

Ordinance No. 123367

Council Bill No. 116909

AN ORDINANCE granting Northwest Kidney Center permission to maintain and operate a pedestrian tunnel under and across Broadway, north of Cherry Street, for a ten-year term, renewable for two successive ten-year terms; specifying the conditions under which this permit is granted; providing for acceptance of the permit and conditions; and ratifying and confirming certain prior acts.

Related Legislation File: _____

Date Introduced and Referred: <u>July 12, 2010</u>	To: (committee): <u>Transportation</u>
Date Re-referred:	To: (committee):
Date Re-referred:	To: (committee):
Date of Final Action: <u>8-2-10</u>	Date Presented to Mayor: <u>8-3-10</u>
Date Signed by Mayor: <u>8/4/10</u>	Date Returned to City Clerk: <u>8/4/10</u>
Published by Title Only <input checked="" type="checkbox"/>	Date Vetoed by Mayor:
Published in Full Text _____	
Date Veto Published:	Date Passed Over Veto:
Date Veto Sustained:	Date Returned Without Signature:

The City of Seattle – Legislative Department

Council Bill/Ordinance sponsored by: *Tom Rasmussen*

Committee Action:

Date	Recommendation	Vote
<u>July 27, 2010</u>	<u>Approve as amended</u>	<u>TR, TB, JG, MO 4-0</u>

This file is complete and ready for presentation to Full Council. _____

Full Council Action:

Date	Decision	Vote
<u>8/2/10</u>	<u>Passed</u>	<u>9-0</u>

Law Department

ORDINANCE 123367

1
2 AN ORDINANCE granting Northwest Kidney Center permission to maintain and operate a
3 pedestrian tunnel under and across Broadway, north of Cherry Street, for a ten-year term,
4 renewable for two successive ten-year terms; specifying the conditions under which this
5 permit is granted; providing for acceptance of the permit and conditions; and ratifying
6 and confirming certain prior acts.

7 WHEREAS, by Ordinance 107876, the City of Seattle (City) granted permission to the
8 Northwest Kidney Center to construct, maintain and operate two pedestrian tunnels under
9 and across Broadway, north of Cherry Street, and Summit Avenue, west of Broadway;
10 and

11 WHEREAS, the conditions of Ordinance 107876 were amended by Ordinances 117591, 119396
12 and 121855; and

13 WHEREAS, the permission authorized by Ordinance 107876 was renewed for two successive
14 10-year terms by Resolution 27927 and Ordinance 119396 and terminated on November
15 30, 2008; and

16 WHEREAS, a portion of Summit Avenue, west of Broadway, occupied by one of the permitted
17 tunnels was vacated by Ordinance 116563 under the petition of Swedish Hospital
18 Medical Center; and

19 WHEREAS, Northwest Kidney Center has submitted an application to the Seattle Department of
20 Transportation (SDOT) Director to continue maintaining and operating the pedestrian and
21 utility tunnel under Broadway; and

22 WHEREAS, the Northwest Kidney Center has satisfied all terms and conditions of the original
23 authorizing ordinance, the SDOT Director (Director) recommends that the term permit be
24 approved subject to the terms identified in this ordinance; NOW, THEREFORE,

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

26 Section 1. **Permission.** Subject to the terms and conditions of this ordinance, permission
27 is granted to Northwest Kidney Center (Permittee) and its successors and assigns, to maintain
28 and operate a pedestrian tunnel and existing private utilities (tunnel) under and across Broadway,
north of Cherry Street, between the properties known as King County parcel numbers



1 1978201435 and 1978201096, for the purpose of underground pedestrian travel and private
2 utility connection.

3 Section 2. **Term.** The permission granted to the Permittee and its successors and assigns,
4 shall be for a term of ten years starting December 1, 2008, and ending at 11:59 p.m. on
5 November 30, 2018. Upon written application of the Permittee at least 180 days before
6 expiration of the term, the Director may renew the permit for two successive ten-year terms
7 subject to the right of the City to terminate the permit as provided for in Section 4, require
8 removal as provided for in Section 5, or revise by ordinance any of the conditions of this
9 ordinance. The total term of the permission as originally granted and renewed shall not exceed 30
10 years. Failure to obtain a new tunnel ordinance or remove the tunnel prior to expiration of the
11 term is a violation of Chapter 15.90 of the Seattle Municipal Code (SMC).
12

13
14 Section 3. **Protection of utilities.** The permission granted is subject to the Permittee
15 bearing the expense of any protection, support or relocation of existing utilities deemed necessary
16 by the owners of the utilities and the Permittee being responsible for any subsequent damage to
17 the utilities due to the construction, repair, reconstruction, maintenance, or operation of the
18 tunnel.
19

20 Section 4. **Removal for public use or for cause.** The permission granted is subject to use
21 of the street right-of-way by the City and the public for travel, utility purposes, and other street
22 uses. The City expressly reserves the right to require the Permittee to remove the tunnel at
23 Permittee's sole cost and expense in the event that:
24
25
26
27
28



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

4 (b) the Director determines that any term or condition of this ordinance has been violated and
5 the violation has not been corrected by the Permittee by the compliance date after written
6 request by the City.
7

8 A City Council determination that the space is needed for or interferes with a public use or
9 benefit shall be conclusive and final without any right of the Permittee to resort to the courts to
10 adjudicate the matter.

11 **Section 5. Removal requirements.** If the permission granted is not renewed at the
12 expiration of a term, or if the permission is extended to its termination date in 30 years and an
13 application for a new permit is not granted, or if the City orders removal of the tunnel pursuant to
14 the terms of this ordinance, then within 90 days after the expiration or termination, or prior to the
15 date stated in an Order to Remove, the Permittee shall, at its own expense, remove the tunnel and
16 replace all portions of the street right-of-way that may have been disturbed for any part of the
17 tunnel in as good condition for public use as they were prior to construction of the tunnel and in
18 at least as good condition in all respects as the abutting portions of the right-of-way. The
19 Director shall then issue a certificate discharging the Permittee, or its successor or assign, from
20 responsibility under this ordinance for occurrences after the discharge date.
21
22
23

24 **Section 6. Repair, reconstruction, readjustment or relocation.** The Permittee shall not
25 reconstruct, relocate, readjust, or repair the tunnel except under the supervision of the Director
26 and in strict accordance with plans and specifications approved by the Director. The Director
27
28



1 may, in the Director's judgment, order the tunnel reconstructed, relocated, readjusted, or repaired
2 at the Permittee's own cost and expense because of: the deterioration or unsafe condition of the
3 tunnel or the installation, construction, reconstruction, maintenance, operation or repair of any
4 municipally-owned public utilities; or for any other cause.

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

11 Section 8. **Continuing obligation to remove and restore.** Notwithstanding termination
12 or expiration of the permission granted, or closure or removal of the tunnel, the Permittee shall
13 remain bound by its obligation under this ordinance until:
14

- 15 (a) the pedestrian tunnel and all its equipment and property are removed from the street right-
16 of-way;
17 (b) the area is cleared and restored in a manner and to a condition satisfactory to the Director;
18 and
19 (c) the Director certifies that the Permittee has discharged its obligations under this
20 ordinance.
21

22 Upon prior notice to the Permittee and entry of written findings that it is in the public interest, the
23 Director may, in the Director's sole discretion, conditionally or absolutely excuse the Permittee
24 from compliance with all or any of the Permittee's obligations to remove the tunnel and its
25 property and to restore any disturbed areas.
26
27
28



1 Section 9. **Release, hold harmless, indemnification, and duty to defend.** The tunnel
2 shall remain the exclusive responsibility of the Permittee, and the Permittee agrees to maintain
3 the tunnel in good and safe condition. The Permittee, by accepting the terms of this ordinance
4 and the permission granted, releases the City from any and all claims resulting from damage or
5 loss to its own property and covenants and agrees for itself, its successors and assigns, with the
6 City, to at all times protect and save harmless the City from all claims, actions, suits, liability,
7 loss, costs, expense or damages of every kind and description, excepting only damages that may
8 result from the sole negligence of the City, that may accrue to, or be suffered by, any person or
9 persons and/or property or properties, including without limitation, damage or injury to the
10 Permittee, its officers, agents, employees, contractors, invitees, tenants and tenants' invitees,
11 licensees or its successors and assigns, by reason of the construction, maintenance, operation or
12 use of the tunnel, or any portion thereof, or by reason of anything that has been done or may at
13 any time be done by the Permittee, its successors or assigns by reason of this ordinance or by
14 reason of the Permittee, its successors or assigns failing or refusing to strictly comply with each
15 and every provision of this ordinance.

16
17
18
19 If any suit, action or claim be filed, instituted or begun against the City, the Permittee, its
20 successors or assigns shall, upon notice thereof from the City, defend the same at its or their sole
21 cost and expense, and in case judgment shall be rendered against the City in any suit or action,
22 the Permittee, its successors or assigns shall fully satisfy the judgment within 90 days after such
23 action or suit shall have been finally determined, if determined adversely to the City. If it is
24 determined by a court of competent jurisdiction that Revised Code of Washington (RCW)
25



1 4.24.115 applies to this ordinance, then in the event claims or damages are caused by or result
2 from the concurrent negligence of:

3 (a) the City, its agents, contractors or employees; and,

4 (b) the Permittee, its agents, contractors, employees or its successors or assigns,

5 this indemnity provision shall be valid and enforceable only to the extent of the negligence of the
6 Permittee or the Permittee's agents, contractors, employees or its successors or assigns.

7
8 Section 10. **Insurance.** For as long as the Permittee, its successors and assigns, shall
9 exercise any permission granted by this ordinance and until the tunnel is entirely removed from
10 its location as described in Section 1 or until discharged by order of the Director as provided in
11 Section 5, the Permittee shall obtain and maintain in full force and effect, at its own expense,
12 insurance that protects the City from claims and risks of loss from perils that can be insured
13 against under commercial general liability (CGL) insurance policies in conjunction with:
14

15 (a) construction, reconstruction, operation, maintenance, use or existence of the tunnel
16 permitted by this ordinance and of any and all portions of the tunnel;

17 (b) Permittee's activity upon, or the use or occupation of the Aloha Street right-of-way, west
18 of Dexter Avenue North, the area described in Section 1; and

19 (c) claims and risks in connection with any activity performed by the Permittee by virtue of
20 the permission granted by this ordinance.
21

22 Minimum insurance requirements are CGL insurance based on the Insurance Services Office
23 (ISO) form CG 00 01 or equivalent. The City requires insurance coverage to be placed with an
24 insurer admitted and licensed to conduct business in Washington State or with a surplus lines
25
26
27
28



1 carrier pursuant to RCW 48.15, except that if it is infeasible to obtain coverage with required
2 insurer, the City may approve an alternative insurer.

3 Minimum limits of liability shall be \$2,000,000 each occurrence combined single limit
4 bodily injury and property damage, with \$4,000,000 annual aggregate. Coverage shall name the
5 "City of Seattle, its elected and appointed officers, officials, employees and agents" as additional
6 insureds for primary and non-contributory limits of liability subject to a Separation of Insureds
7 clause.
8

9 Permittee shall provide to the City, or cause to be provided, certification of insurance
10 coverage consisting of the CGL declarations page, schedule of forms and endorsements, and
11 blanket or additional insured policy provision per the ISO CG 20 12 or equivalent. The insurance
12 coverage certification shall be delivered or sent to the Director or to the department and address
13 as the Director may specify, from time to time, in writing.
14

15 Should the Permittee be self-insured, a letter of certification from the Corporate Risk
16 Manager or appropriate Finance Officer may be submitted in lieu of the insurance coverage
17 certification required by this ordinance, if approved in writing by the City Risk Manager. The
18 letter of certification must provide all information required by the City Risk Manager and
19 document, to the satisfaction of the City Risk Manager, that self-insurance equivalent to the
20 insurance requirements of this ordinance is in force. After a self-insurance certification is
21 approved, the City may subsequently from time to time require updated or additional
22 information. The approved self-insured Permittee must provide 30 days notice of any
23 cancellation or material adverse financial condition of its self-insurance program. The City may
24
25
26
27
28



1 at any time revoke approval of self-insurance and require the Permittee to obtain and maintain
2 insurance as specified in this ordinance.

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

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 in the
13 sum of \$75,000 executed by a surety company authorized and qualified to do business in the
14 State of Washington, conditioned that the Permittee will comply with each and every provision
15 of this ordinance and with each and every order of the Director issued under this ordinance. The
16 Permittee shall ensure that the bond shall remain in effect until the tunnel is entirely removed
17 from its location as described in Section 1, or until the Permittee is discharged by order of the
18 Director as provided in Section 5. An irrevocable letter of credit approved by the City Risk
19 Manager may be substituted for the bond.
20
21

22 Section 13. **Adjustment of insurance and bond requirements.** The Director, in
23 consultation with the City Risk Manager, may adjust minimum levels of liability insurance and
24 surety bond requirements during the term of this permission. If the Director and Risk Manager
25 determine that an adjustment is necessary to fully protect the interests of the City, the Director
26
27
28



1 shall notify the Permittee of the new requirements in writing. Upon receipt, the Permittee shall,
2 within 60 days, provide proof of the adjusted insurance and surety bond levels to the Director.

3 Section 14. **Consent for and conditions of assignment or transfer.** The rights,
4 privileges and authority granted shall not be assignable or transferable by operation of law; nor
5 shall the Permittee, its successors or assigns transfer, assign, mortgage, pledge, or encumber the
6 same without the Director's consent, which the Director shall not unreasonably refuse. The
7 Director may approve assignment and/or transfer of the permit to a successor entity in the case of
8 a change of name and/or ownership if the successor or assignee has demonstrated its acceptance
9 of all of the terms of the permission provided by this ordinance.
10

11 Section 15. **Inspection fees.** The Permittee, its successors and assigns shall, as provided
12 by SMC Chapter 15.76, pay to the City the amounts charged by the City as costs to inspect the
13 tunnel during construction, reconstruction, repair, annual structural inspections, and at other
14 times deemed necessary to ensure the safety of the tunnel.
15

16 **Inspection report.** The Permittee, its successors and assigns shall submit to the SDOT -
17 Roadway Structures Division an inspection report that:
18

- 19 (a) describes the physical dimensions and condition of all load bearing elements,
20 (b) describes any damages or possible repairs to any element of the tunnel,
21 (c) prioritizes all repairs and establishes a timeframe for making the repairs, and
22 (d) is stamped by a professional structural engineer licensed in the State of
23 Washington.
24

25 The report shall be submitted within 60 days after the effective date of this ordinance;
26 subsequent reports shall be submitted (~~biannually~~) biennially, within 30 days prior to the
27
28



1 anniversary date of the effective date of this ordinance; or in the event of a natural disaster or
2 other event that may have damaged the tunnel, the report shall be submitted by the date
3 established by the Director.

4 Section 16. **Annual fee.** Permittee shall promptly pay to the City, upon statements or
5 invoices issued by the Director, an annual fee for the privileges granted by this ordinance in the
6 amount of \$4,320, beginning on December 1, 2008, and adjusted annually thereafter.

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

18 Section 17. **Non-discrimination.** The Permittee shall comply with the City's laws
19 prohibiting discrimination in employment and contracting, including Seattle's Fair Employment
20 Practices Ordinance, Chapter 14.04 and Fair Contracting Practices Ordinance, Chapter 14.10.

21 Section 18. **Acceptance of terms and conditions.** The Permittee shall deliver to the
22 Director its written signed acceptance of the terms of this ordinance within 60 days after the
23 effective date of this ordinance. The Director shall file the written acceptance with the City
24 Clerk. If no such acceptance is received within that 60-day period, the privileges conferred by
25
26
27
28



1 this ordinance shall be deemed declined or abandoned and the permission granted deemed lapsed
2 and forfeited.

3 Section 19. **Ratify and confirm.** Any act taken by the City or the Permittee pursuant to
4 the authority and in compliance with the conditions of this ordinance, but prior to the effective
5 date, is hereby ratified and confirmed.

6 Section 20. This ordinance shall take effect and be in force 30 days from and after its
7 approval by the Mayor, but if not approved and returned by the Mayor within ten days after
8 presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.

9 Passed by the City Council the 2nd day of August, 2010, and
10 signed by me in open session in authentication of its passage this
11

12 2nd day of August, 2010.

13
14 
15
16 President _____ of the City Council

17 Approved by me this 6th day of August, 2010.

18
19
20 
21 Michael McGinn, Mayor

22 Filed by me this 6th day of August, 2010.

23
24 
25 City Clerk

26 (Seal)



FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	DOF Analyst/Phone:
Seattle Department of Transportation	Angela Steel/684-5967	Stephen Barham/733-9084

Legislation Title:

AN ORDINANCE granting Northwest Kidney Center permission to maintain and operate a pedestrian tunnel under and across Broadway, north of Cherry Street, for a ten-year term, renewable for two successive ten-year terms; specifying the conditions under which this permit is granted; providing for acceptance of the permit and conditions; and ratifying and confirming certain prior acts.

• **Summary of the Legislation:**

This legislation will allow Northwest Kidney Center to continue maintaining and operating the existing tunnel located under and across Broadway, north of Cherry Street. An area map is attached for reference.

This tunnel permit is for a term of ten years commencing from the expiration of the last term permit on November 30, 2008. The legislation specifies the conditions under which authorization is granted and provides for acceptance of the permit and conditions.

The Northwest Kidney Center is to pay the City of Seattle an annual fee of \$4,320.00 commencing from the last paid annual fee invoice, December 1, 2008, and annually thereafter. 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. In the absence of such a schedule, the Director may only increase or decrease the previous year's fee annually to reflect any 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 of the Consumer Price Index for the Seattle-Tacoma-Bremerton Area, All Urban Consumers, All Products, Not Seasonally Adjusted. An Annual Fee Appraisal Summary is attached for reference.

• **Background:** *(Include brief description of the purpose and context of legislation and include record of previous legislation and funding history, if applicable):*

By Ordinance 107876, the City granted permission to the Northwest Kidney Center to construct, maintain, and operate a tunnel under and across Broadway, north of Cherry Street. Ordinance 107876 was renewed by Resolution 27927 and Ordinance 119396 and the permission authorized by Ordinance 107876 expired on November 30, 2008.

• *Please check one of the following:*



This legislation does not have any financial implications. (Stop here and delete the remainder of this document prior to saving and printing.)

 X **This legislation has financial implications.** (Please complete all relevant sections that follow.)

Appropriations: This table should reflect appropriations that are a direct result of this legislation. In the event that the project/programs associated with this ordinance had, or will have, appropriations in other legislation, please provide details in the Notes section below.

Fund Name and Number	Department	Budget Control Level*	2010 Appropriation	2011 Anticipated Appropriation
TOTAL				

*See budget book to obtain the appropriate Budget Control Level for your department.

Notes: N/A

Anticipated Revenue/Reimbursement: Resulting From This Legislation: This table should reflect revenues/reimbursements that are a direct result of this legislation. In the event that the issues/projects associated with this ordinance/resolution have revenues or reimbursements that were, or will be, received because of previous or future legislation or budget actions, please provide details in the Notes section below the table.

Fund Name and Number	Department	Revenue Source	2010 Revenue	2011 Revenue
Transportation Operating Fund 10310	Seattle Department of Transportation	Annual Fee –	\$4,320.00 (2008 fee) + \$4,501.44 (2009 fee w/ 4.2% CPI) + \$4,762.52 (2010 fee w/ .58% CPI)	\$4,762.52 + CPI
TOTAL			\$13,853.96	TBD

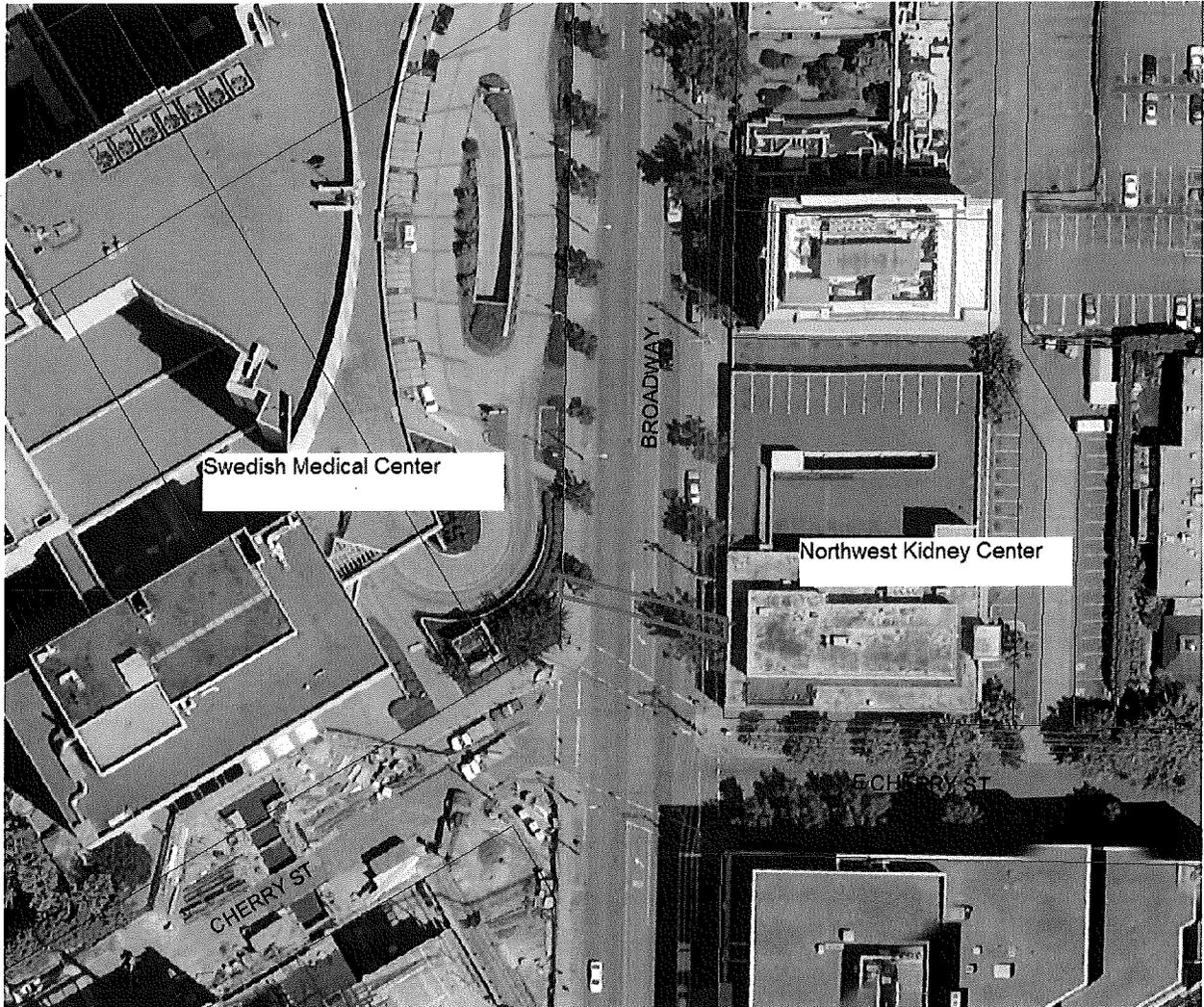
Notes:

Total Regular Positions Created, Modified, Or Abrogated Through This Legislation, Including FTE Impact: This table should only reflect the actual number of positions affected by this legislation. In the event that positions have been, or will be, created as a result of other legislation, please provide details in the Notes section below the table.

Position Title and Department	Position # for Existing Positions	Fund Name & #	PT/FT	2010 Positions	2010 FTE	2011 Positions*	2011 FTE*
-------------------------------	-----------------------------------	---------------	-------	----------------	----------	-----------------	-----------



Attachment A – NW Kidney Center Tunnel 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 Appraisal Summary

STREET USE VALUE ESTIMATE

Date: 11/16/2009
 Prepared by: John Bresnahan Sr. Real Estate Agent

Summary:
Land Value: \$200/SF
First Year Permit Fee:
 \$4,320.00

I. Property Description:

That portion of the 80' wide public road right-of-way known as Broadway Avenue bounded by E Cherry Street to the south and E Columbia Street to the north lying above a tunnel connecting tax parcels 197820-1096 and 197820-1435, measuring approximately 800 square feet (10' tunnel width X 80' right-of-way).

II. Applicant:

Swedish Providence Health Services, 601 Broadway, Seattle/ NW Kidney Center, 700 Broadway, Seattle.

III. Zoning, Size, Assessed Value:

Parcel 197820-1096—MIO-70/NC3-85. 28,573 square feet. Assessed **\$155/SF**
 Parcel 197820-1435—NC3-85. 22,983 square feet. Assessed **\$155/SF**.

IV. Highest and Best Use Analysis:

The highest and best use of this particular public road right-of-way would be assemblage to the adjoining properties.

V. Brief Sales Data Summary:

	Sale #1	Sale #2	Sale #3	Sale #4
Location	426 Broadway	1313 E. Columbia	906 Boylston	726 Broadway
Sale Price	\$3,140,000	\$15,500,000	\$2,075,000	\$8,500,000
Area SF	21,780	92,173	6,721	18,760
Sale Date	6/2007	11/2007	3/2008	9/2007
Zoning	NC3-65	MIO-37-L3	MIO-70-HR	MIO-105/NC3-85
Price/SF	\$144	\$168	\$309	\$453
Parcel Number	219760-0185 (multiple)	225450-0875 (multiple)	197820-1130	1978201400

VI. Notes:

Sale #1 illustrative of a similar sized parcel with inferior zoning and location, requiring upward adjustments, and slight downward adjustment for market timing. Sale #2 illustrative of a sale of much larger size and slightly inferior zoning. Sale #3 is similar zoning, but much smaller parcel. Sale #4 is a sale of slightly superior zoning but smaller parcel. The range of values for MIO zoned properties city-wide since 2005 is \$134-\$611 where the higher values are generally for much smaller parcels or parcels where buildings contribute significant value. The bracket of values is estimated to be \$175-\$350 per SF. A lack of meaningful directly comparable recent sales due to the depressed commercial land market accounts for the wide spread in likely values.



VII. Conclusion:

The value of that portion of Broadway Avenue above the Swedish Providence/NW Kidney Center tunnel is estimated at \$200 per square foot, blended. The first year permit fee should be calculated as follows: $(\$200/\text{SF}) \times (800 \text{ SF}) \times (30\%) \times (9\%) = \$4,320.00$, where 30% is the carry-over sub-surface/alienation multiplier and 9% is the rate of return.



ORDINANCE

AN ORDINANCE granting Northwest Kidney Center permission to maintain and operate a pedestrian tunnel under and across Broadway, north of Cherry Street, for a ten-year term, renewable for two successive ten-year terms; specifying the conditions under which this permit is granted; providing for acceptance of the permit and conditions; and ratifying and confirming certain prior acts.

WHEREAS, by Ordinance 107876, the City of Seattle (City) granted permission to the Northwest Kidney Center to construct, maintain and operate two pedestrian tunnels under and across Broadway, north of Cherry Street, and Summit Avenue, west of Broadway; and

WHEREAS, the conditions of Ordinance 107876 were amended by Ordinances 117591, 119396 and 121855; and

WHEREAS, the permission authorized by Ordinance 107876 was renewed for two successive 10-year terms by Resolution 27927 and Ordinance 119396 and terminated on November 30, 2008; and

WHEREAS, a portion of Summit Avenue, west of Broadway, occupied by one of the permitted tunnels was vacated by Ordinance 116563 under the petition of Swedish Hospital Medical Center; and

WHEREAS, Northwest Kidney Center has submitted an application to the Seattle Department of Transportation (SDOT) Director to continue maintaining and operating the pedestrian and utility tunnel under Broadway; and

WHEREAS, the Northwest Kidney Center has satisfied all terms and conditions of the original authorizing ordinance, the SDOT Director (Director) recommends that the term permit be approved subject to the terms identified in this ordinance; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. **Permission.** Subject to the terms and conditions of this ordinance, permission is granted to Northwest Kidney Center (Permittee) and its successors and assigns, to maintain and operate a pedestrian tunnel and existing private utilities (tunnel) under and across Broadway, north of Cherry Street, between the properties known as King County parcel numbers

THIS VERSION IS NOT ADOPTED



1 1978201435 and 1978201096, for the purpose of underground pedestrian travel and private
2 utility connection.

3 Section 2. **Term.** The permission granted to the Permittee and its successors and assigns,
4 shall be for a term of ten years starting December 1, 2008, and ending at 11:59 p.m. on
5 November 30, 2018. Upon written application of the Permittee at least 180 days before
6 expiration of the term, the Director may renew the permit for two successive ten-year terms
7 subject to the right of the City to terminate the permit as provided for in Section 4, require
8 removal as provided for in Section 5, or revise by ordinance any of the conditions of this
9 ordinance. The total term of the permission as originally granted and renewed shall not exceed 30
10 years. Failure to obtain a new tunnel ordinance or remove the tunnel prior to expiration of the
11 term is a violation of Chapter 15.90 of the Seattle Municipal Code (SMC).

12 Section 3. **Protection of utilities.** The permission granted is subject to the Permittee
13 bearing the expense of any protection, support or relocation of existing utilities deemed necessary
14 by the owners of the utilities and the Permittee being responsible for any subsequent damage to
15 the utilities due to the construction, repair, reconstruction, maintenance, or operation of the
16 tunnel.

17 Section 4. **Removal for public use or for cause.** The permission granted is subject to use
18 of the street right-of-way by the City and the public for travel, utility purposes, and other street
19 uses. The City expressly reserves the right to require the Permittee to remove the tunnel at
20 Permittee's sole cost and expense in the event that:

THIS VERSION IS NOT ADOPTED



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

4 (b) the Director determines that any term or condition of this ordinance has been violated and
5 the violation has not been corrected by the Permittee by the compliance date after written
6 request by the City.
7

8 A City Council determination that the space is needed for or interferes with a public use or
9 benefit shall be conclusive and final without any right of the Permittee to resort to the courts to
10 adjudicate the matter.

11 Section 5. **Removal requirements.** If the permission granted is not renewed at the
12 expiration of a term, or if the permission is extended to its termination date in 30 years and an
13 application for a new permit is not granted, or if the City orders removal of the tunnel pursuant to
14 the terms of this ordinance, then within 90 days after the expiration or termination, or prior to the
15 date stated in an Order to Remove, the Permittee shall, at its own expense, remove the tunnel and
16 replace all portions of the street right-of-way that may have been disturbed for any part of the
17 tunnel in as good condition for public use as they were prior to construction of the tunnel and in
18 at least as good condition in all respects as the abutting portions of the right-of-way. The
19 Director shall then issue a certificate discharging the Permittee, or its successor or assign, from
20 responsibility under this ordinance for occurrences after the discharge date.
21
22
23

24 Section 6. **Repair, reconstruction, readjustment or relocation.** The Permittee shall not
25 reconstruct, relocate, readjust, or repair the tunnel except under the supervision of the Director
26 and in strict accordance with plans and specifications approved by the Director. The Director
27
28

THIS VERSION IS NOT ADOPTED



1 may, in the Director's judgment, order the tunnel reconstructed, relocated, readjusted, or repaired
2 at the Permittee's own cost and expense because of: the deterioration or unsafe condition of the
3 tunnel or the installation, construction, reconstruction, maintenance, operation or repair of any
4 municipally-owned public utilities; or for any other cause.

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

10 Section 8. **Continuing obligation to remove and restore.** Notwithstanding termination
11 or expiration of the permission granted, or closure or removal of the tunnel, the Permittee shall
12 remain bound by its obligation under this ordinance until:

- 13 (a) the pedestrian tunnel and all its equipment and property are removed from the street right-
14 of-way;
15 (b) the area is cleared and restored in a manner and to a condition satisfactory to the Director;
16 and
17 (c) the Director certifies that the Permittee has discharged its obligations under this
18 ordinance.
19

20 Upon prior notice to the Permittee and entry of written findings that it is in the public interest, the
21 Director may, in the Director's sole discretion, conditionally or absolutely excuse the Permittee
22 from compliance with all or any of the Permittee's obligations to remove the tunnel and its
23 property and to restore any disturbed areas.
24
25
26
27
28

1 Section 9. **Release, hold harmless, indemnification, and duty to defend.** The tunnel
2 shall remain the exclusive responsibility of the Permittee, and the Permittee agrees to maintain
3 the tunnel in good and safe condition. The Permittee, by accepting the terms of this ordinance
4 and the permission granted, releases the City from any and all claims resulting from damage or
5 loss to its own property and covenants and agrees for itself, its successors and assigns, with the
6 City, to at all times protect and save harmless the City from all claims, actions, suits, liability,
7 loss, costs, expense or damages of every kind and description, excepting only damages that may
8 result from the sole negligence of the City, that may accrue to, or be suffered by, any person or
9 persons and/or property or properties, including without limitation, damage or injury to the
10 Permittee, its officers, agents, employees, contractors, invitees, tenants and tenants' invitees,
11 licensees or its successors and assigns, by reason of the construction, maintenance, operation or
12 use of the tunnel, or any portion thereof, or by reason of anything that has been done or may at
13 any time be done by the Permittee, its successors or assigns by reason of this ordinance or by
14 reason of the Permittee, its successors or assigns failing or refusing to strictly comply with each
15 and every provision of this ordinance.

16
17
18
19 If any suit, action or claim be filed, instituted or begun against the City, the Permittee, its
20 successors or assigns shall, upon notice thereof from the City, defend the same at its or their sole
21 cost and expense, and in case judgment shall be rendered against the City in any suit or action,
22 the Permittee, its successors or assigns shall fully satisfy the judgment within 90 days after such
23 action or suit shall have been finally determined, if determined adversely to the City. If it is
24 determined by a court of competent jurisdiction that Revised Code of Washington (RCW)
25
26
27
28

THIS VERSION IS NOT ADOPTED



1 4.24.115 applies to this ordinance, then in the event claims or damages are caused by or result
2 from the concurrent negligence of:

3 (a) the City, its agents, contractors or employees; and,

4 (b) the Permittee, its agents, contractors, employees or its successors or assigns,

5 this indemnity provision shall be valid and enforceable only to the extent of the negligence of the
6 Permittee or the Permittee's agents, contractors, employees or its successors or assigns.
7

8 Section 10. **Insurance.** For as long as the Permittee, its successors and assigns, shall
9 exercise any permission granted by this ordinance and until the tunnel is entirely removed from
10 its location as described in Section 1 or until discharged by order of the Director as provided in
11 Section 5, the Permittee shall obtain and maintain in full force and effect, at its own expense,
12 insurance that protects the City from claims and risks of loss from perils that can be insured
13 against under commercial general liability (CGL) insurance policies in conjunction with:
14

15 (a) construction, reconstruction, operation, maintenance, use or existence of the tunnel
16 permitted by this ordinance and of any and all portions of the tunnel;

17 (b) Permittee's activity upon, or the use or occupation of the Aloha Street right-of-way, west
18 of Dexter Avenue North, the area described in Section 1; and
19

20 (c) claims and risks in connection with any activity performed by the Permittee by virtue of
21 the permission granted by this ordinance.
22

23 Minimum insurance requirements are CGL insurance based on the Insurance Services Office
24 (ISO) form CG 00 01 or equivalent. The City requires insurance coverage to be placed with an
25 insurer admitted and licensed to conduct business in Washington State or with a surplus lines
26
27
28

THIS VERSION IS NOT ADOPTED



1 carrier pursuant to RCW 48.15, except that if it is infeasible to obtain coverage with required
2 insurer, the City may approve an alternative insurer.

3 Minimum limits of liability shall be \$2,000,000 each occurrence combined single limit
4 bodily injury and property damage, with \$4,000,000 annual aggregate. Coverage shall name the
5 "City of Seattle, its elected and appointed officers, officials, employees and agents" as additional
6 insureds for primary and non-contributory limits of liability subject to a Separation of Insureds
7 clause.
8

9 Permittee shall provide to the City, or cause to be provided, certification of insurance
10 coverage consisting of the CGL declarations page, schedule of forms and endorsements, and
11 blanket or additional insured policy provision per the ISO CG 20 12 or equivalent. The insurance
12 coverage certification shall be delivered or sent to the Director or to the department and address
13 as the Director may specify, from time to time, in writing.
14

15 Should the Permittee be self-insured, a letter of certification from the Corporate Risk
16 Manager or appropriate Finance Officer may be submitted in lieu of the insurance coverage
17 certification required by this ordinance, if approved in writing by the City Risk Manager. The
18 letter of certification must provide all information required by the City Risk Manager and
19 document, to the satisfaction of the City Risk Manager, that self-insurance equivalent to the
20 insurance requirements of this ordinance is in force. After a self-insurance certification is
21 approved, the City may subsequently from time to time require updated or additional
22 information. The approved self-insured Permittee must provide 30 days notice of any
23 cancellation or material adverse financial condition of its self-insurance program. The City may
24
25
26
27
28

THIS VERSION IS NOT ADOPTED



1 at any time revoke approval of self-insurance and require the Permittee to obtain and maintain
2 insurance as specified in this ordinance.

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

10
11
12 Section 12. **Performance bond.** Within 60 days after the effective date of this ordinance
13 the Permittee shall deliver to the Director for filing with the City Clerk a sufficient bond in the
14 sum of \$75,000 executed by a surety company authorized and qualified to do business in the
15 State of Washington, conditioned that the Permittee will comply with each and every provision
16 of this ordinance and with each and every order of the Director issued under this ordinance. The
17 Permittee shall ensure that the bond shall remain in effect until the tunnel is entirely removed
18 from its location as described in Section 1, or until the Permittee is discharged by order of the
19 Director as provided in Section 5. An irrevocable letter of credit approved by the City Risk
20 Manager may be substituted for the bond.
21

22
23 Section 13. **Adjustment of insurance and bond requirements.** The Director, in
24 consultation with the City Risk Manager, may adjust minimum levels of liability insurance and
25 surety bond requirements during the term of this permission. If the Director and Risk Manager
26 determine that an adjustment is necessary to fully protect the interests of the City, the Director
27
28

THIS VERSION IS NOT ADOPTED



1 shall notify the Permittee of the new requirements in writing. Upon receipt, the Permittee shall,
2 within 60 days, provide proof of the adjusted insurance and surety bond levels to the Director.

3 Section 14. **Consent for and conditions of assignment or transfer.** The rights,
4 privileges and authority granted shall not be assignable or transferable by operation of law; nor
5 shall the Permittee, its successors or assigns transfer, assign, mortgage, pledge, or encumber the
6 same without the Director's consent, which the Director shall not unreasonably refuse. The
7 Director may approve assignment and/or transfer of the permit to a successor entity in the case of
8 a change of name and/or ownership if the successor or assignee has demonstrated its acceptance
9 of all of the terms of the permission provided by this ordinance.
10

11 Section 15. **Inspection fees.** The Permittee, its successors and assigns shall, as provided
12 by SMC Chapter 15.76, pay to the City the amounts charged by the City as costs to inspect the
13 tunnel during construction, reconstruction, repair, annual structural inspections, and at other
14 times deemed necessary to ensure the safety of the tunnel.
15

16 **Inspection report.** The Permittee, its successors and assigns shall submit to the SDOT -
17 Roadway Structures Division an inspection report that:
18

- 19 (a) describes the physical dimensions and condition of all load bearing elements,
- 20 (b) describes any damages or possible repairs to any element of the tunnel,
- 21 (c) prioritizes all repairs and establishes a timeframe for making the repairs, and
- 22 (d) is stamped by a professional structural engineer licensed in the State of
23 Washington.
24

25 The report shall be submitted within 60 days after the effective date of this ordinance;
26 subsequent reports shall be submitted biannually, within 30 days prior to the anniversary date of
27
28

THIS VERSION IS NOT ADOPTED



1 the effective date of this ordinance; or in the event of a natural disaster or other event that may
2 have damaged the tunnel, the report shall be submitted by the date established by the Director.

3 Section 16. **Annual fee.** Permittee shall promptly pay to the City, upon statements or
4 invoices issued by the Director, an annual fee for the privileges granted by this ordinance in the
5 amount of \$4,320, beginning on December 1, 2008, and adjusted annually thereafter.

6 Adjustments to the annual fee shall be made in accordance with a term permit fee schedule
7 ordinance adopted by the City Council and may be made every year. In the absence of a
8 schedule, the Director may only increase or decrease the previous year's fee to reflect any
9 inflationary changes so as to charge the fee in constant dollar terms. This adjustment will be
10 calculated by adjusting the previous year's fee by the percentage change between the two most
11 recent year-end values available of the Consumer Price Index for the Seattle-Tacoma-Bremerton
12 Area, All Urban Consumers, All Products, Not Seasonally Adjusted. All payments shall be made
13 to the City Finance Director for credit to the Transportation Operating Fund.
14
15

16 Section 17. **Non-discrimination.** The Permittee shall comply with the City's laws
17 prohibiting discrimination in employment and contracting, including Seattle's Fair Employment
18 Practices Ordinance, Chapter 14.04 and Fair Contracting Practices Ordinance, Chapter 14.10.
19

20 Section 18. **Acceptance of terms and conditions.** The Permittee shall deliver to the
21 Director its written signed acceptance of the terms of this ordinance within 60 days after the
22 effective date of this ordinance. The Director shall file the written acceptance with the City
23 Clerk. If no such acceptance is received within that 60-day period, the privileges conferred by
24 this ordinance shall be deemed declined or abandoned and the permission granted deemed lapsed
25 and forfeited.
26
27
28

THIS VERSION IS NOT ADOPTED



1 Section 19. **Ratify and confirm.** Any act taken by the City or the Permittee pursuant to
2 the authority and in compliance with the conditions of this ordinance, but prior to the effective
3 date, is hereby ratified and confirmed.

4 Section 20. This ordinance shall take effect and be in force 30 days from and after its
5 approval by the Mayor, but if not approved and returned by the Mayor within ten days after
6 presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.

7
8 Passed by the City Council the ____ day of _____, 2010, and
9 signed by me in open session in authentication of its passage this
10 ____ day of _____, 2010.

11
12
13 _____
14 President _____ of the City Council

15 Approved by me this ____ day of _____, 2010.

16
17
18 _____
19 Michael McGinn, Mayor

20 Filed by me this ____ day of _____, 2010.

21
22
23 _____
24 City Clerk

25 (Seal)

THIS VERSION IS NOT ADOPTED





City of Seattle
Office of the Mayor

July 6, 2010

Honorable Richard Conlin
President
Seattle City Council
City Hall, 2nd Floor

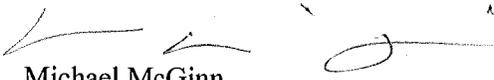
Dear Council President Conlin:

I am pleased to transmit the attached proposed Council Bill that will grant to the Northwest Kidney Center a new ten-year permit for an existing tunnel under and across Broadway, north of Cherry Street, renewable for two additional ten-year terms.

Use of the existing tunnel, which was authorized by Ordinance 107876, provides a connection for pedestrians and utilities for the Northwest Kidney Center and Swedish Medical Center. In addition to granting a new permit, the proposed Council Bill updates the insurance and bond requirements, amends the annual fee, and specifies the conditions under which authorization is granted.

Thank you for your consideration of this legislation. Should you have questions, please contact Angela Steel at (206) 684-5967

Sincerely,


Michael McGinn
Mayor of Seattle

cc: Honorable Members of the Seattle City Council

Michael McGinn, Mayor
Office of the Mayor
600 Fourth Avenue, 7th Floor
PO Box 94749
Seattle, WA 98124-4749

Tel (206) 684-4000
Fax (206) 684-5360
TDD (206) 615-0476
mike.mcginn@seattle.gov

