



# SEATTLE CITY COUNCIL

## Legislative Summary

CB 119159

Record No.: CB 119159

Type: Ordinance (Ord)

Status: Passed

Version: 1

Ord. no: Ord 125506

In Control: City Clerk

File Created: 11/20/2017

Final Action: 01/05/2018

**Title:** AN ORDINANCE granting Lakefront Investors 2 LLC permission to construct, install, and maintain four sets of private communication conduits under and across Boren Avenue North, north of Mercer Street, and under and across the alley between Boren Avenue North and Fairview Avenue North, north of Mercer 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.

**Notes:**

Date  
Filed with City Clerk: 1/5/2018

Mayor's Signature: 1/5/2018

**Sponsors:** O'Brien

Vetoed by Mayor:

Veto Overridden:

Veto Sustained:

**Attachments:**

Drafter: amy.gray@seattle.gov

**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	Mayor	11/28/2017	Mayor's leg transmitted to Council	City Clerk			
1	City Clerk	11/28/2017	sent for review	Council President's Office			
	<b>Action Text:</b> The Council Bill (CB) was sent for review. to the Council President's Office						
	<b>Notes:</b>						
1	Council President's Office	11/29/2017	sent for review	Sustainability and Transportation Committee			
	<b>Action Text:</b> The Council Bill (CB) was sent for review. to the Sustainability and Transportation Committee						
	<b>Notes:</b>						

- 1 Full Council 12/04/2017 referred Sustainability and Transportation Committee  
Action Text: The Council Bill (CB) was referred to the Sustainability and Transportation Committee  
Notes:
- 1 Sustainability and Transportation Committee 12/08/2017 pass Pass  
Action Text: The Committee recommends that Full Council pass the Council Bill (CB).  
In Favor: 2 O'Brien, Johnison  
Opposed: 0
- 1 Full Council 01/02/2018 passed Pass  
Action Text: The Council Bill (CB) was passed by the following vote, and the President signed the Bill:  
Notes:  
In Favor: 9 Councilmember Bagshaw, Councilmember González , Council President Harrell, Councilmember Herbold, Councilmember Johnson, Councilmember Juarez, Councilmember Mosqueda, Councilmember O'Brien, Councilmember Sawant  
Opposed: 0
- 1 City Clerk 01/03/2018 submitted for Mayor  
Mayor's signature
- 1 Mayor 01/05/2018 Signed
- 1 Mayor 01/05/2018 returned City Clerk
- 1 City Clerk 01/05/2018 attested by City Clerk  
Action Text: The Ordinance (Ord) was attested by City Clerk.  
Notes:
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CITY OF SEATTLE

ORDINANCE 125506

COUNCIL BILL 119159

AN ORDINANCE granting Lakefront Investors 2 LLC permission to construct, install, and maintain four sets of private communication conduits under and across Boren Avenue North, north of Mercer Street, and under and across the alley between Boren Avenue North and Fairview Avenue North, north of Mercer 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, Lakefront Investors 1 LLC and Lakefront Investors 2 LLC applied for permission to construct, install, and maintain four sets of private communication conduits, under and across Boren Avenue North, north of Mercer Street, and under and across the alley between Boren Avenue North and Fairview Avenue North, north of Mercer Street, as part of the Lakefront projects located at 630 Boren Avenue North (Project No. 3022086), 625 Boren Avenue North (Project No. 3022087), and 609 Fairview Avenue North (Project No. 3020512); and

WHEREAS, the City Council granted conceptual approval to Lakefront Investors 1 LLC and Lakefront Investors 2 LLC under Resolution 31742; and

WHEREAS, the communication conduits all connect to a building owned by Lakefront Investors 2 LLC, so for ease of administration, Lakefront Investors 2 LLC shall be the sole permittee under this term permit; and

WHEREAS, the adoption of this ordinance is the culmination of the approval process for the communication conduits to legally occupy a below-grade portion of the public right-of-way; NOW, THEREFORE,

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

2           Section 1. **Permission.** Subject to the terms and conditions of this ordinance, The City of  
3 Seattle (“City”) grants permission (also referred to in this ordinance as a permit) to Lakefront  
4 Investors 2 LLC, and its successors and assigns as approved by the Director of the Seattle  
5 Department of Transportation (“Director”) according to Section 14 of this ordinance (the party  
6 named above and each such approved successor and assign are referred to as “Permittee”), to  
7 construct, install, and maintain four sets of PVC communication conduits (collectively referred  
8 to as the “communication conduits”). Each set consists of four 4-inch communication conduits.  
9 The communication conduits shall be located under and across Boren Avenue North, north of  
10 Mercer Street, and under and across the alley between Boren Avenue North and Fairview  
11 Avenue North, north of Mercer Street, adjacent in whole or in part to the properties legally  
12 described as:

13           PARCEL B:  
14           LOT 1, BLOCK 106, D.T. DENNY’S FIRST ADDITION TO NORTH SEATTLE  
15           ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 1 OF PLATS,  
16           PAGE 79, IN KING COUNTY, WASHINGTON; EXCEPT THE EAST 21 FEET  
17           THEREOF CONDEMNED IN KING COUNTY SUPERIOR COURT CAUSE  
18           NUMBER 204496 FOR FAIRVIEW AVENUE NORTH, AS PROVIDED BY  
19           ORDINANCE NUMBER 51975; AND EXCEPT THAT PORTION CONVEYED TO  
20           THE CITY OF SEATTLE BY DEED RECORDED UNDER RECORDING NO.  
21           20090910001133, IN KING COUNTY WASHINGTON.

22           PARCEL C:  
23           LOT 2, BLOCK 106, DAVID T. DENNY’S FIRST ADDITION TO NORTH  
24           SEATTLE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 1 OF  
25           PLATS, PAGE 79, IN KING COUNTY, WASHINGTON; EXCEPT THE EAST 21  
26           FEET THEREOF CONDEMNED IN KING COUNTY SUPERIOR COURT CAUSE  
27           NUMBER 204496, FOR THE WIDENING OF FAIRVIEW AVENUE NORTH, AS  
28           PROVIDED BY ORDINANCE NUMBER 51975 OF THE CITY OF SEATTLE; AND  
29           EXCEPT THAT PORTION CONVEYED TO THE CITY OF SEATTLE BY DEED  
30           RECORDED UNDER RECORDING NO. 20090910001133, IN KING COUNTY,  
31           WASHINGTON.

1 PARCEL D:  
2 LOTS 3 AND 4, BLOCK 106, D.T. DENNY'S FIRST ADDITION TO NORTH  
3 SEATTLE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 1 OF  
4 PLATS, PAGE 79, KING COUNTY, WASHINGTON; EXCEPT THE EAST 21 FEET  
5 THEREOF CONDEMNED IN KING COUNTY SUPERIOR COURT CAUSE  
6 NUMBER 204496 FOR FAIRVIEW AVENUE NORTH, AS PROVIDED BY  
7 ORDINANCE NUMBER 51975; AND EXCEPT THAT PORTION CONVEYED TO  
8 THE CITY OF SEATTLE BY DEED RECORDED UNDER RECORDING NO.  
9 20090910001133, IN KING COUNTY, WASHINGTON.

10 PARCEL E:  
11 LOT 5, BLOCK 106, D.T. DENNY'S FIRST ADDITION TO NORTH SEATTLE,  
12 ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 1 OF PLATS,  
13 PAGE 79, IN KING COUNTY, WASHINGTON; EXCEPT THE EAST 21 FEET  
14 THEREOF CONDEMNED IN KING COUNTY SUPERIOR COURT CAUSE  
15 NUMBER 204496 FOR FAIRVIEW AVENUE NORTH, AS PROVIDED BY  
16 ORDINANCE NUMBER 51975; AND EXCEPT THAT PORTION CONVEYED TO  
17 THE CITY OF SEATTLE BY DEED RECORDED UNDER RECORDING NO.  
18 20090911000659, IN KING COUNTY, WASHINGTON.

19 **630 BOREN AVENUE NORTH**

20 PARCEL A:  
21 THE WEST 103 FEET OF LOTS 7, 8, 9, 10, 11 AND 12, BLOCK 106, DAVID T  
22 DENNY'S FIRST ADDITION TO NORTH SEATTLE, ACCORDING TO THE PLAT  
23 THEREOF RECORDED IN VOLUME 1 OF PLATS, PAGE 79, IN KING COUNTY,  
24 WASHINGTON.

25 PARCEL F:  
26 THE EASTERLY 17 FEET OF LOTS 7, 8, 9, 10, 11 AND 12, BLOCK 106, DAVID T  
27 DENNY'S FIRST ADDITION TO NORTH SEATTLE, ACCORDING TO THE PLAT  
28 THEREOF RECORDED IN VOLUME 1 OF PLATS, PAGE 79, IN KING COUNTY,  
29 WASHINGTON.  
30 EXCEPT THAT PORTION DEDICATED TO THE CITY OF SEATTLE, A  
31 WASHINGTON MUNICIPAL CORPORATION BY BARGAIN AND SALE DEED  
32 RECORDED SEPTEMBER 10, 2009 UNDER RECORDING NO. 20090910001088.

33 **625 BOREN AVENUE NORTH**

34 PARCEL A:  
35 LOTS 1 AND 2, BLOCK 104, D.T. DENNY'S FIRST ADDITION TO NORTH  
36 SEATTLE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 1 OF  
37 PLATS, PAGE 79, IN KING COUNTY, WASHINGTON;  
38 TOGETHER WITH THAT PORTION OF LOTS 1 AND 2, BLOCK 76, LAKE UNION  
39 SHORELANDS, LYING EAST OF THE EASTERLY MARGIN OF TERRY AVENUE  
40 NORTH, AS ESTABLISHED PURSUANT TO CITY OF SEATTLE ORDINANCE  
41 NUMBER 43560.

1 PARCEL B:

2 LOTS 3 AND 4, BLOCK 104, DAVID T. DENNY'S FIRST ADDITION TO NORTH  
3 SEATTLE, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 1 OF  
4 PLATS, PAGE 79, IN KING COUNTY, WASHINGTON;  
5 EXCEPT THE WEST 5 FEET THEREOF HERETOFORE CONDEMNED IN KING  
6 COUNTY SUPERIOR COURT CAUSE NO 162246 FOR STREET PURPOSES, AS  
7 PROVIDED BY ORDINANCE NO. 43560 OF THE CITY OF SEATTLE.

8 PARCEL C:

9 THE EAST HALF OF LOTS 5 AND 6, BLOCK 104, DAVID T. DENNY'S FIRST  
10 ADDITION TO NORTH SEATTLE, ACCORDING TO THE PLAT THEREOF  
11 RECORDED IN VOLUME 1 OF PLATS, PAGE(S) 79, IN KING COUNTY,  
12 WASHINGTON.  
13 EXCEPT THAT PORTION CONVEYED TO CITY OF SEATTLE, A WASHINGTON  
14 MUNICIPAL CORPORATION BY DEED RECORDED SEPTEMBER 11, 2009  
15 UNDER RECORDING NO. 20090911000656.

16 PARCEL D:

17 ALL THAT PORTION OF THE BELOW DESCRIBED PARENT PARCEL, SITUATE  
18 IN THE SOUTHEAST QUARTER OF SECTION 30, TOWNSHIP 25 NORTH,  
19 RANGE 4 EAST OF THE WILLAMETTE MERIDIAN, IN THE CITY OF SEATTLE,  
20 KING COUNTY, WASHINGTON, DESCRIBED AS FOLLOWS:  
21 BEGINNING AT THE NORTHWEST CORNER OF THE BELOW DESCRIBED  
22 PARENT PARCEL, SAID POINT OF BEGINNING ALSO BEING ON THE  
23 EASTERLY MARGIN OF TERRY AVENUE NORTH; THENCE ALONG THE  
24 NORTHERLY LINE THEREOF SOUTH 88°33'54" EAST, 122.83 FEET TO THE  
25 EASTERLY LINE OF SAID PARENT PARCEL;  
26 THENCE ALONG SAID EASTERLY LINE, SOUTH 01°24'37" WEST 50.23 FEET TO  
27 THE NORTHERLY MARGIN OF MERCER STREET;  
28 THENCE, ALONG SAID NORTHERLY MARGIN, SOUTH 88°35'17" WEST, 8.38  
29 FEET;  
30 THENCE, CONTINUING ALONG SAID NORTHERLY MARGIN, NORTH 88°36'43"  
31 WEST, 114.46 FEET TO THE AFOREMENTIONED EASTERLY MARGIN OF  
32 TERRY AVENUE NORTH;  
33 THENCE, ALONG SAID EASTERLY MARGIN NORTH 01°24'40" EAST, 50.74  
34 FEET TO THE POINT OF BEGINNING.

35 PARENT PARCEL:

36 THE WEST HALF OF LOTS 5 AND 6, BLOCK 104, DAVID T. DENNY'S FIRST  
37 ADDITION TO NORTH SEATTLE, ACCORDING TO THE PLAT THEREOF  
38 RECORDED IN VOLUME 1 OF PLATS, PAGE 79, IN KING COUNTY,  
39 WASHINGTON.  
40 EXCEPT THE WEST 5 FEET THEREOF HERETOFORE CONDEMNED IN KING  
41 COUNTY SUPERIOR COURT CAUSE NUMBER 162246 FOR WIDENING OF  
42 TERRY AVENUE NORTH, AS PROVIDED BY ORDINANCE NUMBER 43560 OF  
43 THE CITY OF SEATTLE.

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

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

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

1           (a)     The City Council determines by ordinance that the space occupied by the  
2 communication conduits is necessary for any public use or benefit or that the communication  
3 conduits interfere with any public use or benefit; or

4           (b)     The Director determines that use of the communication conduits has been  
5 abandoned; or

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

10           A City Council determination that the space is needed for, or the communication conduits  
11 interfere with, a public use or benefit is conclusive and final without any right of the Permittee to  
12 resort to the courts to adjudicate the matter.

13           Section 5. **Permittee's obligation to remove and restore.** If the permission granted is  
14 not renewed at the expiration of a term, or if the permission expires without an application for a  
15 new permission being granted, or if the City terminates the permission, then within 90 days after  
16 the expiration or termination of the permission, or prior to any earlier date stated in an ordinance  
17 or order requiring removal of the communication conduits, the Permittee shall, at its own  
18 expense, remove the communication conduits and all of the Permittee's equipment and property  
19 from the public place and replace and restore all portions of the public place that may have been  
20 disturbed for any part of the communication conduits in as good condition for public use as  
21 existed prior to construction of the communication conduits and in at least as good condition in  
22 all respects as the abutting portions of the public place as required by Seattle Department of  
23 Transportation (SDOT) right-of-way restoration standards.



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

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

14 Section 6. **Repair or reconstruction.** The communication conduits shall remain the  
15 exclusive responsibility of the Permittee and the Permittee shall maintain the communication  
16 conduits in good and safe condition for the protection of the public. The Permittee shall not  
17 reconstruct or repair the communication conduits except in strict accordance with plans and  
18 specifications approved by the Director. The Director may, in the Director's judgment, order the  
19 communication conduits reconstructed or repaired at the Permittee's cost and expense because  
20 of: the deterioration of the communication conduits; the installation, construction, reconstruction,  
21 maintenance, operation, or repair of any municipally owned public utilities; or for any other  
22 cause.

1           Section 7. **Failure to correct unsafe condition.** After written notice to the Permittee and  
2 failure of the Permittee to correct an unsafe condition within the time stated in the notice, the  
3 Director may order the communication conduits be removed at the Permittee's expense if the  
4 Director deems that the communication conduits create a risk of injury to the public. If there is  
5 an immediate threat to the health or safety of the public, a notice to correct is not required.

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

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

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

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

3 (a) The existence, condition, construction, reconstruction, modification, maintenance,  
4 operation, use, or removal of the communication conduits;

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

7 (c) The Permittee failing or refusing to strictly comply with every provision of this  
8 ordinance; or arising out of or by reason of the communication conduits or this ordinance in any  
9 other way.

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

21 Section 10. **Insurance.** For as long as the Permittee exercises any permission granted by  
22 this ordinance and until the Director has issued a certification that the Permittee has fulfilled its  
23 removal and restoration obligations under Section 5 of this ordinance, the Permittee shall obtain

1 and maintain in full force and effect, at its own expense, insurance and/or self-insurance that  
2 protects the Permittee and the City from claims and risks of loss from perils that can be insured  
3 against under commercial general liability (CGL) insurance policies in conjunction with:

4 (a) Construction, reconstruction, modification, operation, maintenance, use,  
5 existence, or removal of the communication conduits, as well as restoration of any disturbed  
6 areas of the public place in connection with removal of the communication conduits;

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

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

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

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

22 Within 60 days after the effective date of this ordinance, the Permittee shall provide to  
23 the City, or cause to be provided, certification of insurance coverage including an actual copy of

1 the blanket or designated additional insured policy provision per the ISO CG 20 12 endorsement  
2 or equivalent. The insurance coverage certification shall be delivered or sent to the Director or to  
3 SDOT at an address as the Director may specify in writing from time to time. The Permittee shall  
4 provide a certified complete copy of the insurance policy to the City promptly upon request.

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

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

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

1 contractors a third-party beneficiary provision extending to the City construction indemnities and  
2 warranties granted to the Permittee.

3       Section 12. **Performance bond.** Within 60 days after the effective date of this ordinance,  
4 the Permittee shall deliver to the Director for filing with the City Clerk a sufficient bond  
5 executed by a surety company authorized and qualified to do business in the State of Washington  
6 that is: in the amount of \$100,000, and conditioned with a requirement that the Permittee shall  
7 comply with every provision of this ordinance and with every order the Director issues under this  
8 ordinance. The Permittee shall ensure that the bond remains in effect until the Director has issued  
9 a certification that the Permittee has fulfilled its removal and restoration obligations under  
10 Section 5 of this ordinance. An irrevocable letter of credit approved by the Director in  
11 consultation with the City Attorney’s Office may be substituted for the bond. In the event that  
12 the Permittee assigns or transfers the permission granted by this ordinance, the Permittee shall  
13 maintain in effect the bond or letter of credit required under this section until the Director has  
14 approved the assignment or transfer pursuant to Section 14 of this ordinance.

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

21       Section 14. **Consent for and conditions of assignment or transfer.** When the property  
22 adjacent to the communication conduits and legally described in Section 1 of this ordinance  
23 (“Property”) is transferred, the permission granted by this ordinance shall be assignable and

1 transferable by operation of law pursuant to Section 20 of this ordinance. Prior to transfer, the  
2 successor owner of the Property shall accept in writing all of the terms and conditions of the  
3 permission granted by this ordinance and the new owner of the Property shall be conferred with  
4 the rights and obligations of Permittee by this ordinance. Other than a transfer to a new owner of  
5 the Property, Permittee shall not transfer, assign, mortgage, pledge, or encumber the same  
6 without the Director's consent, which the Director shall not unreasonably refuse. The Director  
7 may approve assignment or transfer of the permission granted by this ordinance to a successor  
8 entity only if the successor or assignee has accepted in writing all of the terms and conditions of  
9 the permission granted by this ordinance; has provided, at the time of the acceptance, the bond  
10 and certification of insurance coverage required under this ordinance; and has paid any fees due  
11 under Section 15 and Section 17 of this ordinance. Upon the Director's approval of an  
12 assignment or transfer, the rights and obligations conferred on the Permittee by this ordinance  
13 shall be conferred on the successors and assigns. Any person or entity seeking approval for an  
14 assignment or transfer of the permission granted by this ordinance shall provide the Director with  
15 a description of the current and anticipated use of the communication conduits.

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

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

- 3           (a)     Describes the physical dimensions and condition of all load-bearing elements;  
4           (b)     Describes any damages or possible repairs to any element of the communication  
5 conduits;  
6           (c)     Prioritizes all repairs and establishes a timeframe for making repairs; and  
7           (d)     Is stamped by a professional structural engineer licensed in the State of  
8 Washington.

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

17           Section 17. **Annual fee.** Beginning on the effective date of this ordinance, and annually  
18 thereafter, the Permittee shall promptly pay to the City, upon statements or invoices issued by the  
19 Director, an annual fee of \$581.40, or as adjusted annually thereafter, for the privileges granted  
20 by this ordinance.

21           Adjustments to the annual fee shall be made in accordance with a term permit fee  
22 schedule adopted by the City Council and may be made every year. In the absence of a schedule,  
23 the Director may only increase or decrease the previous year's fee to reflect any inflationary



1 changes so as to charge the fee in constant dollar terms. This adjustment will be calculated by  
2 adjusting the previous year's fee by the percentage change between the two most recent year-end  
3 values available for the Consumer Price Index for the Seattle-Tacoma-Bremerton Area, All  
4 Urban Consumers, All Products, Not Seasonally Adjusted. All payments shall be made to the  
5 City Finance Director for credit to the Transportation Fund.

6       **Section 18. Compliance with other laws.** Permittee shall construct, maintain, and  
7 operate the communication conduits in compliance with all applicable federal, state, County, and  
8 City laws and regulations. Without limitation, in all matters pertaining to the communication  
9 conduits, the Permittee shall comply with the City's laws prohibiting discrimination in  
10 employment and contracting including Seattle's Fair Employment Practices Ordinance, Chapter  
11 14.04, and Fair Contracting Practices Code, Chapter 14.10 (or successor provisions).

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

21       **Section 20. Obligations run with the Property.** The obligations and conditions imposed  
22 on the Permittee by and through this ordinance are covenants that run with the land and bind  
23 subsequent owners of the Property, regardless of whether the Director has approved assignment

1 or transfer of the permission granted herein to such subsequent owner(s). At the request of the  
2 Director, Permittee shall provide to the Director a current title report showing the identity of all  
3 owner(s) of the Property and all encumbrances on the Property. The Permittee shall, within 60  
4 days of the effective date of this ordinance, and prior to conveying any interest in the Property,  
5 deliver to the Director, upon a form to be supplied by the Director, a covenant agreement  
6 imposing the obligations and conditions set forth in this ordinance, signed and acknowledged by  
7 the Permittee and any other owner(s) of the Property and recorded with the King County  
8 Recorder's Office. The Director shall file the recorded covenant agreement with the City Clerk.  
9 The covenant agreement shall reference this ordinance by its ordinance number. At the request of  
10 the Director, Permittee shall cause encumbrances on the Property to be subordinated to the  
11 covenant agreement.

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

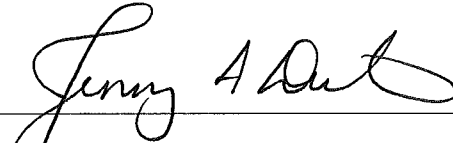
1 Section 22. This ordinance shall take effect and be in force 30 days after its approval by  
2 the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it  
3 shall take effect as provided by Seattle Municipal Code Section 1.04.020.

4 Passed by the City Council the 2nd day of January, 2018,  
5 and signed by me in open session in authentication of its passage this 2nd day of  
6 January, 2018.

7 

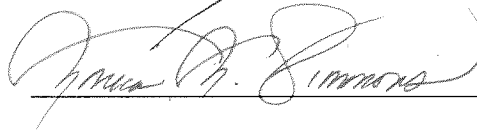
8 President \_\_\_\_\_ of the City Council

9 Approved by me this 5<sup>th</sup> day of January, 2018.

10 

11 Jenny A. Durkan, Mayor

12 Filed by me this 5<sup>th</sup> day of January, 2018.

13 

14 Monica Martinez Simmons, City Clerk

15 (Seal)