

RESOLUTION R 3358

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND APPROVING AND AUTHORIZING THE CITY MANAGER TO SIGN A RIGHT-OF-WAY USE PERMIT AS TO A PORTION OF UNVACATED LAKE WASHINGTON BOULEVARD ABUTTING THE TOWN LIMITS OF THE TOWN OF CLYDE HILL AND LYING NORTH OF SR 520.

Whereas, the Town of Clyde Hill has requested a right-of-way use permit as to a portion of unvacated Lake Washington Boulevard abutting the Clyde Hill Town limits and lying north of SR 520 for the purpose of constructing a cul-de-sac or turnaround for the benefit of real property within Clyde Hill and abutting upon Lake Washington Boulevard along the common boundary line between the Town of Clyde Hill and the City of Kirkland north of SR 520; and

Whereas, the City of Kirkland has no present or immediate use of said public right-of-way surface so long as any utility or other underground installations located therein or to be later located therein are protected; now, therefore,

Be it resolved by the City Council of the City of Kirkland as follows:

Section 1. The City Manager is hereby authorized to sign on behalf of the City of Kirkland and issue to the Town of Clyde Hill that certain City of Kirkland terminable right-of-way use permit as to the therein described portion of unvacated Lake Washington Boulevard lying north of SR 520 and within the limits of the City of Kirkland. A copy of said right-of-way use permit is attached to the original of this resolution as Exhibit "A" and by this reference incorporated herein.

Passed by majority vote of the Kirkland City Council in regular, open meeting this 9th day of March, 1987.

Signed in authentication thereof this 9th day of March, 1987.

Doris Cooper

MAYOR

ATTEST:

Janice Perry
DEPUTY
CLERK

Director of Administration & Finance
(ex officio City Clerk)

CITY OF KIRKLAND
TERMINABLE RIGHT-OF-WAY USE PERMIT

PORTION OF WESTERLY HALF OF UNVACATED LAKE WASHINGTON BOULEVARD ALONG THE COMMON BOUNDARY LINE BETWEEN THE CITY OF KIRKLAND AND THE TOWN OF CLYDE HILL LYING NORTH OF SR 520.

The City of Kirkland hereby grants to the Town of Clyde Hill a terminable permit to use and occupy the surface of the hereinafter described portion of unvacated public right-of-way subject to the terms and conditions hereinafter set forth.

1. No structure or improvements shall be placed within the permit area except such structures or improvements as are approved by the Public Works Director of the City of Kirkland and which conform in general to the cul-de-sac design proposed by the Town of Clyde Hill in that certain letter addressed to the Kirkland City Manager dated February 5, 1987 and then only so long as all conditions of approval of this permit are met and maintained. Any structure, improvement or other obstruction placed within the permit area shall be so placed and maintained as not to interfere with the operation, repair, installation and maintenance of utility and underground installations now existing or hereafter installed within the permit area by the City of Kirkland or pursuant to its authorization. A breach of this paragraph by permittee shall be grounds for immediate revocation of this permit.

2. Upon either revocation or termination of this permit, all structures, improvements and encroachments placed within the permit area shall forthwith be removed and the cost of such removal, including any action required to enforce same, shall be solely that of the permittee; provided that the City may, at the time of such revocation or termination, determine that the public interest would be better served by retaining said improvement structures and encroachments, in which case ownership of same shall revert to the City.

3. Permittee shall, at its sole expense, maintain the area hereinafter described and referred to as the permit area, including all structures, improvements and encroachments placed therein, including all areas thereof which permit or invite public access.

4. The permittee shall hold and save harmless the City of Kirkland, its officers, agents and employees from any and all claim or claims, real or imaginary of whatsoever nature made or asserted against the City of Kirkland, its officers, agents or employees growing out of the construction, development, use, maintenance or occupancy of said permit area or any structure, improvement or encroachment placed within said permit area by the permittee, including all cost, expense and attorneys fees which

may be incurred or charged against the City of Kirkland in the investigation and/or defense of any such claim.

5. Permittee shall obtain, at its sole expense, comprehensive liability insurance in limits satisfactory to the City of Kirkland and shall provide the City with satisfactory proof of the continued insurance coverage as to any and all claims which may arise during the life of this permit or any renewal or extension thereof, notwithstanding when such claim or claims may be filed. Such insurance shall include the City of Kirkland as an additional named insured.

6. This right-of-way use permit and all rights hereunder shall not be transferrable by permittee for any reason whatsoever without the prior consent of the City of Kirkland which may be expressed by resolution of the Kirkland City Council.

7. No waiver by either party of any term or condition of this agreement shall be deemed or construed as a waiver of any other term or condition, nor shall a waiver of any breach be deemed to constitute a waiver of any subsequent breach, whether of the same or different provision of this agreement or permit.

8. Unless otherwise terminated, pursuant to the provisions of paragraph 9 below, the right-of-way use permit herein granted to the Town of Clyde Hill shall terminate as of midnight, December 31, 2007. The permit may be extended for additional terms, provided written request for extension has been received by the City of Kirkland and approved by the Kirkland City Council not more than twenty-four months nor less than six months immediately prior to the then-scheduled termination date.

9. All rights under this permit may be terminated at any time by the City of Kirkland upon giving a permittee ninety days' notice of termination; provided, however, that if such termination is based upon the breach of Sections 1, 3, or 4 of this permit, then, in that event, the termination shall be effective immediately upon receipt by the permittee of the notice of termination. Service of the notice of termination, if made by mail, shall be deemed complete as of the date of mailing; provided said notice is mailed to the permittee at the following address or such other address as the permittee may subsequently provide to the City for the purpose of service:

Mayor of the Town of Clyde Hill
Town Hall
9605 N.E. 24th Street
Bellevue, WA 98004

This permit may also be terminated by permittee at any time, by the giving of a written notice of termination to the City of Kirkland by delivery thereof to the Kirkland City Hall, 123 Fifth Avenue, Kirkland, WA 98033, ninety days prior to the effective date of such termination.

At such time as a notice of termination is served in accordance with the provisions of this section, all rights hereunder shall terminate as of the effective date of the termination.

10. This agreement and permit merges and supercedes all prior negotiations, representations and agreements between the parties hereto relating to the subject matter hereof and constitutes the entire agreement and permit between the City of Kirkland and the Town of Clyde Hill concerning the right to use and to place improvements, structures and encroachments within the portion of the following described unvacated public right-of-way:

That portion of the Lake Washington Boulevard right-of-way lying within Section 19, Township 25 north, Range 5 east, W.M., and more particularly that portion lying northerly and westerly of the State Route 520 right-of-way line and easterly and southerly of the following described ilne:

Commencing on the centerline of State Route 520 at station 277+79.54 and the centerline of Lake Washington Boulevard;

Thence N 20[50'36"W, 108.4 feet to the northerly margin of the State Route 520 right-of-way and the point of beginning;

Thence continuing N 20[50'36"W, 32.82 feet to the point of curvature of Lake Washington Boulevard, at station 459+15.75;

Thence continuing northerly along the centerline of Lake Washington Boulevard and along a curve concave to the left, a distance of 33.25 feet to Lake Washington Boulevard station 459+49;

Thence northeasterly on a radial line 25 feet, more or less, to the right-of-way line of State Route 520 and the easterly right-of-way line for Lake Washington Boulevard, and the terminus of said described line;

All as defined on Washington State Department of Transportation Right-of-Way Map for State Route 520, East Approach to Evergreen Point Bridge, Sheet 1 of 4, approved February 7, 1961.

11. In addition to the remedies provided in this permit and otherwise by law, this agreement and permit shall be specifically enforceable by either party.

DATED at Kirkland, Washington this ____ day of _____,

1987.

TOWN OF CLYDE HILL:

CITY OF KIRKLAND:

BY: _____
Mayor

BY: _____
City Manager