City Council
Chief Clerk's Office
402 City Hall
Philadelphia, PA 19107

Legislation Text

File #: 170163, **Version:** 0

Authorizing Jeffery Tubbs to construct, own, and maintain an "urban topiary" at 1225-33 N 3rd Street, Philadelphia, PA 19122, all under certain terms and conditions.

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. Permission is hereby granted to Jeffery Tubbs, ("Owner") to construct, own and maintain a right -of-way encroachment ("Encroachment") known as an "urban topiary," and consisting of steel tubes covered in honeysuckle vines, protruding through a wooden fence at 1225-33 N 3rd Street, Philadelphia, PA 19122, further described as follows:

Encroachment Description:

Existing Fence Section #1
The location of the northern most point of the northernmost fence is seven feet (7'-0") south of the Thompson Street curb face, from there the fence runs in a southeasterly direction to a point approximately thirteen feet (13'-0") south of the Thompson Street curb face and six feet six inches (6' -6") west of the Germantown Avenue western curb face, at that point, the fence turns and continues twenty-four feet (24'-0") parallel to Germantown Avenue in a southerly direction.

Existing Fence Section #2
From a point fifty feet (50'-0") south of the southerly curb face of Thompson Street and six feet six inches (6'-6") west of the Germantown Avenue western curb face, extending sixteen feet (16'-0") south parallel to Germantown Avenue.

Existing Fence Section #3
From a point seventy four feet (74'-0") south of the southerly curb face of Thompson Street and six feet six inches (6'-6") west of the Germantown Avenue western curb face, extending twenty-one feet (21'-0") south along parallel to Germantown Avenue.

Existing Fence Section #4
From a point one hundred five feet (105'-0") south of the southerly curb face of Thompson Street and six feet (6'-0") west of the Germantown Avenue western curb face, extending southwesterly to a point one hundred sixteen feet (116'-0") south of the southerly curb face of Thompson Street and eight feet west of the Germantown Avenue western curb face.

SECTION 2. The construction, use and maintenance of the Encroachment described and listed in Section 1 shall be in accordance with the laws, rules and regulations of the City of Philadelphia, and specifically those of the Department of Licenses and Inspections, the Department of Streets, and the Art Commission, provided that the Department of Streets, in its sole, unreviewable discretion, may allow minor variations of the dimension limits of Section 1, within standard tolerances of current engineering practice.

SECTION 3. Before exercising any rights or privileges under this Ordinance, Owner must first obtain or have its contractor(s) obtain all required permits, licenses and approvals from all appropriate departments, boards, agencies or commissions. No such department, board, agency or commission shall be required to issue any such permit, license or approval solely because this Ordinance has been enacted, it being the express intent of this Ordinance not to supersede any other provision of law governing the issuance of such permits, licenses or approvals. In addition, before exercising any rights and privileges under this Ordinance, Owner shall enter into an agreement ("Agreement") with the appropriate City department or departments, satisfactory to the City Solicitor, to provide that Owner, *inter alia*:

(a) agrees that upon one hundred and eighty (180) days notice from the City, it shall remove the Encroachment without cost or expense to the City and shall remove the Encroachment at no cost and expense to the City of Philadelphia when given written notice to do so by the City of Philadelphia to accommodate a municipal or municipal sponsored construction project;

(b) shall secure all necessary permits, licenses and approvals from all appropriate departments, agencies, boards or commissions of the City as may be required by regulation or law. No such department, board, agency or commission shall be required to issue any such permit, license or approval solely because this Ordinance has been enacted;

(c) shall assume the costs of all changes and adjustments to, and relocation or abandonment of City utilities and City structures wherever located as may be necessary by the reason of the construction of the Encroachment;

(d) shall carry public liability and property damage insurance, co-naming the City of Philadelphia as an insured party, in such amounts as shall be satisfactory to the City Solicitor, or in lieu thereof, submit documentation in form and content acceptable to the City that Owner is self-insured and is providing the City of Philadelphia the same coverage and benefits had the insurance requirements been satisfied by an insurance carrier authorized to do business in the Commonwealth of Pennsylvania;

(e) shall insure that all construction contractors for the Encroachment carry public liability and property damage insurance, naming the City of Philadelphia as an insured party in such amounts as shall be reasonably satisfactory to the City Solicitor; and

(f) shall give the City and all public utility companies the right-of-access, ingress and egress for the purpose of inspection, maintenance, alteration, relocation or reconstruction of any of their respective facilities which may lie within the public footway adjacent to the Encroachment described in Section 1; an

(g) indemnify and hold harmless the City, its officers, employees and agents from and against any and all loss resulting from injury to, or death to persons or damage to property arising out of, resulting from, or in any manner caused by the presence, location, use, operation, installation, maintenance, replacement or removal of the Encroachment. Owner shall also agree to release the City from any and all claims relating to the Encroachment, including if ordered removed or when street, sidewalk or utility construction occurs; and

(h) furnish the City with either a bond with corporate surety in an amount required by the Department of Streets and in a form satisfactory to the Law Department to insure the compliance

with all the terms and conditions of this Ordinance and the Agreement, or in lieu thereof, submit documentation in a form and content acceptable to the City that Owner self-assumes the liabilities and obligations normally covered by the Surety Bond.

SECTION 4. The City Solicitor shall include in the Agreement such other terms and conditions as shall be deemed necessary to protect the interests of the City.

SECTION 5. The permission granted to Owner to legalize the Encroachment described in Section 1 shall expire without any further action by the City of Philadelphia if Owner has not entered into an Agreement and satisfied all requirements of the Agreement that are listed in Section 3 of this Ordinance within one (1) year after this Ordinance becomes law.

SECTION 6. This Ordinance shall not become effective unless the sum of two hundred dollars ($200.00), toward costs thereof, is paid into the City Treasury within sixty (60) days after the date this Ordinance becomes law.