

1 and conditions set forth in Ordinance 115776, as amended by Ordinances 120814 and 121855,
2 and as further amended by this ordinance.

3 Section 2. Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, and 14 of Ordinance 115776, as
4 amended by Ordinances 120814 and 121855, are amended as follows:

5 1. **Permission.** Subject to the terms and conditions of this ordinance, the City of Seattle
6 (City) grants permission ((is hereby granted)) (also referred to in this ordinance as a permit) to
7 ((Red Hook Ale Brewery, Inc.)) Fremont Dock Co., and its successors and assigns
8 ((("Permittee"))) as approved by the Director of the Seattle Department of Transportation
9 (Director) according to Section 12A of this ordinance (the party named above and each approved
10 successor and assign is referred to as Permittee), to ((construct,)) maintain and operate a utility
11 tunnel (tunnel) under and across Phinney Avenue North, north of North 34th Street, ((connecting
12 Red Hook Ale Brewery, Inc. buildings, said utility)) said tunnel ((will be)) being approximately
13 8 feet wide and approximately 7 feet high and situated approximately 75 feet north of the
14 centerline of North 34th Street((-)), adjacent in whole or in part to the property legally described
15 as:

16 Lots 22 through 25, inclusive, Block 48, Denny & Hoyt's Addition to the City of Seattle,
17 according to the plat thereof recorded in Volume 2 of Plats, page 136, in King County,
18 Washington,

19 EXCEPT the portions thereof condemned by the City of Seattle for street purposes in
20 King County Superior Court Cause Number 54569, AND EXCEPT that portion of said Lot 25
21 conveyed to the City of Seattle for street purposes under Recording Number 907225.



1 2. **Term.** The permission (~~(herein)~~) granted to the Permittee (~~(, its successors and assigns~~
2 ~~shall be)~~ is for a term of ten (~~((10))~~) years, (~~((commencing))~~) starting on the effective date of this
3 ordinance and (~~((terminating))~~) ending at 11:59 p.m. on the last day of the tenth year (~~((; provided,~~
4 ~~however, that upon))~~). Upon written application of the Permittee at least (~~((30))~~) 180 days before
5 expiration of the term, the Director (~~((of Transportation ("Director")))~~) or the City Council may
6 renew the permit (~~((for two))~~) twice, each time for a successive ten-year (~~((terms, provided further~~
7 ~~that the total term of the permission as originally granted and thus extended shall not exceed 30~~
8 ~~years))~~ term, subject to the right of the City to (~~((revise the fee provided for in Section 13 hereof,~~
9 ~~and))~~) require the removal of the tunnel or to revise by ordinance (~~((to then revise))~~) any of the
10 terms and conditions (~~((contained herein))~~) of the permission granted by this ordinance. The total
11 term of the permission, including renewals, shall not exceed 30 years. The Permittee shall
12 submit any application for a new permission no later than 180 days prior to the expiration of the
13 then-existing term.

14 3A. **Removal for public use or for cause.** The (~~((permit))~~) permission granted (~~((hereby))~~)
15 is subject to (~~((the primary and secondary))~~) use of the street right-of-way or other public place
16 (collectively public place) by the City and the public for travel (~~((and utilities))~~), utility purposes,
17 (~~((and))~~) and other public uses or benefits. The City (~~((of Seattle ("City")))~~) expressly reserves the
18 right to deny renewal, or terminate the permission at any time prior to expiration of the initial
19 term or any renewal term, and require the Permittee to remove the ((utility)) tunnel, or any part
20 thereof or installation on the public place at the Permittee's sole cost and expense in the event
21 that:



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

4 (b) the ((Board of Public Works or successor board or official of the City ("Board")))
5 Director determines that use of the tunnel has been abandoned; or

6 (c) the Director determines that any term or condition of this ordinance has been
7 violated, and the violation has not been corrected by the Permittee by the compliance date after a
8 written request by the City to correct the violation (unless a notice to correct is not required due
9 to an immediate threat to the health or safety of the public).

11 A City Council determination that the space is ((necessary)) needed for, or the tunnel
12 interferes with, a ((primary and secondary)) public use or benefit ((shall be)) is conclusive and
13 final without any right of the Permittee to resort to the courts to adjudicate the matter.

14 **3B. Protection of utilities.** The permission granted is subject to the Permittee bearing the
15 expense of any protection, support, or relocation of existing utilities deemed necessary by the
16 owners of the utilities, and the Permittee being responsible for any damage to the utilities due to
17 the construction, repair, reconstruction, maintenance, operation, or removal of the tunnel and for
18 any consequential damages that may result from any damage to utilities or interruption in service
19 caused by any of the foregoing.

20 **4. Permittee's obligation to remove and restore.** ((In the event that the permit is not
21 renewed, or)) If the permission ((hereby)) granted ((extends to its termination in 30 years)) is not
22 renewed at the expiration of a term, or if the permission expires without an application for a new
23 permission being granted, or if the City ((orders)) terminates the permission, then within 90 days
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1 after the expiration or termination of the permission, or prior to any earlier date stated in an
2 ordinance or order requiring removal of the ((utility)) tunnel ((pursuant to the terms of this
3 ordinance, then within 90 days after such expiration, termination or order of removal, or prior to
4 the date stated in an Order to Remove, as the case may be)), the Permittee shall, at its own
5 expense, remove the ((utility)) tunnel and all of the Permittee's equipment and property from the
6 public place. Following removal of the tunnel, the Permittee shall ((plae)) replace and restore all
7 portions of the ((street)) public place that may have been disturbed for any part of the
8 ((structure,)) tunnel. The public place shall be replaced and restored in as good condition for
9 public use as ((they were)) it was prior to construction((, and,)) of the tunnel and in at least as
10 good condition in all respects as the abutting portions ((thereof)) of the public place as required
11 by SDOT right-of-way restoration standards. ((Whereupon, the Board shall issue a certificate
12 discharging Permittee from responsibilities under this ordinance for occurrences after the date of
13 such discharge.))

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16 Failure to remove the tunnel as required by this section is a violation of Chapter 15.90 of
17 the Seattle Municipal Code (SMC) or successor provision; however, applicability of Chapter
18 15.90 does not eliminate any remedies available to the City under this ordinance or any other
19 authority. If the Permittee does not timely fulfill its obligations under this section, the City may
20 in its sole discretion remove the tunnel and restore the public place at the Permittee's expense,
21 and collect the expenses in any manner provided by law.

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23 Upon the Permittee's completion of removal and restoration in accordance with this
24 section, or upon the City's completion of the removal and restoration and the Permittee's
25 payment to the City for the City's removal and restoration costs, the Director shall then issue a
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1 certification that the Permittee has fulfilled its removal and restoration obligations under this
2 ordinance. Upon prior notice to the Permittee and entry of written findings that it is in the public
3 interest, the Director may, in the Director's sole discretion, conditionally or absolutely excuse the
4 Permittee from compliance with all or any of the Permittee's obligations under this section.

5 **5. Repair or reconstruction.** The tunnel shall remain the exclusive responsibility of the
6 Permittee and the Permittee shall maintain the tunnel in good and safe condition for the
7 protection of the public. The Permittee shall not reconstruct(~~(, relocate, readjust)~~) or repair the
8 ((utility)) tunnel except (~~(under the supervision, and)~~) in strict accordance with plans and
9 specifications approved by the ((Board)) Director. The ((Board)) Director may, in ((its)) the
10 Director's judgment ((may)), order ((such reconstruction, relocation, readjustment or repair of))
11 the ((utility)) tunnel reconstructed or repaired at the Permittee's ((own)) cost and expense
12 because of: the deterioration or unsafe condition of the ((utility)) tunnel (~~(, grade separations,~~
13 ~~or~~); the installation, construction, reconstruction, maintenance, operation, or repair of any ((and
14 all)) municipally-owned public utilities(~~(s)~~); or for any other cause.

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17 **6. Failure to correct unsafe condition.** After written notice to the Permittee(~~(, the~~
18 Board)) and failure of the Permittee to correct an unsafe condition within the time stated in the
19 notice, the Director may order the ((utility)) tunnel be closed or removed at the Permittee's
20 expense if the ((Board)) Director deems that ((it)) the tunnel has become unsafe or creates a risk
21 of injury to the public. If there is an immediate threat to the health or safety of the public, a
22 notice to correct is not required.



1 7. **Continuing obligations.** Notwithstanding termination or expiration of the permission
2 granted, or closure or removal of the ((utility)) tunnel, the Permittee shall remain bound by all of
3 its obligations under this ordinance until((:

- 4 (a) ~~the utility tunnel and all its equipment and property are removed for the street,~~
5 (b) ~~the area is cleared and restored in a manner and to a condition satisfactory to the~~

6 Board, and

7 (c) ~~the Board certifies that the Permittee has discharged its obligation herein; Provided,~~
8 ~~that upon written notice to the Permittee and entry of written findings that such is in the public~~
9 ~~interest, the Board may, in its sole discretion, excuse Permittee, conditionally or absolutely, from~~
10 ~~compliance with all or any of the Permittee's obligations to remove the utility tunnel and its~~
11 ~~property and restore areas disturbed.)) the Director has issued a certification that the Permittee
12 has fulfilled its removal and restoration obligations under Section 4 of this ordinance.~~

13 Notwithstanding the issuance of that certification, the Permittee shall continue to be bound by
14 the obligations in Section 8 of this ordinance and shall remain liable for any unpaid fees assessed
15 under Section 13 of this ordinance.

16 8. **Release, hold harmless, indemnification, and duty to defend.** ((The utility tunnel
17 shall remain the exclusive responsibility of the Permittee.)) The Permittee, by ((its acceptance))
18 accepting the terms of this ordinance ((and the permission hereby granted, does release)),
19 releases the City, its officials, officers, employees, and agents from any and all claims, actions,
20 suits, liability, loss, costs, expense, attorneys' fees, or damages of every kind and description
21 arising out of or by reason of the tunnel or this ordinance, including but not limited to claims
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1 resulting from injury, damage, or loss to ((its own)) the Permittee or the Permittee's property
2 ((and does covenant and agree for itself, its successors and assigns, with The City of Seattle)).

3 The Permittee agrees to at all times ((protect and save)) defend, indemnify, and hold
4 harmless ((The)) the City ((of Seattle)), its officials, officers, employees, and agents, from and
5 against all claims, actions, suits, liability, loss, costs, expense, attorneys' fees, or damages of
6 every kind and description, ((f))excepting only ((such)) damages that may result from the sole
7 negligence of the City((, which)), that may accrue to, be asserted by, or be suffered by((;)) any
8 person or ((persons;)) property including, without limitation, damage, death, or injury to ((the
9 Permittee, its)) members of the public or to the Permittee's officers, agents, employees,
10 contractors, invitees, tenants ((and)), tenants' invitees, licensees, or ((their)) successors and
11 assigns, arising out of or by reason of:

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13 (a) the existence, condition, construction, reconstruction, modification, maintenance,
14 operation ((or)), use, or removal of ((said utility)) the tunnel or any portion thereof, or the
15 occupation ((or)), use, or restoration of ((a City street, alley;)) the public place or any portion
16 thereof((, or by reason of)) by the Permittee or any other person or entity;

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18 (b) anything that has been done((;)) or may at any time be done((;)) by the Permittee((, its
19 successors or assigns;)) by reason of this ordinance((, or by reason of)); or

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21 (c) the Permittee((, its successors or assigns;)) failing or refusing to strictly comply with
22 ((each and)) every provision of this ordinance; ((and if)) or

23 (d) this ordinance in any other way.

24 If any ((such)) suit, action, or claim ((shall be)) of the nature described above is filed,
25 instituted, or begun against the City((;)); the Permittee((, its successors or assigns;)) shall((;))



1 upon notice ~~((thereof))~~ from the City~~((;))~~ defend the ~~((same))~~ City, with counsel acceptable to the
2 City, at ~~((its or their))~~ the sole cost and expense of the Permittee, and ~~((in case))~~ if a judgment
3 ~~((shall be))~~ is rendered against the City in any suit or action, the Permittee~~((; its successors or~~
4 assigns,)) shall fully satisfy ~~((said))~~ the judgment within 90 days after ~~((such))~~ the action or suit
5 ~~((shall have))~~ has been finally determined, if determined adversely to the City. If it is determined
6 by a court of competent jurisdiction that Revised Code of Washington (RCW) 4.24.115 applies
7 to this ordinance, then in the event claims or damages are caused by or result from the concurrent
8 negligence of the City, its agents, contractors, or employees, and the Permittee, its agents,
9 contractors, or employees, this indemnity provision shall be valid and enforceable only to the
10 extent of the negligence of the Permittee or the Permittee's agents, contractors, or employees.

11 **9A. Insurance.** For as long as the Permittee~~((; its successors or assigns, shall exercise))~~
12 exercises any permission granted by this ordinance and until the ~~((utility tunnel is entirely~~
13 removed from its location as described in Section 1 or until discharged by order of the)) Director
14 ~~((as provided by))~~ has issued a certification that the Permittee has fulfilled its removal and
15 restoration obligations under Section 4 ~~((of this ordinance, it)),~~ the Permittee shall obtain and
16 maintain in full force and effect, at its own expense ~~((deliver to the Director for filing with the~~
17 City Clerk, general comprehensive policies of public liability)), insurance ~~((which policies must~~
18 be approved by the City Attorney as to form and coverage and which policies must fully
19 protect)) that protects the City from ~~((any and all))~~ claims and risks of loss from perils that can
20 be insured against under commercial general liability (CGL) insurance policies in ~~((connection))~~
21 conjunction with:



1 (a) construction, reconstruction, modification, operation, maintenance, use, ~~((or))~~
2 existence, or removal of the ~~((utility))~~ tunnel ~~((permitted by this ordinance,))~~ or any
3 portion thereof, as well as restoration of any disturbed areas of the public place in
4 connection with removal of the tunnel;

5 (b) the Permittee's activity upon or the use or occupation of the ~~((areas))~~ public place
6 described in Section 1 of this ordinance~~((s));~~ and

7 (c) ~~((any and all))~~ claims and risks in connection with ~~((any activity))~~ activities
8 performed by the Permittee by virtue of the permission granted by this ordinance.
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10 ~~((Each such policy or policies must specifically name the City of Seattle as an additional insured~~
11 ~~party thereunder and provide the following minimum coverages and minimum limits:~~

12 ~~Minimum Coverage: General, comprehensive liability for any injury, death, damage, and/or loss~~
13 ~~of any sort sustained by any person, organization, or corporation (including any liability of the~~
14 ~~City for such to Permittee, its officers, agents and/or employees and any liability of Permittee for~~
15 ~~such to the City of Seattle, its officers, agents and/or employees) in connection with (a)~~
16 ~~operation, maintenance, use or existence of the utility tunnel and any and all portions of the~~
17 ~~utility tunnel permitted by this ordinance, (b) any activity upon or use or occupancy of the area~~
18 ~~described in Section 1 of this ordinance, and (c) for any activity performed by Permittee by~~
19 ~~virtue of the permission granted pursuant to this ordinance:~~

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22 ~~Minimum Limits: (Primary and excess) not less than those otherwise carried by the Permittee~~
23 ~~and in any event not less than One Million Dollars (\$1,000,000.00) per occurrence and annual~~
24 ~~aggregate.~~

25 ~~Each such policy or endorsement thereto must contain the following provisions:))~~
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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 according to RCW Chapter 48.15, except that if it is infeasible to obtain coverage with the
5 required insurer, the City may approve an alternative insurer.

6 Minimum limits of liability shall be \$2,000,000 each occurrence combined single limit
7 bodily injury and property damage, with \$4,000,000 annual aggregate; such minimum limits may
8 be evidenced by primary limits or any combination of primary and excess/umbrella liability
9 limits. Coverage shall include the “((the)) City of Seattle ((is named)), its elected and appointed
10 officers, officials, employees and agents” as ((an)) additional ((insured for all coverage provided
11 by this policy of insurance and shall be fully and completely protected by this policy for all risks
12 and for any and every injury, death, damage and loss of any sort sustained by any person,
13 organization or corporation (including any liability of the City for such to Permitte Fremont
14 Dock Company, its successors and assigns, any of its employees and/or agents and liability of
15 Permittee to the City of Seattle, its officers, agents and employees) in connection with (a)
16 operation, maintenance, use or existence of the utility tunnel and any appurtenances thereto,
17 permitted by the City of Seattle ordinance granting Fremont Dock Company permission to
18 operate and maintain a utility tunnel (b) activities of Fremont Dock Company its successors and
19 assigns, upon use or occupation of the areas described in Section 1 of the authorizing ordinance,
20 as well as (c) any activity performed by Fremont Dock Company, its successors and assigns by
21 virtue of the permission granted by the aforesaid ordinance.”
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1 ~~“The coverage provided by this policy to the City of Seattle or any other named insured~~
2 ~~shall not be terminated, reduced or otherwise changed in any respect without providing at least~~
3 ~~thirty (30) days prior written notice to the City of Seattle, Attention: Director of~~
4 ~~Transportation.)~~ insureds for primary and non-contributory limits of liability subject to a
5 Separation of Insureds clause.

6 The Permittee shall provide to the City, or cause to be provided, certification of insurance
7 coverage consisting of the CGL declarations page, schedule of forms and endorsements, and
8 blanket or additional insured policy provision per the ISO CG 20 12 or equivalent, modified as
9 necessary to conform to the requirements of this ordinance. The insurance coverage certification
10 shall be delivered or sent to the Director or to the Department of Transportation at an address as
11 the Director may specify in writing from time to time. The Permittee shall provide a complete
12 copy of the insurance policy to the City promptly upon request.

13 If the Permittee is self-insured, a letter of certification from the Corporate Risk Manager
14 or appropriate Finance Officer may be submitted in lieu of the insurance coverage certification
15 required by this ordinance, if approved in writing by the City Risk Manager. The letter of
16 certification must provide all information required by the City Risk Manager and document, to
17 the satisfaction of the City Risk Manager, that self-insurance equivalent to the insurance
18 requirements of this ordinance is in force. After a self-insurance certification is approved, the
19 City may from time to time subsequently require updated or additional information. The
20 approved self-insured Permittee must provide 30 days’ prior notice of any cancellation or
21 material adverse financial condition of its self-insurance program. The City may at any time
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1 revoke approval of self-insurance and require the Permittee to obtain and maintain insurance as
2 specified in this ordinance.

3 In the event that the Permittee assigns or transfers the permission granted by this
4 ordinance, the Permittee shall maintain in effect the insurance required under this section until
5 the Director has approved the assignment or transfer pursuant to Section 12A.

6 **9B. Adjustment of insurance and bond requirements.** The Director, in consultation
7 with the City Risk Manager, may adjust minimum liability insurance levels ~~((of liability~~
8 ~~insurance))~~ and surety bond requirements during the term of this permission. ~~((The))~~ If the
9 Director and City Risk Manager determine that an adjustment is necessary to fully protect the
10 interests of the City, the Director shall notify the Permittee of the new requirements in writing.
11 ~~((Upon receipt, the))~~ The Permittee shall, within 60 days of the date of the notice of adjustment,
12 provide proof of the ~~((required levels of))~~ adjusted insurance and surety bond levels to the
13 Director ~~((within 60 days)).~~

14 **10. Contractor insurance.** ~~((Red Hook Ale Brewery, Inc.,))~~ The Permittee shall
15 contractually require that any and all of its contractors performing ~~((construction))~~ work on
16 ~~((the))~~ any premises ~~((as))~~ contemplated by this permit ~~((;))~~ name the “City of Seattle, its elected
17 and appointed officers, officials, employees and agents” as ~~((an))~~ additional ~~((insured on all~~
18 ~~policies of public liability insurance, and))~~ insureds for primary and non-contributory limits of
19 liability on all CGL, Automobile and Pollution liability insurance and/or self-insurance. The
20 Permittee shall also include in all ~~((pertinent))~~ contract documents with its contractors a third-
21 party beneficiary provision extending to the City construction indemnities and warranties granted
22 to ~~((Red Hook Ale Brewery, Inc., to the City as well))~~ the Permittee.



1 11. ~~((Bond:))~~ **Performance bond.** Within 60 days after the effective date of this
2 ordinance, the Permittee shall deliver to the Director ~~((of Engineering))~~ for filing with the City
3 Clerk a ~~((good and))~~ sufficient bond executed by a surety company authorized and qualified to
4 do business in the State of Washington that is: in the ~~((sum))~~ amount of ~~((Twenty-Five~~
5 ~~Thousand Dollars (\$25,000.00), executed by a surety company authorized and qualified to do~~
6 ~~business in the State of Washington,))~~ \$35,000, and conditioned with a requirement that the
7 Permittee ~~((will))~~ shall comply with ~~((each and))~~ every provision of this ordinance and with
8 ~~((each and))~~ every order the ~~((Board pursuant thereto; provided, that if the Mayor of the City in~~
9 ~~his judgment shall deem any bond or bonds filed to be insufficient and demand a new or~~
10 ~~additional bond, the Permittee shall furnish a new or additional bond in such amount as the~~
11 ~~Mayor may specify to be necessary to fully protect the City. Said bond shall remain))~~ Director
12 issues under this ordinance. The Permittee shall ensure that the bond remains in effect until
13 ~~((such time as the utility tunnel is entirely removed from its location as described in Section 1, or~~
14 ~~until discharged by order of the Board of Public Works as provided in))~~ the Director has issued a
15 certification that the Permittee has fulfilled its removal and restoration obligations under Section
16 4 ((of this ordinance)). An irrevocable letter of credit approved by the City Risk Manager may be
17 substituted for the bond upon approval of the Director. In the event that the Permittee assigns or
18 transfers the permission granted by this ordinance, the Permittee shall maintain in effect the bond
19 or letter of credit required under this section until the Director has approved the assignment or
20 transfer pursuant to Section 12A.

21 12A. **Consent for and conditions of assignment or transfer.** The ~~((Permittee shall not))~~
22 permission granted by this ordinance shall not be assignable or transferable by operation of law;
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1 nor shall the Permittee assign, transfer, mortgage, pledge, or encumber ((any privileges conferred
2 by this ordinance)) the same without the Director's consent ((of the Director.)), which the
3 Director shall not unreasonably refuse. The Director may approve assignment ((and/or
4 transferal)) or transfer of the ((permit)) permission granted by this ordinance to a successor entity
5 ((in the case of a change of name and/or ownership provided that)) only if the successor or
6 assignee has ((demonstrated its acceptance of)) accepted in writing all of the terms and
7 conditions of the permission granted ((to the initial Permittee. If permission is granted, the
8 assignee or transferee shall be bound by all of the terms and conditions of this ordinance. The
9 permission conferred by this ordinance shall not be assignable or transferable by operation of
10 law.)) by this ordinance; has provided, at the time of the acceptance, the bond and certification of
11 insurance coverage required under this ordinance; and has paid any fees due under Section 13 of
12 this ordinance. Upon the Director's approval of an assignment or transfer, the rights and
13 obligations conferred on the Permittee by this ordinance shall be conferred on the successors and
14 assigns. Any person or entity seeking approval for an assignment or transfer of the permission
15 granted by this ordinance shall provide the Director with a description of the current and
16 anticipated use of the tunnel.

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20 **12B. Obligations run with the Property.**

21 The obligations and conditions imposed on the Permittee by and through this ordinance
22 are covenants that run with the land and bind subsequent owners of the property adjacent to the
23 tunnel and legally described in Section 1 of this ordinance (the "Property"), regardless of
24 whether the Director has approved assignment or transfer of the permission granted herein to
25 such subsequent owner(s). At the request of the Director, Permittee shall provide to the Director
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1 a current title report showing the identity of all owner(s) of the Property and all encumbrances on
2 the Property. The Permittee shall, prior to conveying any interest in the Property, deliver to the
3 Director upon a form to be supplied by the Director, a covenant agreement imposing the
4 obligations and conditions set forth in this ordinance, signed and acknowledged by the Permittee
5 and any other owner(s) of the Property and recorded with the King County Recorder's Office.
6 The Director shall file the recorded covenant agreement with the City Clerk. The covenant
7 agreement shall reference this ordinance by its ordinance number. At the request of the Director,
8 Permittee shall cause encumbrances on the Property to be subordinated to the covenant
9 agreement.

11 13A. **Inspection fees.** The Permittee(~~, its successors and assigns,~~) shall, as provided by
12 SMC Chapter 15.76 or successor provision, pay (~~to~~) the City (~~such~~) the amounts (~~as may be~~
13 justly chargeable by said) charged by the City (~~as costs of inspection of said utility~~) to inspect
14 the tunnel during construction, reconstruction, repair, annual (~~structural~~) safety inspections, and
15 at other times (~~under the direction of the Director of the Seattle Transportation and in addition~~)
16 deemed necessary by the City. An inspection of the tunnel by the City shall not be construed as a
17 representation, warranty, or assurance to the Permittee or any other person as to the safety,
18 soundness, or condition of the tunnel. Any failure by the City to require correction of any defect or
19 condition shall not in any way limit the responsibility or liability of the Permittee.

22 13B. **Inspection reports.** The Permittee shall submit to the Director, or to the
23 Department of Transportation at an address specified by the Director, an inspection report that:

- 24 (a) describes the physical dimensions and condition of all load-bearing elements;
25 (b) describes any damages or possible repairs to any element of the tunnel;
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1 (c) prioritizes all repairs and establishes a timeframe for making repairs; and

2 (d) is stamped by a professional structural engineer licensed in the State of
3 Washington.

4 A report meeting the foregoing requirements shall be submitted at intervals of 3 years following
5 submittal of the initial report; provided that, in the event of a natural disaster or other event that
6 may have damaged the tunnel, the Director may require that additional reports be submitted by a
7 date established by the Director. The Permittee has the duty of inspecting and maintaining the
8 tunnel, and the responsibility to submit structural inspection reports periodically or as required
9 by the Director does not waive or alter any of the Permittee's other obligations under this
10 ordinance. The receipt of any reports by the Director shall not create any duties on the part of the
11 Director. Any failure by the Director to require a report, or to require action after receipt of any
12 report, shall not waive or limit the obligations of the Permittee.

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15 13C. Annual fee. Beginning on September 29, 2011, and annually thereafter, the
16 Permittee shall promptly pay to the City ((in advance)), upon statements ((rendered)) or invoices
17 issued by the Director, an annual fee((, for the privileges granted and exercised hereunder, of Six
18 Hundred Seventy Three Dollars (\$673.00) for each of the first five years of the renewal period
19 between September 29, 2001, and September 28, 2011. After this period, adjustments)) of \$792,
20 or as adjusted annually thereafter, for the privileges granted by this ordinance.

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22 Adjustments to the annual fee ((amount)) shall be made in accordance with a term permit
23 fee schedule adopted by the City Council ((by ordinance)) and may be ((adjusted)) made every
24 year. In the absence of ((such)) a schedule, the Director may only increase or decrease the
25 previous year's fee ((amount annually)) to reflect any inflationary changes so as to charge ((said))
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1 the fee in constant dollar terms. This adjustment will be calculated by adjusting the previous
2 year's fee ((amount)) by the percentage change between the two most recent year-end values
3 available ((from)) from the Consumer Price Index for the Seattle-Tacoma-Bremerton Area, All
4 Urban Consumers, All Products, Not Seasonally Adjusted. All payments shall be made to the
5 City Finance Director for credit to the Transportation Operating Fund.

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7 **14. Compliance with other laws.** ~~((Non-discrimination: The Permittee shall not
8 discriminate against any employee or applicant for employment in connection with the design,
9 architectural or structural engineering work or the construction, repair, or maintenance of the
10 utility tunnel permitted to be erected pursuant to this ordinance, on the basis of race, religion,
11 creed, color, sex, marital status, sexual orientation, political ideology, and ancestry, age, national
12 origin, or the presence of any sensory, mental or physical handicap unless based upon bona fide
13 occupational qualification. The foregoing commitment shall be implemented as follows:~~

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15 a. ~~the Permittee will take affirmative action to ensure that applicants are employed and
16 that employees are treated during employment without regard to their race, religion, creed, color,
17 sex, national origin or the presence of any sensory, mental or physical handicap. Such action
18 shall include, but not be limited to, the following: employment, upgrading, demotion or transfer,
19 recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of
20 compensation and selection for training, including apprenticeship.~~

21
22 b. ~~the Permittee shall post in conspicuous places available to such employees and
23 applicants for such employment, notices setting forth the provisions of this non-discrimination
24 clause.~~



1 e. the Permittee shall furnish to the Director of Human Rights or a successor official (the
2 “Director”), upon his or her request and on such forms as may be provided, a report of the
3 affirmative action taken in implementing this provision and will permit reasonable access to its
4 records for the purposes of determining compliance with this section. If, upon investigation the
5 Director finds probable cause to believe that the Permittee has failed to comply with any of the
6 terms of this section, the Permittee and the Board will be so notified in writing. The Board shall
7 give the Permittee at least 10 days notice and a hearing thereon. If the Board finds that there has
8 been a violation of this Section, the Board may suspend the permission conferred pending full
9 compliance with the terms of this Section.
10

11 Failure to comply with any of the terms of this provision shall be a material violation of
12 this ordinance.
13

14 The foregoing paragraphs shall be inserted in any sub-contracts for work undertaken
15 pursuant to this ordinance in connection with the design, architectural or structural engineering
16 work or the construction, repair, or maintenance of the utility tunnel permitted to be erected
17 hereunder, unless the Director authorizes the use of another equality of employment opportunity
18 provision.))
19

20 Permittee shall maintain and operate the tunnel in compliance with all applicable federal,
21 state, County and City laws and regulations. Without limitation, in all matters pertaining to the
22 tunnel, the Permittee shall comply with the City’s laws prohibiting discrimination in employment
23 and contracting including Seattle’s Fair Employment Practices Ordinance, Chapter 14.04 and
24 Fair Contracting Practices code, Chapter 14.10 (or successor provisions).
25

26 ***



1 Section 3. **Acceptance of terms and conditions.** The Permittee shall deliver to the
2 Director its written signed acceptance of the terms of this ordinance, as well as the certification
3 of insurance coverage, performance bond, covenant agreement, and inspection report required by
4 sections 9A, 11 12B, and 13B of Ordinance 115776, as amended by Ordinances 120814 and
5 121855 and by this ordinance, within 60 days after the effective date of this ordinance. The
6 Director shall file the written acceptance with the City Clerk. If no such acceptance is received
7 within that 60-day period, the privileges conferred by this ordinance shall be deemed to be
8 declined or abandoned and the permission granted deemed to be lapsed and forfeited and the
9 Permittee shall, at its own expense, remove the utility tunnel and all of the Permittee's equipment
10 and property and replace and restore all portions of the public place as provided in Section 4 of
11 Ordinance 115776, as further amended by Ordinances 120814 and 121855 and as further
12 amended by this ordinance.
13
14

15 Section 4. **Section titles.** Section titles are for convenient reference only and do not
16 modify or limit the text of a section.

17 Section 5. **Ratify and confirm.** Any act taken by the City or the Permittee pursuant to the
18 authority and in compliance with the conditions of this ordinance but prior to the effective date
19 of the ordinance is ratified and confirmed.
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1 Section 6. This ordinance shall take effect and be in force 30 days after its approval by
2 the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it
3 shall take effect as provided by Seattle Municipal Code Section 1.04.020.

4 Passed by the City Council the ____ day of _____, 2012, and
5 signed by me in open session in authentication of its passage this
6 ____ day of _____, 2012.

7
8
9

President _____ of the City Council

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11

Approved by me this ____ day of _____, 2012.

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13
14

Michael McGinn, Mayor

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Filed by me this ____ day of _____, 2012.

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Monica Martinez Simmons, City Clerk

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(Seal)

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FISCAL NOTE FOR NON-CAPITAL PROJECTS

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

Legislation Title:

AN ORDINANCE relating to a utility tunnel under and across Phinney Avenue North, north of North 34th Street, amending Ordinance 115776, as amended by Ordinances 120814 and 121855, updating the insurance and bond requirements, and amending the annual fee and other terms and conditions of the permit; renewing the term of the permit to the Fremont Dock Co., a Washington Corporation; providing for the acceptance of the permit and conditions; and ratifying and confirming certain prior acts.

Summary of the Legislation:

This legislation amends Ordinance 115776, as amended by Ordinances 120814 and 121855, for the Fremont Dock Co. to continue maintaining and operating the existing utility tunnel located under and across Phinney Avenue North, north of North 34th Street. An area map is attached for reference.

This permit is renewed for a ten-year term starting on September 29, 2011. The legislation updates the insurance and surety bond provisions as recommended by the City's Risk Manager, specifies the conditions under which authorization is granted, and provides for acceptance of the permit and conditions.

The ordinance requires the Fremont Dock Co. to pay the City an annual fee of \$792 starting from the last paid annual fee invoice, September 29, 2011, 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 Appraisal Summary is attached for reference.

Background:

By Ordinance 115776, the City granted permission to the Red Hook Ale Brewery, Inc. to construct, operate, and maintain a utility tunnel under and across Phinney Avenue North, north of North 34th Street, for a ten-year term, renewable for two successive ten-year terms.

The conditions of Ordinance 115776 were amended by Ordinances 120814 and 121855. The permission authorized by Ordinance 115776 was due for renewal on September 29, 2011.



Please check one of the following:

This legislation does not have any financial implications.

This legislation has financial implications.

Appropriations: N/A

Anticipated Revenue/Reimbursement Resulting from this Legislation:

Fund Name and Number	Department	Revenue Source	2012 Revenue	2013 Revenue
Transportation Operating Fund 10310	Seattle Department of Transportation	Annual Fee –	2011 Fee: \$792 2012 Fee: \$726	TBD
TOTAL			\$1,518	TBD

Revenue/Reimbursement Notes: The 2012 annual fee is at a reduced rate of \$726 due to an adjustment in King County tax assessed land values between 2011 and 2012.

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

Do positions sunset in the future? No

Spending/Cash Flow: N/A

Other Implications:

- a) Does the legislation have indirect financial implications, or long-term implications?
No
- b) 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 \$792. As previously stated, the City of Seattle has the option to adjust the fee amount on an annual basis.
- c) Does this legislation affect any departments besides the originating department?
No
- d) What are the possible alternatives to the legislation that could achieve the same or similar objectives? None
- e) Is a public hearing required for this legislation?
No



f) **Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation?**

No

g) **Does this legislation affect a piece of property?**

Yes, an area map is attached for reference.

h) **Other Issues:** N/A

List attachments to the fiscal note below:

Attachment A – Fremont Dock Co. Tunnel Area Map
Attachment B – Annual Fee Assessment Summary



Attachment A -- Fremont Dock Co. Tunnel Area Map



Map is for informational purposes only and is not intended to modify or supplement the legal description(s) in the Ordinance.



Attachment B - Annual Fee Assessment Summary

STREET USE ANNUAL FEE ASSESSMENT

Date: 2/21/12

<p><u>Summary:</u> Land Value: \$60/SF First Year Permit Fee: \$792</p>
--

I. Property Description:

Existing utility tunnel located under Phinney Avenue North, north of North 34th Street. Connecting Tax parcels are 1972204130 and 1972203225. Permit is for a total **550 square foot area**.

Applicant:

Fremont Dock Co.

Abutting Parcels, Property Size, Assessed Value:

1. Parcel 1972204130; 10,600 SF

Tax year 2011 Appraised Land Value \$636,000
Assessed at \$60/SF

2. Parcel 1972203225; 31,699 SF

Tax year 2011 Appraised Land Value \$1,901,900
Assessed at \$60/SF

2011 tax assessed land value: \$60/SF

II. Annual Fee Assessment:

The 2011 permit fee is calculated as follows: $(\$60/\text{SF}) \times (550 \text{ SF}) \times (30\%) \times (8\%) = \boxed{\$792}$, where 30% is the degree of alienation for a utility tunnel and 8% is the estimated annual rate of return.

Fee methodology authorized under Ordinance 123485.





City of Seattle
Office of the Mayor

March 13, 2012

Honorable Sally Clark
President
Seattle City Council
City Hall, 2nd Floor

Dear Council President Clark:

I am pleased to transmit the attached proposed Council Bill that will grant to the Fremont Dock Co. a ten-year renewal permit for an existing utility tunnel under and across Phinney Avenue North, north of North 34th Street, as authorized by Ordinance 115776.

The existing utility tunnel connects the Fremont Dock Co property at 180 NW Canal Street with the 3440 Phinney LLC property. In addition to granting a new ten-year permit renewal, the proposed Council Bill updates the insurance and bond requirements, updates the annual fee, and specifies the conditions under which authorization is granted.

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

Sincerely,

Michael McGinn
Mayor of Seattle

cc: Honorable Members of the Seattle City Council

