

Ordinance No. 123513

Council Bill No. 110994

AN ORDINANCE granting Yesler Investment Company, L.L.C. (AKA Martin Selig Real Estate) permission to construct, maintain, and operate a triangular public Plaza with hill climb staircase and art installation at 300 Fifth Avenue, north of Yesler Way, for a ten-year term, renewable for two successive ten-year terms; specifying the conditions under which this permit is granted; providing for the acceptance of the permit and conditions; and ratifying and confirming certain prior acts.

Related Legislation File: \_\_\_\_\_

Date Introduced and Referred: <u>Oct. 18, 2010</u>	To: (committee): <u>Transportation</u>
Date Re-referred:	To: (committee):
Date Re-referred:	To: (committee):
Date of Final Action: <u>Jan. 3, 2011</u>	Date Presented to Mayor: <u>Jan. 4, 2011</u>
Date Signed by Mayor: <u>1-6-11</u>	Date Returned to City Clerk: <u>1-7-11</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>12-14-10</u>	<u>Approve</u>	<u>TR JG TB 3-0</u>

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

## Full Council Action:

Date	Decision	Vote
<u>Jan. 3, 2011</u>	<u>PASSED</u>	<u>9-0</u>

*Law Department*

ORDINANCE 123513

AN ORDINANCE granting Yesler Investment Company, L.L.C. (AKA Martin Selig Real Estate) permission to construct, maintain, and operate a triangular public Plaza with hill climb staircase and art installation at 300 Fifth Avenue, north of Yesler Way, for a ten-year term, renewable for two successive ten-year terms; specifying the conditions under which this permit is granted; providing for the acceptance of the permit and conditions; and ratifying and confirming certain prior acts.

WHEREAS, the Yesler Investment Company, L.L.C. has applied for permission to construct a triangular Plaza along the unimproved easterly margin of the Fifth Avenue right-of-way adjacent to the Yesler Way overpass, of approximately 2,440 square feet, extending 54 linear feet parallel to Yesler Way and 92 linear feet parallel to Fifth Avenue; and

WHEREAS, the Plaza includes an art installation, planters, seating areas, lighting, building awning, stairs, handrails, and public hill climb staircase that will allow pedestrians to connect upper Yesler Way with Fifth Avenue; and

WHEREAS, the art installation designed by John Henry is approximately 85 feet tall, visible from Yesler Way, and overhangs the eastern edge of the sidewalk on Fifth Avenue at a height of approximately 55 feet above the sidewalk at the pavement edge; and

WHEREAS, the public Plaza with hill climb staircase and art installation will serve as a visual anchor along Fifth Avenue, provide a public gathering location, and increase tourism by endowing Seattle with a signature work of art; and

WHEREAS, the Public Art Advisory Committee, consisting of members from the Design Commission, Office of Arts and Cultural Affairs, and Seattle artist community, granted conceptual approval for the art installation on October 21, 2008; and

WHEREAS, the Downtown Design Review Board on January 12, 2009, granted approval for the art installation to serve as the public benefit provisions as required on Master Use Permit No. 9900477; and

WHEREAS, the Design Commission Chair conducted an administrative review and granted conceptual approval for the art installation on February 12, 2009; and

WHEREAS, the departments and utilities had no objections to the conceptual design of the public Plaza with hill climb stair case and art installation; and



1 WHEREAS, in making a recommendation, the Director of Transportation (Director)  
2 considered the submitted plans and application materials and recommended that  
3 conceptual approval be granted; and

4 WHEREAS, by Resolution 31126 the City Council, with the Mayor concurring, granted  
5 conceptual approval of the public Plaza with hill climb staircase and art installation; and

6 WHEREAS, construction of the Plaza with hill climb staircase and art installation has been  
7 completed, and the City and Yesler Investment Company, L.L.C. have negotiated the  
8 terms for the maintenance and operation permit for the Plaza; and

9 WHEREAS, the adoption of this ordinance is the culmination of the approval process for the  
10 public Plaza with hill climb staircase and art installation to legally occupy a portion of  
11 the public right-of-way; NOW, THEREFORE,

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

13 Section 1. **Permission.** Subject to the terms and conditions of this ordinance, permission  
14 (also referred to in this ordinance as a permit) is granted to Yesler Investment Company, L.L.C.,  
15 also known as Martin Selig Real Estate (Permittee), and its successors and assigns to construct,  
16 maintain, and operate a triangular public Plaza with hill climb staircase and art installation  
17 (Plaza) on the easterly margin of the 5<sup>th</sup> Avenue right of way north of Yesler Way, adjacent to  
18 300 Fifth Avenue, King County parcel number 0942001155. In addition to the hill climb  
19 staircase and art installation, the Plaza includes planters, seating areas, lighting, building  
20 awnings, stairs and handrails.

21 Section 2. **Term.** The permission granted to the Permittee and its successors and assigns,  
22 shall be for a term of ten years starting August 1, 2009, and ending at 11:59 p.m. on July 31,  
23 2019. Upon written application of the Permittee at least 180 days before expiration of the term,  
24 the Director of the Seattle Department of Transportation (Director) may renew the permit for two  
25 successive ten-year terms subject to the right of The City of Seattle (City) to terminate the permit  
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1 as provided for in Section 4, require removal as provided for in Section 5, or revise by ordinance  
2 any of the conditions of this ordinance. The total term of the permission as originally granted and  
3 renewed shall not exceed 30 years. Failure to obtain additional permission through a new  
4 ordinance, or to remove the Plaza prior to expiration of the term, is a violation of Chapter 15.90  
5 of the Seattle Municipal Code (SMC).  
6

7       **Section 3. Protection of utilities.** The permission granted is subject to the Permittee  
8 bearing the expense of any protection, support or relocation of existing utilities deemed  
9 necessary by the owners of the utilities and the Permittee being responsible for any subsequent  
10 damage to the utilities due to the construction, repair, reconstruction, maintenance, or operation  
11 of the Plaza.  
12

13       **Section 4. Removal for public use or for cause.** The permission granted is subject to  
14 use of the street right-of-way by the City and the public for travel, utility purposes, and other  
15 street uses. The City expressly reserves the right to require the Permittee to remove the Plaza, or  
16 any part thereof or installation thereon, at the Permittee's sole cost and expense in the event that:  
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- 18       (a) the City Council determines by ordinance that the space occupied by the Plaza is  
19 necessary for any public use or benefit or that the Plaza interferes with any public use or  
20 benefit; or  
21       (b) the Director determines that any term or condition of this ordinance has been  
22 violated and the violation has not been corrected by the Permittee by the compliance date  
23 after written request by the City.  
24

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

4       Section 5. **Removal requirements.** If the permission granted is not renewed at the  
5 expiration of a term, or if the permission is extended to its termination date in 30 years and an  
6 application for a new permit is not granted, or if an acceptance of this ordinance is not timely  
7 received as required by this ordinance, or if the City orders removal of the Plaza pursuant to the  
8 terms of this ordinance, then within 90 days after the expiration or termination, or prior to the  
9 date stated in an Order to Remove, the Permittee shall, at its own expense, remove the Plaza and  
10 replace all portions of the street right-of-way that may have been disturbed for any part of the  
11 Plaza in as good condition for public use as they were prior to construction of the Plaza and in at  
12 least as good condition in all respects as the abutting portions of the right-of-way. The Director  
13 shall then issue a certificate discharging the Permittee, or its successor or assign, from  
14 responsibility under this ordinance for occurrences after the date of such discharge.  
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17       Section 6. **Repair, reconstruction, readjustment or relocation.** The Permittee shall not  
18 reconstruct, relocate, readjust, or repair the Plaza except under the supervision of the Director  
19 and in strict accordance with plans and specifications approved by the Director. The Director  
20 may, in the Director's judgment, order the Plaza reconstructed, relocated, readjusted, or repaired  
21 at the Permittee's own cost and expense because of: the deterioration or unsafe condition of the  
22 Plaza or the installation, construction, reconstruction, maintenance, operation or repair of any  
23 municipally-owned public utilities, or for any other cause.  
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1           Section 7. **Failure to correct unsafe condition.** After notice to the Permittee and failure  
2 of the Permittee to correct an unsafe conditions within the time stated in the notice, the Director  
3 may order the Plaza be closed or removed at the Permittee's expense if the Director deems that it  
4 has become unsafe or creates a risk of injury to the public. If there is an immediate threat to the  
5 health or safety of the public, a notice to correct is not required.  
6

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

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

16           Upon prior notice to the Permittee and entry of written findings that it is in the public interest,  
17 the Director may, in the Director's sole discretion, conditionally or absolutely excuse the  
18 Permittee from compliance with all or any of the Permittee's obligations to remove the Plaza and  
19 its property and to restore any disturbed areas.  
20

21           Section 9. **Release, hold harmless, indemnification, and duty to defend.** The Plaza  
22 shall remain the exclusive responsibility of the Permittee, and the Permittee agrees to maintain  
23 the Plaza in good and safe condition for use by the public. The Permittee, by acceptance of the  
24 terms of this ordinance and the permission granted, releases the City from any and all claims  
25 resulting from damage or loss to the Permittee's property and covenants and agrees for itself, its  
26  
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1 successors and assigns, with the City, to at all times protect and save harmless the City from all  
2 claims, actions, suits, liability, loss, costs, expense or damages of every kind and description,  
3 (excepting only damages that may result from the sole negligence of the City), that may accrue  
4 to, or be suffered by, any person or persons and/or property or properties, including without  
5 limitation, damage or injury to the Permittee, its officers, agents, employees, contractors,  
6 invitees, tenants and tenants' invitees, licensees or its successors and assigns, by reason of the  
7 construction, maintenance, operation or use of the Plaza, or any portion thereof, or by reason of  
8 anything that has been done or may at any time be done by the Permittee, its successors or  
9 assigns by reason of this ordinance or by reason of the Permittee, its successors or assigns failing  
10 or refusing to strictly comply with each and every provision of this ordinance. By way of  
11 example and not limitation, the duty to protect and save harmless the City includes all claims,  
12 actions, or suits maintained by, and any liability, loss, costs, expense or damages allegedly  
13 suffered by, the creator of the art installation as the result of any modification made to the art  
14 installation.  
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17 If any suit, action or claim of the nature described above is filed, instituted or begun  
18 against the City, the Permittee, its successors or assigns shall, upon notice thereof from the City,  
19 defend the same at its or their sole cost and expense, and in case judgment shall be rendered  
20 against the City in any suit or action, the Permittee, its successors or assigns shall fully satisfy  
21 said judgment within 90 days after such action or suit shall have been finally determined, if  
22 determined adversely to the City. If it is determined by a court of competent jurisdiction that  
23

24 Revised Code of Washington (RCW) 4.24.115 applies to this ordinance, then in the event claims  
25 or damages are caused by or result from the concurrent negligence of:  
26  
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1 (a) the City, its agents, contractors or employees; and,

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

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

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

12 (a) construction, reconstruction, operation, maintenance, use or existence of the Plaza  
13 permitted by this ordinance and of any and all portions of the Plaza;

14 (b) the Permittee's activity upon, or the use or occupation of the area described in  
15 Section 1 of this ordinance; and

16 (c) claims and risks in connection with any activity performed by the Permittee by virtue  
17 of the permission granted by this ordinance.  
18

19  
20 Minimum insurance requirements are CGL insurance based on the Insurance Services Office  
21 (ISO) form CG 00 01 or equivalent. The City requires insurance coverage to be placed with an  
22 insurer admitted and licensed to conduct business in Washington State or with a surplus lines  
23 carrier pursuant to Chapter 48.15 RCW, except that if it is infeasible to obtain coverage with the  
24 required insurer, the City may approve an alternative insurer.  
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1 Minimum limits of liability shall be \$1,000,000 each occurrence combined single limit  
2 bodily injury and property damage, with \$2,000,000 annual aggregate. Coverage shall name the  
3 “City of Seattle, its elected and appointed officers, officials, employees and agents” as additional  
4 insureds for primary and non-contributory limits of liability subject to a Separation of Insureds  
5 clause.

6  
7 Permittee shall provide to the City, or cause to be provided, certification of insurance  
8 coverage consisting of the CGL declarations page, schedule of forms and endorsements, and  
9 blanket or additional insured policy provision per the ISO CG 20 12 or equivalent. The insurance  
10 coverage certification shall be delivered or sent to the Director or to the department and address  
11 as the Director may specify, from time to time, in writing.

12  
13 Should the Permittee be self-insured, a letter of certification from the Corporate Risk  
14 Manager or appropriate Finance Officer may be submitted in lieu of the insurance coverage  
15 certification required by this ordinance, if approved in writing by the City Risk Manager. The  
16 letter of certification must provide all information required by the City Risk Manager and  
17 document, to the satisfaction of the City Risk Manager, that self-insurance equivalent to the  
18 insurance requirements of this ordinance is in force. After a self-insurance certification is  
19 approved, the City may subsequently from time to time require updated or additional  
20 information. The approved self-insured Permittee must provide 30 days notice of any  
21 cancellation or material adverse financial condition of its self-insurance program. The City may  
22 at any time revoke approval of self-insurance and require the Permittee to obtain and maintain  
23 insurance as specified in this ordinance.  
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1           Section 11. **Contractor insurance.** The Permittee shall contractually require that any  
2 and all of its contractors performing work on any premises contemplated by this permit name the  
3 “City of Seattle, its elected and appointed officers, officials, employees and agents” as additional  
4 insureds for primary and non-contributory limits of liability on all CGL, Automobile and  
5 Pollution liability insurance and/or self-insurance. The Permittee shall also include in all contract  
6 documents with its contractors a third-party beneficiary provision extending construction  
7 indemnities and warranties granted to Permittee to the City as well.  
8

9           Section 12. **Performance bond.** Within 60 days after the effective date of this ordinance  
10 the Permittee shall deliver to the Director for filing with the City Clerk a sufficient bond in the  
11 sum of \$100,000 executed by a surety company authorized and qualified to do business in the  
12 State of Washington, conditioned that the Permittee will comply with each and every provision  
13 of this ordinance and with each and every order of the Director issued under this ordinance. The  
14 Permittee shall ensure that the bond shall remain in effect until the Plaza is entirely removed  
15 from its location as described in Section 1, or until the Permittee is discharged by order of the  
16 Director as provided in Section 5. An irrevocable letter of credit approved by the City Risk  
17 Manager may be substituted for the bond.  
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20           Section 13. **Adjustment of insurance and bond requirements.** The Director, in  
21 consultation with the City Risk Manager, may adjust minimum levels of liability insurance and  
22 surety bond requirements during the term of this permission. If the Director and Risk Manager  
23 determine that an adjustment is necessary to fully protect the interests of the City, the Director  
24 shall notify the Permittee of the new requirements in writing. Upon receipt, the Permittee shall,  
25 within 60 days, provide proof of the adjusted insurance and surety bond levels to the Director.  
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1           Section 14. **Consent for and conditions of assignment or transfer.** The rights,  
2 privileges and authority granted shall not be assignable or transferable by operation of law; nor  
3 shall the Permittee, its successors or assigns transfer, assign, mortgage, pledge or encumber the  
4 same without the Director's consent, which the Director shall not unreasonably refuse. The  
5 Director may approve assignment and/or transfer of the permit to a successor entity in the case of  
6 a change of name and/or ownership if the successor or assignee has demonstrated its acceptance  
7 of all of the terms of the permission provided by this ordinance.  
8

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

14           Section 16. **Inspection reports.** The Permittee, its successors and assigns shall submit to  
15 the Director, or to the Department of Transportation at an address as the Director may specify in  
16 writing from time to time, an inspection report that:  
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- 18           (a) describes the physical dimensions and condition of all load bearing elements,
- 19           (b) describes any damages or possible repairs to any element of the Plaza,
- 20           (c) prioritizes all repairs and establishes a timeframe for making repairs, and
- 21           (d) is stamped by a professional structural engineer licensed in the State of  
22           Washington.

23           The report shall be submitted within 60 days after the effective date of this ordinance;  
24  
25           subsequent reports shall be submitted every five years, within 30 days prior to the anniversary  
26           date of the effective date of this ordinance; or in the event of a natural disaster or other event  
27



1 that may have damaged the Plaza, the report shall be submitted by the date established by the  
2 Director.

3       Section 17. **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 \$7,686, beginning on August 1, 2009, and adjusted annually thereafter.

6 Adjustments to the annual fee shall be made in accordance with a term permit fee schedule  
7 adopted by the City Council and may be made every year. In the absence of a schedule, the  
8 Director may only increase or decrease the previous year's fee to reflect any inflationary changes  
9 so as to charge the fee in constant dollar terms. This adjustment will be calculated by adjusting  
10 the previous year's fee by the percentage change between the two most recent year-end values  
11 available of the Consumer Price Index for the Seattle-Tacoma-Bremerton Area, All Urban  
12 Consumers, All Products, Not Seasonally Adjusted. All payments shall be made to the City  
13 Finance Director for credit to the Transportation Operating Fund.  
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16       Section 18. **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 code, Chapter 14.10.

19       Section 19. **Acceptance of terms and conditions.** The Permittee shall deliver to the  
20 Director its written signed acceptance of the terms of this ordinance within 60 days after the  
21 effective date of this ordinance. The Director shall file the written acceptance with the City  
22 Clerk. If no such acceptance is received within that 60-day period, the privileges conferred by  
23 this ordinance shall be deemed declined or abandoned and the permission granted deemed lapsed  
24 and forfeited.  
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1 Section 20. **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 21. **Successors and assigns.** The rights conferred to the Permittee and the  
5 obligations and conditions imposed on the Permittee through this ordinance are also conferred  
6 and imposed on the Permittee's successors and assigns. All references in this ordinance to the  
7 "Permittee" shall be deemed to refer also to the successors and assigns of the Permittee.  
8 References in this ordinance to "Permittee and its successors and assigns" or "Permittee or its  
9 successors and assigns" are included as reminders and do not limit the scope of "Permittee" used  
10 alone.  
11

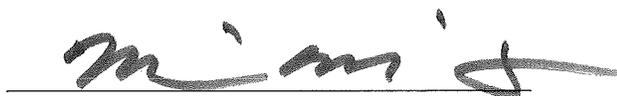
12 Section 22. This ordinance shall take effect and be in force 30 days from and after its  
13 approval by the Mayor, but if not approved and returned by the Mayor within ten days after  
14 presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.

15 Passed by the City Council the 3<sup>rd</sup> day of January, 2011, and  
16 signed by me in open session in authentication of its passage this

17 3<sup>rd</sup> day of January, 2011,  
18

19  
20  
21   
22 President \_\_\_\_\_ of the City Council

23 Approved by me this 6<sup>th</sup> day of January, 2011,  
24

25  
26   
27



Angela Steel  
SDOT Yesler Investment Plaza ORD  
August 5, 2010  
Version #13a

Michael McGinn, Mayor

Filed by me this 6<sup>th</sup> day of January, 2010. 2011 me

Anna B. Simmons  
City Clerk

(Seal)

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**FISCAL NOTE FOR NON-CAPITAL PROJECTS**

<b>Department:</b>	<b>Contact Person/Phone:</b>	<b>CBO Analyst/Phone:</b>
Department of Transportation	Angela Steel/684-5967	Stephen Barham/733-9084

**Legislation Title:**

AN ORDINANCE granting Yesler Investment Company, L.L.C. (AKA Martin Selig Real Estate) permission to construct, maintain, and operate a triangular public Plaza with hill climb staircase and art installation at 300 Fifth Avenue, north of Yesler Way, for a ten-year term, renewable for two successive ten-year terms; specifying the conditions under which this permit is granted; providing for the acceptance of the permit and conditions; and ratifying and confirming certain prior acts.

**Summary of the Legislation:** The legislation grants permission to Yesler Investment Company, L.L.C., also known as Martin Selig Real Estate, to occupy and use the public right-of-way located at 300 Fifth Avenue, at the intersection of Fifth Avenue and Yesler Way. An area map is attached for reference.

The permit is for an initial ten-year term, renewable for two successive ten-year terms, not to exceed a total of 30 years. The legislation specifies the conditions under which authorization is granted and provides for acceptance of the permit and conditions, which will include a commitment to provide a large scale art installation. A depiction of the art installation is attached for reference.

Yesler Investment Company, L.L.C. is to pay to the City of Seattle an annual fee of \$7,686 starting August 1, 2009 and annually thereafter. Adjustments to the annual fee amount shall be made in accordance with a term permit fee schedule adopted by the 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 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.

The permit requires a \$100,000 performance bond on the plaza.

**Background:** Yesler Investment Company, L.L.C obtained the Department of Planning and Development Master Use Permit on March 21, 2006 with the Downtown Design Review Board granting approval for the Art installation to serve as the public benefit provision on January 12, 2009. Yesler Investment Company, L.L.C. has submitted the information required for the Director of Transportation to make a recommendation to the City Council on whether to grant or deny conceptual approval, and the Director has circulated the conceptual information to the City

departments and public and private utilities interested in or affected by the proposed plaza and art installation, and by Resolution 31126, the City Council, with the Mayor concurring, granted conceptual approval of the public plaza, staircase and art installation on April 13, 2009. Construction of the public plaza, staircase and art installation was complete by August 1, 2009.

- 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.)

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

**Appropriations:**

Fund Name and Number	Department	Budget Control Level*	2010 Appropriation	2011 Anticipated Appropriation
<b>TOTAL</b>				

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

Notes: N/A

**Anticipated Revenue/Reimbursement: Resulting From This Legislation:**

Fund Name and Number	Department	Revenue Source	2010 Revenue	2011 Revenue
Transportation Operating Fund 10310	Seattle Department of Transportation	Annual Fee	\$7,686 (2009-2010) \$7,730.77 (.58% CPI 2010-2011)	\$7,769.39
<b>TOTAL</b>			<b>\$15,416.77</b>	<b>\$7,769.39</b>

Notes:

**Total Regular Positions Created, Modified, Or Abrogated Through This Legislation, Including FTE Impact:**

Position Title and Department	Position # for Existing Positions	Fund Name & #	PT/FT	2010 Positions	2010 FTE	2011 Positions*	2011 FTE*
<b>TOTAL</b>							

\* 2010 positions and FTE are total 2010 position changes resulting from this legislation, not incremental changes. Therefore, under 2010, please be sure to include any continuing positions from 2009.



*Notes: N/A*

- **Do positions sunset in the future?** *(If yes, identify sunset date):*

**Spending/Cash Flow:**

Fund Name & #	Department	Budget Control Level*	2010 Expenditures	2011 Anticipated Expenditures
<b>TOTAL</b>				

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

*Notes:*

- **What is the financial cost of not implementing the legislation?** If the legislation is not enacted by the City Council, the City of Seattle will not receive the annual fee of \$7,686 for at least ten years. As previously stated, the City of Seattle has the option to adjust the fee amount on an annual basis.

The public plaza, staircase and art installation, which was granted conceptual approval by Resolution 31126, will not be permitted.

- **Does this legislation affect any departments besides the originating department?**  
None

- **What are the possible alternatives to the legislation that could achieve the same or similar objectives?** None

- **Is the legislation subject to public hearing requirements:** No

- **Other Issues** *(including long-term implications of the legislation):* N/A

- **List attachments to the fiscal note below:**

Attachment A – Yesler Investment Plaza Area Map  
 Attachment B – Annual Fee Appraisal Summary  
 Attachment C – Depiction of the John Henry Art Installation



Attachment A –Yesler Investment Plaza Area Map



Attachment B – Annual Fee Appraisal Summary

**STREET USE VALUE ESTIMATE**

Date: 3/13/2009  
 Prepared by: John Bresnahan, Sr. Real Property Agent

<p><u>Summary:</u>  <b>Land Value:</b> \$350/SF  <b>First Year Permit Fee:</b>          \$7,686.00</p>
--

**I. Property Description:**

That portion of the 66' wide public road right-of-way known as Fifth Ave. S abutting tax parcel 094200-1155 and Yesler Way, measuring approximately 2,440 square feet.

**II. Applicant:**

Yesler Investment Co., LLC, 1000 Second Ave, Suite 1800, Seattle.

**III. Zoning, Size, Assessed Value:**

DMC340/290-400. 26,738 square feet. Assessed \$372/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:**

	<b>Sale #1</b>	<b>Sale #2</b>	<b>Sale #3</b>
<b>Location</b>	9 <sup>th</sup> and Pine	1815 2 <sup>nd</sup> Ave.	8 <sup>th</sup> & Columbia
<b>Sale Price</b>	\$8,600,000	\$6,875,000	\$7,143,346
<b>Area SF</b>	19,920	13,068	28,793
<b>Sale Date</b>	9/2007	1/2007	2/2007
<b>Zoning</b>	DMC340/290-400	DMC240/290-400	HR
<b>Price/SF</b>	<b>\$432</b>	<b>\$526</b>	<b>\$248</b>
<b>Parcel Number</b>	066000-0915 (multiple)	197720-0950	859040-0825 (multiple)

**VI. Notes:**

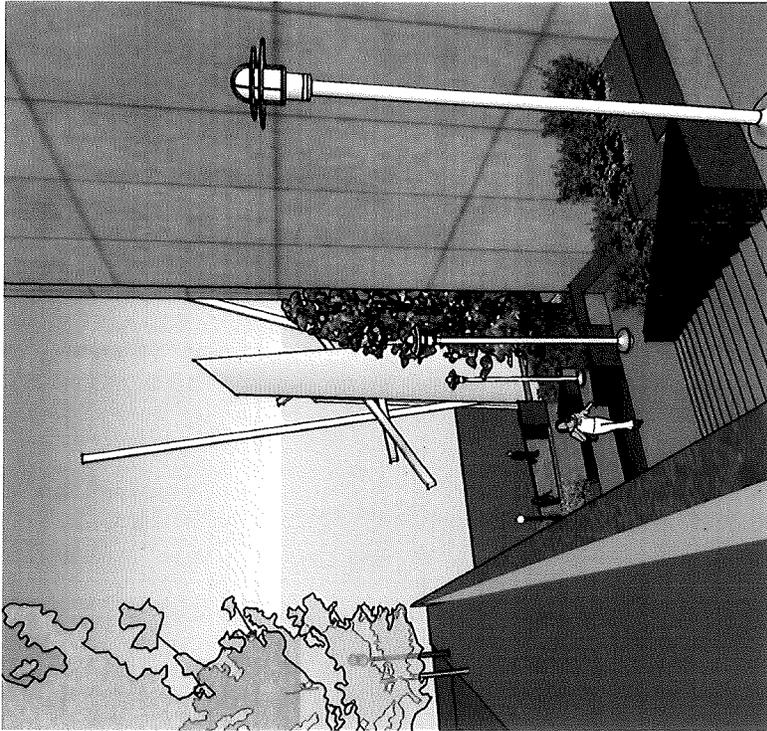
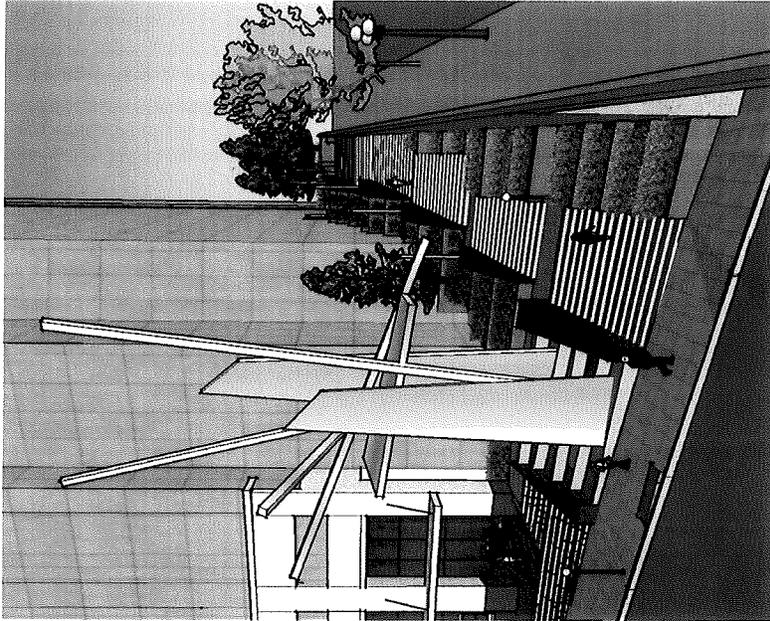
Sale prices in vicinity of the subject ranged from \$248/SF to \$750/SF. Greatest consideration is given to sale #1. A market timing adjustment of approximately 20% was made to sale #1 to arrive at the estimated land value.

**VII. Conclusion:**

The value of that portion of Fifth Ave. S abutting 094200-1155 is estimated at \$350 per square foot. The first year permit fee should be calculated as follows: (\$350/SF) X (2,440 SF) X (10%) X (9%) = \$7,686.00, where 10% is the alienation multiplier and 9% is the rate of return.



Attachment C – Depiction of the John Henry Art Installation



Views of sculpture from Yesler Way.

**FISCAL NOTE FOR NON-CAPITAL PROJECTS**

<b>Department:</b>	<b>Contact Person/Phone:</b>	<b>CBO Analyst/Phone:</b>
Department of Transportation	Angela Steel/684-5967	Stephen Barham/733-9084

**Legislation Title:**

AN ORDINANCE granting Yesler Investment Company, L.L.C. (AKA Martin Selig Real Estate) permission to construct, maintain, and operate a triangular public Plaza with hill climb staircase and art installation at 300 Fifth Avenue, north of Yesler Way, for a ten-year term, renewable for two successive ten-year terms; specifying the conditions under which this permit is granted; providing for the acceptance of the permit and conditions; and ratifying and confirming certain prior acts.

**Summary of the Legislation:** The legislation grants permission to Yesler Investment Company, L.L.C., also known as Martin Selig Real Estate, to occupy and use the public right-of-way located at 300 Fifth Avenue, at the intersection of Fifth Avenue and Yesler Way. An area map is attached for reference.

The permit is for an initial ten-year term, renewable for two successive ten-year terms, not to exceed a total of 30 years. The legislation specifies the conditions under which authorization is granted and provides for acceptance of the permit and conditions, which will include a commitment to provide a large scale art installation. A depiction of the art installation is attached for reference.

Yesler Investment Company, L.L.C. is to pay to the City of Seattle an annual fee of \$7,686 starting August 1, 2009 and annually thereafter. Adjustments to the annual fee amount shall be made in accordance with a term permit fee schedule adopted by the 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 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.

The permit requires a \$100,000 performance bond on the plaza.

**Background:** Yesler Investment Company, L.L.C. obtained the Department of Planning and Development Master Use Permit on March 21, 2006 with the Downtown Design Review Board granting approval for the Art installation to serve as the public benefit provision on January 12, 2009. Yesler Investment Company, L.L.C. has submitted the information required for the Director of Transportation to make a recommendation to the City Council on whether to grant or deny conceptual approval, and the Director has circulated the conceptual information to the City



departments and public and private utilities interested in or affected by the proposed plaza and art installation, and by Resolution 31126, the City Council, with the Mayor concurring, granted conceptual approval of the public plaza, staircase and art installation on April 13, 2009. Construction of the public plaza, staircase and art installation was complete by August 1, 2009.

- 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:**

Fund Name and Number	Department	Budget Control Level*	2010 Appropriation	2011 Anticipated Appropriation
<b>TOTAL</b>				

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

Notes: N/A

**Anticipated Revenue/Reimbursement: Resulting From This Legislation:**

Fund Name and Number	Department	Revenue Source	2010 Revenue	2011 Revenue
Transportation Operating Fund 10310	Seattle Department of Transportation	Annual Fee	\$7,686 (2009-2010) \$7,730.77 (.58% CPI 2010-2011)	\$7,730.77 + CPI (2011 to 2012)
<b>TOTAL</b>			<b>\$15,416.77</b>	<b>TBD</b>

Notes:

**Total Regular Positions Created, Modified, Or Abrogated Through This Legislation, Including FTE Impact:**

Position Title and Department	Position # for Existing Positions	Fund Name & #	PT/FT	2010 Positions	2010 FTE	2011 Positions*	2011 FTE*
<b>TOTAL</b>							

\* 2010 positions and FTE are total 2010 position changes resulting from this legislation, not incremental changes. Therefore, under 2010, please be sure to include any continuing positions from 2009.



*Notes: N/A*

- **Do positions sunset in the future?** *(If yes, identify sunset date):*

**Spending/Cash Flow:**

Fund Name & #	Department	Budget Control Level*	2010 Expenditures	2011 Anticipated Expenditures
<b>TOTAL</b>				

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

*Notes:*

- **What is the financial cost of not implementing the legislation?** If the legislation is not enacted by the City Council, the City of Seattle will not receive the annual fee of \$7,686 for at least ten years. As previously stated, the City of Seattle has the option to adjust the fee amount on an annual basis.

The public plaza, staircase and art installation, which was granted conceptual approval by Resolution 31126, will not be permitted.

- **Does this legislation affect any departments besides the originating department?**

None

- **What are the possible alternatives to the legislation that could achieve the same or similar objectives?** None

- **Is the legislation subject to public hearing requirements:** No

- **Other Issues** *(including long-term implications of the legislation):* N/A

- **List attachments to the fiscal note below:**

Attachment A – Yesler Investment Plaza Area Map

Attachment B – Annual Fee Appraisal Summary

Attachment C – Depiction of the John Henry Art Installation





City of Seattle  
Office of the Mayor

September 21, 2010

Honorable Richard Conlin  
President  
Seattle City Council  
City Hall, 2<sup>nd</sup> Floor

Dear Council President Conlin:

I am pleased to transmit the attached proposed Council Bill that will grant to Yesler Investment Company, L.L.C. a term permit to construct, maintain, and operate a triangular public plaza, hill climb staircase and a significant piece of art along Fifth Avenue, north of Yesler Way. This will be a ten-year term permit, renewable for two additional ten-year terms.

The development of this site will add a great deal of attraction and public interest in this part of downtown Seattle. This project adds approximately 2,400 square feet as a triangular public plaza with seating, landscaping and lighting. The developer has also made available for the public a significant 85-foot art installation, designed by nationally known artist, John Henry, which will serve as a visual anchor along Fifth Avenue and be visible from Yesler Way. There is also a hill climb staircase for the public to access upper Yesler Way from Fifth Avenue. The Yesler Investment Company, L.L.C., has agreed to take responsibility for the maintenance and liability of the public plaza, hill climb staircase and art installation.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Michael McGinn".

Michael McGinn  
Mayor of Seattle

cc: Honorable Members of the Seattle City Council



# City of Seattle

Seattle Department of Transportation

Peter Hahn, Director

## MEMORANDUM

**Date:** March 3, 2011  
**To:** City Clerk  
**From:** Brandon Bolinger   
Admin. Spec. II, Director's Office, SDOT  
**Subject:** Letter of Acceptance per Ordinance 123513

FILED  
CITY OF SEATTLE  
2011 MAR -3 PM 12:07  
CITY CLERK

The attached letter from Yesler Investment Company, LLC, to the Director of Transportation was received today, March 3, 2011, accepting the terms of Ordinance 123513, as required by Section 19 of Ordinance 123513.



Seattle Municipal Tower, 700 5<sup>th</sup> Avenue, Suite 3800, PO Box 34996, Seattle, WA 98124-4996  
Tel: (206) 684-ROAD Tel: (206) 684-5000 Fax: (206) 684-5180

Web: [www.seattle.gov/transportation](http://www.seattle.gov/transportation)

An equal opportunity employer. Accommodations for people with disabilities provided on request.



SEATTLE TRANSPORTATION

MARTIN SELIG 11 MAR -3 AM 10:35

REAL ESTATE

March 1, 2011

Mr. Peter Hahn  
Director  
CITY OF SEATTLE DEPARTMENT OF TRANSPORTATION  
P.O. Box 34996  
Seattle, Washington 98124-4996

FILED  
CITY OF SEATTLE  
2011 MAR -3 PM 12:09  
CITY CLERK

RE: Acceptance of Terms of Ordinance #123513

Dear Mr. Hahn:

This letter should serve as notice that Yesler Investment Company, LLC accepts the terms of Ordinance #123513, which granted permission to construct, maintain, and operate a triangular public plaza with a hill climb staircase and art installation located at 300 5<sup>th</sup> Avenue.

We trust that this letter will be filed with the City Clerk per the terms of Ordinance #123513.

Thank you for your attention to this matter.

Sincerely,

Peter F. Parker  
Yesler Investment Company, LLC/Martin Selig Real Estate

SDOT.030111

cc: Angela Steel, SDOT  
Jack McCullough



MARTIN SELIG

REAL ESTATE

March 24, 2011

Mr. Peter Hahn  
Director  
City of Seattle Department of Transportation  
P.O. Box 34996  
Seattle, Washington 98124-4996

FILED  
CITY OF SEATTLE  
11 MAR 30 AM 10:00  
CITY CLERK

RE: Acceptance of Terms of Ordinance #123513

Dear Mr. Hahn:

This letter should serve as notice that Yesler Investment Company, LLC accepts the terms of Ordinance #123513, which granted permission to construct, maintain, and operate a triangular public plaza with a hill climb staircase and art installation located at 300 5<sup>th</sup> Avenue.

We trust that this letter will be filed with the City Clerk per the terms of Ordinance #123513.

Thank you for your attention to this matter.

Sincerely,

Peter F. Parker  
Yesler Investment Company, LLC/Martin Selig Real Estate

SDOT.032411

cc: Angela Steel, SDOT  
Jack McCullough

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**STATE OF WASHINGTON – KING COUNTY**

--SS.

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265991  
CITY OF SEATTLE, CLERKS OFFICE

No. 12310-123519

**Affidavit of Publication**

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 12<sup>th</sup> 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

CT:TITLE ONLY ORDINANCE

was published on

01/19/11

The amount of the fee charged for the foregoing publication is the sum of \$ 191.10, which amount has been paid in full.



Affidavit of Publication

Subscribed and sworn to before me on

01/19/11

Notary public for the State of Washington,  
residing in Seattle

# State of Washington, King County

## City of Seattle

### TITLE-ONLY PUBLICATION

The full text of the following ordinances, passed by the City Council on January 3, 2011, and published here by title only, will be mailed upon request, or can be accessed at <http://clerk.seattle.gov>. For further information, contact the Seattle City Clerk at 684-8344.

#### ORDINANCE NO. 123510

AN ORDINANCE, relating to a vehicular and pedestrian tunnel under the alley between 6th Avenue and 7th Avenue, north of Stewart Street, amending Ordinance 119508, as amended by Ordinance 121855, updating the insurance and bond requirements, and amending the annual fee; renewing the term of the permit to Plaza 600 Building L.L.C.; providing for acceptance of the permit and conditions; and ratifying and confirming certain prior acts.

#### ORDINANCE NO. 123511

AN ORDINANCE, relating to a utility tunnel under the alley between 5th Avenue and 6th Avenue, north of Virginia Street; amending Ordinance 119437, as amended by Ordinance 121855, transferring the permission from Clise Properties, Inc. to 2001 Sixth L.L.C., updating the insurance and bond requirements, and amending the annual fee; renewing the term of the permit; providing for acceptance of the permit and conditions; and ratifying and confirming certain prior acts.

#### ORDINANCE NO. 123512

AN ORDINANCE vacating the alley in Block 48, Replat of Blocks 44-53, Mercer 2nd Addition to North Seattle, on the petition of 500 Mercer Partners, LLC, a Washington limited liability company, and accepting a Property Use and Development Agreement (Clerk File 305398).

#### ORDINANCE NO. 123513

AN ORDINANCE granting Yesler Investment Company, L.L.C. (AKA Martin Selig Real Estate) permission to construct, maintain, and operate a triangular public Plaza with hill climb staircase and art installation at 300 Fifth Avenue, north of Yesler Way, for a ten-year term, renewable for two successive ten-year terms; specifying the conditions under which this permit is granted; providing for the acceptance of the permit and conditions; and ratifying and confirming certain prior acts.

#### ORDINANCE NO. 123514

AN ORDINANCE accepting for general street purposes 16 deeds conveyed to the City of Seattle by the Central Puget Sound Regional Transit Authority or Sound Transit in connection with the Central Link Light Rail Transit Project as agreed to in a Property Acquisition and Transfer Procedures Agreement between the City of Seattle and Sound Transit; laying off, opening, widening, extending, and establishing portions of the rights-of-way located on Martin Luther King Jr. Way South between South Charleston Street and South Andover Street, South Columbian Way and South Alaska Street, South Angeline Street and South Ferdinand Street; at South Alaska Street and 31st Avenue South; and portions of Rainier Vista Subdivision both East and West of Martin Luther King Jr. Way South; placing the real property conveyed by the 16 deeds under the jurisdiction of the Seattle Department of Transportation; and ratifying and confirming certain prior acts.

#### ORDINANCE NO. 123515

AN ORDINANCE authorizing the Seattle Center Director to execute an agreement with The Vera Project for presentation of an all-ages music and art program during 2011 and 2012.

#### ORDINANCE NO. 123516

AN ORDINANCE vacating the following portions of streets, alleys, and blocks: SW Morgan Street between 15th Avenue SW and Burien Way SW; 12th Avenue SW, 13th Avenue SW, and 14th Avenue SW between SW Morgan Street and SW Holly Street; 11th Place SW between SW Morgan Street and SW Warsaw Street; 11th Avenue SW between SW Morgan Street and 10th Avenue SW; 10th Avenue SW between SW Morgan Street and SW Warsaw Street; SW Warsaw Street between 11th Place SW and 10th Avenue SW; SW Holly Street between 12th Avenue SW and W Marginal Way SW; the alley between 12th Avenue SW and Burien Way SW, north of SW Holly Street; Burien Way SW between the projected north margin of SW Morgan Street from the west to the northern margin of SW Holly Street, as vacated by Ordinance 93969, excepting the northern approximately 50' of Burien Way SW east of its centerline; approximately 350 feet of 9th Avenue SW from the north margin of SW Holly Street; approximately 340 feet of 8th Avenue SW from the north margin of SW Holly Street; approximately 350 feet of 7th Avenue SW from the north margin of SW Holly Street; Sound Way SW between SW Holly Street and Highland Park Way SW; all of Blocks 1, 2, and 3 in Ewald's 1st Addition to the City of Seattle; and all of Blocks 6, 7, 8, and 9 and a portion of Block 5 in Melville-Barth Addition to the City of Seattle, together known as the Sound Way properties in the Riverview neighborhood of West Seattle (the "Sound Way Property"), on the petition of the Seattle Department of Parks and Recreation ("Parks"); ratifying and confirming an easement; and approving a memorandum of understanding for utility purposes related herein (Clerk File 309972).

#### ORDINANCE NO. 123517

AN ORDINANCE appropriating money to pay certain audited claims and ordering the payment thereof.

#### ORDINANCE NO. 123518

AN ORDINANCE appropriating money to pay certain audited claims and ordering the payment thereof.

#### ORDINANCE NO. 123519

AN ORDINANCE appropriating money to pay certain audited claims and ordering the payment thereof.

Date of publication in the Seattle Daily Journal of Commerce, January 19, 2011.

1/19(265991)