permittee's obligations.

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

Adjustments to the Annual Use and Occupation 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-Bellevue Area, All Urban Consumers, All Products, Not Seasonally Adjusted. Permittee shall pay any other applicable fees, including fees for reviewing applications to renew the permit after expiration of the first term. All payments shall be made to the City Finance Director for credit to the Transportation Fund.

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

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

Section 20. **Obligations run with the Property.** The obligations and conditions imposed on the Permittee by this ordinance are covenants that run with the land and bind subsequent owners of the property adjacent to the Private Parking Area 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, the 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, the Permittee shall cause encumbrances on the Property to be subordinated to the covenant agreement.

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

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

Section 22. Private Parking Area Permit Process. The City shall be responsible for the review and approval of all permits within the Private Parking Area, including but not limited to any temporary public space management permits; provided however, the City shall issue all permit(s) for the use or occupancy of the Private Parking Area during the Restricted Hours in accordance with the terms of this ordinance. Applicants for any temporary use permits are required to provide to SDOT a copy of the written approval from the Permittee. The Permittee shall be listed as an additional insured party on any permit issued by the City by a third party for use or occupancy of the Private Parking Area.

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

Section 24. 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 _____, 2022, and signed by me in open session in authentication of its passage this _____ day of _____, 2022.

President _____ of the City Council

Approved / returned unsigned / vetoed this _____ day of _____, 2022.

Bruce A. Harrell, Mayor

Filed by me this _____ day of _____, 2022.

Monica Martinez Simmons, City Clerk

(Seal)

Attachments:

SUMMARY and FISCAL NOTE*

Department:	Dept. Contact/Phone:	CBO Contact/Phone:
Seattle Department of Transportation	Amy Gray/206-386-4638	Christie Parker/206-684-5211

** Note that the Summary and Fiscal Note describes the version of the bill or resolution as introduced; final legislation including amendments may not be fully described.*

1. BILL SUMMARY

Legislation 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.

Summary and Background of the Legislation:

This legislation would allow BSOP 1, LLC to construct, maintain and operate a private parking area on East Howe Street, east of Fairview Avenue East. The BSOP 1, LLC permit would be for a period of fifteen years, commencing on the effective date of the ordinance. The permit may be extended for one successive 15-year term. The legislation specifies the conditions under which permission is granted.

2. CAPITAL IMPROVEMENT PROGRAM

Does this legislation create, fund, or amend a CIP Project? Yes No

3. SUMMARY OF FINANCIAL IMPLICATIONS

Does this legislation amend the Adopted Budget? Yes No

Appropriation change (\$):	General Fund \$		Other \$	
	2022	2023	2022	2023
Estimated revenue change (\$):	Revenue to General Fund		Revenue to Other Funds	
	2022	2023	2022	2023
			\$25,488	TBD
Positions affected:	No. of Positions		Total FTE Change	
	2022	2023	2022	2023

Does the legislation have other financial impacts to The City of Seattle that are not reflected in the above, including direct or indirect, short-term or long-term costs?
 No.

Are there financial costs or other impacts of *not* implementing the legislation?

No.

3.a. Appropriations

This legislation adds, changes, or deletes appropriations.

3.b. Revenues/Reimbursements

This legislation adds, changes, or deletes revenues or reimbursements.

Anticipated Revenue/Reimbursement Resulting from This Legislation:

Fund Name and Number	Dept	Revenue Source	2022 Revenue	2023 Estimated Revenue
Transportation Fund (13000)	SDOT	Annual Fee	\$25,488	TBD
TOTAL			\$25,488	TBD

Is this change one-time or ongoing?

Ongoing.

Revenue/Reimbursement Notes:

The 2022 fee is based on the 2022 land value as assessed by King County.

3.c. Positions

This legislation adds, changes, or deletes positions.

4. OTHER IMPLICATIONS

a. Does this legislation affect any departments besides the originating department?

No.

b. Is a public hearing required for this legislation?

No.

c. Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation?

No.

d. Does this legislation affect a piece of property?

Yes, the BSOP 1, LLC property legally described in Section 1 of the Council Bill.

- e. Please describe any perceived implication for the principles of the Race and Social Justice Initiative. Does this legislation impact vulnerable or historically disadvantaged communities? What is the Language Access plan for any communications to the public?**

This legislation does not have any implications for the principles of the Race and Social Justice Initiative and does not impact vulnerable or historically disadvantaged communities.

f. Climate Change Implications

- 1. Emissions: Is this legislation likely to increase or decrease carbon emissions in a material way?**

No.

- 2. Resiliency: Will the action(s) proposed by this legislation increase or decrease Seattle's resiliency (or ability to adapt) to climate change in a material way? If so, explain. If it is likely to decrease resiliency in a material way, describe what will or could be done to mitigate the effects.**

N/A

- g. If this legislation includes a new initiative or a major programmatic expansion: What are the specific long-term and measurable goal(s) of the program? How will this legislation help achieve the program's desired goal(s)?**

N/A

Summary Attachments:

Summary Attachment A – Private Parking Area Map

Summary Attachment B – Street Use Annual Fee Assessment

1910 FAIRVIEW AVE E
SEATTLE, WA 98102




1818 FAIRVIEW AVE E
SEATTLE, WA 98102 (NAP)

FAIRVIEW AVE E.

RIGHT OF WAY, TYP

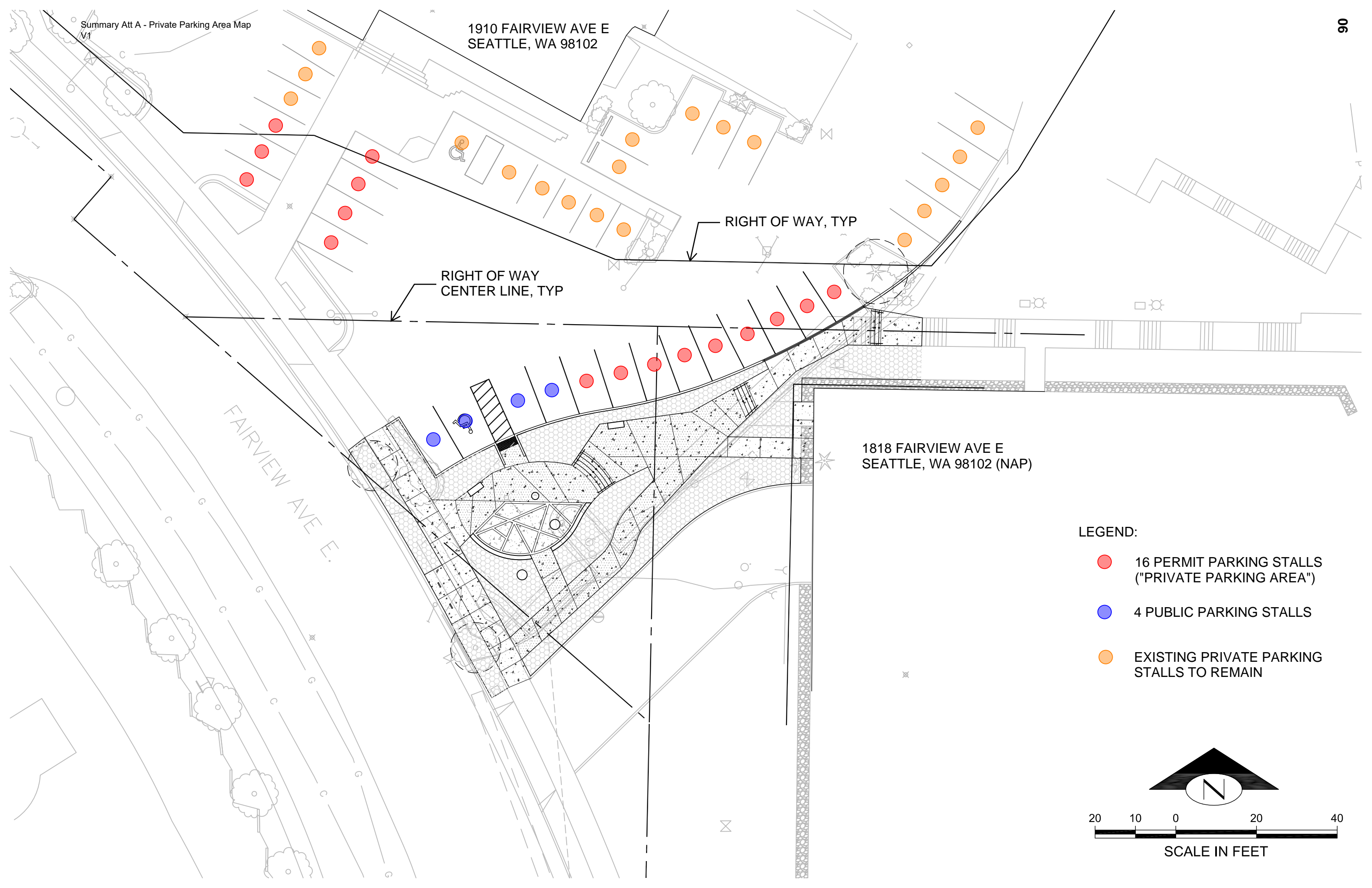
RIGHT OF WAY
CENTER LINE, TYP

LEGEND:

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



SCALE IN FEET



Attachment B - Annual Fee Assessment Summary

STREET USE ANNUAL FEE ASSESSMENT

Date: 12/3/2021

<p><u>Summary:</u> Land Value: \$225/SF 2022 Permit Fee: \$25,488</p>
--

I. Property Description:

New private parking are in unopened East Howe Street, east of Fairview Avenue East. The private parking area is **1,770 square feet**.

Applicant:
BSOP 1, LLC

Abutting Parcels, Property Size, Assessed Value:

2022

Parcel 2025049040; Lot size: 34,100 square feet
Tax year 2022 Appraised Land Value \$7,672,500 (\$225/square foot)

Parcel 4088802655; Lot size: 51,400 square feet
Tax year 2022 Appraised Land Value \$11,565,000 (\$225/square foot)

Average 2022 Tax Assessed Land Value: \$225/SF

II. Annual Fee Assessment:

The 2022 permit fee is calculated as follows:

Private parking area:
 $(\$225/\text{SF}) \times (1,770 \text{ SF}) \times (80\%) \times (8\%) = \boxed{\$25,488}$ where 80% is the degree of alienation for at-grade restricted access and 8% is the annual rate of return.

Fee methodology authorized under Ordinance 123485, as amended by Ordinances 123585, 123907, and 124532.

March 9, 2022

MEMORANDUM

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

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

1818 FAIRVIEW AVE E
SEATTLE, WA 98102 (NAP)

FAIRVIEW AVE E.

RIGHT OF WAY, TYP

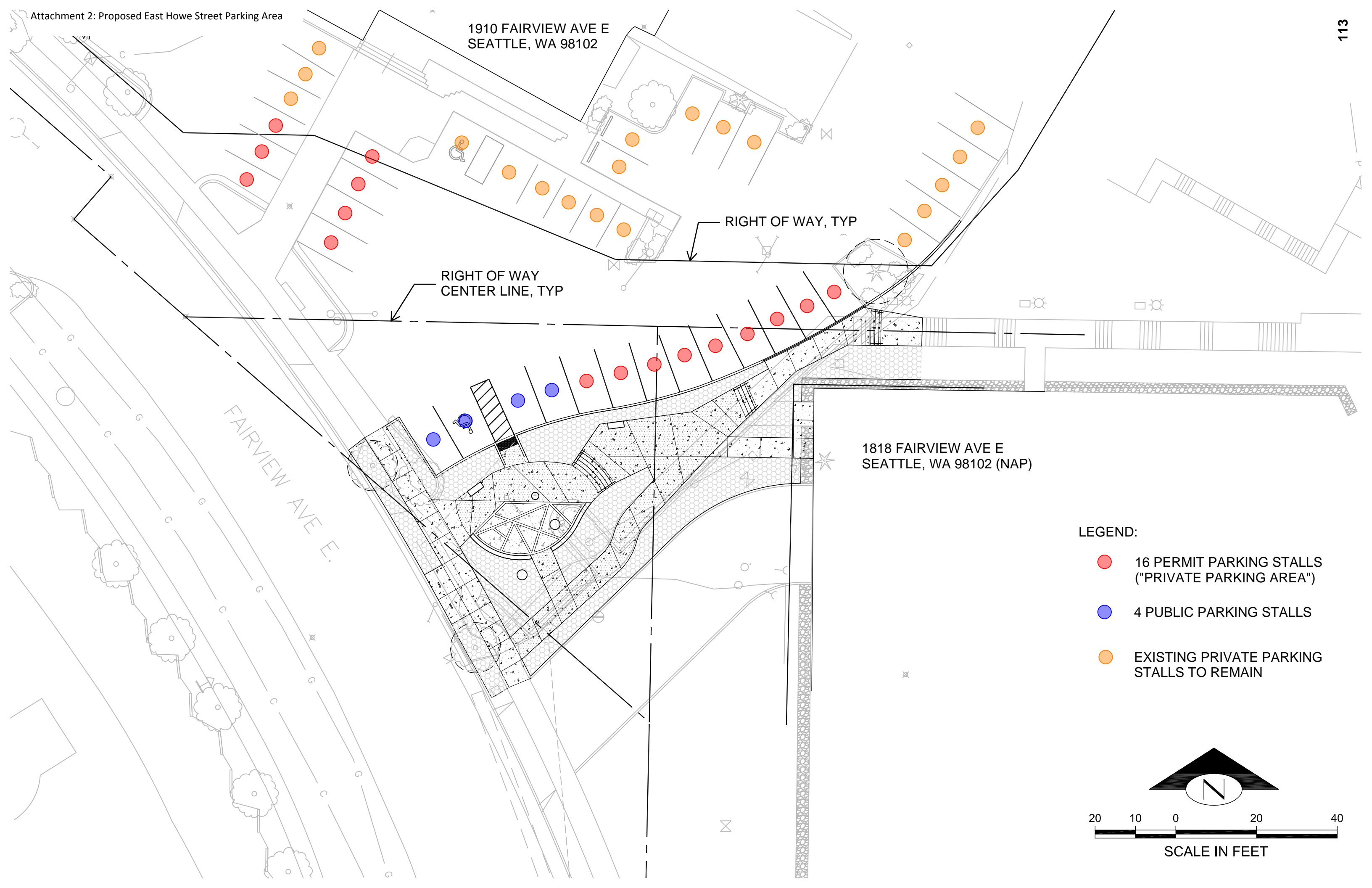
RIGHT OF WAY
CENTER LINE, TYP

LEGEND:

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



SCALE IN FEET





BSOP 1, LLC Term Permit

Council Transportation & Seattle Public Utilities Committee



Presentation overview

East Howe Steps Plaza Steering Committee (Steering Committee) and BSOP 1, LLC entered into a Memorandum of Understanding for the development of the E Howe Steps Plaza

- BSOP 1, LLC is contributing \$500,000 towards the development and maintenance of the new public plaza
- BSOP 1, LLC is seeking a new permit for private weekday parking in East Howe Street, east of Fairview Avenue East to implement the MOU
- The Steering Committee supports the private weekday parking

SDOT recommends approval of the term permit

Term permit process

This term permit implements the agreement between the Steering Committee and BSOP 1, LLC for the development of the public plaza

2-Step approval process:

1. Resolution

City Council adopted Resolution 31988 on March 8, 2021, conceptually approving the private use in the right-of-way, subject to the terms and conditions to be established in the term permit ordinance.

2. Ordinance

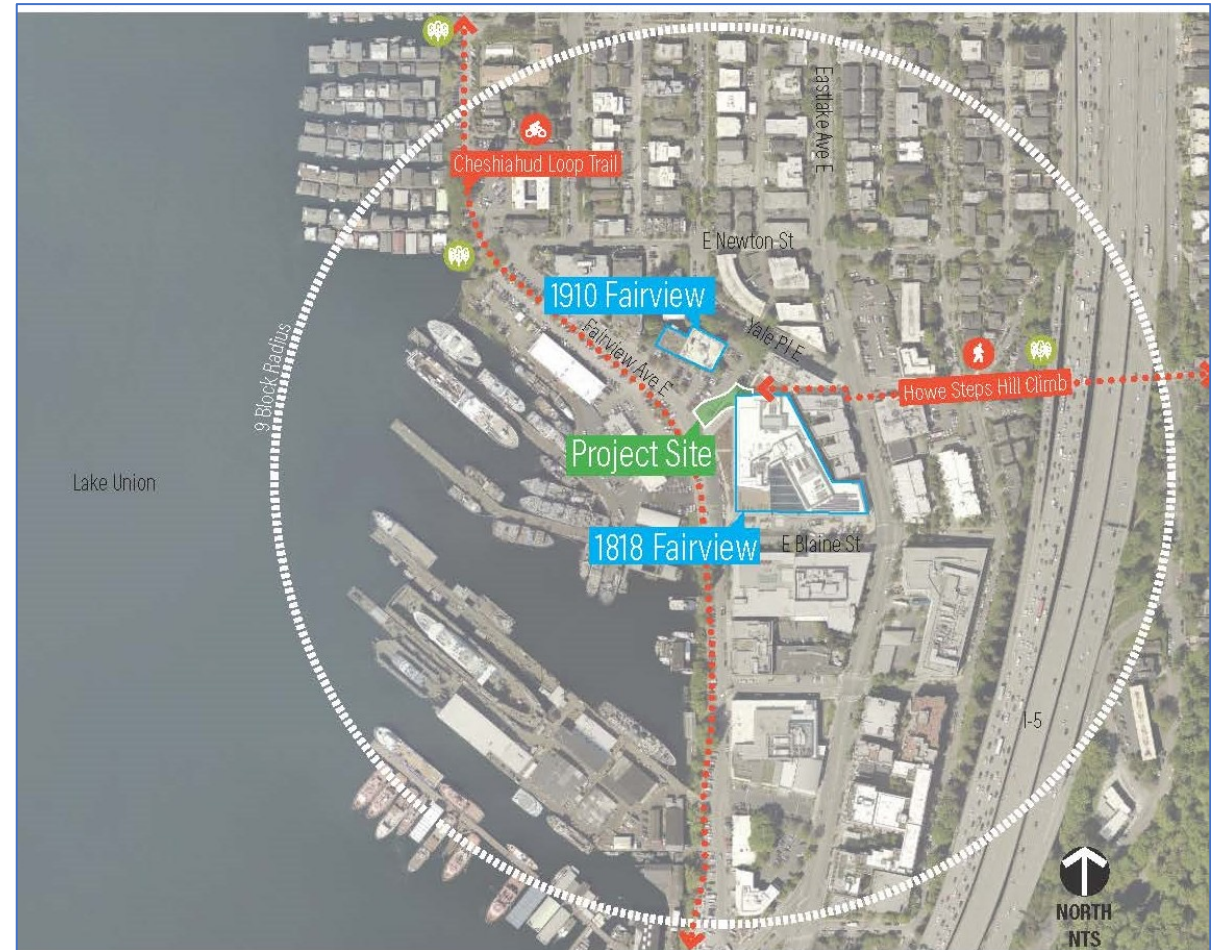
Passage of the ordinance details the terms and conditions of the permit, including annual fee, maintenance obligations, indemnification, insurance, and bond requirements.

Property owner and community organization

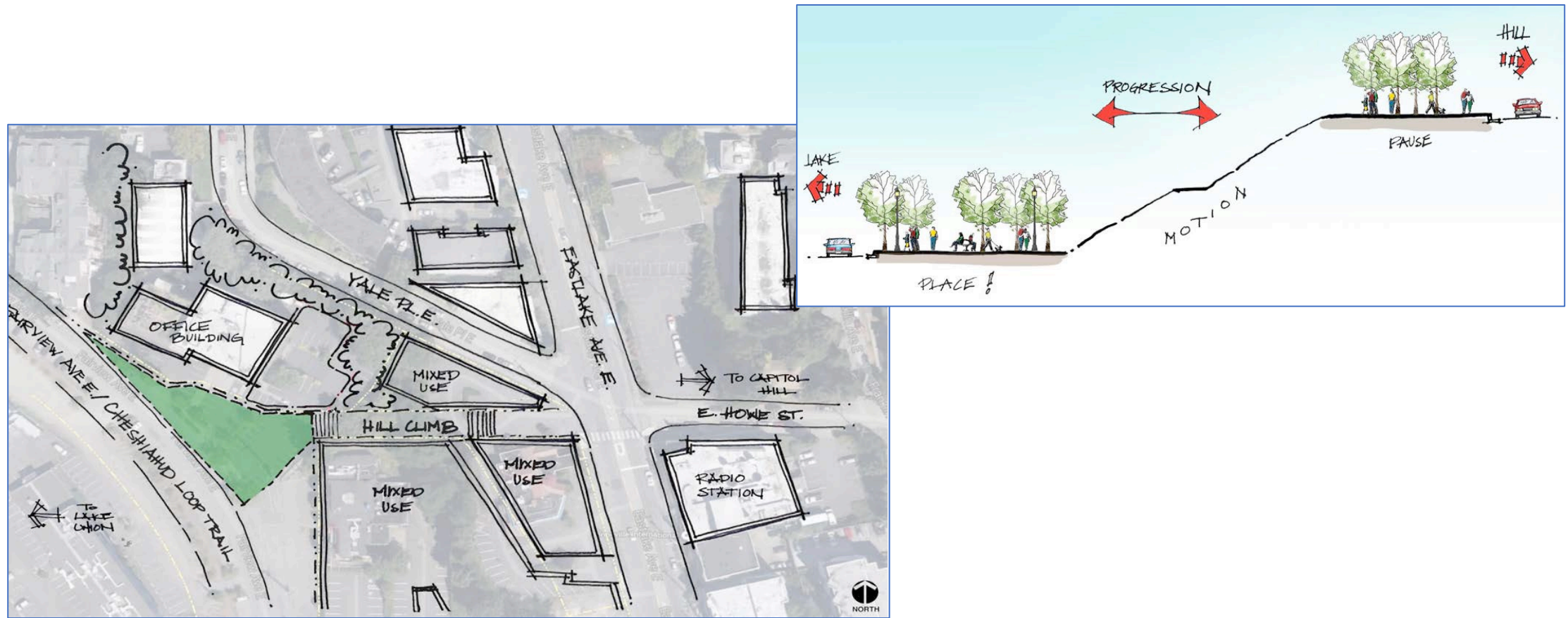
- BSOP 1, LLC: property owner at 1910 Fairview Ave E, an existing office building with business parking located in the E Howe St right-of-way
- E Howe Steps Plaza Steering Committee: Eastlake community members who participated in the development of the MOU for the public improvements and the private parking area

Project area - Eastlake neighborhood

1910 Fairview Ave E



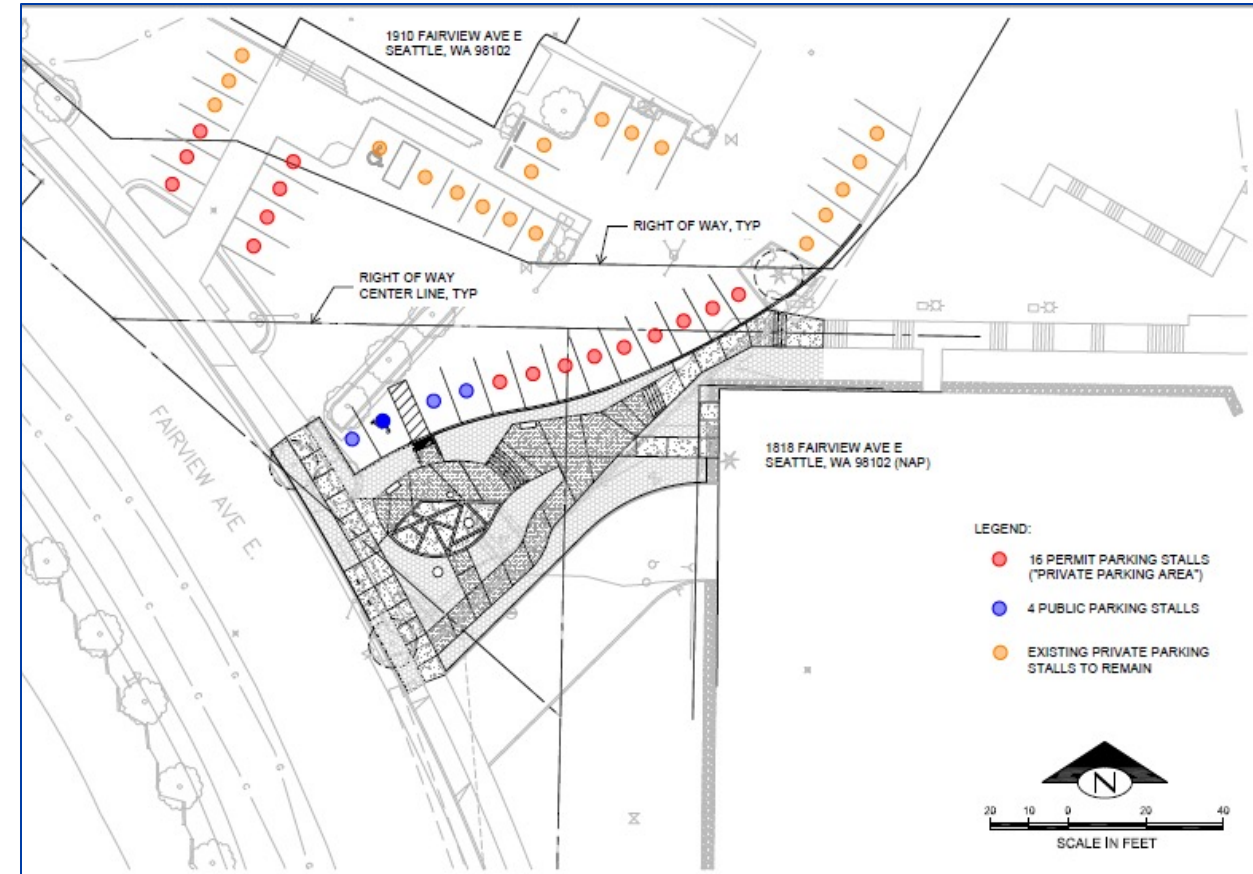
Project area - Eastlake neighborhood



Proposal

The Dept of Neighborhoods facilitated an MOU between the Steering Committee and BSOP 1, LLC

- The Steering Committee received a \$100,000 Matching Fund grant from the Dept of Neighborhoods for designing and permitting the public plaza
- BSOP 1, LLC is contributing \$500,000 to construct the public plaza in unopened right-of-way; BSOP 1 LLC will be responsible for the on-going maintenance of the plaza
- BSOP 1, LLC will accommodate up to 12 community events per year in the private weekday parking area
- The Steering Committee supports the private weekday parking term permit to support the agreement for the construction and on-going maintenance of the new plaza



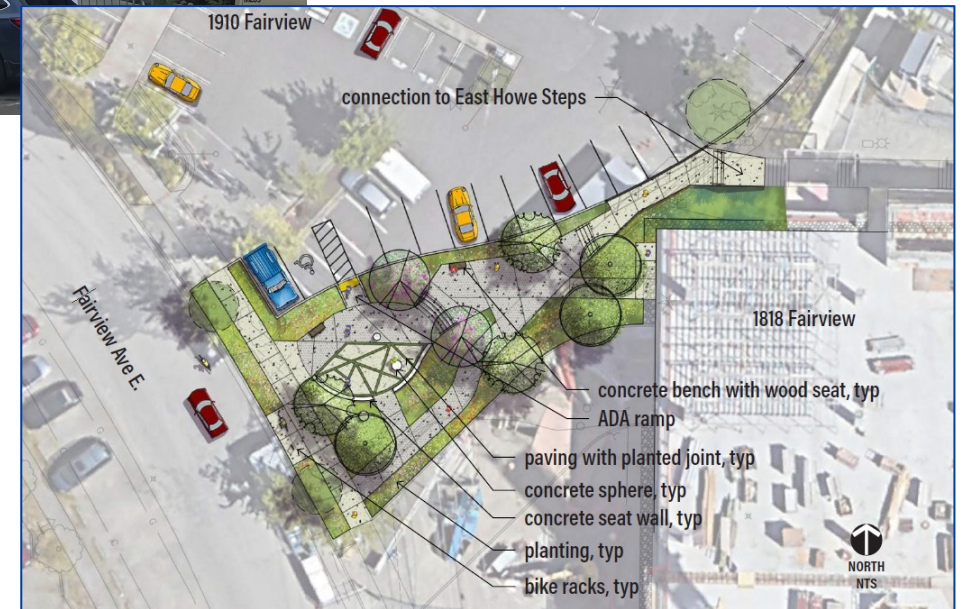
Proposal

Private weekday parking

- 16 signed private stalls
 - Available to the public on weekends and holidays
- 4 public parking stalls

Plaza:

- Landscaping and paver treatment
- Bike racks
- Protecting existing tree



Proposal

Existing conditions – E Howe ROW currently used as parking



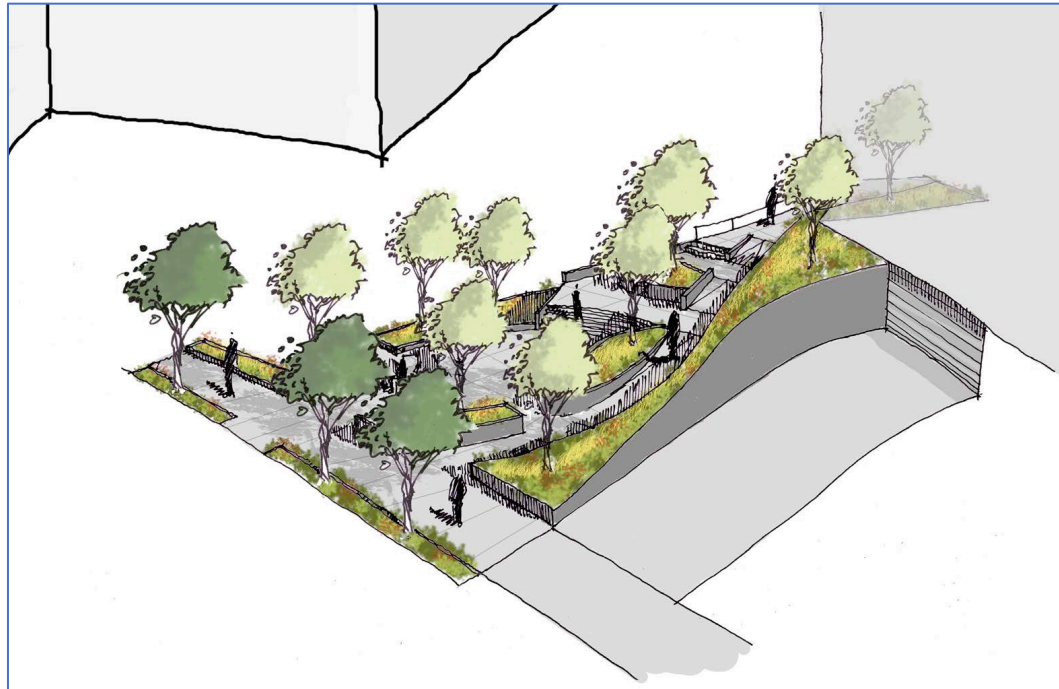
Facing west

Facing east

Proposal

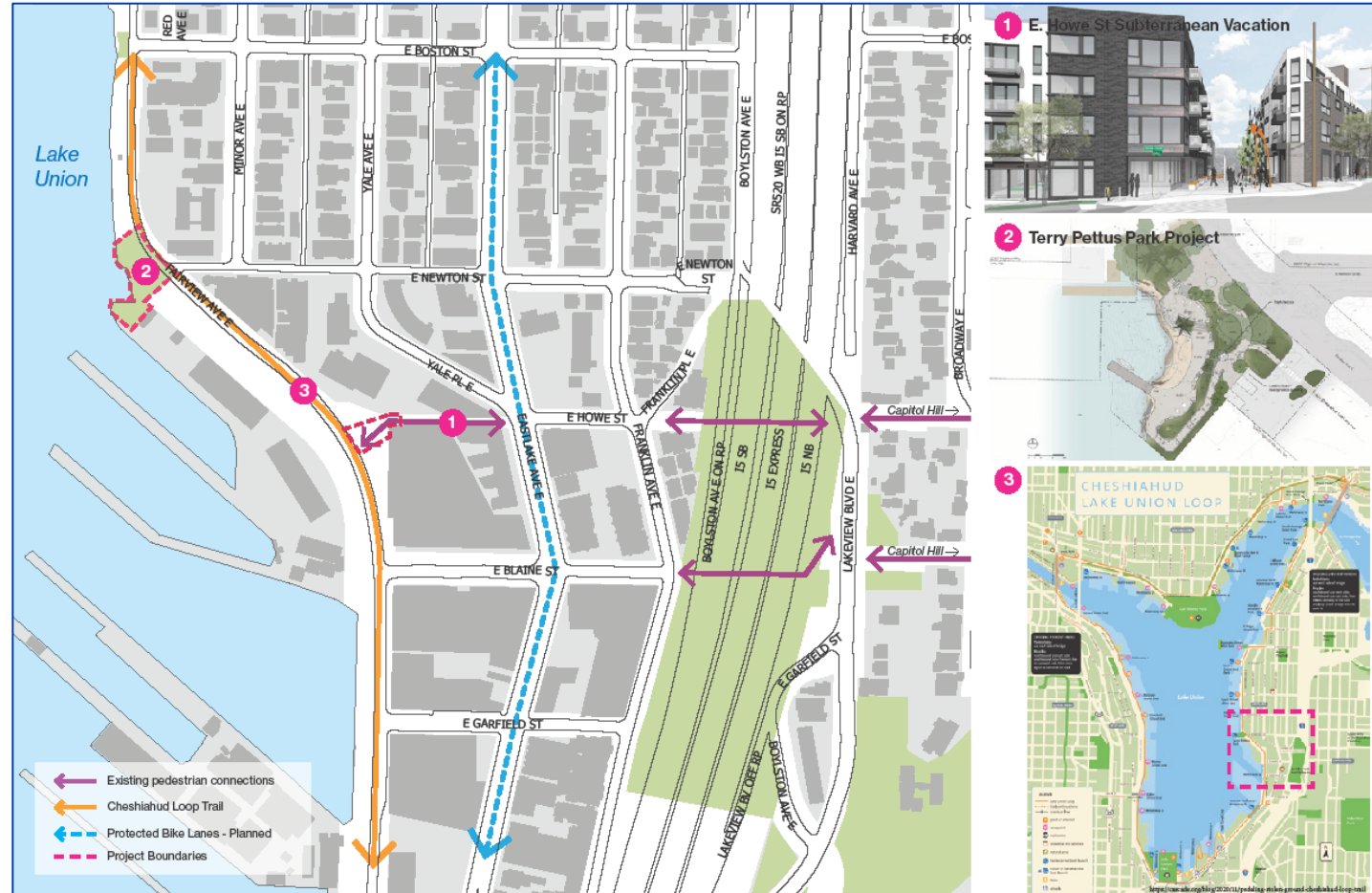
Plaza perspective

Facing west



Facing east

Pedestrian connections



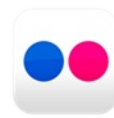
Requested action

- SDOT is seeking Council approval of this Council Bill for the private weekday parking by BSOP 1, LLC
- If the ordinance is approved, the permit will be in place for 15 years, with one renewable 15-year term

Questions?

amy.gray@seattle.gov | (206) 386-4638

www.seattle.gov/transportation





Legislation Text

File #: CB 120290, **Version:** 1

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL _____

AN ORDINANCE granting The Boeing Company permission to continue maintaining and operating two pedestrian tunnels under and across 16th Avenue South, 565 feet south of East Marginal Way South, and under and across East Marginal Way South, 510 feet east of 16th Avenue South; repealing Section 8 of Ordinance 123540; and providing for acceptance of the permit and conditions.

WHEREAS, by Ordinance 123540, the City of Seattle granted The Boeing Company permission to maintain and operate two pedestrian tunnels under and across 16th Avenue South, 565 feet south of East Marginal Way South, and under and across East Marginal Way South, 510 feet east of 16th Avenue South, for a 10-year term, renewable for two successive 10-year terms; and

WHEREAS, the permission authorized by Ordinance 123540 was due for renewal on November 11, 2020; and

WHEREAS, since the adoption of Ordinance 123540, The City of Seattle has established a practice for the length of permit to one 15-year term, renewable for one successive 15-year term; and

WHEREAS, reflective of this change, The Boeing Company submitted an application to the Director of Transportation to renew the permission granted by Ordinance 123540 for a 15-year term; and

WHEREAS, the obligations of Ordinance 123540 remain in effect after the ordinance term expires until the encroachment is removed, or The Boeing Company 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 Boeing Company satisfied all the terms of the original authorizing ordinance and the Director of Transportation recommends that the term permit be renewed for 15 years subject to the terms

identified in this ordinance; 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 The Boeing Company, 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 are referred to as “Permittee”), to continue maintaining and operating two existing pedestrian tunnels under and across 16th Avenue South, 565 feet south of East Marginal Way South, and under and across East Marginal Way South, 510 feet east of 16th Avenue South. The pedestrian tunnels are adjacent in whole or in part to the properties legally described as:

A TRACT OF LAND BETWEEN THE DUWAMISH WATERWAY AS ESTABLISHED BY COMMERCIAL WATERWAY DISTRICT NO. 1 OF KING COUNTY, WASHINGTON AND EAST MARGINAL WAY SOUTH IN SECTIONS 28, 29, 32 AND 33, TOWNSHIP 24 NORTH, RANGE 4 EAST, W.M., DESCRIBED AS FOLLOWS; BEGINNING AT THE INTERSECTION OF THE SOUTH MARGIN OF SOUTH WEBSTER STREET, BEING 12 FEET SOUTH OF THE CENTERLINE THEREOF, AND THE SOUTHWESTERLY MARGIN AT EAST MARGINAL WAY SOUTH, BEING 65 FEET SOUTHWESTERLY OF THE CENTERLINE THEREOF; THENCE SOUTH 47°52'17" EAST, ALONG THE SOUTHWESTERLY MARGIN OF EAST MARGINAL WAY SOUTH, 221.97 FEET, TO THE WEST MARGIN OF 14TH AVENUE SOUTH; THENCE SOUTH 00°58'43" WEST, ALONG THE WEST MARGIN OF 14TH AVENUE SOUTH BEING 60 FEET IN WIDTH, 543.66 FEET, TO A POINT THAT IS 637.11 FEET NORTH OF THE SOUTH LINE OF GOVERNMENT LOT 13 IN SAID SECTION 29; THENCE SOUTH 88°05'51" EAST; PARALLEL WITH SAID SOUTH LINE, 60.01 FEET TO THE EAST MARGIN OF 14TH AVENUE SOUTH; THENCE NORTH 00°58'43" EAST, ALONG SAID EAST MARGIN, 131.35 FEET; THENCE SOUTH 89°12'41" EAST, A DISTANCE OF 182.89 FEET; THENCE NORTH 00°47'19" EAST, A DISTANCE OF 45.88 FEET; THENCE SOUTH 89°12'41" EAST, A DISTANCE OF 137.92 FEET TO THE WEST MARGIN OF 16TH AVENUE SOUTH; THENCE SOUTH 01°57'52" WEST, ALONG THE SAID WEST MARGIN OF 16TH AVENUE SOUTH, 585.85 FEET, TO A POINT OF CURVE; THENCE CONTINUING ALONG SAID WEST MARGIN ON A CURVE TO THE RIGHT, SAID CURVE HAVING A RADIUS OF 1860.08 FEET, THROUGH A CENTRAL ANGLE OF 11°02'53" AN ARC LENGTH OF 358.67 FEET, TO THE POINT OF TANGENCY; THENCE CONTINUING ALONG SAID WEST MARGIN, SOUTH 13°00'45" WEST 282.75 FEET, TO THE NORTHEAST CORNER OF A PORTION OF 16TH AVENUE SOUTH, AS VACATED BY KING COUNTY ORDINANCE NO. 858 AND FILED IN KING COUNTY RECORDS UNDER RECORDING NO. 7111090468; THENCE SOUTH 76°59'15" EAST, TO THE SOUTHEAST CORNER THEREOF A DISTANCE OF 89.03 FEET; THENCE NORTH 13°00'45" EAST, A DISTANCE OF 121.86 FEET; THENCE NORTH 14°06'06" EAST; A DISTANCE OF 303.66 FEET TO THE INTERSECTION WITH THE SOUTH LINE OF SAID SECTION 28, WHENCE THE SOUTHWEST SECTION

CORNER BEARS SOUTH 88°09'49" EAST, A DISTANCE OF 35.92 FEET; SAID POINT BEING ON A CURVE ON THE EASTERLY MARGIN OF 16TH AVENUE SOUTH FROM WHENCE THE CENTER BEARS NORTH 81°09'46" WEST 1960.08 FEET; THENCE NORTHERLY ALONG SAID EASTERLY MARGIN AND SAID CURVE THROUGH A CENTRAL ANGLE OF 06°52'22" AN ARC LENGTH OF 235.12 FEET TO THE POINT OF TANGENCY; THENCE CONTINUING ALONG SAID EASTERLY MARGIN NORTH 01°57'52" EAST 534.65 FEET TO A POINT OF INTERSECTION WITH THE SOUTHWESTERLY MARGIN OF SAID EAST MARGINAL WAY SOUTH, BEING 65 FEET DISTANT FROM, AS MEASURED AT RIGHT ANGLES TO, THE CENTERLINE OF SAID EAST MARGINAL WAY SOUTH;

CONTINUED THENCE ALONG SAID SOUTHWESTERLY MARGIN OF EAST MARGINAL WAY SOUTH ON THE FOLLOWING COURSES: SOUTH 47°52'17" EAST 1189.40 FEET TO THE SOUTH LINE OF SAID SECTION 28; THENCE SOUTH 88°09'49" EAST ALONG SAID SOUTH LINE 23.20 FEET; THENCE SOUTH 47°52'17" EAST 761.80 FEET TO THE POINT OF CURVATURE OF A CURVE TO THE RIGHT HAVING A RADIUS OF 2814.67 FEET; THENCE SOUTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 25°20'43" AN ARC LENGTH 1245.10 FEET TO THE POINT OF TANGENCY; THENCE SOUTH 22°32'06" EAST 165.28 FEET TO AN INTERSECTION WITH A LINE PARALLEL WITH AND 825 FEET SOUTHERLY OF, MEASURED AT RIGHT ANGLES TO, THE NORTH LINE OF THE JOHN BUCKLEY DONATION LAND CLAIM NO. 42; THENCE LEAVING SAID SOUTHWESTERLY MARGIN OF EAST MARGINAL WAY SOUTH AND PROCEEDING ALONG SAID PARALLEL LINE NORTH 89°12'23" WEST 1385.87 FEET TO A POINT ON THE NORTHEASTERLY RIGHT-OF-WAY LINE OF SAID DUWAMISH WATERWAY, SAID POINT BEING ON A CURVE FROM WHENCE THE CENTER BEARS SOUTH 53°50'05" WEST 1969.12 FEET; THENCE NORTHWESTERLY ALONG SAID RIGHT-OF-WAY LINE AND SAID CURVE, THROUGH A CENTRAL ANGLE OF 11°41'41" AN ARC LENGTH OF 401.92 FEET TO THE POINT OF TANGENCY; THENCE NORTH 47°51'36" WEST ALONG SAID RIGHT OF WAY LINE 1068.05 FEET TO A POINT ON THE EASTERLY LINE OF THAT 11 FOOT VACATION OF 16TH AVENUE SOUTH AS RECORDED IN VOLUME 38 PAGE 455 OF KING COUNTY COUNCIL RECORDS DATED JUNE 24, 1940; THENCE CONTINUING NORTH 47°51'36" WEST, ALONG SAID EASTERLY LINE OF THE WATERWAY 101.91 FEET, TO THE WESTERLY LINE OF SAID VACATED 16TH AVENUE SOUTH; THENCE CONTINUING NORTH 47°51'36" WEST, ALONG SAID EASTERLY LINE OF SAID WATERWAY 2380.00 FEET TO THE MEDIAN LINE OF SLIP NO. 4 AS DEFINED IN AN AGREEMENT RECORDED UNDER RECORDING NO. 4477307 IN KING COUNTY RECORDS;

CONTINUED THENCE NORTH 56°29'43" EAST, ALONG SAID MEDIAN LINE, 290.45 FEET TO AN ANGLE POINT IN SAID MEDIAN LINE; THENCE NORTH 43°08'07" EAST, ALONG SAID MEDIAN LINE, 293.08 FEET; THENCE SOUTH 51°08'00" EAST, PERPENDICULAR TO VACATED RIVERSIDE AVENUE, 107.50 FEET, TO THE INTERSECTION WITH THE EXTENSION OF THE SOUTH LINE OF LOT 7 BLOCK 43 OF RIVERPARK AS FILED IN KING COUNTY RECORDS, IN VOLUME 7 OF PLATS PAGE 41; THENCE SOUTH 88°14'56" EAST, ALONG SAID SOUTH LINE EXTENDED, 199.95 FEET, TO THE WEST LINE OF ABRAMS ADDITION AS FILED IN KING COUNTY RECORDS, IN VOLUME 11 OF PLATS PAGE 30; THENCE NORTH 01°51'19" EAST, ALONG SAID WEST LINE, 68.25 FEET, TO THE NORTHWEST CORNER OF BLOCK 5 OF ABRAMS ADDITION AS PLATTED; THENCE SOUTH 88°14'51" EAST, ALONG THE NORTH LINE OF SAID BLOCK 5, 367.67 FEET TO THE NORTHEAST CORNER THEREOF; THENCE SOUTH 01°40'39" WEST, ALONG THE EAST LINE

OF SAID BLOCK 5, 236.00 FEET, TO THE SOUTHEAST CORNER THEREOF; THENCE CONTINUING SOUTH 01°40'39" WEST, 24.00 FEET, TO THE NORTHEAST CORNER OF BLOCK 4 OF SAID ABRAMS ADDITION; THENCE SOUTH 88°14'51" EAST, PARALLEL WITH SOUTH AUSTIN STREET 3.55 FEET; TO A PARCEL OF LAND DEEDED TO THE CITY OF SEATTLE, FILED UNDER RECORDING NO. 8802190331, RECORDS OF KING COUNTY; THENCE SOUTH 48°16'50" EAST, 89.36 FEET; THENCE NORTH 42°25'28" EAST, 45.24 FEET; THENCE NORTH 02°22'56" EAST, 23.09 FEET TO THE SOUTH MARGIN OF SOUTH AUSTIN STREET; THENCE SOUTH 88°14'51" EAST, ALONG THE SOUTH MARGIN OF SOUTH AUSTIN STREET 14.20 FEET TO THE WEST LINE OF CITY OF SEATTLE VACATION ORDINANCE 114027; THENCE NORTH 01°45'09" EAST, ALONG THE WEST LINE, 24.00 FEET TO THE SOUTHEAST CORNER OF LOT 1 BLOCK 6 OF SAID ABRAMS ADDITION; THENCE NORTH 88°14'51" WEST, ALONG THE SOUTH LINE OF LOT 1, 92.01 FEET TO THE SOUTHWEST CORNER LOT 1 BLOCK 6; THENCE NORTH 01°40'39" EAST ALONG THE WEST LINE OF BLOCK 6, 236.00 FEET TO THE NORTHWEST CORNER OF LOT 8, BLOCK 6 AND THE SOUTH MARGIN OF SOUTH WEBSTER STREET; THENCE SOUTH 88°14'51" EAST, ALONG THE SOUTH MARGIN OF SOUTH WEBSTER STREET, 284.45 FEET TO THE TRUE POINT OF BEGINNING. CONTAINING 4,777,635 SQUARE FEET, OR +/- 109.679 ACRES MORE OR LESS.

Section 2. **Term.** The permission granted to the Permittee is for a second and final renewed term of 15 years starting on the effective date of this ordinance and ending at 11:59 p.m. on the last day of the fifteenth year. This second and final term shall not exceed 30 years total from the term authorized in Ordinance 123540, subject to the right of the City to require the removal of the pedestrian tunnels or to revise by ordinance any of the terms and conditions of the permission granted by this ordinance. The Permittee shall submit any application for a new permission no later than one year 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 the pedestrian tunnels 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 pedestrian tunnels, 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 pedestrian tunnels is necessary for any public use or benefit or that the pedestrian tunnels interfere with any public use or benefit; or

B. The Director determines that use of the pedestrian tunnels 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 pedestrian tunnels interfere 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 pedestrian tunnels, the Permittee shall, at its own expense, remove the pedestrian tunnels 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 pedestrian tunnels in as good condition for public use as existed prior to construction of the pedestrian tunnels 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 pedestrian tunnels 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 pedestrian tunnels 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 pedestrian tunnels shall remain the exclusive responsibility of the Permittee and the Permittee shall maintain the pedestrian tunnels in good and safe condition for the protection of the public. The Permittee shall not reconstruct or repair the pedestrian tunnels except in strict accordance with plans and specifications approved by the Director. The Director may, in the Director's judgment, order the pedestrian tunnels reconstructed or repaired at the Permittee's cost and expense: because of the deterioration of the pedestrian tunnels; because of 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 pedestrian tunnels be removed at the Permittee's expense if the Director deems that the pedestrian tunnels create 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 removal of the pedestrian tunnels, 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, or the Seattle City Council passes a new ordinance to renew the permission granted and/or establish a new term. 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 15 and 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 pedestrian tunnels 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 pedestrian tunnels;

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 pedestrian tunnels 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 pedestrian tunnels, as well as restoration of any disturbed areas of the public place in connection with removal of the pedestrian tunnels;

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.

Minimum limits of liability shall be \$5,000,000 per Occurrence; \$10,000,000 General Aggregate; \$5,000,000 Products/Completed Operations Aggregate, including Premises Operations; Personal/Advertising Injury; Contractual Liability. Coverage shall include the "City of Seattle, its 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, in the amount of \$410,000 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.** When the Property is transferred,

the permission granted by this ordinance shall be assignable and transferable by operation of law pursuant to Section 20 of this ordinance. Continued occupation of the right-of-way constitutes the Permittee's acceptance of the terms of this ordinance, and the new owner shall be conferred with the rights and obligations of the Permittee by this ordinance. Other than a transfer to a new owner of the Property, the Permittee shall not 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 provided, at the time of the assignment or transfer, the bond and certification of insurance coverage required under this ordinance; and has paid any fees due under Section 15 and 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 pedestrian tunnels.

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 pedestrian tunnels during construction, reconstruction, repair, annual safety inspections, and at other times deemed necessary by the City. An inspection or approval of the pedestrian tunnels 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 pedestrian tunnels. 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.** 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 pedestrian tunnels;

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.

A report meeting the foregoing requirements shall be submitted within 60 days after the effective date of this ordinance; subsequent reports shall be submitted every two years, provided that, in the event of a natural disaster or other event that may have damaged the pedestrian tunnels, 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 pedestrian tunnels. 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 the Permittee shall pay an Issuance Fee, and annually thereafter, the Permittee shall promptly pay to the City, upon statements or invoices issued by the Director, an Annual Renewal Fee, and an Annual Use and Occupation Fee of \$4,503.29, or as adjusted annually thereafter, for the privileges granted by this ordinance.

Adjustments to the Annual Use and Occupation 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-Bellevue Area, All Urban Consumers, All Products, Not Seasonally Adjusted. Permittee shall pay any other applicable fees, including fees for reviewing applications to renew the permit after expiration of the first term. All payments shall be made to the City Finance Director for credit to the Transportation Fund.

Section 18. **Compliance with other laws.** The Permittee shall construct, maintain, and operate the

pedestrian tunnels in compliance with all applicable federal, state, County, and City laws and regulations.

Without limitation, in all matters pertaining to the pedestrian tunnels, the Permittee shall comply with the City's laws prohibiting discrimination in employment and contracting including Seattle's Fair Employment Practices Ordinance, Chapter 14.04, and Fair Contracting Practices Code, Chapter 14.10 (or successor provisions).

Section 19. Acceptance of terms and conditions. The Permittee shall provide evidence of insurance coverage required by Section 10 of this ordinance, the bond as required by Section 12 of this ordinance, and the covenant agreement required by Section 20 of this ordinance within 60 days after the effective date of this ordinance. Continued occupation of the right-of-way constitutes the Permittee's acceptance of the terms 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 pedestrian tunnels 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, the 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. **Repeal of Section 8 of Ordinance 123540.** Section 8 of Ordinance 123540 is repealed.

Section 23. 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 _____, 2022, and signed by me in open session in authentication of its passage this ____ day of _____, 2022.

President _____ of the City Council

Approved / returned unsigned / vetoed this ____ day of _____, 2022.

Bruce A. Harrell, Mayor

Filed by me this _____ day of _____, 2022.

Monica Martinez Simmons, City Clerk

(Seal)

SUMMARY and FISCAL NOTE*

Department:	Dept. Contact/Phone:	CBO Contact/Phone:
Seattle Department of Transportation	Amy Gray/206-386-4638	Christie Parker/206-684-5211

** Note that the Summary and Fiscal Note describes the version of the bill or resolution as introduced; final legislation including amendments may not be fully described.*

1. BILL SUMMARY

Legislation Title: AN ORDINANCE granting The Boeing Company permission to continue maintaining and operating two pedestrian tunnels under and across 16th Avenue South, 565 feet south of East Marginal Way South, and under and across East Marginal Way South, 510 feet east of 16th Avenue South; repealing Section 8 of Ordinance 123540; and providing for acceptance of the permit and conditions.

Summary and Background of the Legislation:

This legislation allows The Boeing Company to continue maintaining and operating a two pedestrian tunnels under and across 16th Avenue South, 565 feet south of East Marginal Way South,, and under and across East Marginal Way South, 510 feet east of 16th Avenue South. The pedestrian tunnels permit is for a period of 15 years, commencing on the effective date of the ordinance. The legislation specifies the conditions under which permission is granted.

2. CAPITAL IMPROVEMENT PROGRAM

Does this legislation create, fund, or amend a CIP Project? Yes No

3. SUMMARY OF FINANCIAL IMPLICATIONS

Does this legislation amend the Adopted Budget? Yes No

Appropriation change (\$):	General Fund \$		Other \$	
	2022	2023	2022	2023
	\$0	\$0	\$0	\$0
Estimated revenue change (\$):	Revenue to General Fund		Revenue to Other Funds	
	2022	2023	2022	2023
	\$0	\$0	Annual Fee: \$4,503.29 Accrued Annual Fee: \$3,778.77	TBD
Positions affected:	No. of Positions		Total FTE Change	
	2022	2023	2022	2023
	0	0	0	0

Does the legislation have other financial impacts to The City of Seattle that are not reflected in the above, including direct or indirect, short-term or long-term costs?

No.

Are there financial costs or other impacts of *not* implementing the legislation?

Estimate the costs to the City of not implementing the legislation, including estimated costs to maintain or expand an existing facility or the cost avoidance due to replacement of an existing facility, potential conflicts with regulatory requirements, or other potential costs or consequences.

If the legislation is not enacted by the City Council, the City of Seattle would not receive the 2022 annual fee of \$4,503.29, the 2021 annual fee of \$3,778.77, and future annual fees.

3.a. Appropriations

This legislation adds, changes, or deletes appropriations.

3.b. Revenues/Reimbursements

This legislation adds, changes, or deletes revenues or reimbursements.

Anticipated Revenue/Reimbursement Resulting from This Legislation:

Fund Name and Number	Dept	Revenue Source	2022 Revenue	2023 Estimated Revenue
Transportation Fund (13000)	SDOT	Annual Fee	2022 Fee: \$4,503.29 2021 Accrued Fee: \$3,778.77	TBD
TOTAL			\$8,282.06	TBD

Is this change one-time or ongoing?

Ongoing

Revenue/Reimbursement Notes:

The 2022 and 2021 fees are based on the 2022 and 2021 land value as assessed by King County.

3.c. Positions

This legislation adds, changes, or deletes positions.

4. OTHER IMPLICATIONS

a. Does this legislation affect any departments besides the originating department?

If so, please list the affected department(s) and the nature of the impact (financial, operational, etc.).

No.

b. Is a public hearing required for this legislation?

No.

c. Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation?

No.

d. Does this legislation affect a piece of property?

Yes, the Boeing Company property legally described in Section 1 of the Council Bill.

e. Please describe any perceived implication for the principles of the Race and Social Justice Initiative. Does this legislation impact vulnerable or historically disadvantaged communities? What is the Language Access plan for any communications to the public?

This legislation does not have any implications for the principles of the Race and Social Justice Initiative and does not impact vulnerable or historically disadvantaged communities.

f. Climate Change Implications

1. Emissions: Is this legislation likely to increase or decrease carbon emissions in a material way?

No.

2. Resiliency: Will the action(s) proposed by this legislation increase or decrease Seattle's resiliency (or ability to adapt) to climate change in a material way? If so, explain. If it is likely to decrease resiliency in a material way, describe what will or could be done to mitigate the effects.

No.

g. If this legislation includes a new initiative or a major programmatic expansion: What are the specific long-term and measurable goal(s) of the program? How will this legislation help achieve the program's desired goal(s)?

N/A

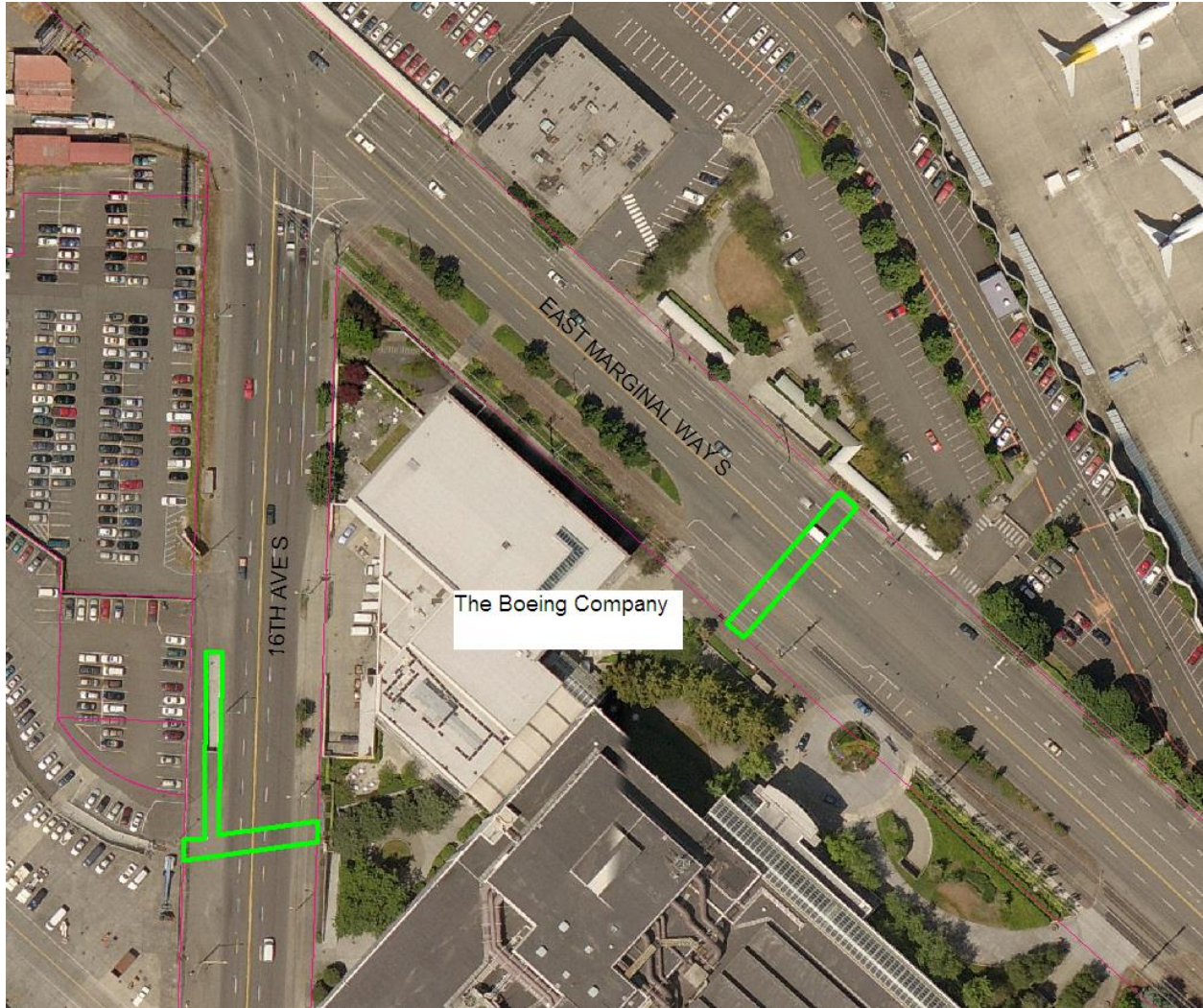
Summary Attachments:

Summary Attachment A - The Boeing Company Tunnels Area Map

Summary Attachment B - The Boeing Company Tunnels Photos

Summary Attachment C - Street Use Annual Fee Assessment

The Boeing Company Tunnels Area Map



Map is for informational purposes only and is not intended to modify or supplement the legal description(s) in the Ordinance.

The Boeing Company Tunnels Photos





STREET USE ANNUAL FEE ASSESSMENT

Date: 12/27/2021

Summary:
Land Value: \$42.09/SF
2022 Permit Fee:
\$4,503.29

I. Property Description:

Two existing pedestrian tunnels under and across 16th Avenue South, south of East Marginal Way South and under and across East Marginal Way South, east of 16th Avenue South. The tunnels provide a pedestrian connection for employees of The Boeing Company between their properties. The tunnels total area is 5,350 square feet.

Applicant:

The Boeing Company

Abutting Parcels, Property Size, Assessed Value:

2022

Parcel 2824049009; Lot size: 349,350
Tax year 2022 Appraised Land Value \$13,047,200 (\$38.38/sq ft)

Parcel 2924049098; Lot size: 4,133
Tax year 2022 Appraised Land Value \$185,900 (\$44.98/sq ft)

Parcel 2924049056; Lot size: 9,811
Tax year 2022 Appraised Land Value \$441,400 (\$44.99/sq ft)

Parcel 0022000005; Lot size: 1,631,114
Tax year 2022 Appraised Land Value \$65,244,500 (\$40.00/sq ft)

2021

Parcel 2824049009; Lot size: 349,350
Tax year 2021 Appraised Land Value \$12,887,600 (\$36.89/sq ft)

Parcel 2924049098; Lot size: 4,133
Tax year 2021 Appraised Land Value \$185,900 (\$44.98/sq ft)

Parcel 2924049056; Lot size: 9,811
Tax year 2021 Appraised Land Value \$441,400 (\$44.99/sq ft)

Parcel 0022000005; Lot size: 1,631,114
Tax year 2021 Appraised Land Value \$23,492,800 (\$14.40/sq ft)

II. Annual Fee Assessment:

The 2022 permit fee is calculated as follows:

$(\$42.09/\text{SF}) \times (5,350 \text{ SF}) \times (25\%) \times (8\%) = \$4,503.29$ where 25% is the degree of alienation for below grade tunnels and 8% is the annual rate of return.

Using the same methodology as above at \$35.32 per square foot, the 2021 permit fee is \$3,778.77.

Fee methodology authorized under Ordinance 123485, as amended by Ordinances 123585, 123907, and 124532.

March 30, 2022

MEMORANDUM

To: Transportation and Seattle Public Utilities Committee
From: Lish Whitson, Analyst
Subject: Council Bill 120290 – Boeing Tunnels Term Permit

On April 5, 2022, the Transportation and Seattle Public Utilities Committee (Committee) will discuss and possibly vote on [Council Bill \(CB\) 120290](#), which would renew approval to the Boeing Corporation to maintain tunnels under 16th Avenue South and East Marginal Way South, south of their intersection. The tunnels connect Boeing facilities west of East Marginal Way South with the King County International Airport – Boeing Field. The legislation would renew an existing permit, first issued in 1955, for one 15-year term.

This memorandum describes term permit renewal standards and the Boeing Tunnel term permit.

Significant Structure Term Permit Renewals

Significant structures are structures that have “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 between private properties; public art placed in right-of-way; and overhead structures attached to buildings. [Seattle Municipal Code \(SMC\) Chapter 15.65](#) establishes the procedures and criteria for approval of and renewal of term permits for significant structures.

[SMC 15.65.073](#) states:

If the Director of Transportation determines at term renewal that the authorizing ordinance requires an amendment, the Director shall provide a recommendation to City Council as to whether an application for a significant structure term permit renewal should be granted or denied with the appropriate terms and conditions, and the Council shall decide on the renewal and establish the terms and conditions of that renewal consistent with [Section 15.65.080](#). Approval of an amended term renewal for a significant structure term permit shall be granted only by ordinance.

Section 15.65.080 provides the terms and conditions that may be included in a term permit ordinance. These include, but are not limited to:

- the term of years that permission is granted and renewal periods, if any;
- provision for regular inspection of and procedures for closure or removal of the structure;

- requirements for performance bonds, public liability insurance, indemnification, conformance with other laws, and annual fees;
- prohibition against assignment without City consent;
- a requirement for execution and recording of a covenant ensuring that obligations and conditions imposed on the permittee run with the land, where applicable;
- public benefit mitigation elements; and
- timely acceptance of permission.

Over the last few years, the Seattle Department of Transportation (SDOT) has been transitioning the length of the terms of significant structure term permits and skybridge permits. Instead of a ten-year term renewable twice for a maximum term of 30 years before a new permit is required, SDOT has been moving to a 15-year initial term for term permits, with one additional 15-year term upon renewal. This shift responds to the volume of term permits, the amount of work required to process a permit renewal, and the rarity of significant changes to approvals during term permit renewals.

Boeing Tunnels

The Boeing Corporation has had operations at the King County International Airport-Boeing Field since it opened in 1928. Since 1955, tunnels under 16th Avenue South and East Marginal Way South have connected Boeing facilities on the west side of 16th Avenue S to the airport, which is located on the east side of East Marginal Way South. The tunnels facilitate movement between the Boeing facilities.

Permission to build and use the tunnels was first granted in 1955 through [Ordinance 84493](#). That permission was granted again in 1981 by [Ordinance 109661](#) and in 2011 by [Ordinance 123540](#). CB 120290 would renew the term permit approval and amend Ordinance 123540, which granted approval to operate the tunnels between 2011 and 2021. Ordinance 123540 provided for up to two additional ten-year terms, requiring renewal in 2021 and 2031 and requiring re-permitting in 2041. CB 120290 would extend approval to Boeing to operate the tunnels for a new 15-year term, starting in 2022 and ending in 2037, at which time Boeing would need to seek a new permit.

Next Steps

If the Committee recommends approval of CB 120290 at its April 5 meeting, it could be considered by the City Council as early as April 12.

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

A photograph of a modern, multi-story building with a blue facade, likely a Boeing facility. In the foreground, there is a paved area with a circular landscaped island containing a 'BOEING' sign. Two flagpoles stand in front of the building, one with the American flag and the other with a blue flag. Traffic lights are visible on the left side of the image. The sky is blue with scattered white clouds.

The Boeing Company Pedestrian Tunnels Renewal

Council Transportation & Seattle Public Utilities Committee



Presentation overview

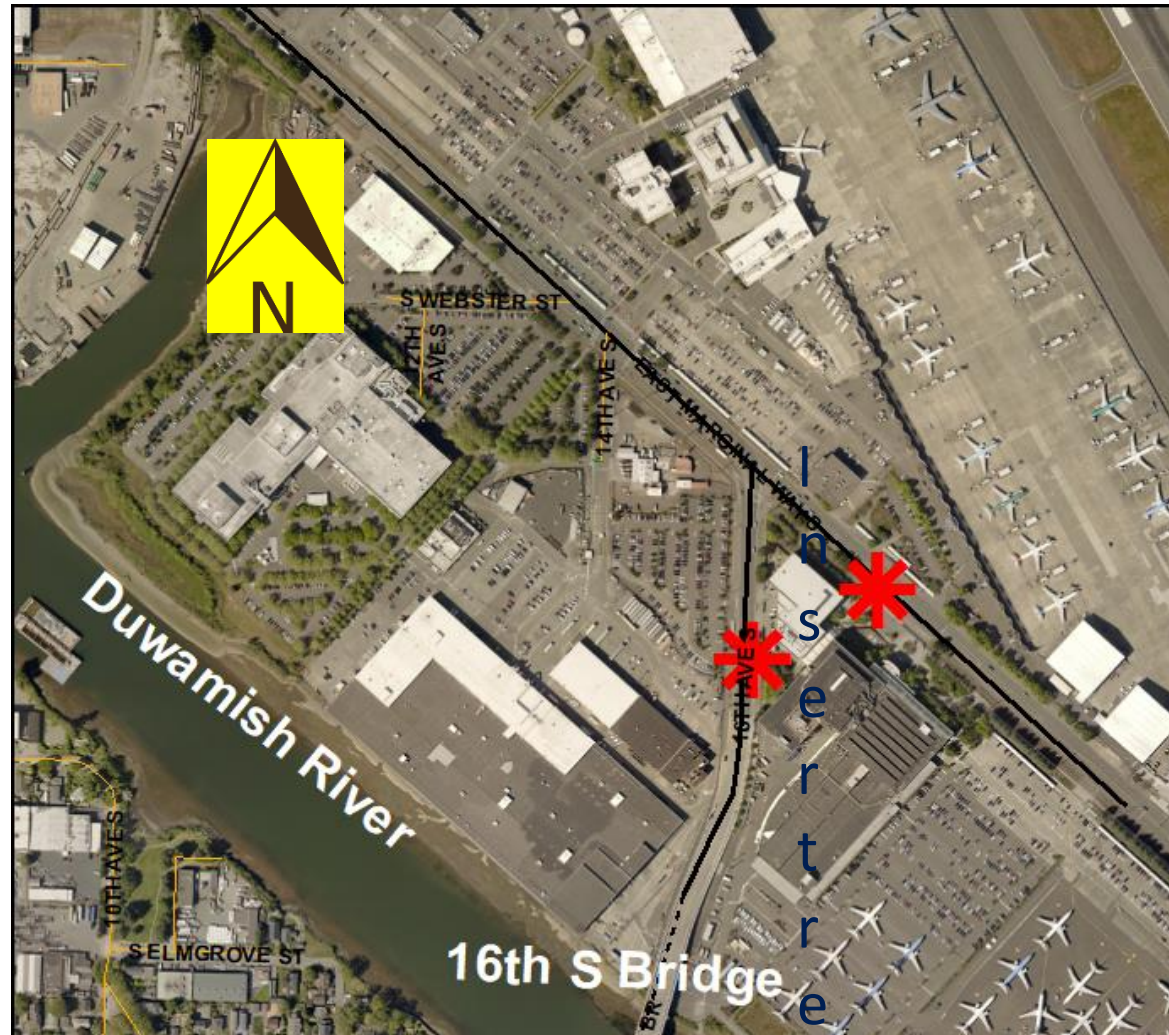
- The Boeing Company is seeking to renew a permit for two existing pedestrian tunnels under 16th Avenue South and East Marginal Way South
- The two pedestrian tunnels provide a connections for staff and visitors to the South Plat 2 Corporate Site and the North Plant 2 Site; and the North Boeing Field Site, Boeing Security, and Boeing Production to the South Plant 2 Site
- SDOT recommends approval of the term permit renewal

Term permit process - permit renewals

Ordinance

Passage of the ordinance renews the permit and details the terms and conditions of the permit, including annual fee, maintenance obligations, indemnification, insurance and bond requirements.

Project neighborhood - Georgetown



Proposal: Boeing pedestrian tunnels



Tunnels were first permitted in 1955



Requested action

- SDOT is seeking Council approval of this Council Bill for the two existing Boeing pedestrian tunnels
- If the ordinance is approved, this permit will be renewed through 2037 and may be extended for an additional 15 years

Questions?

amy.gray@seattle.gov | (206) 386-4638

www.seattle.gov/transportation





Legislation Text

File #: CB 120291, Version: 1

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL _____

AN ORDINANCE relating to rates and charges for water services of Seattle Public Utilities; revising water rates and charges for certain customers; and amending Seattle Municipal Code Section 21.04.440.

WHEREAS, Seattle Public Utilities (SPU) adopted new water rates for 2022 through Ordinance 126434 in

September 2021; and

WHEREAS, customers in the city of Burien have a new rate class for 2022; and

WHEREAS, adopted meter rates for master metered residential developments in Burien under Ordinance

126434 were incomplete; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Section 21.04.440 of the Seattle Municipal Code, last amended by Ordinance 126434, is amended as follows:

21.04.440 Rates outside The City of Seattle

* * *

D. Rates inside the cities of Shoreline, Lake Forest Park, Burien, and Mercer Island. Rates and charges in this subsection 21.04.440.D apply to retail customers of Seattle Public Utilities located within the cities of Shoreline, Lake Forest Park, Burien, and Mercer Island who are not served under the terms of a wholesale contract. Seasonal rates shall be prorated. For usage representing fractional parts of a month, the base service charge and all components of the commodity charge shall be prorated using a 30-day month. Except as otherwise provided in this Chapter 21.04, the rates and charges for water supplied shall be as follows:

* * *

5. Burien residential. Except for Burien master metered residential developments, the rates for metered water supplied to single-family and duplex residences in one month, or fractional part thereof, shall be based on a commodity charge and a base service charge, in accordance with the following schedules:

Schedule WBUR. Schedule WBUR is for all single-family and duplex residences except those billed on Schedule WBURL.

Commodity Charge per 100 Cubic Feet

	Effective January 1, 2022	Effective January 1, 2023
Summer (May 16th-September 15th)		
First 500 cubic feet per residence	\$7.08	\$7.53
Next 1,300 cubic feet per residence	\$8.75	\$9.26
All over 1,800 cubic feet per residence	\$14.62	\$14.62
Winter (September 16th-May 15th)		
All usage	\$6.89	\$7.33

Base Service Charge per Month

Meter Size	Effective January 1, 2022	Effective January 1, 2023
3/4 inch and less	\$23.55	\$24.85
1 inch	\$24.30	\$25.60
1-1/2 inch	\$37.40	\$39.15
2 inch	\$41.45	\$43.30
3 inch	\$153.55	\$159.35
4 inch and larger	\$219.90	\$227.80

Schedule WBURL. Schedule WBURL is for single-family and duplex residences in which one or more persons require medical life support equipment which uses mechanical or artificial means to sustain, restore or supplant a vital function, and which uses a disproportionate amount of water.

Commodity Charge per 100 Cubic Feet

	Effective January 1, 2022	Effective January 1, 2023

Summer (May 16th-September 15th)		
First 500 cubic feet per residence	\$7.08	\$7.53
Next 1,300 cubic feet per residence	\$8.75	\$9.26
Winter (September 16th-May 15th)		
All usage	\$6.89	\$7.33

Base Service Charge Per Month

Meter Size	Effective January 1, 2022	Effective January 1, 2023
3/4 inch and less	\$23.55	\$24.85
1 inch	\$24.30	\$25.60
1-1/2 inch	\$37.40	\$39.15
2 inch	\$41.45	\$43.30
3 inch	\$153.55	\$159.35
4 inch and larger	\$219.90	\$227.80

6. Burien master metered residential developments. The rates for residential developments with master meters of 1-1/2 inches or larger, which operate and maintain their own distribution systems on private property and which use water primarily to serve single-family, detached residences on at least two separate legal parcels, shall be based on a commodity charge and a base service charge, in accordance with the following schedule:

Commodity Charge per 100 Cubic Feet

	Effective January 1, 2022	Effective January 1, 2023
Summer (May 16th-September 15th)		
First 500 cubic feet per residence	\$7.08	\$7.53
Next 1,300 cubic feet per residence	\$8.75	\$9.26
All over 1,800 cubic feet per residence	\$14.62	\$14.62
Winter (September 16th-May 15th)		
All usage	\$6.89	\$7.33

Base Service Charge per Month

Meter Size	Effective January 1, 2022	Effective January 1, 2023
((3/4 inch and less	\$23.55	\$24.85
1 inch	\$24.30	\$25.60))

1-1/2 inch	\$37.40	\$39.15
2 inch	\$41.45	\$43.30
3 inch	\$153.55	\$159.35
4 inch	\$219.90	\$227.80
6 inch	\$270.00	\$280.00
8 inch	\$318.00	\$329.00
10 inch	\$389.00	\$402.00
12 inch	\$525.00	\$543.00
16 inch	\$591.00	\$609.00
20 inch	\$761.00	\$762.00
24 inch	\$955.00	\$956.00

7. Burien general service. The rates for metered water supplied to premises other than single-family, duplex residences, and master-metered residential developments within the ((City)) city of Burien in one month, or fractional part thereof, shall be based on a commodity charge, and a base service charge in accordance with the following schedule:

	Effective January 1, 2022	Effective January 1, 2023
Summer (May 16th-September 15th)		
All usage	\$8.69	\$9.21
Winter (September 16th-May 15th)		
All usage	\$6.84	\$7.29

Base Service Charge per Month

Meter Size	Effective January 1, 2022	Effective January 1, 2023
3/4 inch and less	\$23.35	\$24.85
1 inch	\$24.10	\$25.55
1-1/2 inch	\$37.10	\$39.15
2 inch	\$41.15	\$43.25
3 inch	\$152.30	\$162.95
4 inch	\$218.15	\$231.25
6 inch	\$269.00	\$284.00
8 inch	\$316.00	\$332.00
10 inch	\$387.00	\$405.00

12 inch	\$522.00	\$545.00
16 inch	\$591.00	\$612.00
20 inch	\$761.00	\$766.00
24 inch	\$955.00	\$960.00

8. Burien fire hydrants. The rates for fire hydrants, including test water and water used to extinguish fires, shall be deemed service charges and shall be for any one year, or fractional part thereof, as follows:

Hydrant Type	Effective January 1, 2022	Effective January 1, 2023
Hydrants on 4 inch or smaller mains	\$547.78	\$567.06
Hydrants on 6 inch or larger mains	\$729.22	\$754.90

9. Burien metered fire services. The rates for metered water services supplied for fire protection purposes exclusively, including a monthly allowance for test water and water used to extinguish fires, shall be deemed service charges and shall be for any one month, or fractional part thereof, as follows:

Service Charge per Month

Service Size	Effective January 1, 2022
2 inch and less	\$22.00
3 inch	\$29.00
4 inch	\$53.00
6 inch	\$90.00
8 inch	\$143.00
10 inch	\$206.00
12 inch	\$300.00

For each 100 cubic feet of water consumption in excess of the monthly allowance described below, the charge shall be an additional \$24.80.

Service Size	Monthly Allowance
2 inch and less	100 cubic feet
3 inch	500 cubic feet
4 inch	500 cubic feet
6 inch	500 cubic feet
8 inch	1,000 cubic feet

10 inch	1,000 cubic feet
12 inch	1,000 cubic feet

* * *

Section 2. 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 _____, 2022, and signed by me in open session in authentication of its passage this _____ day of _____, 2022.

President _____ of the City Council

Approved / returned unsigned / vetoed this ____ day of _____, 2022.

Bruce A. Harrell, Mayor

Filed by me this _____ day of _____, 2022.

Monica Martinez Simmons, City Clerk

(Seal)

Attachments:

SUMMARY and FISCAL NOTE*

Department:	Dept. Contact/Phone:	CBO Contact/Phone:
Seattle Public Utilities	Paul Hanna/4-7752	Akshay Iyengar/4-0716

** Note that the Summary and Fiscal Note describes the version of the bill or resolution as introduced; final legislation including amendments may not be fully described.*

1. BILL SUMMARY

Legislation Title: AN ORDINANCE relating to rates and charges for water services of Seattle Public Utilities; revising water rates and charges for certain customers; and amending Seattle Municipal Code Section 21.04.440.

Summary and background of the Legislation: The Council in 2021 adopted new Seattle Public Utilities water rates for 2022 and 2023. That legislation contained a new rate class for multi-house developments in the City of Burien. The adopted rate structure for that class in Burien is not consistent with the rate structure for similar developments in other jurisdictions. Specifically, meter rates for this class in Burien ranged in size from ¾" to 3", while other wholesale customers have meter rates ranging from 1.5" to 24". This legislation would change the Seattle Municipal Code to bring these Burien meter sizes in line with other jurisdictions.

This amendment will standardize the Burien rate class for multi-house developments to conform with those for other jurisdictions and allow SPU to implement the appropriate rates in the utility’s billing system. Currently there are no customers in the rate class that is affected by this change. As a result, there is no financial impact to SPU customers.

2. CAPITAL IMPROVEMENT PROGRAM

Does this legislation create, fund, or amend a CIP Project? ___ Yes X No

3. SUMMARY OF FINANCIAL IMPLICATIONS

Does this legislation amend the Adopted Budget? ___ Yes X No

Does the legislation have other financial impacts to The City of Seattle that are not reflected in the above, including direct or indirect, short-term or long-term costs?
No

Is there financial cost or other impacts of *not* implementing the legislation?
There are no customers in the rate classification affected by the proposed amendment. It is unknown if any customers will qualify before the next scheduled rate study update in 2024. However, if a developer does build in a community that qualifies for the MMRD rate, the current adopted rates may not be sufficient to charge the appropriate rates.

4. OTHER IMPLICATIONS

- a. **Does this legislation affect any departments besides the originating department?**
No
- b. **Is a public hearing required for this legislation?**
No
- c. **Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation?**
No
- d. **Does this legislation affect a piece of property?**
No.
- e. **Please describe any perceived implication for the principles of the Race and Social Justice Initiative. Does this legislation impact vulnerable or historically disadvantaged communities? What is the Language Access plan for any communications to the public?**
NA
- f. **Climate Change Implications**
- 1. Emissions: Is this legislation likely to increase or decrease carbon emissions in a material way?**
None
 - 2. Resiliency: Will the action(s) proposed by this legislation increase or decrease Seattle's resiliency (or ability to adapt) to climate change in a material way? If so, explain. If it is likely to decrease resiliency in a material way, describe what will or could be done to mitigate the effects.**
No
- g. **If this legislation includes a new initiative or a major programmatic expansion: What are the specific long-term and measurable goal(s) of the program? How will this legislation help achieve the program's desired goal(s)?**
NA

Summary Attachments:

Water Rates Update

Technical Correction to 2021 Water Rate Ordinance

April 5, 2022

Seattle's Water System

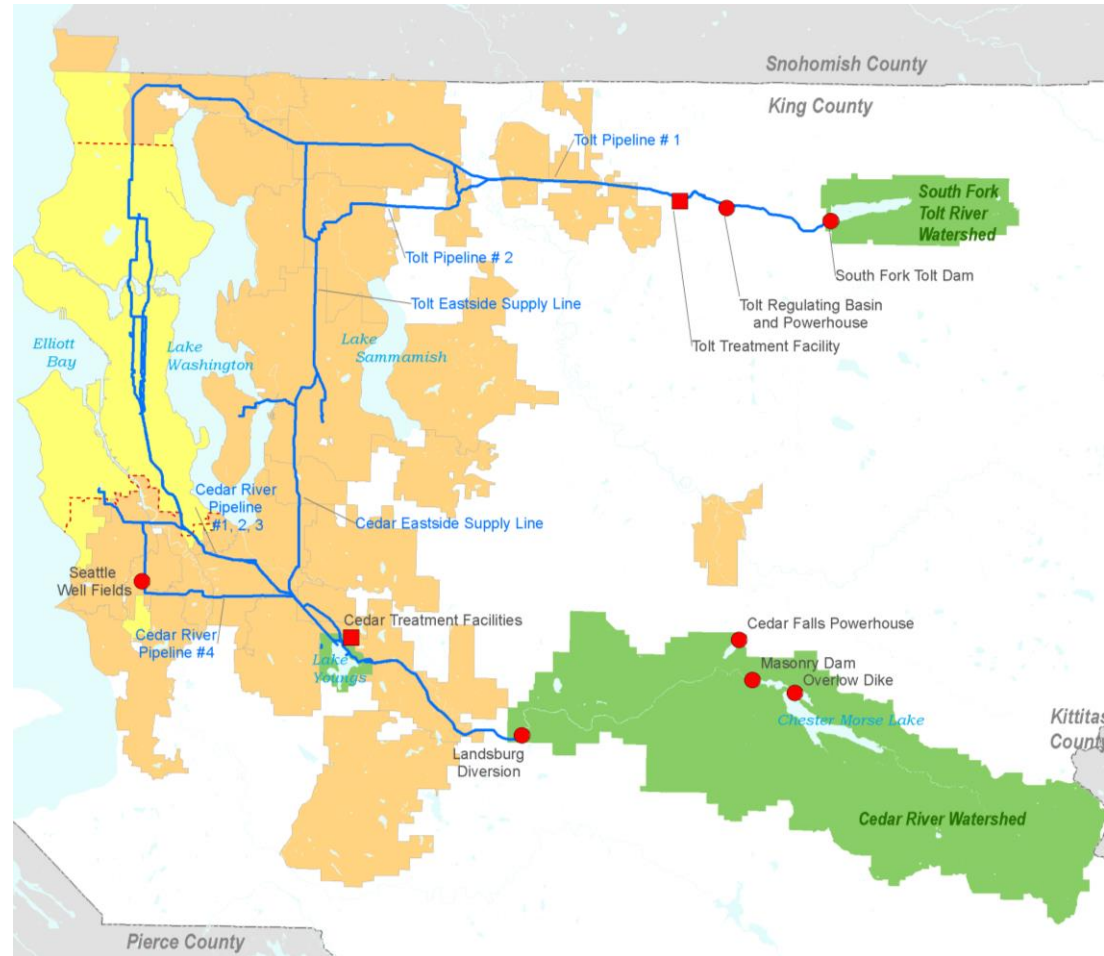
Seattle Retail Service Area

Wholesale Customers

Watersheds

■ Treatment Plant

● Major Facility



Legislative Outcomes

- Technical correction does not affect any current customers
- Legislation reconciles available meter sizes for Master Metered Residential Development in Burien with other jurisdictions served by SPU.

Background

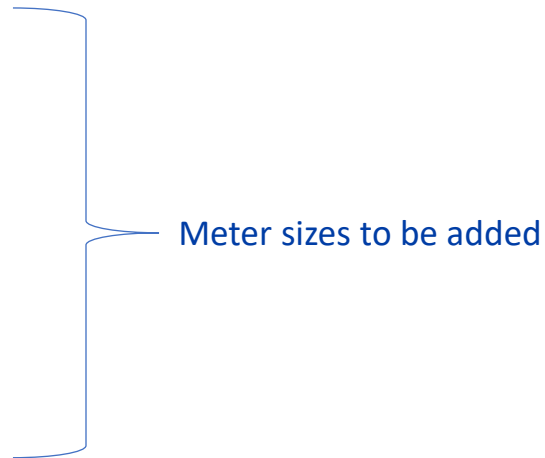
- Water Rates for 2022-2023 approved by Council in mid-2021
- Included new section for customers in Burien due to new local taxes
- This ordinance corrects drafting error for a small (potential) class of customers within the new Burien section

Approved Meter Sizes for Master Metered Residential Developments

Other Jurisdictions

Meter Size

- 1 1/2 inch
- 2 inch
- 3 inch
- 4 inch
- 6 inch
- 8 inch
- 10 inch
- 12 inch
- 16 inch
- 20 inch
- 24 inch



Burien

Meter Size

- 3/4 inch and less
- 1 inch
- 1 1/2 inch
- 2 inch
- 3 inch

