

Ordinance No. 109969

74.D: 44

AN ORDINANCE clarifying liability under the Street Use Ordinance, amending Section 15.42.010 and adding new Sections 15.42.015 and 15.02.025 to the Seattle Municipal Code.

6-17-81 *Jan*

COMPTROLLER
FILE NUMBER _____

Council Bill No. 102345

INTRODUCED: JUN 08 1981	BY: <i>Eke.</i>
REFERRED: JUN 08 1981	TO: <i>Truman</i>
REFERRED:	
REFERRED:	
REPORTED: JUN 22 1981	SECOND READING: JUN 22 1981
THIRD READING: JUN 22 1981	SIGNED: JUN 22 1981
PRESENTED TO MAYOR: JUN 23 1981	APPROVED: JUN 26 1981
RETD. TO CITY CLERK: JUN 26 1981	PUBLISHED:
VETOED BY MAYOR:	VETO PUBLISHED:
PASSED OVER VETO:	VETO SUSTAINED:

ORDINANCE 109969

AN ORDINANCE clarifying liability under the Street Use Ordinance, amending Section 15.42.010 and adding new Sections 15.42.015 and 15.02.025 to the Seattle Municipal Code.

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. Section 15.42.010 (Ordinance 90047 § 35(A)) of the Seattle Municipal Code is amended as follows:

No one shall plant in any public place any maple, Lombardy poplar, cottonwood or gum, or any other tree~~+~~ the roots of which cause injury to the sewers, sidewalks or pavements, ~~or~~) which breeds disease dangerous to other trees or to the public health. ~~((or))~~ No one shall allow to remain in any public place any ~~((planted))~~ tree trunk, limb, branch, fruit or foliage which ~~((has become dead or))~~ is in such condition as to be hazardous to the public, and any such trees now existing in any such planting (parking) strip or abutting street area may be removed in the manner provided in this subtitle for the revocation of permits and removal of obstructions. ~~((No tree shall be planted within two feet of any sidewalk or pavement, except by special permit.))~~

Section 2. A new section shall be added to the Seattle Municipal Code (Street Use Ordinance 90047) as follows:

Section 15.42.015. Any one who owns any tree, the roots of which cause injury to the public sewers, sidewalks, or pavements shall be liable for the damage done to the public sewers, sidewalks or pavement by said trees. No tree shall be planted within one foot of any City sidewalk or pavement, except by special permit.

Section 3. A new section shall be added to the Seattle Municipal Code (Street Use Ordinance 90047) as follows:

1 Section 15.02.025. Disclaimer of City Liability

2 Issuance of any permit pursuant to the Street Use
3 Ordinance does not constitute the creation of a duty by the
4 City to any person or to indemnify any person for any wrong-
5 ful acts of a permit holder against any person or the public
6 or to otherwise shift responsibility from the licensee to
7 the City.

8 Nothing contained in this Ordinance is intended to be
9 nor shall be construed to create or form the basis for any
10 liability on the part of the City, or its officers, employees
11 or agents, for any injury or damage resulting from the
12 failure of a permit holder or applicant for permit to comply
13 with the provisions of this ordinance, or by reason or in
14 consequence of any act or omission in connection with the
15 implementation or enforcement of this ordinance on the part
16 of the City by its officers, employees, or agents.

17 It is expressly the purpose of the ordinance to provide
18 for and promote the health, safety and welfare of the general
19 public, and not to create or otherwise establish or designate
20 any particular class or group of persons who will or should
21 be especially protected or benefited by the terms of this
22 ordinance.

23 It is the specific intent of this Ordinance to place
24 the obligation of complying with its requirements upon the
25 permit holder or applicant for permit within its scope, and
26 no provision of nor term used in this Ordinance is intended
27 to impose any duty whatsoever upon the City or any of its
28 officers or employees, for whom the implementation or enforce-
ment of this Ordinance shall be discretionary and not
mandatory.

Nothing contained in this Ordinance is intended to be nor shall be construed to create or form the basis for any liability on the part of the City, or its officers, employees or agents, for any injury or damage resulting from the failure of a permit holder or applicant for permit to comply with the provisions of this Ordinance, or by reason or in consequence of any act or omission in connection with the implementation or enforcement of this Ordinance on the part of the City by its officers, employees or agents.

Section 4.... This ordinance shall take effect and be in force thirty days from and after its passage and approval, if approved by the Mayor; otherwise it shall take effect at the time it shall become a law under the provisions of the city charter.

Passed by the City Council the 22nd day of June, 1921,
and signed by me in open session in authentication of its passage this 22nd day of
June, 1921.

Carl Grady
President of the City Council.

Approved by me this 26th day of June, 1921.
Charles P. Ryan
Mayor.

Filed by me this 26th day of June, 1921.

Jim Hill
Attest: City Comptroller and City Clerk.

(SEAL)

Published.....

By *Theresa Dunbar*
Deputy Clerk.

THE CITY OF SEATTLE

LAW DEPARTMENT

MUNICIPAL BUILDING . SEATTLE, WASHINGTON 98104

AREA CODE 206 TELEPHONE 625-2402

DOUGLAS N. JEWETT, CITY ATTORNEY

May 27, 1981

Hon. Paul Kraabel, President
City Council
The City of Seattle

Re: Amendment of Street Use Ordinance

Dear Councilman Kraabel:

The Law Department requests the City Council to consider the attached ordinance amending the Street Use Ordinance.

This legislation was drafted after Section 15.42.010 of the Seattle Municipal Code was used against the City in an action for negligent maintenance of a City sidewalk. The ordinance allowed a large recovery to a plaintiff who tripped over a one-and-a-half inch stub on a City sidewalk. The stub had been created by the roots of a City tree. The Court held that the City's violation of the Street Use Ordinance constituted negligence per se, and the plaintiff was allowed to win her case without showing that the City was otherwise negligent in the maintenance of the sidewalk. Van Dyke v. Seattle, Wash. App. No. 7936-1-I, December 22, 1980.

The proposed ordinance amends Section 15.42.010 and adds new sections to the Street Use Ordinance to clarify the City's liability for cracked sidewalks, and to reflect more accurately the real purpose of Section 15.42.010, namely, protecting sewers and sidewalks, and not passers by, from damage caused by tree roots. Further, a new section provides a general disclaimer of City liability for any City failure to enforce the Street Use Ordinance, similar to disclaimers which have been added to the License, Housing, Building, and Fire Codes as a result of the Washington Supreme Court's decision in Halvorson v. Dahl, 89 Wn.2d 673, 574 P.2d 1190 (1978).

Hon. Paul Kraabel
May 27, 1981
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We recommend that this ordinance be passed to remedy the problems faced by the present Street Use provision.

Very truly yours,

DOUGLAS N. JEWETT
City Attorney

By

Susan R Sampson

SUSAN R. SAMPSON
Assistant

and

Colleen Barrett

COLLEEN BARRETT, Intern

DNJ:vf

ORDINANCE 103969

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Section 15.42.015. Any one who owns any tree, the roots of which cause injury to the public sewers, sidewalks, or pavements shall be liable for the damage done to the public sewers, sidewalks or pavement by said trees. No tree shall be planted within one foot of any City sidewalk or pavement, except by special permit.

Section 3. A new section shall be added to the Seattle Municipal Code (Street Use Ordinance 90047) as follows:

Section 15.02.025. Disclaimer of City Liability
Issuance of any permit pursuant to the Street Use Ordinance does not constitute the creation of a duty by the City to any person or to indemnify any person for any wrongful acts of a permit holder against any person or the public or to otherwise shift responsibility from the licensee to the City.

Nothing contained in this Ordinance is intended to be nor shall be construed to create or form the basis for any liability on the part of the City, or its officers, employees or agents, for any injury or damage resulting from the failure of a permit holder or applicant for permit to comply with the provisions of this ordinance, or by reason or in consequence of any act or omission in connection with the implementation or enforcement of this ordinance on the part of the City by its officers, employees, or agents.

It is expressly the purpose of the ordinance to provide for and promote the health, safety and welfare of the general public, and not to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by the terms of this ordinance.

It is the specific intent of this Ordinance to place the obligation of complying with its requirements upon the permit holder or applicant for permit within its scope, and no provision of nor term used in this Ordinance is intended to impose any duty whatsoever upon the City or any of its officers or employees, for whom the implementation or enforcement of this Ordinance shall be discretionary and not mandatory.

Nothing contained in this Ordinance is intended to be nor shall be construed to create or form the basis for any liability on the part of the City, or its officers, employees or agents, for any injury or damage resulting from the failure of a permit holder or applicant for permit to comply with the provisions of this Ordinance, or by reason or in consequence of any act or omission in connection with the implementation or enforcement of this Ordinance on the part of the City by its officers, employees or agents.

Section 4. This Ordinance shall take effect and be in force thirty days from and after its passage and approval, if approved by the Mayor; otherwise it shall take effect on the date it shall become a law under the provisions of the city charter.

Passed by the City Council this 22nd day of June, 1981, and signed by me in open session in authentication of its passage this 22nd day of June, 1981.

Approved by me this 26th day of June, 1981. *Charles Roy* Mayor.

Filed by me this 26th day of June, 1981. *Tim Hill* City Comptroller and City Clerk.

(SEAL)

By *Thomas Lumbard* Deputy Clerk.
Publication ordered by TIM HILL, Comptroller and City Clerk.
Date of Official Publication in the Daily Journal of Commerce, Seattle, June 30, 1981. (C-782)

The City of Seattle--Legislative Department

MR. PRESIDENT:

Date Reported
and Adopted

Your Committee on

Trans

JUN 22 1981

to which was referred C.B. 102345

Clarifying liability under the Street Use Ordinance, amending
Section 15.42.010 and adding new Sections 15.42.015 and 15.02.025
to the Seattle Municipal Code.

6-17-81 *Pen*

Stanley Williams

Chairman

Chairman

Transportation

Committee

Committee

C-783



Affidavit of Publication

**STATE OF WASHINGTON
KING COUNTY—SS.**

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 12th 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

Ordinance No. 109969

was published on June 30, 1981

B. Blaw
Subscribed and sworn to before me on

June 30, 1981

[Signature]
Notary Public for the State of Washington,
residing in Seattle.