

Ordinance No. 124726

Council Bill No. 118334

AN ORDINANCE granting Acorn Development LLC permission to construct, maintain, and operate below-grade utility lines for a site specific heat conveyance system and other utilities under and across Lenora Street between 6th Avenue and 7th Avenue, and under and across 7th Avenue between Lenora Street and Blanchard Street; for a ten-year term, renewable for two successive ten-year terms; specifying the conditions under which this permit is granted and providing for the acceptance of the permit and conditions.

CF No. \_\_\_\_\_

Date Introduced:	
Date 1st Referred: <u>2/23/2015</u>	To: (committee) <u>Transportation</u>
Date Re - Referred:	To: (committee)
Date Re - Referred:	To: (committee)
Date of Final Passage:	Full Council Vote:
Date Presented to Mayor:	Date Approved:
Date Returned to City Clerk:	Date Published: T.O. _____ F.T. _____
Date Vetoed by Mayor:	Date Veto Published:
Date Passed Over Veto:	Veto Sustained:

# The City of Seattle - Legislative Department

Council Bill/Ordinance sponsored by: \_\_\_\_\_

Councilmember

## Committee Action:

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This file is complete and ready for presentation to Full Council. Committee: \_\_\_\_\_  
(initial/date)

Law Dept. Review      OMP Review      City Clerk Review      Electronic Copy Loaded      Indexed



# SEATTLE CITY COUNCIL

## Legislative Summary

CB 118334

Record No.: CB 118334

Type: Ordinance (Ord)

Status: Attested by City Clerk

Version: 1

124726

In Control: City Clerk

File Created: 01/29/2015

Final Action: 03/06/2015

**Title:** AN ORDINANCE granting Acorn Development LLC permission to construct, maintain, and operate below-grade utility lines for a site specific heat conveyance system and other utilities under and across Lenora Street between 6th Avenue and 7th Avenue, and under and across 7th Avenue between Lenora Street and Blanchard Street; for a ten-year term, renewable for two successive ten-year terms; specifying the conditions under which this permit is granted and providing for the acceptance of the permit and conditions.

Date

Notes:

Filed with City Clerk:

Mayor's Signature:

Sponsors: Rasmussen

Vetoed by Mayor:

Veto Overridden:

Veto Sustained:

Attachments:

Drafter: Amy Gray

Filing Requirements/Dept Action:

### History of Legislative File

Legal Notice Published:

Yes

No

Version:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
1	City Clerk	02/10/2015	sent for review	Council President's Office			
	Action Text: The Council Bill (CB) was sent for review to the Council President's Office						
	Notes:						
1	Council President's Office	02/12/2015	sent for review	Transportation Committee			
	Action Text: The Council Bill (CB) was sent for review to the Transportation Committee						
	Notes:						
1	Full Council	02/17/2015	referred	Transportation Committee			
	Action Text: The Council Bill (CB) was referred to the Transportation Committee						
	Notes:						



- 1 Full Council 02/23/2015 referred Transportation  
Committee  
Action Text: The Council Bill (CB) was referred to the Transportation Committee  
Notes:
- 1 Transportation Committee 02/24/2015 pass Pass  
Action Text: The Committee recommends that Full Council pass the Council Bill (CB).  
Notes:  
In Favor: 3 Chair Rasmussen, Vice Chair O'Brien, Member Godden  
Opposed: 0
- 1 Full Council 03/02/2015 passed Pass  
Action Text: The Council Bill (CB) passed by the following vote and the President signed the Bill:  
In Favor: 9 Councilmember Bagshaw, Council President Burgess, Councilmember  
Clark, Councilmember Godden, Councilmember Harrell, Councilmember  
Licata, Councilmember O'Brien, Councilmember Rasmussen,  
Councilmember Sawant  
Opposed: 0
- 1 City Clerk 03/03/2015 submitted for Mayor  
Mayor's signature  
Action Text: The Council Bill (CB) was submitted for Mayor's signature to the Mayor  
Notes:
- 1 Mayor 03/06/2015 Mayor's leg City Clerk  
transmitted to  
Council  
Action Text: The Council Bill (CB) was Mayor's leg transmitted to Council to the City Clerk  
Notes:
- 1 Mayor 03/06/2015 Signed  
Action Text: The Council Bill (CB) was Signed  
Notes:
- 1 Mayor 03/06/2015 sent to Clerk City Clerk  
Action Text: The Council Bill (CB) was sent to Clerk to the City Clerk  
Notes:
- 1 City Clerk 03/06/2015 attested by City  
Clerk  
Action Text: The Council Bill (CB) was attested by City Clerk  
Notes:
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**CITY OF SEATTLE**  
**ORDINANCE** 124726  
**COUNCIL BILL** 118334

AN ORDINANCE granting Acorn Development LLC permission to construct, maintain, and operate below-grade utility lines for a site specific heat conveyance system and other utilities under and across Lenora Street between 6th Avenue and 7th Avenue, and under and across 7th Avenue between Lenora Street and Blanchard Street; for a ten-year term, renewable for two successive ten-year terms; specifying the conditions under which this permit is granted and providing for the acceptance of the permit and conditions.

WHEREAS, Acorn Development LLC (Acorn) has applied for permission to construct below-grade utilities including utility lines for a site specific heat conveyance system, including facilities for conveying non-potable water, a site specific fire protection water conveyance system, and communications, for new Acorn building(s); and

WHEREAS, the below-grade utility lines will be used for utilities that include a site specific heat conveyance system that will capture heat energy from the Westin Building Exchange at 2001 6th Avenue and will transfer that heat energy to the Acorn building(s) as a heating and cooling source; and

WHEREAS, the Seattle City Council conceptually approved utility tunnels containing the site specific, below-grade heat conveyance system for the Acorn building(s) under Resolution No. 31545. Although the Resolution refers to utility tunnels, only utility lines will be installed in the right-of-way; and

WHEREAS, Acorn acknowledges that the utility lines and site specific, below-grade heat conveyance system will not be utilized to provide utility services to third parties (other

1 than the Westin Building Exchange and Eco District LLC) under the permissions granted  
2 under this ordinance; and.

3 WHEREAS, adopting this ordinance is the culmination of the approval process for the utility  
4 lines that contain a site specific, below-grade heat conveyance system to legally occupy a  
5 portion of the public right-of-way, NOW, THEREFORE,

6  
7 **BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

8 Section 1. **Permission.** Subject to the terms and conditions of this ordinance, the City of  
9 Seattle (City) grants permission (also referred to in this ordinance as a permit) to Acorn  
10 Development LLC (Acorn), and its parents, affiliates, successors and assigns as approved by the  
11 Director of the Seattle Department of Transportation (Director) according to Section 14 of this  
12 ordinance (the party named above and each such approved successor and assign is referred to as  
13 the Permittee), to construct, maintain, and operate below-grade utility lines that contain a site  
14 specific heat conveyance system and other utilities limited to the Acorn development, including  
15 facilities for a site specific fire protection water conveyance system, communications, and all  
16 related appurtenances (Utility Lines), under and across Lenora Street between 6th Avenue and  
17 7th Avenue, and under and across 7th Avenue between Lenora Street and Blanchard Street,  
18 adjacent in whole or in part to the property legally described as:

19 All of Block 14, Addition to the Town of Seattle, as Laid off by the Heirs  
20 of Sarah A. Bell, Deceased (Commonly known as Heirs of Sarah A. Bell's  
21 Addition to the City of Seattle), According to the Plat thereof, Recorded in Vol. 1  
22 of Plats, page 103, in King County, Washington; and  
23

1 All of Block 19, Second Addition to the Town of Seattle, as Laid off by  
2 the Heirs of Sarah A. Bell, Deceased (Commonly known as Heirs of Sarah A.  
3 Bell's Addition to the City of Seattle), According to the Plat thereof, Recorded in  
4 Vol. 1 of Plats, page 121, in King County, Washington; and

5  
6 All of Block 20, Second Addition to the Town of Seattle, as Laid off by  
7 the Heirs of Sarah A. Bell, Deceased (Commonly known as Heirs of Sarah A.  
8 Bell's Addition to the City of Seattle), According to the Plat thereof, Recorded in  
9 Vol. 1 of Plats, page 121, in King County, Washington.

10  
11 The Utility Lines are for the purpose of providing distribution and connection for a  
12 heating and cooling system and other private utility systems limited to the buildings on Block 14,  
13 Block 19, and Block 20 (Acorn campus). If at any time after the adoption of this ordinance, the  
14 Utility Lines, heating and cooling systems, or other private utility systems authorized by this  
15 ordinance are proposed to be connected to properties other than the Acorn campus, or to  
16 buildings that have a different ownership than the buildings on the Acorn campus, by Acorn or a  
17 permit transferee subject to Section 14 of this ordinance, a new amended ordinance shall be  
18 required and subject to approval by the City Council.

19 Section 2. **Term.** The permission granted to Permittee is for a term of ten years starting  
20 on the effective date of this ordinance and ending at 11:59 p.m. on the last day of the tenth year.  
21 Upon written application made by the Permittee at least 180 days before expiration of the then-  
22 existing term, the Director or the City Council may renew the permit twice, each time for a  
23 successive ten-year term, subject to the right of the City to require the removal of the Utility

1 Lines or to revise by ordinance any of the terms and conditions of the permission granted by this  
2 ordinance. The total term of this permission, including renewals, shall not exceed 30 years. The  
3 Permittee shall submit any application for a new permission no later than 180 days prior to the  
4 expiration of the then-existing term.

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 Utility Lines and for any consequential damages that may result from any damage to utilities  
10 or interruption in service caused by the construction, repair, reconstruction, maintenance,  
11 operation, or removal of the Utility Lines.

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

18       (a) The City Council determines by ordinance that the space occupied by the Utility  
19 Lines is necessary for any public use or benefit or that the Utility Lines interfere with any public  
20 use or benefit; or

21       (b) The Director determines that use of the Utility Lines has been abandoned; or

22       (c) The Director determines that any term or condition of this ordinance has been  
23 violated, and the violation has not been corrected by the Permittee by the compliance date after a

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

3 A City Council determination that the space is needed for, or the Utility Lines interfere with, a  
4 public use or benefit is conclusive and final without any right of the Permittee to resort to the  
5 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 or a  
9 reasonable time period as determined by the Director, or whichever is longer; after the expiration  
10 or termination of the permission, or prior to any earlier date stated in an ordinance or in an order  
11 requiring removal of the Utility Lines; the Permittee shall at its own expense remove the Utility  
12 Lines and all of the Permittee's equipment and property from the public place and replace and  
13 restore all portions of the public place that may have been disturbed for any part of the Utility  
14 Lines in as good condition for public use as existed prior to construction of the Utility Lines and  
15 in at least as good condition in all respects as the abutting portions of the public place as required  
16 by SDOT right-of-way restoration standards.

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



1           Upon the Permittee's completion of the 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 then 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 Utility Lines shall remain the exclusive  
9 responsibility of the Permittee and the Permittee shall maintain the Utility Lines in good and safe  
10 condition for the protection of the public, including other below-grade facilities. The Permittee  
11 shall not reconstruct or repair the Utility Lines including but not limited to the addition or  
12 replacement of utilities in the Utility Lines, except in strict accordance with plans and  
13 specifications approved by the Director, in consultation with other City Departments. The  
14 Director may, in the Director's judgment, order the Utility Lines reconstructed or repaired at the  
15 Permittee's cost and expense because of: the deterioration or unsafe condition of the Utility  
16 Lines; the installation, construction, reconstruction, maintenance, operation, or repair of any  
17 municipally-owned public utilities; or for any other cause.

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

1           **Section 8. Continuing obligations.** Notwithstanding termination or expiration of the  
2 permission granted, or closure or removal of the Utility Lines, the Permittee shall remain bound  
3 by all of its obligations under this ordinance until the Director has issued a certification that the  
4 Permittee has fulfilled its removal and restoration obligations under Section 5 of this ordinance.  
5 The Permittee shall continue to be bound by the obligations in Section 9 of this ordinance and  
6 shall remain liable for any unpaid fees assessed under Section 17 of this ordinance until the  
7 Permittee has fulfilled its obligations under Section 5 of this ordinance.

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

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

21           (a)    The existence, condition, construction, reconstruction, modification, maintenance,  
22 operation, use, or removal of the Utility Lines or any portion thereof, or the use, occupation, or

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

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

5 (c) The Permittee failing or refusing to strictly comply with every provision of this  
6 ordinance.

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

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

1 (a) Construction, reconstruction, modification, operation, maintenance, use,  
2 existence, or removal of the Utility Lines or any portion thereof, as well as restoration of any  
3 disturbed areas of the public place in connection with removal of the Utility Lines;

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

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

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

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

19 Within 60 days after the effective date of this ordinance, the Permittee shall provide to  
20 the City, or cause to be provided, certification of insurance coverage including an actual copy of  
21 the blanket or designated additional insured policy provision per the ISO CG 20 12 endorsement  
22 or equivalent. The insurance coverage certification shall be delivered or sent to the Director or to  
23 the Seattle Department of Transportation (SDOT) at an address as the Director may specify in

1 writing from time to time. The Permittee shall provide a certified complete copy of the insurance  
2 policy to the City promptly upon request.

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

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

16       Section 11. **Contractor insurance.** The Permittee shall contractually require that any  
17 and all of its contractors performing work on any premises contemplated by this permit name the  
18 "City of Seattle, its officers, officials, employees and agents" as additional insureds for primary  
19 and non-contributory limits of liability on all CGL, Automobile and Pollution liability insurance  
20 and/or self-insurance.

21       Section 12. **Performance bond.** Within 60 days after the effective date of this ordinance,  
22 the Permittee shall deliver to the Director for filing with the City Clerk a sufficient bond  
23 executed by a surety company authorized and qualified to do business in the State of Washington



1 that is in the amount of \$95,000, and conditioned with a requirement that the Permittee shall  
2 comply with every provision of this ordinance and with every order the Director issues under this  
3 ordinance. The Permittee shall ensure that the bond remains in effect until the Director has issued  
4 a certification that the Permittee has fulfilled its removal and restoration obligations under  
5 Section 5 of this ordinance. An irrevocable letter of credit approved by the Director in  
6 consultation with the City Attorney's Office may be substituted for the bond. If the Permittee  
7 assigns or transfers the permission granted by this ordinance, the Permittee shall maintain in  
8 effect the bond or letter of credit required under this section until the Director has approved the  
9 assignment or transfer pursuant to Section 14 of this ordinance.

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

16       **Section 14. Consent for and conditions of assignment or transfer.** The permission  
17 granted by this ordinance shall not be assignable or transferable by operation of law; nor shall the  
18 Permittee transfer, assign, mortgage, pledge or encumber the same without the Director's  
19 consent. If the Director approves an assignment or transfer of the permission granted by this  
20 ordinance to a successor entity, the successor or assignee shall accept in writing all of the terms  
21 and conditions of the permission granted by this ordinance, including the payment of fees set  
22 forth in Section 17 of this ordinance; shall provide, at the time of the acceptance, the bond and  
23 certification of insurance coverage required under this ordinance; and any fees due and payable

1 under Section 17 of this ordinance shall be paid current prior to the assignment or transfer taking  
2 effect. Upon the Director's approval of an assignment or transfer, the rights and obligations  
3 conferred on the Permittee by this ordinance shall be conferred on the successors and assigns  
4 from and after the effective date of such assignment or transfer. Upon assignment or transfer, the  
5 Permittee shall be released from all obligations conferred on the Permittee by this ordinance that  
6 arise after the assignment or transfer. The release shall have no effect on the Permittee's  
7 obligations conferred by this ordinance during the period the Permittee was subject to this  
8 ordinance. Any person or entity seeking approval for an assignment or transfer of the permission  
9 granted by this ordinance shall provide the Director with a description of the current and  
10 anticipated use of the Utility Lines.

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

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

- 20       (a) Describes any damages or possible repairs, beyond routine maintenance, to any  
21 element of the Utility Lines; and  
22       (b) Prioritizes all repairs and establishes a timeframe for making repairs.

1 A report meeting the foregoing requirements shall be submitted within 10 days after the  
2 Permittee becomes aware of any failure or operating problem in the Utility Lines. If, however,  
3 there is indication that a failure in the Utility Lines poses a threat to the public place, the  
4 Permittee shall notify the Director promptly after the threat is known to the Permittee. All  
5 reconstructions or repairs shall be reviewed by the Director as provided for in Section 6. If a  
6 natural disaster or other event may have damaged the Utility Lines, the Director may require that  
7 additional reports be submitted by a date established by the Director. The Permittee has the duty  
8 of monitoring the condition of and maintaining the Utility Lines. The responsibility to submit  
9 reports periodically or as required by the Director does not waive or alter any of the Permittee's  
10 other obligations under this ordinance. The receipt of any reports by the Director shall not create  
11 any duties on the part of the Director. Any failure by the Director to require a report, or to  
12 require action after receipt of any report, shall not waive or limit the obligations of the Permittee  
13 under this ordinance.

14       Section 17. **Annual fee.** Beginning on the effective date of this ordinance, and annually  
15 thereafter, the Permittee shall promptly pay to the City, upon statements or invoices issued by the  
16 Director, an annual fee of \$8,305.25, or as adjusted annually thereafter, for the privileges granted  
17 by this ordinance.

18       Adjustments to the annual fee shall be made in accordance with a term permit fee  
19 schedule adopted by the City Council and may be made every year. In the absence of a schedule,  
20 the Director may only increase or decrease the previous year's fee to reflect any inflationary  
21 changes so as to charge the fee in constant dollar terms. This adjustment will be calculated by  
22 adjusting the previous year's fee by the percentage change between the two most recent year-end  
23 values available for the Consumer Price Index for the Seattle-Tacoma-Bremerton Area, All

1 Urban Consumers, All Products, Not Seasonally Adjusted. All payments shall be made to the  
2 City Finance Director for credit to the Transportation Operating Fund.

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

9       **Section 19. Acceptance of terms and conditions.** Permittee shall deliver to the Director  
10 its written signed acceptance of the terms of this ordinance within 60 days after the effective date  
11 of this ordinance. The Director shall file the written acceptance with the City Clerk. If no such  
12 acceptance is received within that 60-day period, the privileges conferred by this ordinance shall  
13 be deemed declined or abandoned and the permission granted deemed lapsed and forfeited. The  
14 Permittee shall not commence construction of the Utility Lines prior to the Permittee delivering  
15 its written signed acceptance of the terms of this ordinance and providing the bond and  
16 certification of insurance coverage required by this ordinance as well as the covenant agreement  
17 required by Section 20 of this ordinance.

18       **Section 20. Obligations run with the Property.** The obligations and conditions  
19 imposed on the Permittee by and through this ordinance are covenants that run with the land and  
20 bind subsequent owners of the property adjacent to the Utility Lines and legally described in  
21 Section 1 of this ordinance (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, Permittee shall provide to the Director a current title report showing the


1 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 or Council  
8 Bill number. At the request of the Director, the Permittee shall cause encumbrances on the  
9 Property to be subordinated to the covenant agreement.

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

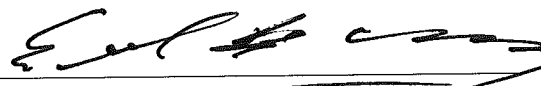


1 Section 22. This ordinance shall take effect and be in force 30 days after its approval by  
2 the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it  
3 shall take effect as provided by Seattle Municipal Code Section 1.04.020.


4 Passed by the City Council the 20<sup>th</sup> day of March, 2015, and  
5 signed by me in open session in authentication of its passage this  
6 20<sup>th</sup> day of March, 2015.

7  
8  
9   
10 \_\_\_\_\_  
11 President \_\_\_\_\_ of the City Council

12 Approved by me this 6 day of February, 2015. <sup>March AS 4/2/15</sup>

13  
14  
15   
16 \_\_\_\_\_  
17 Edward B. Murray, Mayor

18  
19 Filed by me this <sup>6<sup>th</sup></sup> ~~10<sup>th</sup>~~ day of MARCH, 2015.  
20 <sub>JRS 3/12/15</sub>

21   
22 \_\_\_\_\_  
23 Monica Martinez Simmons, City Clerk

24  
25 (Seal)

**BILL SUMMARY & FISCAL NOTE**

<b>Department:</b>	<b>Contact Person/Phone:</b>	<b>Executive Contact/Phone:</b>
Seattle Department of Transportation	Angela Steel/684-5967	Aaron Blumenthal/233-2656

**1. BILL SUMMARY**

**Legislation Title:**

AN ORDINANCE granting Acorn Development LLC permission to construct, maintain, and operate below-grade utility lines for a site specific heat conveyance system and other utilities under and across Lenora Street between 6th Avenue and 7th Avenue, and under and across 7th Avenue between Lenora Street and Blanchard Street; for a ten-year term, renewable for two successive ten-year terms; specifying the conditions under which this permit is granted and providing for the acceptance of the permit and conditions.

**Summary and background of the Legislation:**

This legislation grants Acorn Development LLC (“Acorn”) permission to construct, maintain, and operate below-grade utilities including utility lines for a site specific heat conveyance system, including facilities for conveying non-potable water, a site specific fire protection water conveyance system, and communications, under and across Lenora Street between 6th Avenue and 7th Avenue, and under and across 7th Avenue between Lenora Street and Blanchard Street. An area map is attached for reference.

The utility lines will be used for utilities that include a site specific heat conveyance system that will capture heat energy from the Westin Building Exchange at 2001 6th Avenue and will transfer that heat energy to the Acorn buildings as a heating and cooling source.

This permit is for a ten-year term, renewable for two successive ten-year terms. The legislation has an insurance provision as recommended by the City's Risk Manager, specifies the conditions under which authorization is granted, and provides for acceptance of the permit and conditions. The ordinance requires Acorn to pay the City an annual fee of \$8,305.25 commencing on the effective date of this ordinance. Adjustments to the annual fee may be made every year and if so made shall be calculated in accordance with a term permit fee schedule adopted by the City Council by Ordinance 123485. An Annual Fee Assessment Summary is attached for reference.

The Seattle City Council conceptually approved utility tunnels containing the site specific, below-grade heat conveyance system for the Acorn building(s) under Resolution No. 31545. Although the Resolution refers to utility tunnels, only utility lines will be installed in the right of way.

**2. CAPITAL IMPROVEMENT PROGRAM**

This legislation creates, funds, or amends a CIP Project.

Project Name:	Project I.D.:	Project Location:	Start Date:	End Date:	Total Cost:

**3. SUMMARY OF FINANCIAL IMPLICATIONS**

Please check one:

This legislation has direct financial implications. (

This legislation does not have direct financial implications.

<b>Budget program(s) affected:</b>				
<b>Estimated \$ Appropriation change:</b>	<b>General Fund \$</b>		<b>Other \$</b>	
	<b>2015</b>	<b>2016</b>	<b>2015</b>	<b>2016</b>
<b>Estimated \$ Revenue change:</b>	<b>Revenue to General Fund</b>		<b>Revenue to Other Funds</b>	
	<b>2015</b>	<b>2016</b>	<b>2015</b>	<b>2016</b>
			<b>\$8,305.25</b>	<b>TBD</b>
<b>Positions affected:</b>	<b>No. of Positions</b>		<b>Total FTE Change</b>	
	<b>2015</b>	<b>2016</b>	<b>2015</b>	<b>2016</b>
<b>Other departments affected:</b>				

**3.a. Appropriations**

This legislation adds, changes, or deletes appropriations.

Fund Name and number	Dept	Budget Control Level Name/##*	2015 Appropriation Change	2016 Estimated Appropriation Change
<b>TOTAL</b>				

Appropriations Notes:

**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	2015 Revenue	2016 Estimated Revenue
Transportation Operating Fund 10310	Seattle Department of Transportation	Annual Fee	\$8,305.25	TBD
<b>TOTAL</b>				

Revenue/Reimbursement Notes: The 2016 fee will be based on 2016 King County assessed land values.

**3.c. Positions**

\_\_\_\_\_ This legislation adds, changes, or deletes positions.

**Total Regular Positions Created, Modified, or Abrogated through this Legislation, Including FTE Impact:**

Position # for Existing Positions	Position Title & Department*	Fund Name & #	Program & BCL	PT/FT	2015 Positions	2015 FTE	Does it sunset? (If yes, explain below in Position Notes)
<b>TOTAL</b>							

\* List each position separately

Position Notes:

**4. OTHER IMPLICATIONS**

- a) Does the legislation have indirect or long-term financial impacts to the City of Seattle that are not reflected in the above?  
No.
- b) Is there financial cost or other impacts of not implementing the legislation?  
If the legislation is not enacted by the City Council, the City of Seattle will not receive the annual fee of \$8,305.25. As previously stated, the City of Seattle has the option to adjust the fee amount on an annual basis.
- c) Does this legislation affect any departments besides the originating department?  
No.
- d) Is a public hearing required for this legislation?  
No.

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

No.

- f) **Does this legislation affect a piece of property?**

Yes, Westin Building Exchange at 2001 6th Avenue and the abutting Acorn Buildings, which properties are legally described in Section 1 of the Council Bill.

- g) **Please describe any perceived implication for the principles of the Race and Social Justice Initiative. Does this legislation impact vulnerable or historically disadvantaged communities?**

There are no perceived implications for the principles of the Race and Social Justice Initiative. This legislation does not impact vulnerable or historically disadvantaged communities.

- h) **If this legislation includes a new initiative or a major programmatic expansion: What are the long-term and measurable goals of the program? Please describe how this legislation would help achieve the program's desired goals.**

N/A

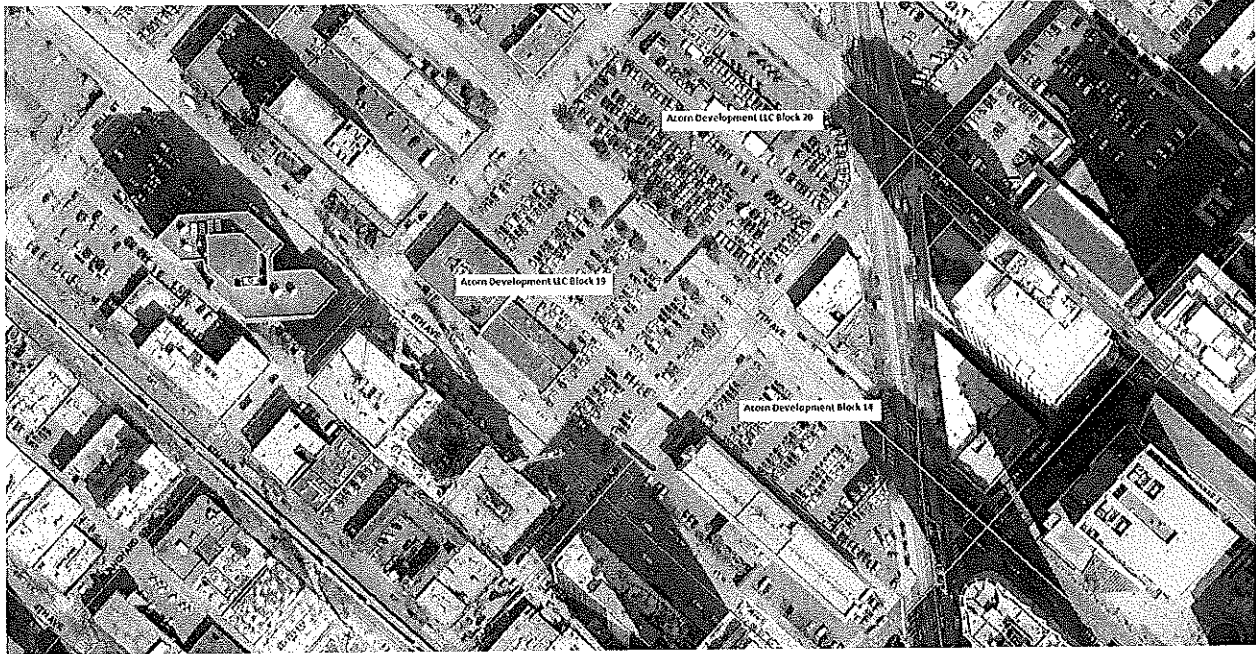
- i) **Other Issues:** N/A

**List attachments below:**

Attachment A - Acorn Development LLC Area Map  
Attachment B - Annual Fee Assessment Summary



## Attachment A – Acorn Development LLC Area Map



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

Attachment B - Annual Fee Assessment Summary

Date: 1/8/15

<p><u>Summary:</u> <b>Land Value: \$687.98/SF</b> <b>2015 Permit Fee:</b> <b>\$8,305.25</b></p>
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**I. Property Description:**

Below-grade utility lines for a site specific heat conveyance system and other utilities under and across Lenora Street between 6th Avenue and 7th Avenue, and under and across 7th Avenue between Lenora Street and Blanchard Street. The area is **503 square feet**.

**Applicant:**  
Acorn Development LLC

**Abutting Parcels, Property Size, Assessed Value:**

1. Parcel 0659000775; Lot size: 38,880 square feet  
Tax year 2015 Appraised Land Value \$27,216,000
2. Parcel 0660000165; Lot size: 12,960 square feet  
Tax year 2015 Appraised Land Value \$9,072,000
3. Parcel 0660000220; Lot size: 19,440 square feet  
Tax year 2015 Appraised Land Value \$13,608,000
4. Parcel 0660000215; Lot size: 6,480 square feet  
Tax year 2015 Appraised Land Value \$4,536,000
5. Parcel 0660000270; Lot size: 32,400 square feet  
Tax year 2015 Appraised Land Value \$21,363,600
6. Parcel 0660000205; Lot size: 12,960 square feet  
Tax year 2015 Appraised Land Value \$9,702,000
7. Parcel 0660000275; Lot size: 6,480 square feet  
Tax year 2015 Appraised Land Value \$4,253,900

Average 2015 Tax Assessed Land Value: \$687.98/SF

**II. Annual Fee Assessment:**

The 2015 permit fee is calculated as follows:

$(\$687.98/\text{SF}) \times (503 \text{ SF}) \times (30\%) \times (8\%) = \$8,305.25$  where 30% is the degree of alienation for a below-grade utility lines and 8% is the annual rate of return.

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

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STATE OF WASHINGTON -- KING COUNTY

--SS.

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322315

No.

CITY OF SEATTLE, CLERKS OFFICE

**Affidavit of Publication**

The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12<sup>th</sup> day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

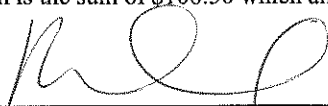
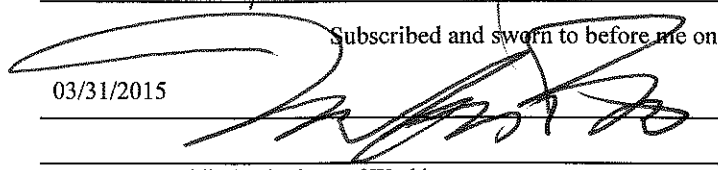
CT:124725-729 TITLE ONLY

was published on

03/31/15

The amount of the fee charged for the foregoing publication is the sum of \$108.50 which amount has been paid in full.



  
\_\_\_\_\_  
Subscribed and sworn to before me on  
03/31/2015  
  
\_\_\_\_\_  
Notary public for the State of Washington,  
residing in Seattle

## State of Washington, King County

### City of Seattle

Legislation passed by the Seattle  
City Council 3/02/15

Ord. 124725

C.B. 118338

AN ORDINANCE appropriating money to pay certain audited claims and ordering the payment thereof.

Ord. 124726

C.B. 118334

AN ORDINANCE granting Acorn Development LLC permission to construct, maintain, and operate below-grade utility lines for a site specific heat conveyance system and other utilities under and across Lenora Street between 6th Avenue and 7th Avenue, and under and across 7th Avenue between Lenora Street and Blanchard Street; for a ten-year term, renewable for two successive ten-year terms; specifying the conditions under which this permit is granted and providing for the acceptance of the permit and conditions.

Ord. 124727

C.B. 118335

AN ORDINANCE granting Eco District LLC permission to construct, maintain, and operate below-grade utility lines for a site specific heat conveyance system under and along Virginia Street between 5th Avenue and 6th Avenue, and under and across 6th Avenue between Virginia Street and Lenora Street; for a ten-year term, renewable for two successive ten-year terms; specifying the conditions under which this permit is granted and providing for the acceptance of the permit and conditions.

Ord. 124728

C.B. 118333

AN ORDINANCE vacating a portion of Terry Avenue and an alley in Block 32, Heirs of Sarah A. Bells 2nd Addition, on the petition of King County (Clerk File 29 5303); and ratifying and confirming certain prior acts.

Ord. 124729

C.B. 118336

AN ORDINANCE relating to the First Hill Streetcar project; authorizing the Director of the Department of Transportation to acquire, accept, and record, on behalf of the City of Seattle, various easements granted to the City of Seattle for a portion of Blocks 5, 6, 11, 12, and 14 of the Town of Seattle, as laid out by D. S. Maynard, Commonly known as D. S. Maynards Plat of Seattle, and Blocks 138 and 139 of A. A. Dennys Broadway Addition to the City of Seattle, to install, construct, erect, alter, improve, repair, and maintain permanent streetcar cable eyebolts to various buildings or structures; placing such easements under the jurisdiction of the Seattle Department of Transportation; and ratifying and confirming certain acts.

Date of publication in the Seattle Daily Journal of Commerce, March 31, 2015.

3/31(322315)