

AMENDED
IN SECTION 6 BY 8611 437274
ORDINANCE No. 18027

AN ORDINANCE OF THE CITY OF SEATTLE granting to the OREGON AND WASHINGTON RAILROAD COMPANY, a corporation, organized under the laws of the State of Oregon, its successors or assigns, the right, privilege and authority to construct and maintain a tunnel, and to lay down, construct, maintain and operate sundry railway tracks through the same and at and beyond each end thereof, along, across and beneath sundry streets, avenues, alleys and other public places within the City of Seattle, and upon other property within the limits of said city; and granting to said company, its successors and assigns, a right of way for said tunnel and said tracks along, across and beneath all said sundry streets, avenues, alleys and other public places of said City.

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

Section 1. The City of Seattle does hereby grant to the Oregon and Washington Railroad Company, a corporation organized under the laws of the State of Oregon, its successors and assigns, in perpetuity, the right, privilege and authority to construct and maintain two (2) single track tunnels, each designed for the construction, maintenance and operation therein of one (1) main track of standard gauge railway within the limits of said city and along the route hereinbelow specified, and the right to pass beneath all the streets, avenues, alleys, and other public places in said city overlying the same, and also the right, privilege and authority to lay down, construct, maintain and operate such single track of standard gauge railway throughout the length of each of said tunnels, which said track shall connect with such other main tracks of grantee, its successors and assigns, as said grantee shall be authorized by ordinance of the City of Seattle to construct, together with certain other tracks of standard gauge railway at and beyond the north portals

of said tunnels together with all needful crossovers and connections between said tunnels and between any of said tracks or any other tracks adjacent thereto, all as is hereinbelow more particularly specified; and also a right of way fifty (50) feet in width for said tunnels and said tracks therein along, across and beneath all said streets, avenues, alleys and other public places in said city, which right of way for said tunnels shall be uniformly twenty-five (25) feet in width on both sides of the center line for such tunnel right of way as hereinbelow described. All which rights, privileges and authorities are hereby granted subject to all the conditions, restrictions, specifications and requirements in this ordinance expressed.

Section 2. The southerly portals or entrances of said tunnels shall be situated at such points within the limits of block twenty-nine (29) of D. S. Maynard's plat of the town (now city) of Seattle lying between Washington Street and Main Street as said grantee, its successors or assigns, may select therefor; and the center line of said tunnel right of way shall run thence in a northerly direction below and underneath the following described lines: From the southerly portals of said tunnels above mentioned the center line of right of way therefor shall follow a line drawn twenty-five (25) feet westerly from, when measured at right angles to, the westerly line of Fifth Avenue South to a point of curvature, from which a curve with a radius of fourteen hundred thirty-two and sixty-nine one hundredths (1432.69) feet, carried northerly and to the left, would become tangent to the center line of Fifth Avenue; thence northerly along the center line of Fifth Avenue to a point where a curve with a radius of fourteen hundred thirty-two and sixty-nine one hundredths (1432.69) feet, carried northerly and to the left, would become tangent to a line produced southeasterly, drawn through a point thirty-nine and five tenths (39.5) feet southerly, when measured along the center line of Elliott Avenue from

the intersection of Elliott Avenue and Bell Street, and a point twenty-six and five tenths (26.5) feet northerly, when measured along the center line of Western Avenue from the intersection of Western Avenue and Lenora Street; thence northwesterly along above described line to the northerly portals of said tunnels, situated in the westerly half of block thirty-three (33), of A. A. Denny's Sixth Addition to the City of Seattle. Also a right of way for two (2) tracks of standard gauge railway from the northerly portals above described, to a connection with certain rights of way in Railroad Avenue described as follows: Beginning at the northerly terminus of the right of way for tunnel purposes above described, and continuing thence northwesterly to a point in block one hundred seventy-one A (171 A) Seattle Tide Lands, where a curve with a radius of seven hundred sixty-four and forty-nine one hundredths (764.49) feet carried northerly and to the right would intersect the center line of that certain sixty (60) foot right of way granted to the Seattle & Montana Railway Company by Ordinance No. 1305 entitled "An Ordinance granting to the Seattle & Montana Railway Company, its successors and assigns, the right and authority to locate, lay down, construct, maintain and operate a railway consisting of one or more tracks in, along, upon and over certain public streets and alleys of the City of Seattle. Approved March 10, 1890". Said right of way at said portals being fifty (50) feet in width, but in its course decreasing from fifty (50) feet in width at said northerly portals of said tunnels, to thirty (30) feet in width at its intersection with the easterly line of Elliott Avenue, and from this point to the point of curvature in block one hundred seventy-one A (171 A) above mentioned shall be thirty (30) feet in width, and from said point of curvature to its intersection with the center line of said franchise granted by ordinance No. 1305 above mentioned, shall increase in width from thirty (30) feet to sixty (60) feet.

Said tunnels shall be constructed of such dimensions that after they shall have been lined with suitable walls and ceilings of concrete, or other proper material, they will have a clear width of not less than sixteen (16) feet and such height as said grantee, its successors and assigns, shall determine upon as suitable, with reference to the passage of trains through said tunnel. The crown of the lining of the roof of said tunnels shall at no point be higher than fifty (50) feet above the city datum line.

Section 3. Said tracks herein authorized shall begin at an elevation of eleven (11) feet above city datum line at the southerly portal of said tunnel and shall be constructed and maintained to and through said tunnel at such elevation or elevations above the city datum line and on such gradients as said grantee, its successors or assigns, may from time to time determine, to an elevation of eight (8) feet above the city datum line at the northerly portals.

Section 4. The grant in this ordinance contained is made expressly subject to the following conditions and requirements, to-wit:

First. The City of Seattle shall retain the same control of the streets, avenues and alleys in and across which said railway tracks shall be laid down, as over other streets, avenues and alleys, and shall have the right at all times, by general ordinance, to regulate the speed of locomotives and trains within the limits of the right of way herein granted, other than between the portals of said tunnels, and the maximum period or time for which locomotives, cars and trains shall be allowed to blockade travel along or across the streets embraced in this grant, or intersecting streets, where used at grade, and shall have such further control and police powers over said right of way as the City Charter and state laws may permit.

Second. Said grantee, its successors or assigns, by its or their acceptance of this grant, do each of them for themselves, its successors or assigns, agree to protect and save harmless the City of Seattle from all claims, actions or damages of every kind and description which may accrue to, or be suffered by, any person or persons by reason of any defective construction or maintenance or improper occupation of said right of way, or by reason of the negligent operation by said grantee, its successors or assigns, of its railway trains over the rights of way hereinbefore described. And in case suit or action is commenced against the city for damages arising out of, or by reason of, such defective construction or maintenance or improper occupation or negligent operation, said grantee, its successors or assigns, may, and shall upon notice to it or them of the commencement of such action, defend the same at its or their sole cost and expense, and in case judgment shall be rendered against the City of Seattle in such a suit or action, will fully satisfy such judgment within ninety (90) days after such suit or action shall have been finally determined, if determined adversely to said city.

Third. Within six (6) months after the taking effect of this ordinance, said grantee, its successors and assigns, shall convey to the City of Seattle for street purposes such portions of lots one (1), four (4) and five (5) in block thirtythree (33) and of lots two (2), three (3), six (6), seven (7) and ten (10) of block thirtyfour (34), all in A. A. Denny's Sixth Addition to the City of Seattle, as shall lie between lines thirty-three (33) feet distant from, on both sides of and parallel with the center line of said tunnel right of way, as said right of way has hereinabove been described as passing below and underneath said block.

If the surface of the ground shall be disturbed by the construction of said tunnel in passing underneath Bell Street or Elliott Avenue, grantee, its successors and assigns, shall provide

proper supports for the roadway at such point and pay all costs necessarily incurred in the adjustment or readjustment or any public utilities such as sewers, water mains, gas mains, or electrical conduits intercepted at said point, and where said right of way intersects Railroad Avenue at the foot of Battery Street, said grantee, its successors and assigns, shall bear the cost of all necessary grading or regrading, planking, paving or other improving of the surface of such streets, as may not properly be required to be borne by the holder of any other franchise or franchises across said street.

The clearance to be allowed in the construction of all of said bridges from the underside of the girders thereof to the top of the rails of the track of grantee, its successors or assigns, shall be twenty-two (22) feet.

Section 5. The City of Seattle hereby reserves to itself and its grantees the right to carry all water mains, sewer mains, gas pipes, conduits, subways and other public utilities underneath any and all tracks herein authorized, below any and all bridges herein provided for, and underneath all streets which may be vacated concurrently with or after the enactment of this ordinance, and reserves the right of access to any spaces occupied by such tracks within the limits of any such streets or alleys, and the right to open the ground beneath said tracks, for all purposes of construction, maintenance, repair, alteration and inspection of any such public utilities, which rights shall be exercised, however, so as to interfere as little as practicable with the use of said tracks and so as to leave the right of way occupied thereby restored to as good a condition as prior to any exercise of such rights. Subject to said rights herein reserved by the City, the grantee herein, its successors or assigns, may occupy and use any of the spaces within the limits of any such streets for the travel on which it is herein provided that bridges shall be in the first instance or may in future be required to be constructed between the abutments of such bridges (but not in such manner as to hinder access to and

beneath such spaces for the construction, maintenance, repair, alteration or inspection of any of said public utilities, nor to increase the cost thereof to said city or its grantees), for the construction, maintenance and use thereon of buildings, platforms, driveways, tracks, and other railway facilities for terminal purposes.

Section 6. Said grantee, its successors and assigns, shall have begun work upon the construction of one of the tunnels herein authorized within thirty (30) days after the taking effect of this ordinance, and shall have completed the construction of such tunnel and of its track, ready for the operation of trains, within four (4) years after the taking effect of this ordinance. And if said work shall not be begun within the time in this clause prescribed, or if said tunnel and said track shall not be completed and ready for use to the extent aforesaid within the time in this clause prescribed, and if such performance to the extent aforesaid, as the case may be, shall not have been prevented by injunctions, unavoidable delays in condemnation suits, strikes, riots or some occurrence beyond the control of said grantee, its successors or assigns, the City Council of said City shall have the right, after sixty days' notice to said grantee, its successors or assigns, to declare, by ordinance, the forfeiture of all rights, privileges and authorities herein granted.

Section 7. In the operation of the tracks authorized by this ordinance, said grantee, its successors and assigns, shall have the right to use steam power or any other motive power that they or either of them may deem suitable, subject to the reasonable control and regulations of the City of Seattle.

Section 8. The rights of way, and all the rights, privileges and authorities granted by this ordinance, and all the benefit hereof, shall be assignable by said grantee, its successors or assigns, as it or they may at any time elect, either as an entirety or as respects any one or more of the tracks, or parts of the same, embraced within the scope of such grant; provided,

however, that no such assignment, either total or partial, shall be of any force or effect until a copy thereof, certified as such by the secretary of the assignee, or other officer or person having the proper custody of such assignment in its behalf, shall have been filed in the office of the City Comptroller.

Section 9. Nothing in this ordinance contained shall be construed as granting an exclusive franchise or privilege for the use of any street, avenue, alley or highway or other public place, or any part thereof; and the grant herein contained shall be subject to the right of the City Council at any time hereafter to repeal, change or modify said grant, if the franchise granted thereby is not operated in accordance with the provisions of said grant or at all, and the City of Seattle also reserves the right at any time hereafter so to repeal, amend or modify said grant.

Section 10. In order to claim the benefits of this ordinance and to acquire the rights, privileges and authorities hereby granted said grantee, its successors or assigns, must, within sixty (60) days after the taking effect of this ordinance, file in the office of the City Comptroller a copy of a resolution, duly adopted by the board of trustees of said grantee, its successors or assigns, which copy shall be duly certified and attested by its secretary under its corporate seal, accepting the benefits of this ordinance and the rights, privileges and authorities hereby granted, subject to all the conditions, restrictions, specifications and requirements herein expressed.

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

Passed the City Council the 2nd day of MARCH 1908, and signed by me in open session in authentication of its passage this 2nd day of MARCH 1908.

A. H. Burnett Jr.
President of the City Council.

Approved by me this 6th day of MARCH 1908.
W. H. Hickman Moon
Mayor.

Filed by me this 6th day of MARCH 1908.

Attest:

A. M. Carroll
City Comptroller and ex-officio City Clerk.

(SEAL)

By

Deputy Clerk.

Published

MAR - 7 1908

A. M. Carroll
City Comptroller and ex-officio City Clerk.

By

A. H. Harrison
Deputy Clerk.