

Ordinance No. 123437

Council Bill No. 117015

AN ORDINANCE relating to the Museum of History and Industry ("MOHAI"); authorizing the Director of Finance to execute an agreement regarding the distribution of proceeds from the Washington State Department of Transportation's acquisition of the MOHAI facility at McCurdy Park.

Related Legislation File: _____

Date Introduced and Referred: <u>Oct. 25, 2010</u>	To: (committee): <u>Full Council</u>
Date Re-referred:	To: (committee):
Date Re-referred:	To: (committee):
Date of Final Action: <u>11.1.10</u>	Date Presented to Mayor: <u>11.2.10</u>
Date Signed by Mayor: <u>Nov. 8, 2010</u>	Date Returned to City Clerk: <u>Nov. 9, 2010</u>
Published by Title Only <input checked="" type="checkbox"/>	Date Vetoed by Mayor:
Published in Full Text _____	
Date Veto Published:	Date Passed Over Veto:
Date Veto Sustained:	Date Returned Without Signature:

The City of Seattle – Legislative Department

Council Bill/Ordinance sponsored by: *[Signature]*
Sq Bagshaw

Committee Action:

Date	Recommendation	Vote

This file is complete and ready for presentation to Full Council. _____

Full Council Action:

Date	Decision	Vote
<u>11.1.10</u>	<u>Passed</u>	<u>8-0</u>
		<u>Excused: MO</u>

Law Department

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

4
5 Passed by the City Council the 1st day of November, 2010, and
6 signed by me in open session in authentication of its passage this
7 1st day of November, 2010.

8
9
10 
11 _____
12 President _____ of the City Council

13
14 Approved by me this 9th day of Nov., 2010.

15 
16 _____
17 Michael McGinn, Mayor

18
19 Filed by me this 9th day of November, 2010.

20 
21 _____
22 City Clerk

23 (Seal)

24 Attachment 1: AGREEMENT REGARDING DISTRIBUTION OF MOHAI FACILITY
25 PROCEEDS BY AND BETWEEN THE CITY OF SEATTLE, A WASHINGTON
26 MUNICIPAL CORPORATION AND HISTORICAL SOCIETY OF SEATTLE AND KING
27 COUNTY, A WASHINGTON NONPROFIT CORPORATION
28



Attachment 1

**AGREEMENT REGARDING DISTRIBUTION OF MOHAI FACILITY PROCEEDS
BY AND BETWEEN THE CITY OF SEATTLE,
A WASHINGTON MUNICIPAL CORPORATION
AND HISTORICAL SOCIETY OF SEATTLE AND KING COUNTY,
A WASHINGTON NONPROFIT CORPORATION**

This Agreement, dated _____, 2010, between The City of Seattle (“City”) and the Historical Society of Seattle and King County (“MOHAI”).

WHEREAS, pursuant to Ordinance 123132, the City and MOHAI entered into a Project Development Agreement (“Development Agreement”) allowing MOHAI to develop and use the Lake Union Armory building for a new regional history museum; and

WHEREAS, the Development Agreement provides that the City will transfer to MOHAI all of the proceeds the City receives from the State of Washington Department of Transportation (“WSDOT”) for its acquisition of MOHAI’s museum building in McCurdy Park; and

WHEREAS, under a settlement agreement between the City, MOHAI and WSDOT, WSDOT has agreed to pay \$40 million for the acquisition of MOHAI’s building in two installments of \$20 million each, one payable in 2010 and the second one payable on or before August 1, 2011 (the “Building Payments); and

WHEREAS, in Ordinance 123408, the City agreed to pay the Building Payments to MOHAI as soon as practicable after such funds are received by the City; and

WHEREAS, the City has expressed an interest in having access to a portion of the Building Payments for a period of time to help ameliorate the impact of a projected severe revenue shortfall in its 2011 and 2012 General Fund budgets; and



WHEREAS, MOHAI wishes to support the City in addressing its short-term budget problems by accepting deferred payment of \$8.5 million of its second installment of Building Payments;

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, the parties agree as follows:

1. From the second \$20 million installment of Building Payments due from WSDOT on or before August 1, 2011, the City will pay MOHAI \$11.5 million as soon as possible after the City receives such funds. The City shall pay the remaining \$8.5 million (the "Retained Funds") to MOHAI as described below, first from the City's share of any payments the City receives as a result of WSDOT's acquisition of land within the MOHAI Use Area ("Land Payments"). The parties agree that no payment will be due until February 1, 2013, when the City becomes obligated to promptly pay to MOHAI the amount of Land Payments received to that date or \$8.5 million, whichever is less. Thereafter, the City shall continue to promptly pay to MOHAI as much of the entire amount of Retained Funds as may be necessary to fully repay such funds to MOHAI from the City's share of Land Payments as and when such Land Payments are received by the City. The following schedule provides for minimum payments to be paid to MOHAI from City funds other than the City's share of Land Payments in the event the City's share of any Land Payments is not sufficient to fully restore the Retained Funds more quickly:

- a. On February 1, 2013, the City will pay MOHAI a minimum of \$2.5 million.
- b. On February 1, 2014, unless MOHAI has already received at least \$5 million of the Retained Funds, the City will pay MOHAI \$2.5 million, less any portion of the \$2.5 million previously paid to MOHAI from City shares of Land Payments.



- c. On February 1, 2015, unless MOHAI has already received the full \$8.5 million of the Retained Funds, the City will pay MOHAI \$3.5 million, less any portion of the \$3.5 million previously paid to MOHAI from City shares of Land Payments.

2. The City's repayment obligation is not contingent on its receipt of any Land Payments and payments required under Paragraph 1(a) – (c) shall be made from other City funds if Land Payments are not available when such payments are due. As noted, commencing on February 1, 2013, and continuing thereafter, the City will pay its share of any Land Payments received by and after February 1, 2013 to MOHAI as promptly as possible after any Land Payments are received until the \$8.5 million in Retained Funds has been fully distributed to MOHAI. All payments to MOHAI of the Retained Funds required under Paragraph 1 will be accelerated in whole or in part as such compensation is actually received by the City. No other use of the City's share of any such Land Payments shall have a higher priority than restoration and payment to MOHAI of the Retained Funds.

3. The City's retention of the amounts as described above shall not constitute a loan from MOHAI to the City, and the City shall not be obligated to pay interest to MOHAI on the Retained Funds and any interest earned on such Retained Funds during the term of this Agreement shall accrue to the City.

4. The City's payment obligation described above will be absolute and irrevocable and shall not be subject to delay or diminution by setoff, counterclaim, abatement or otherwise.

5. Nothing in this Agreement shall reduce or in any way affect the prompt provision to MOHAI of the full amount of any payments to which it is otherwise entitled, specifically including but not limited to MOHAI's own separate share of any Land Payments, under terms of the Agreement Regarding Assignment of Acquisition/Condemnation Proceeds, as amended, and



as confirmed by Ordinance 123408 and otherwise as provided in Ordinance 123408, except for the second \$20 million installment for acquisition of the MOHAI museum building in McCurdy Park due from WSDOT on or before August 1, 2011.

City:

CITY OF SEATTLE, a Washington
municipal corporation

By: _____
Name: Glen Lee
Title: Director of Finance

Approved as to form:

City of Seattle Assistant City Attorney

MOHAI:

HISTORICAL SOCIETY OF SEATTLE
AND KING COUNTY, a Washington
nonprofit corporation

By: _____
Name: _____
Title: _____



FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	Leg Analyst/Phone:
Legislative	Norm Schwab	684-9292

Legislation Title:

AN ORDINANCE relating to the Museum of History and Industry (“MOHAI”); authorizing the Director of Finance to execute an agreement regarding the distribution of proceeds from the Washington State Department of Transportation’s acquisition of the MOHAI facility at McCurdy Park.

Summary of the Legislation:

This legislation authorizes the Director of Finance to sign an agreement with the Historical Society of Seattle and King County (a/k/a Museum of History and Industry (MOHAI)). The agreement establishes a schedule for payment to MOHAI of the second \$20 million installment that the City will receive from the Washington State Department of Transportation (WSDOT) for acquisition of the MOHAI museum building in McCurdy Park due from WSDOT on or before August 1, 2011.

The agreement provides for the City to pay MOHAI the WSDOT proceeds in four installments:

- \$11.5 million as soon as possible after the City receives the WSDOT settlement funds;
- On February 1, 2013, a minimum of \$2.5 million;
- On February 1, 2014, another \$2.5 million less any portion of the \$2.5 million previously received.
- On February 1, 2015, another \$3.5 million, less any portion of the \$3.5 million previously received.

The agreement anticipates that payments will be made from the City’s share of proceeds from WSDOT’s acquisition of land in McCurdy and East Montlake parks, and such payment will be accelerated as such compensation is actually received by the City. If the City has not received the land proceeds by the time payments are due, the City will be required to use other resources to fund the obligation. The payment schedule will allow the City to use \$8.5 million of the MOHAI settlement proceeds to help ameliorate the impact of a projected severe revenue shortfall in its 2011 and 2012 General Fund budgets, to which MOHAI has indicated its support.

Background:

The purpose of this legislation is to supplement the Settlement Agreement between the City of Seattle, WSDOT and MOHAI authorized by Ordinance 123408, passed by the City Council on September 27, 2010.



At the time of passage of this ordinance, MOHAI had agreed to the City's temporary use of \$8.5 million from the 2011 payment by WSDOT for the acquisition of the MOHAI museum building in McCurdy Park. MOHAI agreed to this proposed use of funds with the understanding that the City intends to use the future City's share of proceeds from WSDOT's condemnation of the land in McCurdy and East Montlake parks needed for the State Route 520 project to pay MOHAI in lieu of the retained funds. The City's repayment obligation is not contingent on its receipt of these funds. This obligation will be absolute and irrevocable per the terms of the agreement.

In negotiating this agreement with MOHAI, the City Council's intent is to use the retained funds amounting to \$8.5 million to help ameliorate the impact of a projected sever revenue shortfall in its 2011 and 2012 General Fund budgets.

This legislation does not have any financial implications.

This legislation has financial implications.

Appropriations:

Fund Name and Number	Department	Budget Control Level*	2010 Appropriation	2011 Anticipated Appropriation
n/a	n/a	n/a	n/a	n/a
TOTAL				

Appropriations Notes: Under Ordinance 123408 passed on September 27, 2010, the funds were appropriated into the Cumulative Reserve Subfund – Unrestricted Subaccount in a new MOHAI Replacement Facilities (KMOHAI) Budget Control Level. The appropriation was for \$40 million, in anticipation of both the 2010 and 2011 receipt of funds from WSDOT; however, the ordinance specifies that no funds can be expended until the City has received the same from WSDOT.

Anticipated Revenue/Reimbursement: Resulting from this Legislation:

Fund Name and Number	Department	Revenue Source	2010 Revenue	2011 Revenue
n/a	n/a	n/a	n/a	n/a
TOTAL				

Revenue/Reimbursement Notes: The revenue to cover the City's obligation to MOHAI for the retention of \$8.5 million from the proceeds for WSDOT's acquisition of the MOHAI museum facility is anticipated to come from the City's share of proceeds from WSDOT's condemnation of the land in McCurdy and East Montlake parks needed for the State Route 520 project. Receipt of such funds is anticipated to occur in late 2012 or 2013. Based on appraisals done to date, the City's share of such proceeds should be more than sufficient to cover the \$8.5 million obligation to MOHAI. In the unlikely event that the proceeds are not sufficient or do not arrive in a timely fashion to cover the City's obligated payment schedule to MOHAI, other unrestricted City funds



would have to cover the obligation. Future ordinances would address the source of revenues and any appropriations needed.

Total Regular Positions Created, Modified, or Abrogated through this Legislation, Including FTE Impact: None

Spending/Cash Flow:

Fund Name & #	Department	Budget Control Level*	2010 Expenditures	2011 Anticipated Expenditures
n/a	n/a	n/a	n/a	n/a
TOTAL				

Spending/Cash Flow Notes: Spending of the \$8.5 million will be determined as part of the Adopted 2011 and 2012 budgets.

What is the financial cost of not implementing the legislation?

Without the \$8.5 million, the City Council would not be able to offset deeper cuts as proposed in the Mayor's 2011-2012 Proposed Budget.

Does this legislation affect any departments besides the originating department?

The legislation does not affect departments directly, but one-time use of the \$8.5 million in the 2011 and 2012 budgets could affect several department budgets.

What are the possible alternatives to the legislation that could achieve the same or similar objectives?

The City Council could increase taxes and fees to bring in the \$8.5 million.

Is the legislation subject to public hearing requirements? No

Other Issues: None

List attachments to the fiscal note below: None



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BY AND BETWEEN THE CITY OF SEATTLE,
A WASHINGTON MUNICIPAL CORPORATION
AND HISTORICAL SOCIETY OF SEATTLE AND KING COUNTY,
A WASHINGTON NONPROFIT CORPORATION**

This Agreement, dated December 6, 2010, between The City of Seattle (“City”) and the Historical Society of Seattle and King County (“MOHAI”).

WHEREAS, pursuant to Ordinance 123132, the City and MOHAI entered into a Project Development Agreement (“Development Agreement”) allowing MOHAI to develop and use the Lake Union Armory building for a new regional history museum; and

WHEREAS, the Development Agreement provides that the City will transfer to MOHAI all of the proceeds the City receives from the State of Washington Department of Transportation (“WSDOT”) for its acquisition of MOHAI’s museum building in McCurdy Park; and

WHEREAS, under a settlement agreement between the City, MOHAI and WSDOT, WSDOT has agreed to pay \$40 million for the acquisition of MOHAI’s building in two installments of \$20 million each, one payable in 2010 and the second one payable on or before August 1, 2011 (the “Building Payments); and

WHEREAS, in Ordinance 123408, the City agreed to pay the Building Payments to MOHAI as soon as practicable after such funds are received by the City; and

WHEREAS, the City has expressed an interest in having access to a portion of the Building Payments for a period of time to help ameliorate the impact of a projected severe revenue shortfall in its 2011 and 2012 General Fund budgets; and

CITY CLERK
MND DEC 16 AM 10:22
CITY OF SEATTLE
FILED

WHEREAS, MOHAI wishes to support the City in addressing its short-term budget problems by accepting deferred payment of \$8.5 million of its second installment of Building Payments;

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, the parties agree as follows:

1. From the second \$20 million installment of Building Payments due from WSDOT on or before August 1, 2011, the City will pay MOHAI \$11.5 million as soon as possible after the City receives such funds. The City shall pay the remaining \$8.5 million (the "Retained Funds") to MOHAI as described below, first from the City's share of any payments the City receives as a result of WSDOT's acquisition of land within the MOHAI Use Area ("Land Payments"). The parties agree that no payment will be due until February 1, 2013, when the City becomes obligated to promptly pay to MOHAI the amount of Land Payments received to that date or \$8.5 million, whichever is less. Thereafter, the City shall continue to promptly pay to MOHAI as much of the entire amount of Retained Funds as may be necessary to fully repay such funds to MOHAI from the City's share of Land Payments as and when such Land Payments are received by the City. The following schedule provides for minimum payments to be paid to MOHAI from City funds other than the City's share of Land Payments in the event the City's share of any Land Payments is not sufficient to fully restore the Retained Funds more quickly:

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- b. On February 1, 2014, unless MOHAI has already received at least \$5 million of the Retained Funds, the City will pay MOHAI \$2.5 million, less any portion of the \$2.5 million previously paid to MOHAI from City shares of Land Payments.
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3. The City's retention of the amounts as described above shall not constitute a loan from MOHAI to the City, and the City shall not be obligated to pay interest to MOHAI on the Retained Funds and any interest earned on such Retained Funds during the term of this Agreement shall accrue to the City.

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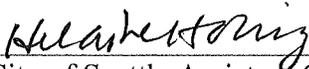
the second \$20 million installment for acquisition of the MOHAI museum building in McCurdy Park due from WSDOT on or before August 1, 2011.

City:

CITY OF SEATTLE, a Washington
municipal corporation

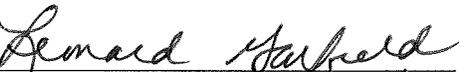
By: 
Name: Glen Lee
Title: Director of Finance

Approved as to form:


City of Seattle Assistant City Attorney

MOHAI:

HISTORICAL SOCIETY OF SEATTLE
AND KING COUNTY, a Washington
nonprofit corporation

By: 
Name: Leonard Garfield
Title: Executive Director

STATE OF WASHINGTON – KING COUNTY

--SS.

263075
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.

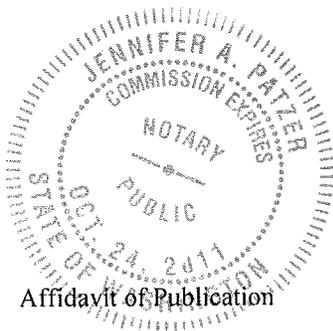
The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CT:123436 & 123437

was published on

11/15/10

The amount of the fee charged for the foregoing publication is the sum of \$ 40.95, which amount has been paid in full.



Affidavit of Publication

Subscribed and sworn to before me on

11/15/10

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 November 1, 2010, and published here by title only, will be mailed upon request, or can be accessed at <http://clerk.seattle.gov>. For further information, contact the Seattle City Clerk at 684-8344.

ORDINANCE NO. 123436

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

ORDINANCE NO. 123437

AN ORDINANCE relating to the Museum of History and Industry ("MOHAI"), authorizing the Director of Finance to execute an agreement regarding the distribution of proceeds from the Washington State Department of Transportation's acquisition of the MOHAI facility at McCurdy Park.

Publication ordered by the City Clerk
Date of publication in the Seattle Daily Journal of Commerce, November 15, 2010.
11/15(263075)