



Adopted as follows:

Yeast — Council Members Benson, Castaneda-Lopez, Cushingberry, Jr., Jenkins, Leland, Sheffield, and President Jones — 7.

Nays — None.

**Department of Public Works
City Engineering Division**

June 9, 2015

Honorable City Council:

Re: Petition No. 708 — The Kales Grand Circus Park, LLC, request for use and maintenance of the existing and in-service pedestrian tunnel extending from the Grand Circus Parking Garage to the Kales Building at 76 W. Adams.

Petition No. 708 of "The Kales Grand Circus Park, LLC" requests permission to transfer and maintain the existing encroachment(s) consisting of a Pedestrian Tunnel, a Canopy and addi-

tional minor encroachments within West Adams Avenue, 60 feet wide, between Woodward Avenue, 120 feet wide and Park Avenue, 60 feet wide.

This petition is being made by the current owner of the Kales Building, located at 76 W. Adams Avenue, Detroit, Michigan. The Petitioner was the lender to "Kales Building, LLC" the former owner of the building. The former owner defaulted on its loan obligations to the petitioner. The petitioner foreclosed its mortgage on the building on August 8, 2013 and has succeeded to the interest of the former owner.

On July 30, 2003, your Honorable Body approved petition 918 (2003 J.C.C. pages 2440-2444) by Kales Building, LLC (the former owner) for installation and maintenance of the pedestrian tunnel, the proposed canopy encroachment and some minor existing building encroachments as shown on the ALTA/ACSM Land Title

Survey; Drawing No. 24-169, created by George Jerome & Co., provided to City Engineering by the Developer. The encroachments were permitted but are not to be assigned or transferred without the written approval of City Council.

The petitioner is making the exact same requests as were made by the former owner in petition no. 918 (2003) except the permission to install the encroachments. The only other variance from the petition no. 918 (2003) is more complete and accurate description of the pedestrian tunnel has been provided by George Jerome & Co., Professional Surveyors.

The Pedestrian Tunnel layout was designed in order to minimize disturbance of existing underground utilities. The subsurface Pedestrian Tunnel Encroachment is approximately 10' wide by 8' high connecting the Kales Building at the corner of Park Avenue and West Adams and the underground parking structure located in Grand Circus Park, being between 3' and 20' in depth under the existing W. Adams roadway grade. Then continuing within the park property to a point within said parking structure.

The existing Canopy encroachment is 17' wide extending 14.5' into the north line of W. Adams right-of-way about 12' to 13' above the sidewalk grade.

The other existing encroachments into the public rights-of-way the Petitioner proposes to maintain are as follows:

- 2-Window Sills approximately 0.40 feet into W. Adams.
- Vent Pipe approximately 1.00 feet into W. Adams.
- 2-Sign frames approximately 0.80 feet into W. Adams.
- 2-Sign frames approximately 0.80 feet into Park Ave.
- Decorative Trim approximately 0.40 feet into Park Ave.
- 2-Areas of Decorative Trim approximately 0.40 feet into the Public Alley.
- Steel Pipe cover approximately 0.66 feet into the Public Alley.
- Fire Escape approximately 5.08 to 5.23 feet into the Public Alley.
- 2-Vent pipes approximately 0.95 feet into the Public Alley.
- Building encroaches approximately 0.06 feet (max.) into the Public Alley.

The petition was referred to the City Engineering Division — DPW for investigation (utility review) and report. This is our report.

All involved City departments and privately owned utility companies have reported no objections to the encroachments. Where appropriate, provisions protecting certain utility installations are part of the resolution.

The provisions for construction and maintenance by the previous owner were met and it is the recommendation of City

Engineering — DPW that the encroachment permit be transferred under the same terms and conditions as set forth in approval of petition 918 approved by your Honorable Body on July 30, 2003; amended to remove the installation details including the temporary construction easements; also amended to reflect the correct legal description of the tunnel.

I am recommending adoption of the attached resolution.

Respectfully submitted,
RICHARD DOHERTY, P.E.
City Engineer

City Engineering Division — DPW
By Council Member Benson:

Whereas, On July 30, 2003, your Honorable Body approved petition 918 (2003 J.C.C. pages 2440-2444) by Kales Building, LLC (the former owner) for installation and maintenance of the pedestrian tunnel, the proposed canopy encroachment and some minor existing building encroachments as shown on the ALTA/ACSM Land Title Survey; Drawing No. 24-169, created by George Jerome & Co., provided to City Engineering by the Developer; and

Whereas, The Petitioner, The Kales Grand Circus Park, LLC, respectfully requests that your Honorable Body approve the transfer of the approved encroachments on the same terms and conditions as were established in the approval of July 30, 2003; so the property owners may continue to use, operate and maintain the pedestrian tunnel and the other approved encroachments; and

Whereas, The Pedestrian Tunnel was constructed and is utilized in connection with a Parking Agreement entered into between the City and the Petitioner as authorized under separate Resolution (the "Parking Agreement") to provide access to the Grand Circus underground parking structure for the residents and users of the Kales Building, therefore be it

Resolved, The City Engineering Division — DPW is hereby authorized and directed to issue permits to "The Kales Grand Circus Park, LLC" the Petitioner for property 76 West Adams Street, Detroit, Michigan 48226, to improve, repair and maintain the Pedestrian Tunnel, the Canopy and pre-existing building encroachments (the "Encroachments") into the public rights-of-way, adjoining a parcel described as follows:

Lots 17 and 18 "A Plat of Park Lots 84, 85 and 86", as recorded in Liber 7, Page 27 Deeds, Wayne County Records; commonly known as 76 West Adams.

- The subsurface Pedestrian Tunnel Encroachment will be approximately 10' wide by 8' high connecting the Kales Building at the corner of Park Avenue and West Adams and the underground parking structure located in Grand Circus Park, being between 3' and 20' in depth

under the existing W. Adams roadway grade. Then continuing within the park property to a point within said parking structure. The underground pedestrian tunnel being more particularly described: Commencing at the southwest corner of Lot 18 "A Plat of Park Lots 84, 85 and 86 (known as Browns Subdivision of said Park Lots)", as recorded in Liber 7, Page 27 Deeds, Wayne County Records; thence N60°14'45"E 80.24 feet along the northerly line of Adams Avenue to the southeasterly corner of Lot 17 of said Plat and the Point of Beginning; thence S29°47'28"E 43.37 feet; thence S89°53'20"E 61.55 feet; thence N60°08'33"E 12.02 feet; thence S30°00'00"E 28.92; thence S60°08'33"W 20.20 feet; thence N89°53'20"W 98.98 feet; thence N29°47'28"W 53.67 feet to a point on the northerly line of Adams Avenue; thence N60°14'45"E 40.52 feet; along said northerly line of Adams Avenue to the Point of Beginning, containing 0.12 acres more or less.

- The proposed Canopy encroachment is 17' wide extending 14.5' into the north line of W. Adams right-of-way about 12' to 13' above the sidewalk grade.

The other existing encroachments into the public rights-of-way the Petitioner proposes to maintain are as follows:

- 2-Window Sills approximately 0.40 feet into W. Adams.

- Vent Pipe approximately 1.00 feet into W. Adams.

- 2-Sign frames approximately 0.80 feet into W. Adams.

- 2-Sign frames approximately 0.80 feet into Park Ave.

- Decorative Trim approximately 0.40 feet into Park Ave.

- 2-Areas of Decorative Trim approximately 0.40 feet into the Public Alley.

- Steel Pipe cover approximately 0.66 feet into the Public Alley.

- Fire Escape approximately 5.08 to 5.23 feet into the Public Alley.

- 2-Vent pipes approximately 0.95 feet into the Public Alley.

- Building encroaches approximately 0.06 feet (max.) into the Public Alley;

Provided, The Petitioner, "The Kales Grand Circus Park, LLC" or its assigns shall apply to the Buildings and Safety Engineering Department for a building permit prior to any construction for maintenance. Also, when it becomes necessary to open cut public streets, bore, jack, occupy or barricade city rights-of-way for construction or maintenance of encroachments such work shall be according to detailed permit application drawings submitted to the City Engineering Division — DPW and Recreation Department prior to any public right-of-way construction; and further

Provided, The Recreation Department

is hereby authorized and directed to draft (or cause to be drafted) and execute (for and on behalf of the City of Detroit) or transfer a "Easement Agreement" with The Petitioner, "The Kales Grand Circus Park, LLC" for that part of the encroachment within Grand Circus Park; and further

Provided, That the necessary permits shall be obtained from the City Engineering Division — DPW and the Buildings and Safety Engineering Department. The Encroachments shall be maintained under their rules and regulations; also in accord with plans submitted to and approved by these departments; including the Recreation Department (if necessary), the Municipal Parking Department (if necessary), the Public Lighting Department (if necessary), the Water and Sewerage Department (if necessary), and the Traffic Engineering Division — DPW (if necessary); and further

Provided, That all costs for the maintenance, permits and use of the encroachments shall be borne by The Petitioner, "The Kales Grand Circus Park, LLC" or its assigns; and further

Provided, That all costs incurred by privately owned utility companies and/or city departments to alter, adjust, and/or relocate their existing utility facilities located in close proximity to the encroachments, shall be borne by The Petitioner, "The Kales Grand Circus Park, LLC" or assigns. Should damages to utilities occur as a result of construction, use, maintenance or repair of the Encroachments, The Petitioner, "The Kales Grand Circus Park, LLC" or its assigns shall be liable for all incidental repair costs and waives all claims for damages to the encroaching installations; and further

Provided, If it becomes necessary to repair or replace the utilities located or to be located within the public rights-of-way, by acceptance of this permission, The Petitioner "The Kales Grand Circus Park, LLC" (owners) for themselves, or their assigns, (by acceptance of permits for construction near underground utility lines, conduits, or mains) waives all claims for damages to the encroaching installations and agree to pay all costs incurred in their removal (or alteration), if removal (or alteration) becomes necessary; and further

Provided, That The Petitioner, "The Kales Grand Circus Park, LLC" shall file with the Finance Department an indemnity agreement in form approved by the Law Department. The agreement shall save and protect the City of Detroit from any and all claims, damages or expenses that may arise by reason of the issuance of the permits and the faithful or unfaithful performance by The Petitioner, "The

Kales Grand Circus Park, LLC” of the terms thereof. Further, The Petitioner, “The Kales Grand Circus Park, LLC” shall agree to pay all claims, damages or expenses that may arise out of the use, repair and maintenance of the proposed Encroachments; and further

Provided, The property owned by The Petitioner, “The Kales Grand Circus Park, LLC” and the Encroachment shall be subject to proper zoning or regulated use (Board of Zoning Appeals Grant) including City ordinances; and further

Provided, That only those rights created under this resolution run for the benefit of “The Kales Grand Circus Park, LLC”, its lenders, residents, tenants, successor’s and assigns; and further

Provided, That no other rights in the public streets, alleys or other public place shall be considered waived by this permission which is granted expressly on the condition that said encroachments shall be removed at any time when so directed by the City Council, and the public property affected shall be restored to a condition satisfactory to the City Engineering Division — DPW after a engineering investigation and report by the city and the agents of the owners; and further

Provided, This resolution is revocable at the will, whim or caprice of the City

Council, and The Petitioner, “The Kales Grand Circus Park, LLC” acquires no implied or other privileges hereunder not expressly stated herein, however, there shall be no revocation or termination of the permit to allow the Pedestrian Tunnel Encroachment without a resolution from the Detroit City Council directing such revocation or termination before revoking such permit, the City Council may consider engineering reports and studies from City departments and owners of the Kales Building; and further

Provided, That the encroachment permit shall not be assigned or transferred without the written approval of the City Council; and be it further

Provided, The “as built” drawings sealed by a professional engineer registered in the State of Michigan previously provided to the City Engineering Division — DPW and the Recreation Department after the installation of the encroachments as called for in the resolution of petition 918 approved July 30, 2003, by Detroit City Council (2003 J.C.C. pages 2440-2444); shall be an “appendix” to this resolution as recorded in the Wayne County Register of Deeds.

Provided, That the City Clerk shall within 30 days record a certified copy of this resolution with the Wayne County Register of Deeds.

