



Legislation Text

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File #: CB 118894, Version: 1

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**CITY OF SEATTLE**  
**ORDINANCE** \_\_\_\_\_  
COUNCIL BILL \_\_\_\_\_

AN ORDINANCE amending Ordinance 124874; modifying the use of the open space improvements over and across Utah Avenue South between South Stacy Street and South Lander Street for First and Utah Street Associates, LLC; and ratifying and confirming certain prior acts.

WHEREAS, the Seattle City Council passed Ordinance 124874, renewing the term for First and Utah Street

Associates, LLC to occupy, construct, maintain, and operate open space improvements over and across

Utah Avenue South between South Stacy Street and South Lander Street; and

WHEREAS, First & Utah Street Associates, LLC has submitted an application to the Seattle Director of

Transportation (“Director”) to modify the use of the open space improvements over and across Utah

Avenue South between South Stacy Street and South Lander Street; NOW, THEREFORE,

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

Section 1. Sections 1, 4, 9, 13, and 15 of Ordinance 121572, as amended by Ordinance 124874, are amended as follows:

1. **Permission.** Subject to the terms and conditions of this ordinance, The City of Seattle (“City”) grants permission (also referred to in this ordinance as a permit) to the First & Utah Street Associates, LLC (“Permittee”), and its successors and assigns as approved by the Director of the Seattle Department of Transportation (“Director”) according to Section 14 of this ordinance, to occupy Utah Avenue South between South Stacy Street and South Lander Street to install and construct, maintain, and operate landscaping, decorative paving, benches, including approximately 1,127 square feet for stairs and accessible ramps, and other open space improvements in the public place (“open space improvements”). The permit granted is subject

to use by the public for pedestrian travel, emergency vehicle access, and utility purposes.

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4. **Permittee's obligation to remove and restore.** If the permission granted is not renewed at the expiration of a term, or if the permission expires without an application for a new permission being granted, or if the City terminates the permission, then within 90 days after the expiration or termination of the permission, or prior to any earlier date stated in an ordinance or order requiring removal of the open space improvements, the Permittee shall, at its own expense, remove the open space improvements, including but not limited to the stairs and ramps providing ingress and egress to the commercial properties adjacent to the public place, and all of the Permittee's equipment and property from the public place and replace and restore all portions of the public place that may have been disturbed for any part of the open space improvements in as good condition for public use as existed prior to the construction of the open space and in at least as good condition in all respects as the abutting portions of the public place as required by Seattle Department of Transportation ("SDOT") right-of-way restoration standards.

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9. **Open Space Improvements.** The Permittee shall own any improvements and fixtures, including but not limited to: art, benches, stairs, and ramps, or other amenities that were installed in and on the closed street by Permittee; provided, however, that ownership may be negotiated with the City at the termination of the permit. Activation of the public place with uses open to the public is allowed, subject to applicable City departments' review and approval. Any activation of the public place for private uses must be permitted by the City.

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13A. **Performance bond.** Within 60 days after the effective date of this ordinance, the Permittee shall deliver to the Director for filing with the City Clerk a sufficient bond executed by a surety company authorized and qualified to do business in the State of Washington that is: in the amount of (~~(\$1,000,000)~~) \$1,025,000, and

conditioned with a requirement that the Permittee shall comply with every provision of this ordinance and with every order the Director issues under this ordinance. The Permittee shall ensure that the bond amount remains in effect until the Director has issued a certification that the Permittee has fulfilled its removal and restoration obligations under Section 7 of this ordinance. An irrevocable letter of credit approved by the Director in consultation with the City Attorney's Office may be substituted for the bond. In the event that the Permittee assigns or transfers the permission granted by this ordinance, the Permittee shall maintain in effect the bond or letter of credit required until the Director has approved the assignment or transfer pursuant to Section 14 of this ordinance.

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

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15. **Inspection fees.** The Permittee shall, as provided by SMC Chapter 15.76 or successor provisions, pay the City the amounts charged by the City to inspect the open space improvements during construction, reconstruction, repair, annual safety inspections, and at other times as deemed necessary by the City. An inspection or approval of the open space improvements by the City shall not be construed as a representation, warranty, or other assurance to the Permittee or any other person as to the safety, soundness, or condition of the open space improvements. Any failure by the City to require correction of any defect or condition shall not in any way limit the responsibility or liability of the Permittee. Beginning on October 13, ((2014)) 2017, and annually thereafter, the Permittee shall promptly pay to the City, upon statements or invoices issued by the Director, an annual fee of (((\$21,840.00)) \$29,937.60, or as adjusted thereafter, for the privileges granted by this ordinance.

Adjustments to the annual fee shall be made in accordance with a term permit fee schedule adopted by City Council and may be made every year. In the absence of a schedule, the Director may only increase or decrease the previous year's fee to reflect inflationary changes so as to charge the fee in constant dollar terms. This adjustment will be calculated by adjusting the previous year's fee by the percentage change between the two most recent year-end values available from the Consumer Price Index for the Seattle-Tacoma-Bremerton Area, All Urban Consumers, All Products, Not Seasonally Adjusted. All payments shall be made to the City Finance Director for credit to the Transportation Operating Fund.

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Section 2. **Acceptance of terms and conditions.** The Permittee shall deliver to the Director its written signed acceptance of the terms of this ordinance within 60 days after the effective date of this ordinance. The Director shall file the written acceptance with the City Clerk. If no such acceptance is received within that 60-day period, the privileges conferred by this ordinance shall be deemed declined or abandoned and the permission deemed lapsed and forfeited.

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

Passed by the City Council the \_\_\_\_ day of \_\_\_\_\_, 2017, and signed by me in open session in authentication of its passage this \_\_\_\_ day of \_\_\_\_\_, 2017.

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

Approved by me this \_\_\_\_ day of \_\_\_\_\_, 2017.

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Edward B. Murray, Mayor

Filed by me this \_\_\_\_ day of \_\_\_\_\_, 2017.

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Monica Martinez Simmons, City Clerk

(Seal)