

NOW, THEREFORE, BE IT ENACTED BY THE COUNCIL OF THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY:

Section 1. That subject to the requirements, limitations and conditions contained herein, James and Candace Higgins are hereby granted the privilege to construct and maintain said ~~aerial, and underground, and above ground~~ encroachments under Proposal No. 2023M-015EN-001, in accordance with the plans which are on file in the office of the Director of the Nashville Department of Transportation and Multimodal Infrastructure ("NDOT") (formerly known as the "Metropolitan Department of Public Works"), and which are attached hereto as "Exhibit B" and incorporated by reference herein.

Section 2. That the authority granted hereby for the construction, installation, operation, and maintenance of said ~~aerial and underground~~ encroachments under Proposal No. 2023M-015EN-001 shall not be construed as a surrender by the Metropolitan Government of its rights or power to pass resolutions or ordinances regulating the use of its streets, or the right of the Metropolitan Government through its legislative body, in the interest of public necessity and convenience to order the relocation of said facilities at the expense of James and Candace Higgins.

Section 3. That plans and specifications for said ~~aerial and underground~~ encroachments under Proposal No. 2023M-015EN-001 shall be submitted to the Director of NDOT for approval before any work is begun; and all work, material, and other details of said installation shall be approved by the Director of NDOT prior to its use by James and Candace Higgins.

Section 4. That construction and maintenance of said ~~aerial and underground~~ encroachments under Proposal No. 2023M-015EN-001 shall be under the direction, supervision, and control of the Director of NDOT, and its installation, when completed, must be approved by said Director.

Section 5. That this Ordinance confers upon James and Candace Higgins a privilege and not a franchise, and the Mayor and the Metropolitan Council herein expressly reserve the right to repeal this Ordinance, whenever, in their judgment, a repeal may be demanded by public welfare, and such repeal shall confer no liability on the Metropolitan Government of Nashville and Davidson County, its successors and assigns, by reason of said repeal. In the event of such repeal by said Metropolitan Government, James and Candace Higgins, their successors and assigns, shall remove said ~~aerial and underground~~ encroachments at their own expense.

Section 6. James and Candace Higgins shall pay all costs incident to the construction, installation, operation and maintenance of said ~~aerial and underground~~ encroachments under Proposal No. 2023M-015EN-001, and shall save and hold the Metropolitan Government of Nashville and Davidson County harmless from all suits, costs, claims, damages or judgments in any way connected with said construction, installation, operation and maintenance of said ~~aerial and underground~~ encroachments and shall not claim, set up or plead, as a defense, in the event of joint liability, with or without suit, that it and the Metropolitan Government were joint wrongdoers. James and Candace Higgins shall be responsible for the expense, if any, of repairing and returning the right-of-way to the condition which it was in prior to the installation of said ~~aerial and underground~~ encroachments, and for any street closure.

Section 7. That the authority granted to James and Candace Higgins, as herein described, shall not in any way interfere with the rights of the Metropolitan Government, its agents, servants, and/or contractors and utility companies, operating under franchise from the Metropolitan Government to enter, construct, operate, maintain, repair, rebuild, enlarge, and patrol its now existing or future utilities, including drainage facilities, together with their appurtenances, and to do any and all things necessary and incidental thereto.

Section 8. James and Candace Higgins shall and are hereby required to furnish the Metropolitan Government of Nashville and Davidson County a certificate of public liability insurance, naming the

Metropolitan Government as an insured party, of at least \$4,000,000 dollars aggregate, for the payment of any judgment had on any claim, of whatever nature, made for actions or causes of action arising out of, or connected with, the construction or installation of said aerial and underground encroachments. Said certificate of insurance shall be filed with the Metropolitan Clerk and NDOT prior to the granting of a permit, and the insurance required herein shall not be canceled without the insurance company or companies first giving thirty (30) days written notice to the Metropolitan Government of Nashville and Davidson County.

Section 9. That said construction shall be carefully guarded and protected, and shall be completed promptly, so as to cause the least inconvenience to the public. The acceptance by James and Candace Higgins of all provisions of this Ordinance shall be determined by the beginning of work.

Section 10. The authority granted pursuant to this Ordinance shall not become effective until the certificate of insurance, as required in Section 8, has been posted with the Metropolitan Clerk and NDOT.

Section 11. This Ordinance shall take effect from and after its adoption, the welfare of the Metropolitan Government of Nashville and Davidson County requiring it.

Analysis

This ordinance, as substituted, authorizes James & Candace Higgins to install, construct and maintain aerial, underground, and above ground encroachments at 630 Division Street. The encroachments comprise an awning, cast-in-place site wall, fall protection railing, concrete planter boxes, and bicycle parking, encroaching the public right-of-way. The applicant must indemnify the Metropolitan Government from all claims in connection with the construction and maintenance of the encroachments and is required to post a certificate of public liability insurance in the amount of \$4,000,000, in aggregate, with the Metropolitan Clerk naming the Metropolitan Government as an insured party.

This ordinance has been approved by the Planning Commission.

A substitute was added at the Metropolitan Council's meeting on October 17, 2023, to clarify language about the location of the encroachments.