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**CITY OF SEATTLE**  
**ORDINANCE \_\_\_\_\_**

COUNCIL BILL 118125

AN ORDINANCE granting King County Department of Natural Resources and Parks, Wastewater Treatment Division permission to construct, maintain, and operate new and existing diversion structures in 32nd Avenue West for an unlimited term; specifying the conditions under which this permit is granted; and providing for the acceptance of the permit and conditions.

WHEREAS, King County Department of Natural Resources and Parks, Wastewater Treatment Division ("KCWTD") has applied for permission to construct, maintain and operate new and existing below-grade diversion structures in 32nd Avenue West; these facilities include drains, below-grade vaults, an above-grade control cabinet, retaining wall, vent pipes, and manhole covers and hatches; and

WHEREAS, the purpose of the project is to reduce and control stormwater flows to the combined sewer system and the frequency of combined sewer overflow ("CSO") events at Seattle Public Utility's South Magnolia Basin outfall to Puget Sound; and

WHEREAS, KCWTD has determined that installing and implementing the South Magnolia diversion structure is KCWTD's preferred option for complying with KCWTD's National Pollution Discharge Elimination System Waste Discharge Permit No. WA-002918-1 for the West Point Wastewater Treatment Plant that requires KCWTD to limit CSO events to Puget Sound at the South Magnolia Basin to no more than one overflow per year; and

WHEREAS, by Resolution 31476, the City granted conceptual approval of the construction of the South Magnolia CSO project; and

WHEREAS, the adoption of this ordinance is the culmination of the approval process for the diversion structures to legally occupy a portion of the public right-of-way, NOW, THEREFORE,

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

Section 1. **Permission.** Subject to the terms and conditions of this ordinance, the City of Seattle ("City") grants permission (also referred to in this ordinance as a permit) to King County Department of Natural Resources and Parks, Wastewater Treatment Division, and its successors



1 and assigns as approved by the Director of the Seattle Department of Transportation ("Director")  
2 according to Section 14 of this ordinance (the party named above and each such approved  
3 successor and assign is referred to as "Permittee"), to construct, maintain, and operate new and  
4 existing diversion structures in 32nd Avenue West, including drains, below-grade vaults, an  
5 above-grade control cabinet, retaining wall, vent pipes, and manhole covers and hatches within  
6 32nd Avenue West, ("South Magnolia CSO") legally described as: A 50 FOOT WIDE STRIP  
7 OF LAND LYING WITHIN THAT PORTION OF 32ND AVENUE WEST RIGHT-OF-WAY  
8 LOCATED IN THE SOUTHEAST QUARTER OF SECTION 22, TOWNSHIP 25 NORTH,  
9 RANGE 3 EAST, W.M., CITY OF SEATTLE, KING COUNTY, WASHINGTON, MORE  
10 PARTICULARLY DESCRIBED AS FOLLOWS:  
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12 BEGINNING AT THE NORTHWEST CORNER OF LOT 5 BLOCK, 4, MAGNOLIA  
13 VIEW ADDITION, DIVISION NO. 2, TO THE CITY OF SEATTLE, RECORDED IN  
14 VOLUME 31 OF PLATS, PAGE 41, RECORDS OF KING COUNTY, WASHINGTON,  
15 (ALSO BEING A POINT OF THE EAST MARGIN OF 32ND AVENUE WEST); THENCE S  
16 01°36'02" W ALONG SAID EAST MARGIN OF 32ND AVENUE WEST A DISTANCE OF  
17 101.00 FEET; THENCE DEPARTING SAID EAST MARGIN N 88°23'58" W A DISTANCE  
18 OF 50.00 FEET TO THE CENTERLINE OF THE 32ND AVENUE WEST RIGHT-OF-WAY;  
19 THENCE N 01°36'02" E ALONG SAID CENTERLINE A DISTANCE OF 101.00 FEET;  
20 THENCE DEPARTING SAID CENTERLINE S 88°23'58" E A DISTANCE OF 50.00 FEET,  
21 MORE OR LESS, TO THE POINT OF BEGINNING AND THE TERMINUS OF THIS LINE.  
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24 AND  
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1 A 20 FOOT WIDE STRIP OF LAND LYING WITHIN THAT PORTION OF THE  
2 32ND AVENUE WEST RIGHT-OF-WAY LOCATED IN THE SOUTHEAST QUARTER OF  
3 SECTION 22, TOWNSHIP 25 NORTH, RANGE 3 EAST, W.M., CITY OF SEATTLE, KING  
4 COUNTY, WASHINGTON, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

5 COMMENCING AT THE SOUTHWEST CORNER OF LOT 14, BLOCK 4,  
6 MAGNOLIA VIEW ADDITION, DIVISION NO. 2, TO THE CITY OF SEATTLE,  
7 RECORDED IN VOLUME 31 OF PLATS, PAGE 41, RECORDS OF KING COUNTY,  
8 WASHINGTON (ALSO BEING A POINT OF THE EAST MARGIN OF 32ND AVENUE  
9 WEST); THENCE S 01°36'02"W ALONG SAID EAST MARGIN OF 32ND AVENUE  
10 WEST, A DISTANCE OF 5.00 FEET; THENCE DEPARTING SAID EAST MARGIN N  
11 88°23'58" W A DISTANCE OF 20.00 FEET TO THE TRUE POINT OF BEGINNING;  
12 THENCE CONTINUING N 88°23'58" W A DISTANCE OF 20.00 FEET; THENCE N  
13 01°36'02" E A DISTANCE OF 20.00 FEET; THENCE S 88°23'58" E A DISTANCE OF 20.00  
14 FEET; THENCE S 01°36'02" W A DISTANCE OF 20.00 FEET, MORE OR LESS, TO THE  
15 TRUE POINT OF BEGINNING AND THE TERMINUS OF THIS LINE.  
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18 Section 2. **Term.** The permission granted to the Permittee to construct, maintain, and  
19 operate the South Magnolia CSO under this ordinance shall continue for so long as the South  
20 Magnolia CSO is used to reduce the frequency of combined sewer overflows to Puget Sound at  
21 the South Magnolia Basin outfall. This permission is subject to the right of the City to require the  
22 removal of the South Magnolia CSO for city transportation purposes or to revise by ordinance  
23 any of the terms and conditions of the permission granted by this ordinance. During the lifetime  
24 of the South Magnolia CSO, the Director may further assess the effectiveness of the South  
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1 Magnolia CSO and determine if additional amendments to this ordinance are desired or  
2 necessary.

3       **Section 3. Protection of utilities.** The permission granted is subject to the Permittee  
4 bearing the expense of any protection, support, or relocation of existing utilities deemed  
5 necessary by the owners of the utilities, and the Permittee being responsible for any damage to  
6 the utilities due to the construction, repair, reconstruction, maintenance, operation, or removal of  
7 the South Magnolia CSO and for any consequential damages that may result from any damage to  
8 utilities or interruption in service caused by any of the foregoing.

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10       **Section 4. Removal for transportation purposes.** The permission granted is subject to  
11 use of the street right-of-way or other public place (collectively, public place) by the City and the  
12 public for transportation purposes. The City expressly reserves the right to deny or terminate the  
13 permission at any time and require the Permittee to remove the South Magnolia CSO, or any part  
14 thereof or installation on the public place, at the Permittee's sole cost and expense in the event  
15 that:  
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- 17       (a) the City Council determines by ordinance that the space occupied by the South  
18 Magnolia CSO is necessary for any city transportation purpose or that the South  
19 Magnolia CSO interferes with any city transportation purpose; or  
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21       (b) the Director determines that use of the South Magnolia CSO has been abandoned;  
22 or  
23       (c) the Director determines that any term or condition of this ordinance has been  
24 violated, and the violation has not been corrected by the Permittee by the compliance date  
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1 after a written request by the City to correct the violation (unless a notice to correct is not  
2 required due to an immediate threat to the health or safety of the public).

3 A City Council determination by ordinance that the space is needed for, or the South Magnolia  
4 CSO interferes with a city transportation purpose is conclusive and final.

5 **Section 5. Permittee's obligation to remove and restore.** If the City terminates the  
6 permission, then within a reasonable time stated in the ordinance or order requiring removal of  
7 the South Magnolia CSO, the Permittee shall, at its own expense, remove the South Magnolia  
8 CSO and all of the Permittee's equipment and property from the public place. The Permittee  
9 shall replace and restore all portions of the public place that may have been disturbed for any  
10 part of the South Magnolia CSO in as good condition for public use as existed prior to  
11 construction of the South Magnolia CSO and in at least as good condition in all respects as the  
12 abutting portions of the public place as required by SDOT right-of-way restoration standards.

13 Failure to remove the South Magnolia CSO as required by this section is a violation of  
14 Chapter 15.90 of the Seattle Municipal Code (SMC) or successor provision; however,  
15 applicability of Chapter 15.90 does not eliminate any remedies available to the City under this  
16 ordinance or any other authority. If the Permittee does not timely fulfill its obligations under this  
17 section, the City may in its sole discretion remove the South Magnolia CSO and restore the  
18 public place at the Permittee's expense, and collect such expense in any manner provided by law.  
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20 Upon the Permittee's completion of removal and restoration in accordance with this  
21 section, or upon the City's completion of the removal and restoration and the Permittee's  
22 payment to the City for the City's removal and restoration costs, the Director shall then issue a  
23 certification that the Permittee has fulfilled its removal and restoration obligations under this  
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1 ordinance. Upon prior notice to the Permittee and entry of written findings that it is in the public  
2 interest, the Director may, in the Director's sole discretion, conditionally or absolutely excuse the  
3 Permittee from compliance with all or any of the Permittee's obligations under this section.

4       **Section 6. Repair or reconstruction.** The South Magnolia CSO shall remain the  
5 exclusive responsibility of the Permittee and the Permittee shall maintain the South Magnolia  
6 CSO in good and safe condition for the protection of the public. The Permittee shall obtain all  
7 required City permits and approvals to construct, reconstruct, repair, or maintain the South  
8 Magnolia CSO. Construction of the South Magnolia CSO shall conform to the plans and  
9 specifications approved by the Director. The Director may, in the Director's judgment, order the  
10 South Magnolia CSO reconstructed or repaired at the Permittee's cost and expense because of:  
11 the deterioration or unsafe condition of the South Magnolia CSO; the installation, construction,  
12 reconstruction, maintenance, operation, or repair of any municipally-owned public utilities; or  
13 for any other cause that gives rise to public health or safety concerns.  
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16       **Section 7. Failure to correct unsafe condition.** After written notice to the Permittee and  
17 failure of the Permittee to correct an unsafe condition within the time stated in the notice, the  
18 Director may order the South Magnolia CSO be closed or removed at the Permittee's expense if  
19 the Director deems that the South Magnolia CSO has become unsafe or creates a risk of injury to  
20 the public. If there is an immediate threat to the health or safety of the public, a notice to correct  
21 is not required.  
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23       **Section 8. Continuing obligations.** Notwithstanding termination of the permission  
24 granted, or closure or removal of the South Magnolia CSO, the Permittee shall remain bound by  
25 all of its obligations under this ordinance until the Director has issued a certification that the  
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1 Permittee has fulfilled its removal and restoration obligations under Section 5 of this ordinance.

2 Notwithstanding the issuance of that certification, the Permittee shall continue to be bound by  
3 the obligations in Section 9 of this ordinance and shall remain liable for any unpaid fees assessed  
4 under Section 17 of this ordinance.

5 **Section 9. Release, hold harmless, indemnification, and duty to defend.** The  
6 Permittee, by accepting the terms of this ordinance, releases the City, its officials, officers,  
7 employees, and agents from any and all claims, actions, suits, liability, loss, costs, expense,  
8 attorneys' fees, or damages of every kind and description arising out of or by reason of the South  
9 Magnolia CSO or this ordinance, including but not limited to claims resulting from injury,  
10 damage, or loss to the Permittee or the Permittee's property.

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12 The Permittee agrees to at all times defend, indemnify, and hold harmless the City, its  
13 officials, officers, employees, and agents from and against all claims, actions, suits, liability,  
14 loss, costs, expense, attorneys' fees, or damages of every kind and description, excepting only  
15 damages that may result from the sole negligence of the City, that may accrue to, be asserted by,  
16 or be suffered by any person or property including, without limitation, damage, death, or injury  
17 to members of the public or to the Permittee's officers, agents, employees, contractors, invitees,  
18 tenants, tenants' invitees, licensees, or successors and assigns, arising out of or by reason of:  
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20  
21 (a) the existence, condition, construction, reconstruction, modification, maintenance,  
22 operation, use, or removal of the South Magnolia CSO or any portion thereof, or the use,  
23 occupation, or restoration of the public place or any portion thereof by the Permittee or any other  
24 person or entity;



1 (b) anything that has been done or may at any time be done by the Permittee by reason of  
2 this ordinance; or

3 (c) the Permittee failing or refusing to strictly comply with every provision of this  
4 ordinance; or arising out of or by reason of the South Magnolia CSO or this ordinance in any  
5 other way.

6 If any suit, action, or claim of the nature described above is filed, instituted, or begun  
7 against the City, the Permittee shall upon notice from the City defend the City, with counsel  
8 acceptable to the City, at the sole cost and expense of the Permittee, and if a judgment is  
9 rendered against the City in any suit or action, the Permittee shall fully satisfy the judgment  
10 within 90 days after the action or suit has been finally determined, if determined adversely to the  
11 City. If it is determined by a court of competent jurisdiction that Revised Code of Washington  
12 (RCW) 4.24.115 applies to this ordinance, then in the event claims or damages are caused by or  
13 result from the concurrent negligence of the City, its agents, contractors, or employees, and the  
14 Permittee, its agents, contractors, or employees, this indemnity provision shall be valid and  
15 enforceable only to the extent of the negligence of the Permittee or the Permittee's agents,  
16 contractors, or employees.  
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20 **Section 10. Insurance.** For as long as the Permittee exercises any permission granted by  
21 this ordinance and until the Director has issued a certification that the Permittee has fulfilled its  
22 removal and restoration obligations under Section 5 of this ordinance, the Permittee shall obtain  
23 and maintain in full force and effect, at its own expense, insurance that protects the City from  
24 claims and risks of loss from perils that can be insured against under commercial general liability  
25 (CGL) insurance policies in conjunction with:  
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1 (a) construction, reconstruction, modification, operation, maintenance, use, existence, or  
2 removal of the South Magnolia CSO or any portion thereof, as well as restoration of  
3 any disturbed areas of the public place in connection with removal of the South  
4 Magnolia CSO;

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

7 (c) claims and risks in connection with activities performed by the Permittee by virtue of  
8 the permission granted by this ordinance.  
9

10 Minimum insurance requirements are CGL insurance based on the Insurance Services  
11 Office (ISO) form CG 00 01 or equivalent. The City requires insurance coverage to be placed  
12 with an insurer admitted and licensed to conduct business in Washington State or with a surplus  
13 lines carrier pursuant to RCW Chapter 48.15. If coverage is placed with any other insurer or is  
14 partially or wholly self-insured, such insurer(s) or self-insurance is subject to approval by the  
15 City's Risk Manager.  
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17 Minimum limits of liability shall be \$2,000,000 each occurrence combined single limit  
18 bodily injury and property damage, with \$4,000,000 annual aggregate. Coverage shall name the  
19 "City of Seattle, its elected and appointed officers, officials, employees and agents" as additional  
20 insureds for primary and non-contributory limits of liability subject to a Separation of Insureds  
21 clause.  
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23 Within 60 days after the effective date of this ordinance, the Permittee shall provide to  
24 the City, or cause to be provided, certification of insurance coverage including an actual copy of  
25 the blanket or designated additional insured policy provision per the ISO CG 20 12 endorsement  
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1 or equivalent. The insurance coverage certification shall be delivered or sent to the Director or to  
2 the Department of Transportation ("SDOT") at an address as the Director may specify in writing  
3 from time to time. The Permittee shall provide a certified complete copy of the insurance policy  
4 to the City promptly upon request.

5 If the Permittee is self-insured, a letter of certification from the Corporate Risk Manager  
6 may be submitted in lieu of the insurance coverage certification required by this ordinance, if  
7 approved in writing by the City's Risk Manager. The letter of certification must provide all  
8 information required by the City's Risk Manager and document, to the satisfaction of the City's  
9 Risk Manager, that self-insurance equivalent to the insurance requirements of this ordinance is in  
10 force. After a self-insurance certification is approved, the City may from time to time  
11 subsequently require updated or additional information. The approved self-insured Permittee  
12 must provide 30 days' prior notice of any cancellation or material adverse financial condition of  
13 its self-insurance program. The City may at any time revoke approval of self-insurance and  
14 require the Permittee to obtain and maintain insurance as specified in this ordinance.  
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17 In the event that the Permittee assigns or transfers the permission granted by this  
18 ordinance, the Permittee shall maintain in effect the insurance required under this section until  
19 the Director has approved the assignment or transfer pursuant to Section 14 of this ordinance.  
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21 Section 11. **Contractor insurance.** The Permittee shall contractually require that any  
22 and all of its contractors performing work contemplated by this permit name the "City of Seattle,  
23 its elected and appointed officers, officials, employees and agents" as additional insureds for  
24 primary and non-contributory limits of liability on all CGL, Automobile and Pollution liability  
25 insurance and self-insurance. The Permittee shall also include in all contract documents with its  
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1 contractors a third-party beneficiary provision extending to the City construction indemnities and  
2 warranties granted to the Permittee.

3       **Section 12. Performance bond.** In the event that the Permittee seeks to assign or transfer  
4 the permission granted by this ordinance, the Director in consultation with the City Attorney's  
5 Office, may determine that a performance bond is necessary to adequately protect the City's  
6 interests, in which case the successor entity shall deliver to the Director for filing with the City  
7 Clerk, as a condition of approval of the assignment or transfer within 60 days of notification of  
8 such determination, a sufficient bond executed by a surety company authorized and qualified to  
9 do business in the State of Washington that is in the amount determined by the Director in  
10 consultation with the City Attorney's Office, and conditioned with a requirement that the  
11 successor entity shall comply with every provision of this ordinance and with every order the  
12 Director issues under this ordinance. The successor entity shall ensure that the bond remains in  
13 effect until the Director has issued a certification that the successor entity has fulfilled its  
14 removal and restoration obligations under Section 5. An irrevocable letter of credit approved by  
15 the SDOT Director in consultation with the City Attorney's Office may be substituted for the  
16 bond.  
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19       **Section 13. Adjustment of insurance and bond requirements.** The Director may adjust  
20 minimum liability insurance levels and surety bond requirements during the term of this  
21 permission. If the Director determines that an adjustment is necessary to fully protect the  
22 interests of the City, the Director shall notify the Permittee of the new requirements in writing.  
23 The Permittee shall, within 60 days of the date of the notice, provide proof of the adjusted  
24 insurance and surety bond levels to the Director.  
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1           Section 14. **Consent for and conditions of assignment or transfer.** The permission  
2 granted by this ordinance shall not be assignable or transferable by operation of law; nor shall the  
3 Permittee transfer, assign, mortgage, pledge or encumber the same without the Director's  
4 consent, which the Director shall not unreasonably refuse. The Director may approve assignment  
5 or transfer of the permission granted by this ordinance to a successor entity only if the successor  
6 or assignee has accepted in writing all of the terms and conditions of the permission granted by  
7 this ordinance; has provided, at the time of the acceptance, the bond and certification of  
8 insurance coverage required under this ordinance; and has paid any fees due under Section 17 of  
9 this ordinance. Any person or entity seeking approval for an assignment or transfer of the  
10 permission granted by this ordinance shall provide the Director with a description of the current  
11 and anticipated use of the South Magnolia CSO.

12           The obligations and conditions imposed on the Permittee by and through this ordinance  
13 are also imposed on the Permittee's successors and assigns regardless of whether the Director  
14 has approved assignment or transfer of the permission granted by this ordinance to the successors  
15 or assigns. All references in this ordinance to obligations or conditions imposed on the  
16 "Permittee" shall also be deemed to refer to the Permittee's successors and assigns.

17           Section 15. **Inspection fees.** The Permittee shall, as provided by SMC Chapter 15.76 or  
18 successor provision, pay the City the amounts charged by the City to inspect the South Magnolia  
19 CSO during construction, reconstruction, repair, safety inspections, and at other times deemed  
20 necessary by the City. No inspection or approval by the City shall be construed as a representation,  
21 warranty or assurance to the Permittee or any other person as to the safety or soundness of any  
22 structure or condition, nor as to compliance with this ordinance or any agreement or standard. Any  
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1 failure by the City to require correction of any defect or condition shall not in any way limit the  
2 responsibility or liability of the Permittee.

3       Section 16. **Inspection reports.** The Permittee shall submit to the Director, or to SDOT  
4 at an address specified by the Director, an inspection report that:

- 5           (a) describes the physical dimensions and condition of all load-bearing elements;  
6           (b) describes any damages or possible repairs to any element of the South Magnolia  
7           CSO;  
8           (c) prioritizes all repairs and establishes a timeframe for making repairs; and  
9           (d) is stamped by a professional structural engineer licensed in the State of  
10           Washington.

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12       The report meeting the foregoing requirements shall be submitted in the event of a natural  
13 disaster or other event that may have damaged the South Magnolia CSO, and shall be submitted  
14 by the date established by the Director. The Permittee has the duty of inspecting and  
15 maintaining the South Magnolia CSO and the responsibility to submit structural inspection  
16 reports as required by the Director does not waive or alter any of the Permittee's other  
17 obligations under this ordinance.  
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20       The receipt of any reports by the Director shall not create any duties on the part of the  
21 Director. Any failure by the Director to require a report, or to require action after receipt of any  
22 report, shall not waive or limit the obligations of the Permittee.

23       Section 17. **Annual fee.** Beginning on the effective date of this ordinance, and annually  
24 thereafter, the Permittee shall promptly pay to the City, upon statements or invoices issued by the  
25 Director, an annual fee of \$2,753.77.  
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1 Adjustments to the annual fee shall be made in accordance with a term permit fee  
2 schedule adopted by the City Council and may be made every year. In the absence of a schedule,  
3 the Director may only increase or decrease the previous year's fee to reflect any inflationary  
4 changes so as to charge the fee in constant dollar terms. This adjustment will be calculated by  
5 adjusting the previous year's fee by the percentage change between the two most recent year-end  
6 values available for the Consumer Price Index for the Seattle-Tacoma-Bremerton Area, All  
7 Urban Consumers, All Products, Not Seasonally Adjusted. All payments shall be made to the  
8 City Finance Director for credit to the Transportation Operating Fund.  
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10 **Section 18. Compliance with other laws.** Permittee shall construct, maintain and operate  
11 the South Magnolia CSO in compliance with all applicable federal, state, County and City laws  
12 and regulations. Without limitation, in all matters pertaining to the South Magnolia CSO, the  
13 Permittee shall comply with the City's laws prohibiting discrimination in employment and  
14 contracting including Seattle's Fair Employment Practices Ordinance, Chapter 14.04, and Fair  
15 Contracting Practices code, Chapter 14.10, or successor provisions.  
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17 **Section 19. Acceptance of terms and conditions.** The Permittee shall deliver to the  
18 Director its written signed acceptance of the terms of this ordinance within 60 days after the  
19 effective date of this ordinance. The Director shall file the written acceptance with the City  
20 Clerk. If an acceptance is not received within that 60-day period, the privileges conferred by this  
21 ordinance shall be deemed declined or abandoned and the permission granted deemed lapsed  
22 and forfeited. The Permittee shall not commence construction of the South Magnolia CSO prior  
23 to the Permittee delivering its written signed acceptance of the terms of this ordinance and  
24 providing the certification of insurance coverage required by this ordinance.  
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1           **Section 20. Obligations run with the Property.** The obligations and conditions  
2 imposed on the Permittee by this ordinance are covenants that bind the Permittee's heirs,  
3 successors, and assigns regardless of whether the Director has approved an assignment or  
4 transfer of the permission granted by this ordinance. The Permittee shall, within 60 days of the  
5 effective date of this ordinance, and prior to conveying any interest in the encroachments or  
6 improvements that are the subject of this ordinance, deliver to the Director on a form supplied by  
7 the Director, a covenant agreement imposing the obligations and conditions in this ordinance,  
8 signed and acknowledged by the Permittee, and recorded with the King County Recorder's  
9 Office. The Director shall file the recorded covenant agreement with the City Clerk. The  
10 covenant agreement shall reference this ordinance by its ordinance number.  
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1 Section 21. **Section titles.** Section titles are for convenient reference only and do not  
2 modify or limit the text of a section.

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

6 Passed by the City Council the \_\_\_\_ day of \_\_\_\_\_, 2014, and  
7 signed by me in open session in authentication of its passage this  
8 \_\_\_\_\_ day of \_\_\_\_\_, 2014.

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12 \_\_\_\_\_  
13 President \_\_\_\_\_ of the City Council

14 Approved by me this \_\_\_\_ day of \_\_\_\_\_, 2014.

15  
16 \_\_\_\_\_  
17 Edward B. Murray, Mayor

18  
19 Filed by me this \_\_\_\_ day of \_\_\_\_\_, 2014.

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21 \_\_\_\_\_  
22 Monica Martinez Simmons, City Clerk

23 (Seal)



**FISCAL NOTE FOR NON-CAPITAL PROJECTS**

| <b>Department:</b>                       | <b>Contact Person/Phone:</b> | <b>CBO Analyst/Phone:</b> |
|--|------------------------------|---------------------------|
| The Seattle Department of Transportation | Angela Steel/4-5967          | Christie Parker/684-5211  |

**Legislation Title:**

AN ORDINANCE granting King County Department of Natural Resources and Parks, Wastewater Treatment Division permission to construct, maintain, and operate new and existing diversion structures in 32nd Avenue West for an unlimited term; specifying the conditions under which this permit is granted; and providing for the acceptance of the permit and conditions

**Summary of the Legislation:**

This legislation grants the King County Department of Natural Resources and Parks, Wastewater Treatment Division ("KCWTD") permission to construct, maintain, and operate new and existing below-grade diversion structures in 32nd Avenue West ("South Magnolia CSO"). These facilities include drains, below-grade vaults, above-grade control cabinet, retaining wall, vent pipes, manhole covers, and hatches as part of the South Magnolia CSO project. An area map is attached for reference.

This permit is for an unlimited term for so long as the South Magnolia CSO is used to reduce the frequency of combined sewer overflows to Puget Sound at the South Magnolia Basin, subject to the right of the City to require the removal of the South Magnolia CSO or to revise any of the terms and conditions of the permission granted by this permit. The legislation has an insurance provision as recommended by the City Risk Manager, specifies the conditions under which authorization is granted, and provides for acceptance of the permit and conditions.

The ordinance requires KCWTD to pay the City an annual fee of \$2,753.77 commencing on the effective date of the ordinance, and annually thereafter. Adjustments to the annual fee may be made every year

**Background:**

By Resolution 31476, the City granted conceptual approval for the South Magnolia CSO project.

X  This legislation has financial implications.

**Appropriations:**

N/A



Appropriations Notes: N/A

**Anticipated Revenue/Reimbursement Resulting from this Legislation:**

| Fund Name and Number                | Department                           | Revenue Source | 2014 Revenue      | 2015 Revenue |
|-------------------------------------|--------------------------------------|----------------|-------------------|--------------|
| Transportation Operating Fund 10310 | Seattle Department of Transportation | Annual Fee     | \$2,753.77        | TBD          |
| <b>TOTAL</b>                        |                                      |                | <b>\$2,753.77</b> |              |

Revenue/Reimbursement Notes:

None

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

Position Notes: N/A

**Do positions sunset in the future?** N/A

**Spending/Cash Flow:** N/A

Spending/Cash Flow Notes: 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 \$2,753.77.
- 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? No.**

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

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

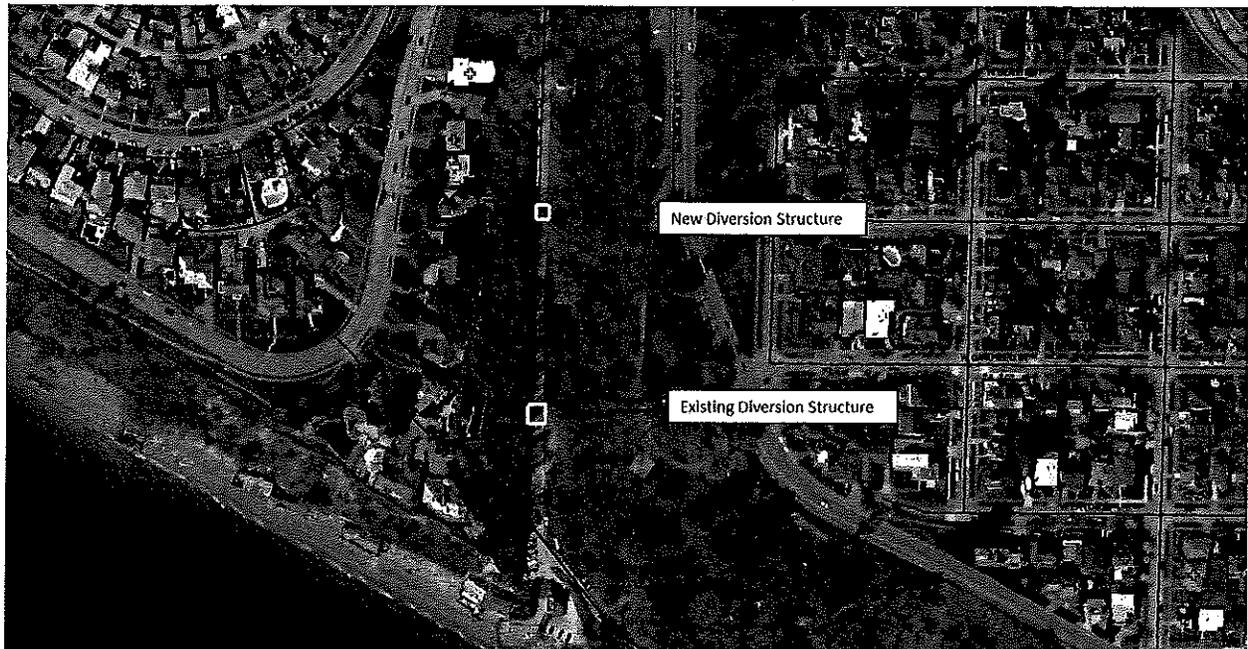
Attachment A - King County South Magnolia CSO Area Map

Attachment B - Annual Fee Assessment Summary





### Attachment A – King County South Magnolia CSO 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: 5/14/15

|   |
|---|
| <p><u>Summary:</u><br/><b>Land Value:</b><br/>Existing Structure<br/>\$55.63/SF<br/>New Structure<br/>\$41.02/SF<br/><b>2014 Permit Fee:</b><br/>\$2,753.77</p> |
|---|

I. Property Description:

The King County Department of Natural Resources and Parks, Wastewater Treatment Division has proposed the construction and expansion of diversions structures in 32nd Avenue West. The combined sewer overflow system area is **2,706 square feet**.

Applicant:

King County Department of Natural Resources and Parks, Wastewater Treatment Division

Abutting Parcels, Property Size, Assessed Value:

**Existing Structure**

1. Parcel 5039800160, Square Feet 12,394  
Tax year 2014 Appraised Land Value \$556,000
2. Parcel 5039800165, Square Feet 11,129  
Tax year 2014 Appraised Land Value \$739,000  
Average 2014 tax assessed land value: \$55.63/SF

**New Structure**

1. Parcel 5039800100, Square Feet 7,787  
Tax year 2014 Appraised Land Value \$322,000
2. Parcel 5039800105, Square Feet 8,160  
Tax year 2014 Appraised Land Value \$336,000



3. Parcel 5039800110, Square Feet 8,609

Tax year 2014 Appraised Land Value \$349,000

Average 2014 tax assessed land value: \$41.02/SF

**II. Annual Fee Assessment:**

The 2014 permit fee is calculated as follows:

Existing Structure:  $(\$55.63/\text{SF}) \times (256 \text{ SF}) \times (30\%) \times (8\%) = \$341.79$  where 30% is the degree of alienation for a below-grade utility structure and 8% is the annual rate of return.

New Structure:  $(\$41.02/\text{SF}) \times (2,450 \text{ SF}) \times (30\%) \times (8\%) = \$2,411.98$  where 30% is the degree of alienation for a below-grade utility structure and 8% is the annual rate of return.

Fee methodology authorized under Ordinance 123485.



**City of Seattle**  
Edward B. Murray  
Mayor

June 3, 2014

Honorable Tim Burgess  
President  
Seattle City Council  
City Hall, 2<sup>nd</sup> Floor

Dear Council President Burgess:

I am pleased to transmit the attached proposed Council Bill that will grant to the King County Department of Natural Resources and Parks, Wastewater Treatment Division ("KCWTD") permission to expand, construct, maintain, and operate a combined sewer overflow control system ("South Magnolia CSO") within 32nd Avenue West as part of the South Magnolia Basin.

The purpose of the South Magnolia CSO project is to reduce and control stormwater flows to the combined sewer system and the frequency of CSO events at Seattle Public Utility's South Magnolia Basin outfall to Puget Sound. King County's National Pollution Discharge Elimination System Waste Discharge Permit for the West Point Wastewater Treatment Plant requires that King County limit CSO events to Puget Sound to no more than one overflow per year.

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

Sincerely,

  
Edward B. Murray  
Mayor of Seattle

cc: Honorable Members of the Seattle City Council