

ORDINANCE No. 185821

*Grant a revocable permit to Astor AREP-II, the Parker LLC to construct, use and maintain building improvements in the airspace over a portion of the NW 12th and NW 13th Aves right-of-way at NW Pettygrove and NW Quimby Sts (Ordinance)

The City of Portland ordains:

Section 1. The Council finds:

1. Astor AREP-II, the Parker LLC has requested approval of an Encroachment Request for a building projection over the sidewalk portion of the right-of-way of NW 12th and NW 13th Avenues right-of-way at NW Pettygrove and NW Quimby Streets having State identification numbers 1N1E33AA 100.
2. The Encroachments in the Public Right-of-Way City document requires the Design Committee (now known as the Design Commission) to provide a recommendation to the City Engineer for a building projection encroachment in the right-of-way.
3. The Design Commission recommended that the City Engineer approve the requested encroachment.
4. The attached City Engineer's report recommends findings in support of the encroachment request, subject to certain conditions (Exhibit A).

NOW, THEREFORE, the Council directs:

- a. The findings in the attached City Engineer's report are adopted. See Exhibit A.
- b. A revocable permit is granted personal to Astor AREP-II, the Parker LLC, to construct, use and maintain a building encroachment over the sidewalk NW 12th and NW 13th Avenues, as located and described in the City Engineer's report, attached to and by reference made a part of this Ordinance, subject to the following conditions:
 - (1) This encroachment is a burden upon the abutting property described above and runs with the land.
 - (2) This encroachment is for the use of the street area only, and shall not exempt the applicant from obtaining any license or permit required by the City Code or Ordinances for any act to be performed under this ordinance, nor shall this ordinance waive the provisions of any City Code, Ordinance, or the City Charter, except as herein stated.

- (3) An Encroachment Permit shall be entered into to provide for the encroachment in the public right-of-way.
- (4) The abutting property owner shall be responsible for maintenance of the structure at their own expense.
- (5) The abutting property owner shall be liable to any person who is injured or otherwise suffers damage by reason of the property owner's failure to keep any structure located in the half of the street area immediately abutting his or her property in safe condition and good repair. Furthermore, said abutting property owner shall be liable to the City of Portland, its officers, agents and employees, for any judgment or expense incurred or paid by the City its officers, agents or employees, by reason of the existence of any such structure in the street area.
- (6) The permittee shall hold the City of Portland, its officers, agents, and employees free and harmless from any claims for damages to persons or property, including legal fees and costs of defending any actions or suits, including any appeals, which may result from the permitted activity.
- (7) The permittee or the permittee's contractor shall provide an insurance policy which has been approved by the City Attorney, naming the City as additional named insured. Evidence of this insurance shall be provided prior to issuance of the underground parking structure building permit. This insurance to remain in effect throughout all phases of construction performed under this permit.
- (8) The permittee shall reimburse the City for the cost of filing a copy of this permit with the Elections and Records Division of Multnomah County
- (9) If, during construction allowed under this permit, it becomes necessary or expedient to modify the plan or location of any item authorized by this permit, the permittee shall first obtain the approval of the City Engineer.
- (10) The permittee shall be responsible for maintenance of the street area disturbed during construction of the building. Failure to maintain said street area, or failure to repair or replace any portion of said street area immediately upon notification from the Office of the City Engineer, shall be cause for the City Engineer to declare the disturbed areas a nuisance. The City Engineer may summarily abate the nuisance and recover its cost from permittee for so doing, initiate proceedings through the Code Hearings Officer, file civil suit or take any other action necessary to ensure the permittee, transferee or assignee performs the required repairs to the public right-of-way.
- (11) The permittee shall provide the City Engineer with a final revised and complete set of plans after construction of the underground parking structure. The plans shall

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accurately represent the as-built, show the exact location of all installations in the right-of-way and be certified by the approved inspector to be true and accurate.

- (12) No modification shall be made to any installation authorized under this permit without prior approval from the City Engineer. Failure to maintain the building in conformance with the approved plans or repair to or modification of the building projections without obtaining prior approval from the City Engineer shall cause immediate revocation of this permit without further action by the City Engineer. Within 30 days of revocation, the permittee shall remove the building projections from the street area and restore the street area to the satisfaction of the City Engineer.

Section 2. The Council declares an emergency exists because delay in enactment of this Ordinance will result in unnecessary hardship on the applicant due to unnecessary delay of the permit and resulting delay in the ability to construct the building and restore the public streets for use; therefore, this Ordinance shall be in force and effect from and after its passage by the Council.

Passed by the Council, **DEC 19 2012**

Mayor Sam Adams
Prepared by: Robert E Haley:slg
Date Prepared: December 11, 2012

LAVONNE GRIFFIN-VALADE

Auditor of the City of Portland

by



Deputy

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✓140

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Agenda No.
ORDINANCE NO.
Title *and*

185821

*Grant a revocable permit to Evergreen Galway LLC & Astor Pacific LLC to construct, use and maintain building improvements in the airspace over a portion of the NW 12th and NW 13th Aves right-of-way at NW Pettygrove and NW Quimby Sts (Ordinance)

<p>INTRODUCED BY Commissioner/Auditor: MAYOR SAM ADAMS</p> <p>COMMISSIONER APPROVAL</p> <p>Mayor—Finance and Administration - Adams <i>[Signature]</i></p> <p>Position 1/Utilities - Fritz</p> <p>Position 2/Works - Fish</p> <p>Position 3/Affairs - Saltzman</p> <p>Position 4/Safety - Leonard</p> <p>BUREAU APPROVAL</p> <p>Bureau: Bureau of Transportation Group Manager: Greg Jones Development & Capital Program Other: <i>[Signature]</i></p> <p>Prepared by: Robert Haley:slg Date Prepared: December 11, 2012 <i>[Signature]</i></p> <p>Financial Impact & Public Involvement Statement Completed <input checked="" type="checkbox"/> Amends Budget <input type="checkbox"/> Not Required <input type="checkbox"/></p> <p>Portland Policy Document If "Yes" requires City Policy paragraph stated in document. Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></p> <p>Council Meeting Date December 19, 2012</p> <p>City Attorney Approval City Attorney Approval: required for contract, code, easement, franchise, comp plan, charter</p>	<p>CLERK USE: DATE FILED DEC 14 2012</p> <p style="text-align: right;">LaVonne Griffin-Valade Auditor of the City of Portland</p> <p style="text-align: center;"><i>[Signature]</i> ON BEHALF OF MAYOR Adams.</p> <p>By: <i>[Signature]</i> Deputy</p> <p>ACTION TAKEN:</p>
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AGENDA
<p>TIME CERTAIN <input type="checkbox"/></p> <p>Start time: _____</p> <p>Total amount of time needed: _____ (for presentation, testimony and discussion)</p>
<p>CONSENT <input checked="" type="checkbox"/></p>
<p>REGULAR <input type="checkbox"/></p> <p>Total amount of time needed: _____ (for presentation, testimony and discussion)</p>

FOUR-FIFTHS AGENDA	COMMISSIONERS VOTED AS FOLLOWS:		
		YEAS	NAYS
1. Fritz	1. Fritz	✓	
2. Fish	2. Fish	✓	
3. Saltzman	3. Saltzman	✓	
4. Leonard	4. Leonard	✓	
Adams	Adams	✓	