

08/11/12/29
#12

ORDINANCE

AN ORDINANCE granting Theta Chi Fraternity, Inc. permission to maintain and operate a pedestrian skybridge over the alley between 17th Avenue Northeast and 16th Avenue Northeast, south of Northeast 47th Street, for an eight-year term; specifying the conditions under which this permit is granted; providing for acceptance of the permit and conditions; ratifying and confirming certain prior acts; and repealing Ordinance 123315.

WHEREAS, by Ordinance 105225, the City granted Theta Chi Fraternity, Inc. permission to construct, maintain and operate a pedestrian skybridge over the alley between 17th Avenue Northeast and 16th Avenue Northeast, south of Northeast 47th Street; and

WHEREAS, the conditions of Ordinance 105225 were amended by Ordinances 106385, 105225, 112892, and 121855; and

WHEREAS, the permission authorized by Ordinance 105225 was renewed for two successive 10-year terms by Resolutions 27455 and 29230 and terminated on August 31, 2005; and

WHEREAS, Ordinance 123315 was approved by City Council granting Theta Chi Fraternity, Inc. permission to maintain and operate a pedestrian skybridge as described above; and

WHEREAS, Theta Chi Fraternity, Inc. failed to file with the Director of Transportation their letter of acceptance of the terms of the permit conferred by Ordinance 123315, and the permission must be deemed lapsed and forfeited under the terms of Section 19; and

WHEREAS, Theta Chi Fraternity, Inc. has submitted a new application to the Seattle Department of Transportation (SDOT) Director to continue maintaining and operating the pedestrian skybridge and paid a portion of their annual fees up to August 2011; and

WHEREAS, Theta Chi Fraternity, Inc. has satisfied all terms of the original authorizing ordinance, and as required by Chapter 15.64 Seattle Municipal Code (SMC), has submitted the required information; and

WHEREAS, SDOT is evaluating the City's skybridge term permit policies and granting a term permit for less than ten years is consistent with SDOT's evaluation time frame while allowing the skybridge to come into permit compliance; and

WHEREAS, 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:



1 Section 1. **Permission.** Subject to the term and conditions of this ordinance, permission
2 (also referred to in this ordinance as a permit) is granted to Theta Chi Fraternity, Inc. (Permittee)
3 and its successors and assigns, to maintain and operate a pedestrian skybridge (skybridge) over
4 the alley between 17th Avenue Northeast and 16th Avenue Northeast, between Northeast 47th
5 Street and Northeast 45th Street, in Block 17, University Park Addition, between the properties
6 known as King County parcel numbers 8823902480 and 8823902385, for the purpose of
7 providing pedestrian travel over the alley. This ordinance supersedes Ordinance 123315.
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9 Section 2. **Term.** The permission granted to the Permittee and its successors and
10 assigns, shall be for a term of eight years starting September 1, 2005, and ending at 11:59 p.m. on
11 August 31, 2013. The total term of the permission as originally granted shall not exceed eight
12 years, subject to the right of the City of Seattle (City) to require the removal of the skybridge as
13 provided for in Section 4 or 5, and revise by ordinance any of the conditions of this ordinance.
14 The Permittee shall submit a complete application for a new skybridge ordinance 180 days prior
15 to the ordinance term expiring. Failure to obtain additional permission through a new ordinance,
16 or remove the skybridge prior to expiration of the term, is a violation of Chapter 15.90 of the
17 Seattle Municipal Code (SMC).
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19 Section 3. **Protection of utilities.** The permission granted is subject to the Permittee
20 bearing the expense of any protection, support or relocation of existing utilities deemed necessary
21 by the owners of the utilities; and the Permittee being responsible for any subsequent damage to
22 the utilities due to the construction, repair, reconstruction, maintenance, or operation of the
23 skybridge.
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1 –Section 4. **Removal for public use or for cause.** The permission granted is subject to
2 use of the street right-of-way by the City and the public for travel, utility purposes, and other
3 street uses. The City expressly reserves the right to require the Permittee to remove the
4 skybridge, or any part thereof or installation thereon, at Permittee's sole cost and expense in the
5 event that:

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- 7 (a) the City Council determines by ordinance that the space occupied by the skybridge is
8 necessary for any public use or benefit or that the skybridge interferes with any public use
9 or benefit; or
- 10 (b) the Director determines that any term or condition of this ordinance has been violated and
11 the violation has not been corrected by the Permittee by the compliance date after a
12 written request by the City to correct the violation.

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

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18 Section 5. **Removal requirements.** If the permission granted reaches its termination in
19 eight years and an application for a new permit is not granted, or if acceptance of this ordinance
20 is not timely received as required by this ordinance; or if the City orders removal of the skybridge
21 pursuant to the terms of this ordinance, then within 90 days after the expiration or termination,
22 or prior to the date stated in an Order to Remove; the Permittee shall, at its own expense, remove
23 the skybridge and replace all portions of the street right-of-way that may have been disturbed for
24 any part of the skybridge in as good condition for public use as they were prior to construction of
25 the skybridge and in at least as good condition in all respects as the abutting portions of the right-
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1 of-way as required by the applicable SDOT standards for right-of-way restoration. The Director
2 shall then issue a certificate discharging the Permittee, or its successor or assign, from
3 responsibility under this ordinance.

4 Section 6. **Repair, reconstruction, or relocation.** The Permittee shall not reconstruct,
5 relocate, or repair the skybridge except under the supervision of the Director and in strict
6 accordance with plans and specifications approved by the Director. The Director may, in the
7 Director's judgment, order the skybridge reconstructed, relocated, or repaired at the Permittee's
8 own cost and expense because of: the deterioration or unsafe condition of the skybridge; or the
9 installation, construction, reconstruction, maintenance, operation, or repair of any municipally-
10 owned public utilities; or for any other cause.

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

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

22 (a) the skybridge and all its equipment and property are removed from the street right-of-
23 way;

24 (b) the area is cleared and restored in a manner and to a condition satisfactory to the Director;
25 and
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1 (c) the Director certifies that the Permittee has discharged its obligations under this
2 ordinance.

3 Upon prior notice to the Permittee and entry of written findings that it is in the public interest, the
4 Director may, in the Director's sole discretion, conditionally or absolutely excuse the Permittee
5 from compliance with all or any of the Permittee's obligations to remove the skybridge and its
6 property and to restore any disturbed areas.
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8 Section 9. **Release, hold harmless, indemnification, and duty to defend.** The
9 skybridge shall remain the exclusive responsibility of the Permittee and the Permittee agrees to
10 maintain the skybridge in good and safe condition for use by the public. The Permittee, by
11 accepting the terms of this ordinance, releases the City from any and all claims resulting from
12 damage or loss to the Permittee's property; and agrees for itself, its successors and assigns; to at
13 all times protect and save harmless the City from all claims, actions, suits, liability, loss, costs,
14 expense, or damages of every kind and description, excepting only damages that may result from
15 the sole negligence of the City; that may accrue to or be suffered by any person or property
16 including without limitation, damage or injury to the Permittee, its officers, agents, employees,
17 contractors, invitees, tenants and tenants' invitees, licensees or its successors and assigns; by
18 reason of the construction, maintenance, operation or use of the skybridge, or any portion thereof;
19 or by reason of anything that has been done or may at any time be done by the Permittee, its
20 successors or assigns by reason of this ordinance; or by reason of the Permittee, its successors or
21 assigns failing or refusing to strictly comply with every provision of this ordinance.
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25 If any suit, action, or claim of the nature described above is filed, instituted, or begun
26 against the City; the Permittee, its successors or assigns, shall upon notice from the City; defend
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1 the City at its or their sole cost and expense; and if a judgment is rendered against the City in any
2 suit or action, the Permittee, its successors or assigns, shall fully satisfy the judgment within 90
3 days after the action or suit has been finally determined, if determined adversely to the City. If it
4 is determined by a court of competent jurisdiction that Revised Code of Washington (RCW)
5 4.24.115 applies to this ordinance, then in the event claims or damages are caused by or result
6 from the concurrent negligence of:
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8 (a) the City, its agents, contractors or employees; and

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

10 this indemnity provision shall be valid and enforceable only to the extent of the negligence of the
11 Permittee or the Permittee's agents, contractors, employees, or successors or assigns.
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13 Section 10. **Insurance.** For as long as the Permittee, its successors or assigns, shall
14 exercise any permission granted by this ordinance and until the skybridge is entirely removed
15 from its location as described in Section 1 or until discharged by order of the Director as
16 provided in Section 5, the Permittee shall obtain and maintain in full force and effect, at its own
17 expense, insurance that protects the City from claims and risks of loss from perils that can be
18 insured against under commercial general liability (CGL) insurance policies in conjunction with:
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20 (a) construction, reconstruction, operation, maintenance, use, or existence of the skybridge
21 and any portions of the skybridge permitted by this ordinance;

22 (b) the Permittee's activity upon or the use or occupation of the area described in Section 1 of
23 this ordinance; and
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25 (c) claims and risks in connection with any activity performed by the Permittee by virtue of
26 the permission granted by this ordinance.
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1 Minimum insurance requirements are CGL insurance based on the Insurance Services Office
2 (ISO) form CG 00 01 or equivalent. The City requires insurance coverage to be placed with an
3 insurer admitted and licensed to conduct business in Washington State or with a surplus lines
4 carrier pursuant to Chapter 48.15 RCW, except that if it is infeasible to obtain coverage with a
5 required insurer, the City may approve an alternative insurer.
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7 Minimum limits of liability shall be \$2,000,000 each occurrence combined single limit
8 bodily injury and property damage, with \$4,000,000 annual aggregate. Coverage shall name the
9 "City of Seattle, its elected and appointed officers, officials, employees and agents" as additional
10 insureds for primary and non-contributory limits of liability subject to a Separation of Insureds
11 clause.
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13 Permittee shall provide to the City, or cause to be provided, certification of insurance
14 coverage consisting of the CGL declarations page, schedule of forms and endorsements, and
15 blanket or additional insured policy provision per the ISO CG 20 12 or equivalent. The
16 insurance coverage certification shall be delivered or sent to the Director or to the Department of
17 Transportation at an address as the Director may specify in writing from time to time.
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19 Should the Permittee be self-insured, a letter of certification from the Corporate Risk
20 Manager or appropriate Finance Officer may be submitted in lieu of the insurance coverage
21 certification required by this ordinance, if approved in writing by the City Risk Manager. The
22 letter must provide all information required by the City Risk Manager and document, to the
23 satisfaction of the City Risk Manager, that self-insurance equivalent to the insurance
24 requirements of this ordinance is in force. After a self-insurance certification is approved, the
25 City may from time to time subsequently require updated or additional information. The
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1 approved self-insured Permittee must provide 30-days notice of any cancellation or material
2 adverse financial condition of its self-insurance program. The City may at any time revoke
3 approval of self-insurance and require the Permittee to obtain and maintain insurance as specified
4 in this ordinance.

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

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

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25 **Section 13. Adjustment of insurance and bond requirements.** The Director, in
26 consultation with the City Risk Manager, may adjust minimum liability insurance levels and
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1 surety bond requirements during the term of this permission. If the Director and Risk Manager
2 determine that an adjustment is necessary to fully protect the interests of the City, the Director
3 shall notify the Permittee of the new requirements in writing. Upon receipt, the Permittee shall
4 within 60 days, provide proof of the adjusted insurance and surety bond levels to the Director.

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

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

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

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- 19 (a) describes the physical dimensions and condition of all load-bearing elements,
 - 20 (b) describes any damage or possible repairs to any element of the skybridge,
 - 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 Washington.
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1 The report shall be submitted within 60 days after the effective date of this ordinance. In
2 the event of a natural disaster or other event that may have damaged the skybridge, the report
3 shall be submitted by the date established by the Director.

4 Section 17. **Annual fee.** Beginning on September 1, 2009, the Permittee shall promptly
5 pay to the City upon statements or invoices issued by the Director, an annual fee of \$1,232 or as
6 adjusted annually thereafter, for the privileges granted by this ordinance.

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8 Adjustments to the annual fee shall be made in accordance with a term permit fee
9 schedule ordinance adopted by the City Council and may be made every year. In the absence of a
10 schedule, the Director may only increase or decrease the previous year's fee to reflect any
11 inflationary changes so as to charge the fee in constant dollar terms. This adjustment will be
12 calculated by adjusting the previous year's fee by the percentage change between the two most
13 recent year-end values available from the Consumer Price Index for the Seattle-Tacoma-
14 Bremerton Area, All Urban Consumers, All Products, Not Seasonally Adjusted. All payments
15 shall be made to the City Finance Director for credit to the Transportation Operating Fund.
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18 Section 18. **Non-discrimination.** The Permittee shall comply with the City's laws
19 prohibiting discrimination in employment and contracting including the Seattle Fair Employment
20 Practices Ordinance, Chapter 14.04 SMC, and the Fair Contracting Practices code, Chapter 14.10
21 SMC.

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23 Section 19. **Acceptance of terms.** The Permittee shall deliver to the Director its written
24 signed acceptance of the terms of this ordinance within 60 days after the effective date of this
25 ordinance. The Director shall file the written acceptance with the City Clerk. If acceptance is
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1 not received within that 60-day period, the privileges conferred by this ordinance shall be deemed
2 declined or abandoned and the permission granted deemed lapsed and forfeited.

3 Section 20. **Successors and assigns.** The rights conferred to the Permittee and the
4 obligations and conditions imposed on the Permittee through this ordinance are also conferred
5 and imposed on the Permittee's successors and assigns. All references in this ordinance to the
6 "Permittee" shall also be deemed to refer to the successors and assigns of the Permittee.
7 References in this ordinance to "Permittee and its successors and assigns" or "Permittee or its
8 successors and assigns" are included as reminders and do not limit the scope of "Permittee" used
9 alone.
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11 Section 21. **Permittee failure to accept terms.** Ordinance 123315 is repealed.

12 Section 22. **Ratify and confirm.** Any act taken by the City or the Permittee pursuant to
13 the authority and in compliance with the conditions of this ordinance but prior to the effective
14 date of the ordinance is ratified and confirmed.
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16 Section 23. This ordinance shall take effect and be in force 30 days from and after its
17 approval by the Mayor, but if not approved and returned by the Mayor within ten days after
18 presentation, it shall take effect as provided by Municipal Code Section 1.04.020.
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Passed by the City Council the ____ day of _____, 2011, and signed by
me in open session in authentication of its passage this
____ day of _____, 2011.

President _____ of the City Council

Approved by me this ____ day of _____, 2011.

Michael McGinn, Mayor

Filed by me this ____ day of _____, 2011.

City Clerk

(Seal)



FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	CBO Analyst/Phone:
Seattle Department of Transportation	Angela Steel/684-5967	Becky Guerra/684-5339

Legislation Title:

AN ORDINANCE granting Theta Chi Fraternity, Inc. permission to maintain and operate a pedestrian skybridge over the alley between 17th Avenue Northeast and 16th Avenue Northeast, south of Northeast 47th Street, for an eight-year term; specifying the conditions under which this permit is granted; providing for acceptance of the permit and conditions; ratifying and confirming certain prior acts; and repealing Ordinance 123315.

Summary of the Legislation:

This legislation will allow Theta Chi Fraternity, Inc. to continue maintaining and operating the existing skybridge located across the alley between 17th Avenue Northeast and 16th Avenue Northeast, south of Northeast 47th Street. An area map is attached for reference.

This skybridge permit is for a term of eight years commencing from the expiration of the last term permit on September 1, 2005. The legislation specifies the conditions under which authorization is granted and provides for acceptance of the permit and conditions.

The Theta Chi Fraternity, Inc. is to pay the City of Seattle an annual fee of \$1,232 commencing from the last paid annual fee invoice, September 1, 2009, 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 123485. An Annual Fee Assessment Summary is attached.

Background:

By Ordinance 105225, the City granted permission to the Theta Chi Fraternity, Inc. to construct, maintain, and operate a skybridge across the alley between 16th Avenue Northeast and 17th Avenue Northeast, south of Northeast 47th Street. Ordinance 105225 was renewed by Resolutions 27455 and 29230 and the permission authorized by Ordinance 105225 expired on August 31, 2005.

Ordinance 123315 was approved by City Council, but was not accepted by Theta Chi Fraternity, Inc. within 60 days after the effective date of the ordinance, making the privileges conferred by Ordinance 123315 deemed abandoned and the permission granted lapsed and forfeited. Theta Chi Fraternity, Inc. have paid partial annual fees for use from 2009-2011 based on the fee assessment from Ordinance 123315 which will be credited to their new fee assessments for this new ordinance.



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: 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	2011 Revenue	2012 Revenue
Transportation Operating Fund 10310	Seattle Department of Transportation	Annual Fee –	2009 Fee = \$1,232 2010 Fee = \$1,232 2011 Fee = \$1,232 Subtotal: \$3,696 (Less fees paid: \$378.00 (2009 fee) + \$380.20 (2010 fee)= \$758.20) Total: \$2,937.80	TBD
TOTAL			\$2,937.80	TBD

Revenue/Reimbursement Notes: N/A

Total Regular Positions Created, Modified, or Abrogated through this Legislation, Including FTE Impact: N/A

Do positions sunset in the future? No.
 (If yes, identify sunset date)

Spending/Cash Flow: N/A

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 \$1,232 for at least four years. As previously stated, the City of Seattle has the option to adjust the fee amount on an annual basis. The skybridge, as originally permitted under Ordinance 105225, will no longer be permitted.

Does this legislation affect any departments besides the originating department?

No.

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: (Include long-term implications of the legislation.)

N/A

List attachments to the fiscal note below:

- Attachment A - Theta Chi Skybridge Area Map
- Attachment B - Annual Fee Assessment Summary



Attachment A – Theta Chi Skybridge 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 Assessment Summary

STREET USE ANNUAL FEE ASSESSMENT

Date: 1/14/11

<p><u>Summary:</u> Land Value: \$110/SF First Year Permit Fee: \$1,232</p>
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I. Property Description:

Existing pedestrian skybridge between the Theta Chi Fraternity and Annex. Located across the alley between 17th Avenue NE and 16th Avenue NE, north of NE 45th Street. Connecting Tax parcels are 8823902480 and 8823902385. Permit is for a 70 square foot area.

Applicant:

Theta Chi Fraternity, Inc.

Abutting Parcels, Property Size, Assessed Value:

1. Parcel 8823902480; 6,480 square feet

Tax year 2009 Appraised Land Value \$712,800
Assessed at \$110/SF

2. Parcel 882390385; 8,100 square feet

Tax year 2009 Appraised Land Value \$891,000
Assessed at \$110/SF

Average 2009 tax assessed land value: \$110/SF

II. Conclusion:

The value of the pedestrian skybridge is estimated at \$110 per square foot. The first year permit fee should be calculated as follows: $(\$110/\text{SF}) \times (70 \text{ SF}) \times (200\%) \times (8\%) = \$1,232$, where 200% is the degree of alienation multiplier and 8% is the rate of return.

Fee methodology authorized under Ordinance 123485.





City of Seattle
Office of the Mayor

March 8, 2011

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 Theta Chi Fraternity, Inc. a new eight-year permit to maintain and operate an existing pedestrian skybridge over and across the alley between 16th Avenue Northeast and 17th Avenue Northeast, south of Northeast 47th Street, linking the fraternity house and annex.

The term for this existing skybridge will commence from the expiration of the last term permit, September 1, 2005. The Seattle Department of Transportation (SDOT) is currently evaluating the City's skybridge term permit policies and granting a term permit for less than ten years is consistent with SDOT's policy evaluation time. This term permit will supersede Ordinance 123315.

In addition to authorizing a new term, the proposed Bill updates the insurance and bond requirements, amends the annual fee, and specifies the conditions under which authorization is granted.

Thank you for considering 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
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