

THIS MEMORANDUM OF UNDERSTANDING ("MOU") is made this ____ day of _____, 2025 (the "Effective Date"), by and between the CITY OF SEATTLE, a Washington municipal corporation ("City") the DOWNTOWN SEATTLE ASSOCIATION, a Washington non-profit organization ("DSA").

RECITALS

WHEREAS, DSA is a 501(c)(4) non-profit membership organization duly incorporated and registered to do business in Washington whose primary area of concern is the downtown area defined as the Metropolitan Improvement District ("MID"); and

WHEREAS, DSA exists to promote, advance and stimulate civic, business, commercial and residential interests and general welfare in the downtown area and adjoining areas; to acquaint and inform the public as to its objectives and to stimulate public opinion and reaction to these ends by providing information and other civic educational, commercial, industrial, social and public features as will foster, encourage and stimulate these purposes; to encourage, foster and stimulate commerce, trade, finance and professional interests and encourage, promote and stimulate change and advances for the general improvement and welfare of the downtown area and adjoining areas; and

WHEREAS, City and DSA are both interested in the potential benefit to the public that will result from the deployment of interactive media kiosk ("Kiosks"), technology consisting of hardware installed in public areas and related software that together provide static and digital content such as wayfinding, public service and safety announcements and commercial advertising, along with communication technology such as WIFI radio and emergency service calling; and

WHEREAS, DSA has determined that Kiosks can be used in a variety of ways to enhance City communication, commerce, entertainment, educational and civic affairs and that their installation, deployment, and operation in selected parts of the City will benefit the City as a whole and has actively engaged with vendors of Kiosks to better understand how the use of such technology will meet the needs of Seattle's downtown residents, visitors, and tourists; and

WHEREAS, the City and DSA believe that Kiosks will play a role in the revitalization of the downtown core, as well as in other commercial areas across the City; and

WHEREAS, the City will host six games of the FIFA World Cup in summer 2026; and

WHEREAS, the City and DSA have determined that Kiosks will play a valuable role in helping the projected hundreds of thousands of visitors during the FIFA World Cup with wayfinding, information, and other services; and

WHEREAS, the City and DSA intend that Kiosks will further the City's interest in equity by providing free Wi-Fi hubs throughout the downtown core benefiting those who may not be able to afford such services currently; and

WHEREAS, the City and DSA intend that Kiosks will also serve a public safety function by providing a 911 call function to allow community members the ability to seek police, fire, and emergency medical help; and

WHEREAS, the City and DSA jointly intend for revenues obtained via Kiosks to be dedicated to services that improve public safety, including providing a more welcoming environment for pedestrians, workers, residents, and tourists; and

WHEREAS, Ratepayer Advisory Boards (“Boards”) for each of the City Business Improvement Areas (“BIAs”) have submitted a letter indicating support for installing one or more Kiosks in its individual area of concern; and

WHEREAS, DSA may address issues outside the downtown area where they may affect the businesses and residents within downtown; and

WHEREAS, DSA has applied for a programmatic term permit to allow the Kiosks to be placed in the public right-of-way and the Seattle City Council passed Ordinance XXXXXX authorizing this use of the public right-of-way;

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and DSA hereby agree as follows:

1. Incorporation of Background Information.

The Recitals, and all definitions set out therein, are hereby incorporated and made a part of this MOU.

2. Collaboration of Parties.

The parties agree to work collaboratively, as outlined in this MOU, to advance the interests of both parties in matters relating to the deployment and operation of Kiosks in Seattle.

3. Term.

The “Operational Date” shall mean the date that is the earlier of: (a) the date upon which the thirtieth (30th) Kiosk has been installed and is operational (here meaning capable of displaying content); and (b) the date that is eighteen (18) months from the Effective Date of this agreement.

The term of this MOU, and the rights and obligations of the parties set forth herein, shall begin on the Effective Date and continue for an initial term ending on the fifteenth anniversary of the Operational Date (the “Initial Term”) or as otherwise established by Ordinance XXXXXX. If Ordinance XXXXXX establishes a different term than this MOU, the term established by Ordinance XXXXXX shall control. The Initial Term may be renewed pursuant to term permit Ordinance XXXXXX and SMC 15.65.071.

The MOU automatically expires unless DSA requests an extension the permission granted under term permit Ordinance XXXXXX.

4. Selection of Kiosks and Vendor Management

DSA shall be solely responsible for Kiosk siting, installation, operations, maintenance, and removal pursuant to this MOU consistent with Ordinance XXXXXX and the SDOT Permits (defined in Section 5) and subject to approval by the City under Sections 5 and 6 of this MOU. To carry out this responsibility, DSA will select, contract with, and manage the vendor or vendors that will install, operate and maintain Kiosks (individually, each vendor is a “Kiosk Vendor”). DSA may delegate via contract certain operational and management duties to the Kiosk Vendor. Any such delegation will not limit DSA’s responsibility to oversee Kiosk siting, operations and management, waive or assign any DSA duties under this MOU, or serve as a novation of this MOU.

5. Installation and Operations of Kiosks

- a. **Early Conceptual Plan Submittal.** At least thirty days prior to applying for the installation of any Device, DSA will provide to the Mayor’s office a high-level conceptual plan showing possible locations that are being considered for the Devices. The Mayor’s office or its designee is encouraged, but not required, to provide comment on the conceptual plan if there are any concerns. Such early review is intended to be high-level, and non-binding. Such review shall not substitute for SDOT’s subsequent regulatory permit review. The Mayor’s office shall conduct its screening review of the proposed locations within thirty (30) days following receipt thereof. If the Mayor’s office does not object to the proposed Device locations within such 30-day period, DSA can proceed to the regulatory permit review for the proposed Device locations
- b. **Permitting.** DSA is responsible for obtaining all necessary permit or permits (“SDOT Permits”) from the Seattle Department of Transportation (“SDOT”), and any other City departments. Prior to installing any Kiosks, SDOT and other City departments will review and decide whether or not to grant in its sole regulatory discretion. If and when granted, DSA and Kiosk Vendor must comply with SDOT Permits’ and other City departments requirements and restrictions. Failure to comply with SDOT Permits’ and other City departments requirements, including requirements to indemnify the City and maintain specific insurance, will be a default under this MOU. If, after DSA provides all information requested by SDOT and other City departments and complies with all other SDOT and other City departments requests, SDOT or another City department declines to issue an SDOT Permit or other City department’s permits for any Kiosk or Kiosks, DSA is excused from the obligation to install such Kiosk(s). The City shall have no liability under this MOA, and it shall not be deemed a breach of this contract if SDOT or another City department in its regulatory capacity declines to issue an SDOT Permit, or other City permit or take any other regulatory action requested by DSA or contemplated by this MOU.

- c. **City Approval of Plan and Schedule.** DSA is responsible for creating installation plans, including Kiosk location, schedule for installation, and operational parameters. DSA will provide these plans to SDOT for review. In its proprietary capacity, the City's Representative will review these plans for consistency with this MOU in its sole discretion and will not unreasonably delay, deny, or condition approval. Such review will be in addition to and not substitute for SDOT's regulatory review.
- d. **Installation Responsibilities.** DSA bears the responsibility and all costs for Kiosk installation.
- e. **Repairs and Maintenance.** DSA directly, or through its Kiosk Vendor, will maintain the Kiosks in good working order and repair consistent with Ordinance XXXXXX for the Term, including as necessary, replacing non-functioning Kiosks or components of Kiosks. DSA will notify SDOT if the Kiosk fails to comply with the requirements of Ordinance XXXXXX or otherwise poses a risk to the health or safety of the public. DSA will further protect from damage or destruction all private and public property around or near the Kiosks consistent with Ordinance XXXXXX.
- f. **Upgrade.** DSA will no less frequently than monthly, deploy or cause to be deployed updates to the operating software for the Kiosks to ensure that such software remains reasonably up to date and functional for its purposes. Additionally, DSA will, from time to time, and no less frequently than once every five (5) years, upgrade or cause to be upgraded the internal networking and computing components of each Kiosk as necessary to maintain Kiosk performance, service and amenities in accordance with the best standards of the public information kiosk industry and consistent with kiosks serving other major metropolitan areas.

6. Number of Kiosks, Deployment Area, and Phases.

- a. DSA will install Kiosks on City rights-of-way in the "Deployment Area," which will consist of a "Primary Area" and an "Extension Area" at the City's option, both defined below.
- b. DSA will install Kiosks within City rights-of-way consistent with the terms described in Ordinance XXXXXX. If there are any inconsistencies between this MOU and Ordinance XXXXXX, the Primary and Extension Areas, conditions, and obligations described in Ordinance XXXXXXXX control.
- c. Phase I: Phase I will begin on the Commencement Date. The Deployment Area will initially consist of the Seattle downtown area consisting of MID and served by DSA ("Primary Area"). DSA, directly or through its Kiosk Vendor, will install and operate thirty (30) Kiosks within the Primary Area.
- d. Phase II: Phase II is an optional extension of Kiosk deployment. The City has the option any time during the Initial Term after the Operational Date at the City's sole discretion to direct DSA to install, or cause the installation, of up to fifty (50) additional Kiosks by providing written notice to DSA setting out the number of additional Kiosks to be installed and (where applicable) the BIA(s) in which they should be installed.

- i. Up to thirty (30) additional Kiosks may be installed in the Primary Area at the City's option.
 - ii. The City may, but need not, expand the Deployment Area into neighborhoods outside the Primary Area served by the BIA Boards of Ballard, U District, SODO, and West Seattle ("Extension Area"). DSA will install no more than twenty (20) Kiosks in the Extension Area.
 - iii. After receiving written direction to proceed and prior to placement of any Kiosks in the Extension Area, DSA will coordinate with the other specified BIA Boards, and confer with the City as appropriate, to determine suitable Kiosk locations consistent with Ordinance XXXXXX and the purposes of this MOA. After coordination and consultation, DSA will provide a list of Kiosk locations to the City under Section 5(b).
- e. In no event shall DSA install a Kiosk outside the Deployment Area.
 - f. The Kiosk locations, installation criteria, and number of Kiosks deployed within the Deployment Area will be subject to Ordinance XXXXXX, SDOT Permits, and any other City permits.
Any subsequent applications for Kiosks beyond the 80 identified in Phase 1 and Phase 2 will require a new MOU and a separate term permit ordinance.

7. Utilities.

DSA will be responsible for obtaining and bearing the costs of the installation, including all permits, trenching and conduit installation, and ongoing use of all utilities. City will cooperate in good faith with DSA and the Kiosk Vendor to identify access points to the City's electrical distribution system to power the Devices, City and DSA (or its Kiosk Vendor, as applicable) will enter into a power agreement that establishes payment and/or reimbursement rates to the City as compensation for such electrical connections.

8. Public Content on Kiosks

The Kiosks shall display public information or other content of general interest and import to the public at large, including, but not limited to, wayfinding, transportation information, public safety and health information, historical and local information and public service information ("Public Content"). Public Content that is provided to DSA by the City for purposes of display on the Kiosks shall be displayed as determined and directed by the City. The parties agree to cooperate in good faith to reach consensus on the display of Public Content.

The Kiosks shall operate in two different modes: (1) interactive mode, when a user has engaged one of the two touchscreens located on the Kiosk and (2) passive mode, in which a Kiosk is not in use and the interactive touchscreens rotate through eight spots. During interactive mode, Public Content on each screen in interactive mode will occupy a minimum of sixty-six percent (66%) of the screen area (i.e., Public Content will occupy the entire useable active area) and the content displayed in the passive mode loop will be relocated to the top one-third (1/3rd) of the screen area. During passive mode, each screen of the Kiosks will display a rotational mix of commercial, arts and Public Content. Each Kiosk rotates a total of eight spots, each with an equal duration. Public Content will be displayed during passive mode ("City Passive Content") at no cost to DSA or the City on (a) one (1) out of every eight (8) spots at all times plus (b) any unsold

inventory. City Passive Content shall equal at a minimum 25% of total passive mode screen time on an annual basis. City and DSA shall work together in good faith to program such City Passive Content.

The City may request that the Kiosks provide additional messaging for exceptional circumstances such as special events (e.g., FIFA World Cup, as further described in Section 10), exigent circumstances (e.g., earthquakes, snow), public safety emergencies, or other unforeseeable circumstances. The City agrees that it shall limit its requests for additional messaging so as to maximize the availability of paid content, and the DSA agrees that it shall not unreasonably withhold its authorization for any such City requests for additional messaging.

9. Other Content on Kiosks.

During interactive mode, Other Content on the screen in interactive mode will occupy a maximum of thirty-four percent (34%) of the screen area.

10. World Cup Operations.

Certain Kiosks will be located within a geographical area subject to the Host City Agreement between the City and FIFA regarding the 2026 World Cup (“Host City Agreement”). Notwithstanding DSA’s general rights under Sections 8 and 9, City reserves the right to instruct DSA to limit the content on Kiosks within that area or otherwise subject to the Host City Agreement to content consistent with the Host City Agreement for the time period covered by the Host City Agreement, which extends beyond the period that World Cup games are actually held in the City; provided, that City agrees, to the extent reasonably practicable, to narrowly tailor any such instruction to match the final terms of the Host City Agreement with respect to any prohibited content categories or rights of first refusal or similar bargaining rights. DSA and its Vendor are responsible for complying with the terms of the Host City Agreement, as instructed by City, at their cost. The City shall not be required to pay or otherwise compensate either DSA or Kiosk Vendor for lost revenue in complying with this section or otherwise take steps that City determines to be necessary under the Host City Agreement.

Without limiting the foregoing, DSA acknowledges and agrees that under the Host City Agreement, FIFA has rights to acquire and/or restrict advertisements that will affect Kiosk operations during the World Cup event period.

Notwithstanding anything in this Section 10 to the contrary, City agrees to (a) provide advance notice as soon as reasonably practicable to DSA and Kiosk Vendor with respect to any covered areas where Kiosks are located with respect to any rights to acquire and/or restrict advertisements that will affect Kiosk operations and (b) treat Kiosks no worse than other out-of-home media assets that may fall under the restrictions set forth in the Host City Agreement. DSA and Kiosk Vendor acknowledge that City does not control which media assets FIFA may choose to restrict under the Host City Agreement.

11. Revenue Share.

- A. DSA intends to enter agreements with Kiosk Vendors under which DSA will receive revenue based on advertising fees from Kiosks less the Kiosk Vendor's eligible expenses for installation, operations, and maintenance ("Revenue Share"). DSA anticipates that the thirty (30) Phase I Kiosks covered by this MOU in the Primary Area will generate approximately \$1.1 million in Revenue Share per year. DSA will deploy the Revenue Share under this Agreement for these purposes:
 - 1. funding public safety and capital improvements within the public realm and/or projects that benefit the general public which are located within the Primary Area or in locations otherwise approved in writing by the City; and
 - 2. remitting any portion to the City as provided in this MOU.
- B. DSA will retain 100% of the yearly Revenue Share up to \$1.1 million (the "Revenue Threshold") to be spent on public benefit purposes set out in subsection 11.A. and subject to such additional review and oversight as City may exercise over DSA and MID.
- C. All Revenue Share proceeds in excess of the Revenue Threshold for Phase I Kiosks in the Primary Area shall be paid by DSA to the City. All Revenue Share proceeds for Phase II Kiosks in the Primary Area shall be paid by DSA to the City. The City intends to deploy funds generated within the Primary Area for general City purposes consistent with enhancing the downtown experience for residents and visitors.
- D. DSA will retain all Revenue Share proceeds in the Extension Area. DSA will deploy these funds within the BIA in which the Kiosks is located to carry out services consistent with the purposes of this MOU. DSA will coordinate with the Ratepayer Board(s) for the BIA in which the Kiosks to determine how to spend these funds and may, in DSA's discretion, contract directly with those Ratepayer Board(s) to carry out projects consistent with the public benefit purposes of this MOU.

12. Annual Reports.

By March 1 of each year during the term of this MOU, DSA shall provide the City a written report ("Annual Report") that includes an accounting of funds generated at the Kiosks, breakdown of funds generated by location (Primary Area versus Extension Area by BIA), Revenue Share funds received by DSA, and DSA's expenditures of Revenue Share, along with funds and accounting for the use of all funds during the prior calendar year. The Annual Report shall also include a summary of actual and projected expenditures during the past year for each element supported by Revenue Share and (separately) other DSA spending. The Annual Report shall provide a brief narrative summary describing the scope of services provided overall by the DSA and the additional services that were funded with the Revenue Share. The Annual Report is in addition to any reporting requirements specified in Ordinance XXXXXX.

13. Privacy

DSA and its Kiosk Vendor shall limit information from users that it collects or retains. In particular, DSA and its Kiosk Vendor will not:

- a. Collect nor retain any MAC or IP addresses or other identifying information from users or passersby who do not expressly provide their consent.
- b. Deploy any video camera recording functionality whatsoever.
- c. Deploy any still photography functionality whatsoever, other than a photo booth feature that, solely when activated by a user, will take a picture of the user that can be retrieved by the user via QR code, it being understood that neither DSA nor the Kiosk Vendor will retain such images for any other use and that the photo booth feature will not activate unless activated by a user.

14. Recordkeeping, Audits, Public Records Act.

DSA shall maintain and retain all records and other documents related to this MOU for a period of three years from the date of expiration of this MOU, except in cases where unresolved audit questions require retention for a longer period as determined by the City. These records shall be available at any time during normal business hours and as often as the City deems necessary. DSA shall permit the City or its designee to audit, examine and make excerpts or transcripts from such records. DSA acknowledges that the City is subject to Washington's Public Records Act RCW Chapter 42.56 ("Act") and documents related to or created pursuant to this MOU may be deemed "public records" under the Act. Upon being notified of the City of a public records request related to this MOA, DSA will make available to the City and/or requester all requested documents. If DSA believes any such requested material is not a "public record" under the Act or is otherwise non-disclosable, DSA may, at its sole expense and risk, seek an injunction in a court of competent jurisdiction barring the City from disclosing those documents or records.

15. Indemnification and Hold Harmless, Insurance.

1. Indemnification by DSA. Except as provided below, DSA agrees to indemnify, defend, and hold harmless the City, its officials, employees, agents, and representatives (collectively, the "City Indemnified Parties"), from any and all claims, actions, damages, losses, fines, costs, and expenses ("Losses") arising out of or related to DSA's activities and DSA's obligations in connection with this MOU. This indemnification will include, but not be limited to, any claims for personal injury, property damage, or other damages arising directly out of or in connection with DSA's activities and obligations for the Project.
2. Exceptions. Notwithstanding anything to the contrary in this Agreement, DSA is not obligated to indemnify, hold harmless, or defend the City Indemnified Parties against any claim (whether direct or indirect) to the extent such claim or corresponding Losses arise out of or result from the City's negligence or willful misconduct, including that of its employees.

3. **Indemnification Procedure.** The City will give DSA reasonably prompt written notice (a “Claim Notice”), as soon as practicable after the City becomes aware of any claim, of any Losses or discovery of facts on which the City intends to base a request for indemnification under this Agreement. Each Claim Notice must contain a description of the third-party claim and the nature and amount of the related Losses to the extent that the nature and amount of the Losses are known at the time. The City will furnish reasonably promptly to DSA copies of all papers and official documents received in respect of any Losses. All indemnification obligations in this Agreement are conditioned upon the City:
 - a. reasonably promptly delivering the Claim Notice and related documents under this Section 14; and
 - b. cooperating with DSA in the defense of any such claim or liability and any related settlement negotiations.
4. **Third-Party Insurance.** DSA will secure customary insurance, hold harmless, and indemnification provisions in its agreements with any third-party service providers or vendors engaged in fulfilling the obligations under this Agreement. In the event of a third-party claim that arises out of the third-party services, each Party will use good faith and reasonable efforts to enforce the applicable provisions of their contracts.
5. **No Liability to City.** No recommendations, approvals, or other actions under this MOU by the City, its elected officials, officers or employees will cause the City to bear any responsibility or liability for the design, construction or operation of the Kiosks or defects related thereto or any inadequacy or error therein or failure to comply with applicable law, ordinance, rule, or regulation. Approvals provided by the City under this MOU will not constitute an opinion or representation as to their adequacy for any purpose other than the City’s own purposes.

16. Termination, Default and Remedies.

- d. **Default.** A default which shall be a breach of the MOU shall occur if either party fails to comply with any term of this MOU and such failure is not cured within thirty (30) days after receipt of written notice from the non-breaching party of the same, or, if such failure to comply with any term of this MOU is of a nature that it cannot reasonably be cured within such thirty (30) day period, the breaching party shall have such additional time as is reasonably necessary in which to cure such failure but not to exceed sixty (60) days from the date of receipt of written notice of default.
- e. **Remedies.** If any breach of this MOU is not cured within the time period set forth in Section 15(a), above, the non-breaching party shall have the right to terminate this MOU and seek such other rights and remedies as may be available at law or in equity.

17. Force Majeure.

Neither party shall be liable to the other for any loss, damage, claim, delay or default arising during suspension of performance due to acts of God (including storm, fire, flood and earthquake), labor disturbances (including strikes, boycotts, lockouts, etc.) war, acts of terrorism, civil commotion, imposition of any future governmental law, ordinance, rule or regulation, any strike or work stoppage, or other cause beyond the control of such party; provided, however, that either party shall only be entitled to rely on this Section to the extent it uses its best efforts to resume performance under this MOU as soon as reasonably practicable after such occurrence. Each party will notify the other if it becomes aware of any Force Majeure that will significantly delay performance. The notifying party will give such notice promptly (but in no event later than fifteen (15) calendar days) after it discovers the Force Majeure.

18. Notice.

All notices, demands, requests or other communications given under this MOU shall be in writing and be given by: (a) personal delivery; (b) certified mail, return receipt requested; (c) nationally recognized overnight courier service to the address set forth below; or (d) electronic mail or as otherwise designated in writing by the parties. All notices delivered pursuant to the terms of this Section shall be deemed delivered on receipt or refusal of receipt.

19. Governing Law.

This MOU shall be governed by and construed by the laws of the State of Washington, exclusive of its conflict of law rules, and exclusive jurisdiction over any legal action arising out of or in connection with this MOU shall be in King County Superior Court.

20. Counterparts and Electronic Signatures.

This MOU may be executed by the parties hereto in two or more counterparts and each executed counterpart shall be considered an original. This MOU may be executed and delivered by electronic signature; any original signatures that are initially delivered electronically shall be physically delivered with reasonable promptness thereafter.

21. Amendments

This MOU may not be amended, waived or discharged except by an instrument in writing executed by the party against which enforcement of such amendment, waiver, or discharge is sought, except by mutual agreement of the parties.

22. Invalidity; Severability.

The invalidity of any one of the covenants, agreements, conditions or provisions of this MOU or any portion thereof shall not affect the remaining portions thereof or any part hereof and this MOU shall be amended to substitute a valid provision which reflects the intent of the parties as was set forth in the invalid provision.

23. No Joint Venture, Partnership, Agency.

This MOU may not be construed as in any way establishing a partnership, joint venture, express or implied agency, or employer-employee relationship between the City and DSA. Nor shall any provision be construed to give the City custody of any information or content that is in the custody of DSA or any other person or entity. Nor shall provision be construed to give the City a right to possess such information except as may be required by Washington's Public Records Act, RCW Chapter 42.56.

24. No Waiver.

The failure of any party to exercise any right hereunder, or to insist upon strict compliance by the other party, shall not constitute a waiver of either party's right to demand strict compliance with the terms and conditions of this MOU.

25. Survival.

The provisions of this MOU which, by their reasonable terms, are intended to survive termination of this MOU shall survive termination. In the event that this MOU is terminated or expires by its terms, such expiration or termination shall not affect any liability or other obligation which shall have accrued prior to such termination.

26. Section Headings.

The section headings herein are inserted only for convenience and reference and shall in no way define, limit, or prescribe the scope or intent of any provisions of this MOU.

27. Usage of Terms.

When the context in which words are used herein indicates that such is the intent, words in the singular number shall include the plural and vice versa. All pronouns and any variations thereof shall be deemed to refer to all genders.

28. Anti-Discrimination.

In providing services hereunder, DSA shall not discriminate on the basis of race, color, religion, sexual orientation, gender, ancestry, national origin, age, physical or mental capability, or marital status.

29. No Third-Party Beneficiaries.

This Agreement is entered into for the sole benefit of the Parties, and except as specifically provided herein, no other person will be a direct or indirect beneficiary of or will have any direct or indirect case of action or claim in connection with this Agreement.

30. Term Permit Ordinance.

The Seattle City Council passed Ordinance XXXXXX authorizing a programmatic term permit for DSA to locate Kiosks in the public right-of-way. Ordinance XXXXXX details the terms, conditions, and obligations that DSA must abide by for this use. If there are any inconsistencies between this MOU and Ordinance XXXXXX, the terms, conditions, and obligations in Ordinance XXXXXX prevail.