

Ordinance No. 122148

Council Bill No. 115612

AN ORDINANCE relating to the Seattle Center Department; authorizing execution of Amendment No. 1 to the Agreement with The Westin Seattle for the Management of Food and Beverage Services at Marion Oliver McCaw Hall and the Exhibition Hall at Seattle Center.

CF No. _____

Date Introduced:	JUN 19 2006		
Date 1st Referred:	To: (committee) <u>Parks, Education, Libraries and Labor</u>		
Date Re - Referred:	To: (committee)		
Date Re - Referred:	To: (committee)		
Date of Final Passage:	Full Council Vote: <u>9-0</u>		
Date Presented to Mayor:	Date Approved: <u>7/6/06</u>		
Date Returned to City Clerk:	Date Published:	T.O. <input checked="" type="checkbox"/> F.T. <input type="checkbox"/>	
Date Vetoed by Mayor:	Date Veto Published:		
Date Passed Over Veto:	Veto Sustained:		

The City of Seattle - Legislative Department

Council Bill/Ordinance sponsored by: _____
Councilmember

Committee Action:

June 21, 2006
passed
year = RC/02
May = P (CB)

6/26/06 Passed 9-0

This file is complete and ready for presentation to Full Council. Committee: _____
(initial/date)

Law Department

Law Dept. Review

OMP
Review

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City Clerk
Review

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ORDINANCE 122148

AN ORDINANCE relating to the Seattle Center Department; authorizing execution of Amendment No. 1 to the Agreement with The Westin Seattle for the Management of Food and Beverage Services at Marion Oliver McCaw Hall and the Exhibition Hall at Seattle Center.

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. As requested by the Seattle Center Director and recommended by the Mayor, the Seattle Center Director, or his or her designee, is authorized to execute, for and on behalf of The City of Seattle, an agreement with The Westin Seattle substantially in the form of the agreement attached hereto and identified as "AMENDMENT No. 1 TO THE AGREEMENT FOR THE MANAGEMENT OF FOOD AND BEVERAGE SERVICES AT MARION OLIVER McCAW HALL AND THE EXHIBITION HALL AT SEATTLE CENTER BETWEEN THE CITY OF SEATTLE AND THE WESTIN SEATTLE" (Attachment 1).

Section 2. Any act consistent with the authority and prior to the effective date of this ordinance is hereby ratified and confirmed.



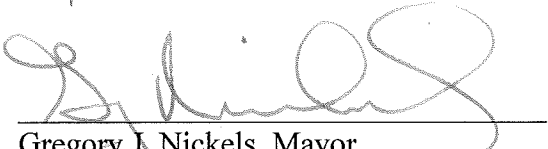
Section 3. This ordinance shall take effect and be in force thirty (30) days from and after its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

Passed by the City Council the 26th day of June, 2006, and signed by me in open session in authentication of its passage this 26th day of June, 2006.



President _____ of the City Council

Approved by me this 6th day of July, 2006.



Gregory J. Nickels, Mayor

Filed by me this 6th day of July, 2006.



City Clerk

(Seal)

Attachment 1: AMENDMENT No. 1 TO THE AGREEMENT FOR THE MANAGEMENT OF FOOD AND BEVERAGE SERVICES AT MARION OLIVER McCRAW HALL AND THE EXHIBITION HALL AT SEATTLE CENTER BETWEEN THE CITY OF SEATTLE AND THE WESTIN SEATTLE



City of Seattle

Gregory J. Nickels, Mayor

Office of the Mayor

May 16, 2006

Honorable Nick Licata
President
Seattle City Council
City Hall, 2nd Floor

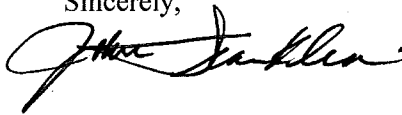
Dear Council President Licata:

I am pleased to transmit the attached proposed Council Bill that authorizes an amendment to the agreement between the City of Seattle and The Westin Seattle for food and beverage services at McCaw Hall and the Exhibition Hall. The amendment revises the agreement, which was completed nine months before McCaw Hall opened, to reflect the current operations in the building.

In October 2002, the City Council authorized an agreement with The Westin Seattle for management of food and beverage services at McCaw Hall and the Exhibition Hall at Seattle Center. Under the agreement, The Westin Seattle is the exclusive provider of concession and catering services in McCaw Hall and the exclusive provider of concession services in the neighboring Exhibition Hall. The Westin pays a percentage of gross sales to the City, starting at 7.5%, and increasing, as total sales increase, to a maximum of 12.5%. This amendment includes a negotiated reduction in certain catering fees by The Westin, in exchange for the City waiving the percentage sales fee for these events. This change was made in order to keep resident tenant special events in McCaw Hall, rather than at off-site locations, as was the case with the old Opera House. The experience to date in McCaw Hall has demonstrated that this revision in fee structure is a benefit to all parties. The Seattle Opera and Pacific Northwest Ballet are holding the majority of their special catered events at McCaw Hall, which helps The Westin by providing enough business for The Westin to retain a core of regular employees and reduce staff turnover, and helps the City by increasing the gross food sales in the building, which increases the percentage applied to calculate The Westin's total concession fee paid to the City.

Thank you for your consideration of this legislation. Should you have questions, please contact Ned Dunn at 684-7212 or Margaret Wetter at 684-7203.

Sincerely,


for
GREG NICKELS
Mayor of Seattle

cc: Honorable Members of the Seattle City Council



Attachment 1

AMENDMENT NO. 1
TO THE AGREEMENT FOR
THE MANAGEMENT OF FOOD AND BEVERAGE SERVICES
AT MARION OLIVER McCaw HALL
AND THE EXHIBITION HALL AT SEATTLE CENTER
BETWEEN
THE CITY OF SEATTLE
AND
THE WESTIN SEATTLE

THIS FIRST AMENDATORY AGREEMENT is entered into by and between The City of Seattle, a municipal corporation of the State of Washington ("City"), operating through its Seattle Center Department ("Seattle Center") and The Westin Seattle ("Westin"), having its principle place of business at 1900 Fifth Avenue, Seattle, Washington, 98101.

WHEREAS, on December 30, 2002, the parties hereto entered into an agreement for the Management of Food and Beverage Services at the Marion Oliver McCaw Hall ("McCaw Hall") and the Exhibition Hall at Seattle Center, pursuant to which The Westin Seattle was authorized to provide the Seattle Center and its patrons with exclusive food and beverage concession and catering services at McCaw Hall and exclusive food and beverage concession services at the Exhibition Hall ("Agreement"); and

WHEREAS, the Agreement provided for The Westin Seattle to pay to the City a percentage of its annual Gross Sales; and

WHEREAS, in a separate agreement between the City of Seattle, Pacific Northwest Ballet Association and Seattle Opera (together "Resident Entities") Relating to the Use and Management of Marion Oliver McCaw Hall it is recognized that the Resident Entities have certain status, rights and responsibilities in the management and operation of McCaw Hall; and

WHEREAS, the parties hereto desire to modify their Agreement to reflect certain practical considerations based on the experience gained since McCaw Hall opened in June of 2003, and to recognize the contribution that the Resident Entities make to the financial sustainability of McCaw Hall; NOW, THEREFORE,

IN CONSIDERATION of the mutual promises, covenants and conditions set forth in this Amendment No. 1, the parties agree as follows:

1. The third paragraph of Section 4.9, Obligation to Actively Market for Catering Events and Share in Rental Payments, is amended to read as follows:



The Westin shall receive a portion of all rental fees paid by a client, other than the Pacific Northwest Ballet and the Seattle Opera, for events in the front of house spaces in McCaw Hall, as shown in Exhibit E. Cancellation fees for events in the front of house spaces shall be shared equally by the Westin and Seattle Center. Seattle Center shall pay the Westin its share of the front-of-house rental fees monthly, for rents received during the previous calendar month. The Westin shall record such payments as Gross Sales in the month in which such payments are received. Seattle Center, in consultation with the Westin, shall establish and change as necessary the rental rates shown in Exhibit E, along with the Seattle Center deductions, which shall be tied to Seattle Center event costs and not unreasonably inflated.

2. The first paragraph of Section 5.1, Percentage of Gross Sales, is amended to read as follows:

In exchange for the grant of rights set forth in Article IV, the Westin agrees to pay to the City a percentage of its annual Gross Sales on a Monthly Accounting Period basis during each year of the term of this Agreement, in the manner set forth below and in accordance with the following graduated percentage payment schedule:

<u>Gross Sales</u>	<u>Percentage</u>
Zero to \$1,000,000	7.5% to City
\$1,000,001 to \$1,500,000	8.5% to City
\$1,500,001 to \$2,000,000	9.5% to City
\$2,000,001 to \$2,500,000	10.5% to City
\$2,500,001 to \$3,000,000	11.5% to City
\$3,000,001 and higher	12.5% to City

For the purposes of this paragraph only and in order to establish the percentage sales due Seattle Center, Westin shall include in its calculation of cumulative Gross Sales the proceeds from Catering sales made to Pacific Northwest Ballet, Seattle Opera, Seattle Center or the Seattle Center Foundation, but no percentage payments to the City shall be due for such sales. In exchange for such payment exemption, the Westin agrees to provide Catering services to Pacific Northwest Ballet, Seattle Opera, Seattle Center and Seattle Center Foundation at prices that are 15% less than the Westin's standard prices for such Catering services.

3. The second paragraph of Section 5.2, Timing and Form of Payments, is deleted in its entirety.
4. Section 6.1, Monthly Report, is amended to read as follows:

Within ten (10) days following the end of each Monthly Accounting Period, the Westin shall submit to the City an accounting report on an event-by-event basis for such period. Each report shall include for each event at least the following information: the Event Service Order number, event name, date of event, location of event if not in



McCaw Hall, nature of services provided, estimated attendance, and the amount of Gross Sales received or remaining owing. All information shall be documented satisfactory to the Seattle Center, which may include requests for additional kinds of related information from time to time, formatted to correspond with the "event type" categories currently used by the Seattle Center and provided in electronic as well as paper form, utilizing a computer application Approved by the Seattle Center Director.

5. Section 7.4, Menus, Prices and Signage, is amended to read as follows:

Each year during the term of the Agreement, the Westin shall submit proposed Concession menus and prices, and proposed prices for any other services provided under this Agreement, to the Seattle Center Director for Approval, which Approval shall not be unreasonably withheld. Such proposed menus and prices shall be submitted no later than July 1 for implementation on the following September. If the Westin desires to make any menu and price changes at any other time, it shall submit its request to the Seattle Center Director for Approval not less than thirty (30) days prior to the date of the proposed change. In the event no written response is provided by the City within the thirty (30) day review period, the Westin's proposed changes shall be deemed Approved. The Westin shall provide a wide range of Catering menus and prices to meet the variety of needs and price points of Seattle Center clients. Client event orders and cost estimates shall clearly indicate all client costs including service charges, gratuities, labor costs and sales tax. Subject to the Approval of the Seattle Center Director, all Westin signage, marketing, menus and employee uniforms and identification shall tastefully reflect the relationship hereunder between the Seattle Center and the Westin.

6. The notifications for Seattle Opera and Pacific Northwest Ballet in Section 21.1, Requirements for Notice, are amended to read as follows:

If to the Seattle Opera:

Seattle Opera
Ms. Kelly Tweeddale, Administrative Director
102 John Street
P.O. Box 9248
Seattle, WA 98109
Telephone: (206) 676-5515
Facsimile: (206) 389-7651

If to the Pacific Northwest Ballet:

Pacific Northwest Ballet
Mr. D. David Brown, Executive Director
301 Mercer Street
Seattle, WA 98109
Telephone: (206) 441-2441
Facsimile: (206) 441-2440



7. A revised Exhibit E, attached, is hereby incorporated into the Agreement.
8. All of the terms and conditions of the Agreement for the Management of Food and Beverage Services at the Marion Oliver McCaw Hall not modified by this Amendment shall remain in full force and effect. The additions, deletions, and modifications made herein shall be effective as of the date this Agreement is fully executed.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed by having an authorized representative of each such party affix his/her signature in the space below:

THE CITY OF SEATTLE

THE WESTIN SEATTLE

Robert Nellams
Seattle Center Director

Elisabeth James
General Manager

Date: _____

Date: _____



FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	DOF Analyst/Phone:
Seattle Center	Ned Dunn/684-7212 Margaret Wetter/684-7203 Helaine Honig/684-8222	Cheryl Swab/684-8053

Legislation Title:

AN ORDINANCE relating to the Seattle Center Department; authorizing execution of Amendment No. 1 to the Agreement with The Westin Seattle for the Management of Food and Beverage Services at Marion Oliver McCaw Hall and the Exhibition Hall at Seattle Center.

• **Summary of the Legislation:**

This legislation authorizes an amendment to the agreement between the City of Seattle and The Westin Seattle for food and beverage services at McCaw Hall and the Exhibition Hall. The amendment revises the agreement, which was completed nine months before McCaw Hall opened, to reflect the current operations in the building. The changes include simplifying certain accounting practices, a change in the timing for The Westin to propose annual menus and prices, and a change in catering prices and fees for certain events.

• **Background:**

In October 2002, the City Council passed Ordinance 120946 authorizing execution of an agreement with The Westin Seattle for management of food and beverage services at McCaw Hall and the Exhibition Hall at Seattle Center. The term of the agreement was five years from the anticipated building opening in the summer of 2003, ending July 31, 2008. The agreement may be extended for an additional five-year term, if both parties agree. Under the agreement, The Westin Seattle is the exclusive provider of concession and catering services in McCaw Hall and the exclusive provider of concession services in the neighboring Exhibition Hall. Concession services include food and beverage services in the McCaw Hall café and at concession stands ("over-the-counter" sales) before and during events in the building. Catering services are for special events and private party rentals of the facilities, arranged and paid for by the event organizer. Under the agreement, The Westin pays 7.5% of gross concession and catering sales to the City for the first \$1,000,000 in sales, with the percentage increasing by 1% on each additional \$500,000 increment of gross sales, up to a maximum of 12.5%. The Westin made an up-front capital investment of \$235,000 in food service equipment and infrastructure in McCaw Hall and pays an additional 1.5% of gross sales into a capital reserve fund for replacement of food service equipment.

In the old building (the Opera House), the former concessionaire provided day-of-event concession services for Seattle Opera and Pacific Northwest Ballet events, but for the most part the Opera and Ballet elected not to use the concessionaire to provide catering services, because

the concessionaire was not able to provide the level of service they desired. As a consequence, these special events were held off-site at other locations. Part of the reason in selecting The Westin as concessionaire for McCaw Hall was to keep these special events in the building, as well as to attract new business. The catering prices first proposed by The Westin were significantly above what the Opera and Ballet were used to paying for catering at off-site locations. Because it was in the best interest of all parties to keep these events in McCaw Hall, Seattle Center and The Westin agreed that The Westin would reduce its catering fees by 15% for catering sales to the Seattle Opera, Pacific Northwest Ballet, Seattle Center, and the Seattle Center Foundation. In exchange, The Westin would not pay a percentage fee on these sales to the City. However, these gross sales would count toward the total gross sales on which The Westin's increasing percentage fee payment to the City is calculated. The experience to date in McCaw Hall has demonstrated that this revision in catering fee structure is a benefit to all parties. The Opera and Ballet are holding the majority of their special catered events at McCaw Hall, which helps The Westin by providing enough business for The Westin to retain a core of regular employees and reduce staff turnover, and helps the City by increasing the gross food sales in the building, which increases the percentage applied to calculate The Westin's total concession fee paid to the City.

The McCaw Hall catering and concession revenue estimate of \$115,472 in the 2006 adopted budget assumes the revised fee structure outlined above, which is memorialized in this legislation. Actual catering and concession revenue under the first two full years of The Westin Agreement was \$102,672 in 2004 and \$166,496 in 2005, both using the revised fee structure. Seattle Center's experience in McCaw Hall has demonstrated that this revision in fee structure is a benefit to all parties and recommends that it be made permanent.

The other changes to the agreement in this amendment are minor, technical changes in reporting and record keeping which make administration of the agreement more efficient for all of the parties.

- Please check one of the following:

☐ **This legislation does not have any financial implications.**

☒ **This legislation has financial implications.**

Appropriations: This table should reflect appropriations that are a direct result of this legislation. In the event that the project/ programs associated with this ordinance have appropriations that were, or will be, received because of previous or future legislation or budget actions, please provide details in the Notes section below.

Fund Name and Number	Department	Budget Control Level*	2006 Appropriation	2007 Anticipated Appropriation
TOTAL			0	0

**See budget book to obtain the appropriate Budget Control Level for your department.*

Notes: NA

Anticipated Revenue/Reimbursement: Resulting From This Legislation: *This table should reflect revenues/reimbursements that are a direct result of this legislation. In the event that the issues/projects associated with this ordinance/resolution have revenues or reimbursements that were, or will be, received because of previous or future legislation or budget actions, please provide details in the Notes section below the table.*

Fund Name and Number	Department	Revenue Source	2006 Revenue	2007 Revenue
TOTAL			0	0

Notes: This amendment does not result in a change to the Seattle Center revenue budget. The impact of the proposed legislation was already anticipated in the catering/concession revenue projections for McCaw Hall.

Total Regular Positions Created Or Abrogated Through This Legislation, Including FTE

Impact: *This table should only reflect the actual number of positions created by this legislation. In the event that positions have been, or will be, created as a result of previous or future legislation or budget actions, please provide details in the Notes section below the table.*

Position Title and Department*	Fund Name	Fund Number	Part-Time/ Full Time	2006 Positions	2006 FTE	2007 Positions**	2007 FTE**
TOTAL			NA	NA	NA	NA	NA

* List each position separately

** 2007 positions and FTE are total 2007 position changes resulting from this legislation, not incremental changes. Therefore, under 2007, please be sure to include any continuing positions from 2006

Notes: None

- **Do positions sunset in the future?** (If yes, identify sunset date):

Spending/Cash Flow: This table should be completed only in those cases where part or all of the funds authorized by this legislation will be spent in a different year than when they were appropriated (e.g., as in the case of certain grants and capital projects). Details surrounding spending that will occur in future years should be provided in the Notes section below the table.

Fund Name and Number	Department	Budget Control Level*	2006 Expenditures	2007 Anticipated Expenditures
TOTAL				

* See budget book to obtain the appropriate Budget Control Level for your department.

Notes: NA

- **What is the financial cost of not implementing the legislation?** (Estimate the costs to the City of not implementing the legislation, including estimated costs to maintain or expand an existing facility or the cost avoidance due to replacement of an existing facility, potential conflicts with regulatory requirements, or other potential costs if the legislation is not implemented.)

If the legislation is not implemented, McCaw Hall and The Westin would lose catered events to other venues, and The Westin would experience higher staff turnover in their Seattle Center operation due to a reduced level of events for staff to work.

- **What are the possible alternatives to the legislation that could achieve the same or similar objectives?** (Include any potential alternatives to the proposed legislation, such as reducing fee-supported activities, identifying outside funding sources for fee-supported activities, etc.)

Changes to the agreement between The Westin Seattle and the City require approval by the City Council, so legislation must be enacted to amend the existing agreement.

- **Is the legislation subject to public hearing requirements:** (If yes, what public hearings have been held to date, and/or what plans are in place to hold a public hearing(s) in the future.)

No

- **Other Issues** (including long-term implications of the legislation):

None

Please list attachments to the fiscal note below:

STATE OF WASHINGTON – KING COUNTY

--SS.

200229
CITY OF SEATTLE, CLERKS OFFICE

No. TITLE ONLY

Affidavit of Publication

The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12th day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

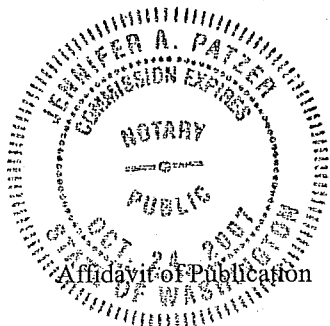
The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CT:122145-122151

was published on

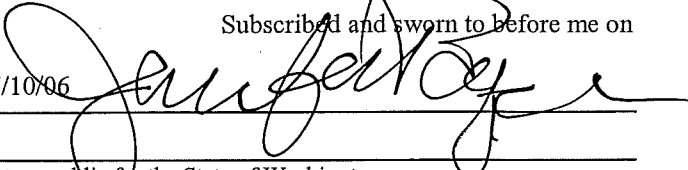
07/10/06

The amount of the fee charged for the foregoing publication is the sum of \$ 96.60, which amount has been paid in full.




Subscribed and sworn to before me on

07/10/06


Notary public for the State of Washington,
residing in Seattle

State of Washington, King County

City of Seattle

TITLE-ONLY PUBLICATION

The full text of the following ordinances, passed by the City Council on June 26, 2006, and published here by title only, will be mailed upon request, or can be accessed electronically at <http://clerk.ci.seattle.wa.us>. For further information, contact the Seattle City Clerk at 684-8344.

ORDINANCE NO. 122151

AN ORDINANCE appropriating money to pay certain audited claims and ordering the payment thereof.

ORDINANCE NO. 122150

AN ORDINANCE relating to the Department of Parks and Recreation; authorizing the acquisition of real property located at 1702 NW 62nd Street, otherwise known as Lot 16, Block 17, Gilman Park Addition, according to the plat thereof recorded in Volume 3 of Plats, page 40, in King County, Washington; authorizing acceptance of the deed for open space, park, and recreation purposes; and authorizing acquisition by condemnation.

ORDINANCE NO. 122149

AN ORDINANCE relating to the Seattle Center Department; authorizing execution of an agreement with Festivals, Inc. for the presentation of annual Bite of Seattle festivals at Seattle Center.

ORDINANCE NO. 122148

AN ORDINANCE relating to the Seattle Center Department; authorizing execution of Amendment No. 1 to the Agreement with The Westin Seattle for the Management of Food and Beverage Services at Marion Oliver McCaw Hall and the Exhibition Hall at Seattle Center.

ORDINANCE NO. 122147

AN ORDINANCE conditionally authorizing the Mayor to sign and/or execute a collective bargaining agreement and a memorandum of understanding between the City of Seattle and the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry, Local 32; and providing payment therefor.

ORDINANCE NO. 122146

AN ORDINANCE implementing a court order regarding Seattle Public Utilities funding of the City's One Percent for Art program; appropriating funds to Finance General to reimburse the Drainage and Wastewater Fund, the Water Fund, and the Solid Waste Fund for expenditures on certain public art projects; and transferring jurisdiction of certain art projects from Seattle Public Utilities to the Office of Arts and Cultural Affairs; all by a three-fourths vote of the City Council.

ORDINANCE NO. 122145

AN ORDINANCE accepting from Ms. Neva Gurb the gift of a chair that once belonged to Mayor Bertha Knight Landes.

Publication ordered by JUDITH PIPPIN,
City Clerk

Date of publication in the Seattle Daily
Journal of Commerce, July 10, 2006.

7/10(200229)