

**CITY OF SEATTLE**  
**ORDINANCE** 126764  
**COUNCIL BILL** 120506

AN ORDINANCE granting Dunn Lumber Company permission to construct, maintain, and operate a private communication conduit under and across Latona Avenue Northeast, north of Northeast Northlake Way, 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, Dunn Lumber Company applied for permission to construct, operate, and maintain a private communication conduit under and across Latona Avenue Northeast, north of Northeast Northlake Way in the Wallingford neighborhood (“Communication Conduit”); and

WHEREAS, the obligations of the ordinance remain in effect after the ordinance term expires until the encroachment is removed, or Dunn Lumber 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 Seattle City Council adopted Resolution 32053 and conceptually approved the Communication Conduit, and Dunn Lumber Company has met the obligations described in this resolution; and

WHEREAS, the adoption of this ordinance is the culmination of the approval process for the Communication Conduit 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 Dunn

1 Lumber Company, and its successors and assigns as approved by the Director of the Seattle  
2 Department of Transportation (“Director”) according to Section 14 of this ordinance (the party  
3 named above and each such approved successor and assign is referred to as the “Permittee”), to  
4 construct, maintain, and operate a private communication conduit under and across Latona  
5 Avenue Northeast, north of Northeast Northlake Way, (collectively referred to as  
6 “Communication Conduit”), adjacent in whole or in part to the property legally described as:

7 Lots 1-21, inclusive, Block 7, Latona Addition to the City of Seattle according to the plat  
8 thereof recorded in Volume 4 of Plats, Page 28, in King County, Washington.  
9

10 Section 2. **Term.** The permission granted to the Permittee is for a term of 15 years  
11 starting on the effective date of this ordinance and ending at 11:59 p.m. on the last day of the  
12 fifteenth year. Upon written application made by the Permittee at least one year before expiration  
13 of the term, the Director or the City Council may renew the permit once, for a successive 15-year  
14 term, subject to the right of the City to require the removal of the Communication Conduit, or to  
15 revise by ordinance any of the terms and conditions of the permission granted by this ordinance.  
16 The total term of the permission, including renewals, shall not exceed 30 years. The Permittee  
17 shall submit any application for a new permission no later than one year before the then-existing  
18 term expires. Any new application would be subject to the fees and criteria in place at the time of  
19 the new application.

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

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

7           A. The City Council determines by ordinance that the space occupied by the  
8 Communication Conduit is necessary for any public use or benefit or that the Communication  
9 Conduit interferes with any public use or benefit; or

10          B. The Director determines that use of the Communication Conduit has been abandoned;  
11 or

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

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

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

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

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

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

20 Section 6. **Repair or reconstruction.** The Communication Conduit shall remain the  
21 exclusive responsibility of the Permittee and the Permittee shall maintain the Communication  
22 Conduit in good and safe condition for the protection of the public. The Permittee shall not  
23 reconstruct or repair the Communication Conduit except in strict accordance with plans and

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

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

12       Section 8. **Continuing obligations.** Notwithstanding the termination or expiration of the  
13 permission granted, or removal of the Communication Conduit, the Permittee shall remain bound  
14 by all of its obligations under this ordinance until the Director has issued a certification that the  
15 Permittee has fulfilled any removal and restoration obligations established by the City, or the  
16 Seattle City Council passes a new ordinance to renew the permission granted and/or establishes a  
17 new term. Notwithstanding the issuance of that certification, the Permittee shall continue to be  
18 bound by the obligations in Section 9 and Section 20 of this ordinance and shall remain liable for  
19 any unpaid fees assessed under Sections 15 and 17 of this ordinance.

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

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

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

10 A. The existence, condition, construction, reconstruction, modification, maintenance,  
11 operation, use, or removal of the Communication Conduit or any portion thereof, or the use,  
12 occupation, or restoration of the public place or any portion thereof by the Permittee or any other  
13 person or entity;

14 B. Anything that has been done or may at any time be done by the Permittee by reason of  
15 this ordinance; or

16 C. The Permittee failing or refusing to strictly comply with every provision of this  
17 ordinance; or arising out of or by reason of the Communication Conduit, or this ordinance in any  
18 other way.

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

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

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

13       A. Construction, reconstruction, modification, operation, maintenance, use, existence, or  
14 removal of the Communication Conduit or any portion thereof, as well as restoration of any  
15 disturbed areas of the public place in connection with removal of the Communication Conduit;

16       B. The Permittee's activity upon or the use or occupation of the public place described in  
17 Section 1 of this ordinance; and

18       C. Claims and risks in connection with activities performed by the Permittee by virtue of  
19 the permission granted by this ordinance.

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



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

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

11           Section 12. **Performance bond.** Within 60 days after the effective date of this ordinance,  
12 the Permittee shall deliver to the Director for filing with the City Clerk a sufficient bond  
13 executed by a surety company authorized and qualified to do business in the State of Washington  
14 in the amount of \$40,000, and conditioned with a requirement that the Permittee shall comply  
15 with every provision of this ordinance and with every order the Director issues under this  
16 ordinance. The Permittee shall ensure that the bond remains in effect until the Director has issued  
17 a certification that the Permittee has fulfilled its removal and restoration obligations under  
18 Section 5 of this ordinance. An irrevocable letter of credit approved by the Director in  
19 consultation with the City Attorney’s Office may be substituted for the bond. If the Permittee  
20 assigns or transfers the permission granted by this ordinance, the Permittee shall maintain in  
21 effect the bond or letter of credit required under this section until the Director has approved the  
22 assignment or transfer pursuant to Section 14 of this ordinance.

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

7           Section 14. **Consent for and conditions of assignment or transfer.** When the Property  
8 is transferred, the permission granted by this ordinance shall be assignable and transferable by  
9 operation of law pursuant to Section 20 of this ordinance. Continued occupation of the right-of-  
10 way constitutes the Permittee's acceptance of the terms of this ordinance, and the new owner of  
11 the Property shall be conferred with the rights and obligations of the Permittee by this ordinance.  
12 Other than a transfer to a new owner of the Property, the Permittee shall not transfer, assign,  
13 mortgage, pledge, or encumber the same without the Director's consent, which the Director shall  
14 not unreasonably refuse or condition. The Director may approve assignment or transfer of the  
15 permission granted by this ordinance to a successor entity only if the successor or assignee has  
16 provided, at the time of the assignment or transfer, the bond and certification of insurance  
17 coverage required under this ordinance; and has paid any fees due under Sections 15 and 17 of  
18 this ordinance. Upon the Director's approval of an assignment or transfer, the rights and  
19 obligations conferred on the Permittee by this ordinance shall be conferred on the successors and  
20 assigns. Any person or entity seeking approval for an assignment or transfer of the permission  
21 granted by this ordinance shall provide the Director with a description of the current and  
22 anticipated use of the Communication Conduit.

1           Section 15. **Inspection fees.** The Permittee shall, as provided by SMC Chapter 15.76 or  
2 successor provision, pay the City the amounts charged by the City to inspect the Communication  
3 Conduit during construction, reconstruction, repair, annual safety inspections, and at other times  
4 deemed necessary by the City. An inspection or approval of the Communication Conduit by the  
5 City shall not be construed as a representation, warranty, or assurance to the Permittee or any  
6 other person as to the safety, soundness, or condition of the Communication Conduit. Any failure  
7 by the City to require correction of any defect or condition shall not in any way limit the  
8 responsibility or liability of the Permittee.

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

11           A. Describes the physical dimensions and condition of all load-bearing elements in the  
12 Communication Conduit;

13           B. Describes any damages or possible repairs to any element of the Communication  
14 Conduit;

15           C. Prioritizes all repairs and establishes a timeframe for making repairs; and

16           D. Is stamped by a professional structural engineer licensed in the State of Washington.

17           A report meeting the foregoing requirements shall be submitted at the request of the  
18 Director. In the event of a natural disaster or other event that may have damaged the  
19 Communication Conduit, the Director may require that additional reports be submitted by a date  
20 established by the Director. The Permittee has the duty of inspecting and maintaining the  
21 Communication Conduit. The responsibility to submit structural inspection reports periodically  
22 or as required by the Director does not waive or alter any of the Permittee's other obligations  
23 under this ordinance. The receipt of any reports by the Director shall not create any duties on the

1 part of the Director. Any failure by the Director to require a report, or to require action after  
2 receipt of any report, shall not waive or limit the Permittee's obligations.

3       Section 17. **Annual fee.** Beginning on the effective date of this ordinance the Permittee  
4 shall pay an Issuance Fee, and annually thereafter, the Permittee shall promptly pay to the City,  
5 upon statements or invoices issued by the Director, an Annual Renewal Fee, and an Annual Use  
6 and Occupation fee of \$3,375, or as adjusted annually thereafter, for the privileges granted by  
7 this ordinance for the Communication Conduit.

8       Adjustments to the Annual Use and Occupation Fee shall be made in accordance with a  
9 term permit fee schedule adopted by the City Council and may be made every year. In the  
10 absence of a schedule, the Director may only increase or decrease the previous year's fee to  
11 reflect any inflationary changes so as to charge the fee in constant dollar terms. This adjustment  
12 will be calculated by adjusting the previous year's fee by the percentage change between the two  
13 most recent year-end values available for the Consumer Price Index for the Seattle-Tacoma-  
14 Bellevue Area, All Urban Consumers, All Products, Not Seasonally Adjusted. Permittee shall  
15 pay any other applicable fees, including fees for reviewing applications to renew the permit after  
16 expiration of the first term. All payments shall be made to the City Finance Director for credit to  
17 the Transportation Fund.

18       Section 18. **Compliance with other laws.** The Permittee shall construct, maintain, and  
19 operate the Communication Conduit in compliance with all applicable federal, state, County, and  
20 City laws and regulations. Without limitation, in all matters pertaining to the Communication  
21 Conduit, the Permittee shall comply with the City's laws prohibiting discrimination in  
22 employment and contracting including Seattle's Fair Employment Practices Ordinance, Chapter  
23 14.04, and Fair Contracting Practices code, Chapter 14.10 (or successor provisions).

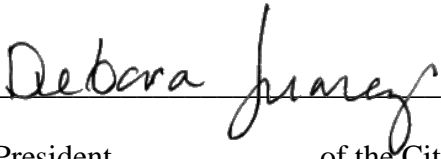
1           Section 19. **Acceptance of terms and conditions.** The Permittee shall not commence  
2 construction of the Communication Conduit before providing evidence of insurance coverage  
3 required by Section 10 of this ordinance, the bond as required by Section 12 of this ordinance,  
4 and the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

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


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

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


Passed by the City Council the 14th day of February, 2023,  
and signed by me in open session in authentication of its passage this 14th day of  
February, 2023.

  
President \_\_\_\_\_ of the City Council

☒ Approved / ☐ returned unsigned / ☐ vetoed this 16th day of February, 2023.

  
Bruce A. Harrell, Mayor

Filed by me this 16th day of February, 2023.

  
Elizabeth M. Adkisson, Interim City Clerk

(Seal)