

AN ORDINANCE
BY COUNCILMEMBER



AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT FOR EXISTING RIGHT-OF-WAY ENCROACHMENT (“ENCROACHMENT AGREEMENT”) WITH DC-180 PEACHTREE, LLC AND 180 PEACHTREE RETAIL, LLC., OWNERS OF REAL PROPERTY LOCATED AT 180 PEACHTREE STREET, FOR THE PURPOSE OF PERMITTING AN EXISTING BASEMENT WHICH PRESENTLY EXTENDS INTO THE PUBLIC RIGHT-OF-WAY; TO WAIVE THE APPLICATION FEE, RENTAL FEE AND YEARLY INSPECTION FEE; TO EXECUTE AN ATTACHMENT EASEMENT AGREEMENT WITH DC-180 PEACHTREE, LLC AND FHM ATLANTA 150, LLC, ET AL., OWNERS OF REAL PROPERTY LOCATED AT 150 CARNEGIE WAY, FOR THE PURPOSE OF INSTALLING AND ATTACHING TO THE PARKING GARAGE, AND THEREAFTER MAINTAINING, EYEBOLT AND SPAN WIRE ATTACHMENTS IN SUPPORT OF AN OVERHEAD CATENARY SYSTEM FOR THE ATLANTA STREETCAR PROJECT; TO WAIVE MONTHLY PEDESTRIAN SKYBRIDGE FEE FOR 150 CARNEGIE WAY; AND FOR OTHER PURPOSES.

WHEREAS, DC-180 Peachtree, LLC and 180 Peachtree Retail, LLC are the owners of that certain parcel of land located at 180 Peachtree Street, Atlanta, GA 30303 (as visually depicted on Exhibit A); and

WHEREAS, DC-180 Peachtree, LLC and FHM Atlanta 150, LLC, et al. are the owners of that certain parcel of land located at 150 Carnegie Way, Atlanta, GA 30303 (as visually depicted on Exhibit B) (both owners hereinafter being jointly referred to as “Building Owner” and both parcels hereinafter being jointly referred to as “180 Building”); and

WHEREAS, the Building Owner has granted the City of Atlanta (“City”) certain (a) easement rights to install and thereafter maintain portions of an overhead catenary system (“OCS”) consisting of eyebolts, span wire attachments and related structural supports (“Facility”) on the 180 Building parking garage (as visually depicted on Exhibit C) and (b) access rights to the 180 Building to install and maintain portions of the OCS consisting of poles constructed in the public right-of-way (as visually depicted on Exhibit D), in order to facilitate the construction of the Atlanta Streetcar Project; and

WHEREAS, the 180 Building’s basement exists below grade, a part of which encroaches onto the City’s public right-of-way on Ellis Street and Peachtree Street (“Encroachment”) (as visually depicted on Exhibit E); and

WHEREAS, the Building Owner desires to maintain the existing basement; and

WHEREAS, the City’s Code of Ordinances, at Sections 138-20, 138-22 and 138-24, require that an encroachment agreement be entered into between the City and Building Owner for

authorization to allow the 180 Building to maintain the existing basement in the public right-of-way; and

WHEREAS, the Commissioner of the Department of Public Works has reviewed the plans for the right-of-way encroachment and has determined that the existing basement will not adversely impact the ability of the affected right-of-way to handle pedestrian traffic or otherwise to perform its intended public function; and

WHEREAS, the Building Owner has agreed to conform to the conditions set forth in the City Code of Ordinances at Sections 138-20, 138-22 and 138-24; and

WHEREAS, the Building Owner desires enter into an agreement with the City to grant the City an easement for the purpose of installing and attaching to the Building Owner's Parking Garage, and thereafter maintaining, eyebolt and span wire attachments in support of the OCS (as visually depicted on Exhibit F) for the Atlanta Streetcar Project ("Easement Agreement"); and

WHEREAS, the City and Building Owner desire to enter into the above-referenced Encroachment Agreement on even date of the Easement Agreement, the former to serve as, among other reasons, consideration for the Easement Agreement; and

WHEREAS, the 180 Building will be exempted from paying the application, rental and yearly inspection fees as contained in Section 138-20(a) and Appendix B of the City Code of Ordinances, and the monthly pedestrian skybridge fee for 150 Carnegie Way; and

WHEREAS, installation of OCS consisting of poles constructed in the right-of-way encroachment area and the attachment of the Facility to the Parking Garage is required for the operation of the Atlanta Streetcar Project.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA, as follows:

SECTION 1: That the Mayor is authorized, on behalf of the Department of Public Works, to enter into an Encroachment Agreement, as outlined in Section 138, Article II, of the City's Code of Ordinances with the Building Owner for the purpose of granting to Building Owner the right to continue to use, and the obligation to maintain, a basement in the public right-of-way located at 180 Peachtree Street, in a form and pursuant to the conditions determined by the Commissioner of the Department of Public Works and the City Attorney, to be desirable and in the best interests of the City of Atlanta for this transaction.

SECTION 2: That the plans and specifications for said basement shall be submitted for the review and approval of the Commissioner of the Department of Public Works.

SECTION 3: That the Building Owner shall indemnify the City for any damages to persons or properties resulting from the maintenance of said basement.

SECTION 4: That the Building Owner shall comply with the conditions set forth in Sections 138-20, 138-22 and 138-24 of the City's Code of Ordinances.

SECTION 5: That the Building Owner is exempted from paying the application, rental and yearly inspection fees as contained in Section 138-20(a) and Appendix B of the City Code of Ordinances for the 180 Building, and the monthly pedestrian skybridge fee for 150 Carnegie Way; said fee requirements are hereby waived.

SECTION 6: That the Mayor is authorized, on behalf of the Department of Public Works, to enter into an Attachment Easement Agreement for the purpose of installing and attaching to the Parking Garage, and thereafter maintaining, the Facility in support of an OCS.

SECTION 7: That the City Attorney is directed to prepare an Encroachment Agreement and Attachment Easement Agreement acceptable as to form, for execution by the Mayor and Building Owner.

SECTION 8: That the referenced Encroachment Agreement and Attachment Easement Agreement shall not become binding upon the City, and the City shall incur neither obligation nor liability thereunder until the Agreements have been approved as to form by the City Attorney, executed by the Mayor, attested to by the Municipal Clerk and executed by the Building Owner.

SECTION 9: That this Ordinance shall become effective immediately upon signing by the Mayor or as otherwise provided by operation of law.