



Legislation Text

File #: 36522, **Version:** 2

Fiscal Note

\$500 administrative fee will be deposited into Account No. GN01-78231.

Title

SUBSTITUTE Authorizing the Mayor and the City Clerk to execute a Consent to Occupy Easement for the benefit of Geovani, LLC to permit private improvements within a public sidewalk easement at 1824 S. Park Street.

Body

WHEREAS, the City is the holder of a public sidewalk easement (the "City Easement") over the easterly 6 feet of property located at 1824 S. Park Street and legally described as Lot 1, Certified Survey Map No. 3206; and

WHEREAS, the property owner, Geovani, LLC (the "Owner"), has constructed a parking lot and will be installing landscaping and planters within that area of the City Easement depicted on the attached Exhibit (the "Occupancy Area"); and

WHEREAS, City Engineering Division staff have reviewed the Owner's plans and are willing to permit the existence and maintenance of said improvements by the Owner within the Occupancy Area, under the terms and conditions specified herein.

NOW, THEREFORE, BE IT RESOLVED that the Mayor and the City Clerk are hereby authorized to execute a Consent to Occupy Easement for the benefit of the Owner, subject to the following terms and conditions:

1. Grant of Permission. The City will grant the Owner, its successors and assigns, permission to occupy the Occupancy Area for the limited purpose of allowing the parking lot, landscaping and planters depicted on the attached Exhibit (collectively, the "Permitted Improvements"), all in accordance with the site plan (LNDSPR-2014-00185) which has been approved by the City Engineering Division.
2. Construction and Maintenance.
 - a. The Owner shall be responsible for all costs of the maintenance, repair and replacement of the Permitted Improvements. All such work shall be performed in compliance with applicable codes and ordinances.
 - b. With the exception of routine maintenance and repairs and normal utilization of the Permitted Improvements, no changes to, additions to or alterations of the Permitted Improvements shall be allowed without the prior written approval of applicable plans and specifications by the City Engineer.
3. Use. The Owner shall use and occupy the Occupancy Area in a manner consistent with the rights conveyed in the Consent, and shall ensure that such use and occupancy shall not interfere with or disturb the City's rights under the City Easement.
4. Type of Grant. The granting of the Consent shall not transfer, release, or convey any of the rights the City may have in the Occupancy Area by virtue of the City Easement. The granting of the Consent shall be deemed to be permissive and shall preclude the Owner from any claim of adverse possession against the City by virtue of any encroachment on or into the City Easement and by virtue of the granting

of the Consent.

5. Compensation for Damages. The Permitted Improvements may be disturbed or removed by the City without replacement or compensation to the Owner.
6. Indemnification. The Owner shall be liable to and agree to indemnify, defend and hold harmless the City, and its officers, officials, agents, and employees, against all loss or expense (including liability costs and attorney's fees) by reason of any claim or suit, or of liability imposed by law upon the City or its officials, officers, agents or employees for damages because of bodily injury, including death at any time resulting therefrom, sustained by any person or persons or on account of damages to property, including loss of use thereof, arising from, in connection with, caused by or resulting from the acts or omissions of the Owner and/or its agents, employees, assigns, guests, invitees, or subcontractors, in the performance of the Consent, whether caused by or contributed to by the negligent acts of the City, its officers, officials, agents, and employees.
7. Termination. The Consent shall automatically terminate upon the earliest of the following to occur: (a) the release of the City Easement by the City; (b) the removal of the Permitted Improvements by the Owner; ~~or~~ (c) the agreement to terminate by the parties or their successors or assigns; or (d) sixty (60) days after the date of written notice from the City to the Owner advising of the City's need to use the Occupancy Area for public sidewalk purposes. In the event of termination, the Owner shall remove the Permitted Improvements at the Owner's expense and execute such document(s) as may be requested by the City for the purpose of further evidencing the termination of the rights granted in the Consent.