

Ordinance No. 124120 124224

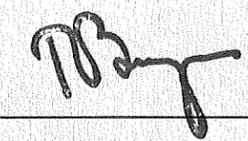
Council Bill No. 117812

AN ORDINANCE relating to the Department of Finance and Administrative Services; authorizing the amendment of certain lease agreements with the Washington State Department of Transportation, to clarify that the City's indemnity obligations are limited to funds that have been appropriated and are available at the time an indemnity claim is made, and to specify the resources available to meet such obligations.

Related Legislation File:

Date Introduced and Referred: <u>6-17-13</u>	To: (committee): <u>Government Performance and Finance</u>
Date Re-referred:	To: (committee):
Date Re-referred:	To: (committee):
Date of Final Action: <u>7/8/13</u>	Date Presented to Mayor: <u>7/9/13</u>
Date Signed by Mayor: <u>7/16/13</u>	Date Returned to City Clerk: <u>7/17/13</u>
Published by Title Only <input checked="" type="checkbox"/>	Date Vetoed by Mayor:
Published in Full Text <input type="checkbox"/>	
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: 

Committee Action:

Date	Recommendation	Vote
<u>6/19/2013</u> ^{7/3/2013}	<u>PASS</u>	<u>SC TB 2-0-0</u>

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

Full Council Action:

Date	Decision	Vote
<u>July 8, 2013</u>	<u>Passed</u>	<u>9-0</u>

LAW DEPARTMENT

CITY OF SEATTLE
ORDINANCE 124224
COUNCIL BILL 117812

1 AN ORDINANCE relating to the Department of Finance and Administrative Services;
2 authorizing the amendment of certain lease agreements with the Washington State
3 Department of Transportation, to clarify that the City's indemnity obligations are limited
4 to funds that have been appropriated and are available at the time an indemnity claim is
5 made, and to specify the resources available to meet such obligations.
6

7
8 WHEREAS, the City of Seattle leases various parcels of property that are owned and managed
9 by the Washington State Department of Transportation (WSDOT); and

10 WHEREAS, WSDOT requires such leases to include an indemnity obligation of the City for
11 third party claims caused by, or resulting from, the City's use of WSDOT property, or
12 arising out of, or in connection with, any acts or activities related to the leases; and

13 WHEREAS, the City believes that such indemnity provisions are appropriate as well as common
14 leasing practice; and

15 WHEREAS, the City and WSDOT wish to clarify that the City's indemnity obligations are not
16 unlimited, but by State law must be limited to funds that have been appropriated and are
17 available at the time an indemnity claim is made; and

18 WHEREAS, the City has diligently performed its indemnity obligations in the past, and has
19 made robust appropriations to enable performance of these obligations in the future; and

20 WHEREAS, the City and WSDOT have agreed to amend certain existing lease agreements to
21 include clarifying language that explains the City's appropriation structure and specifies
22 the appropriated funds that could be drawn from and used to pay for an indemnity claim
23 were it to be triggered; NOW, THEREFORE,

24 **BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

25 Section 1. The City of Seattle is hereby authorized to amend its existing lease
26 agreements with the Washington State Department of Transportation as identified in Section 2
27 below, to include the following language:
28



1
2 TENANT'S FUNDS AVAILABLE TO SATISFY INDEMNITY CLAIMS.

3
4 A. TENANT's indemnity obligations under this lease are limited to funds that have been
5 appropriated and are available at the time an indemnity claim is made. TENANT's annual
6 appropriations available to satisfy an indemnity claim are the funds available in (1) the
7 Budget Control Level (BCL) under which the lease was made; (2) any associated BCL
8 controlled and authorized for transfer by TENANT; and (3) the Judgment and Claims
9 Subfund. In addition, the City maintains excess liability insurance coverage,
10 disbursements of which do not require City appropriation.

11
12 B. For 2013 the amount appropriated in the Judgment and Claims Subfund is \$21,533,963
13 (which includes \$9,745,897 for litigation expenses; \$3,750,000 to pay claims; and
14 \$6,500,000 to satisfy unanticipated claims); and the amount of excess liability insurance
15 coverage is \$40 million.

16
17 C. The Seattle Department of Finance and Administrative Services, or successor department,
18 shall notify WSDOT annually of any changes to the City's appropriation structure, or to
19 the appropriation amounts, set forth in part (B) above. Such notice will be sent to:

20 DEPARTMENT OF TRANSPORTATION (Mailing Address)
21 Attn.: Property Management Program Manager
22 P.O. Box 47338
23 Olympia, WA 98504-7338;

24 or

25 DEPARTMENT OF TRANSPORTATION (Physical Address)
26 Attn.: Property Management Program Manager
27 7345 Linderson Way S.W.
28 Tumwater, WA 98501



Section 2. The leases to be amended are the following:

	Tenant	Description	Term	WSDOT Lease #	WSDOT IC #	Commencement Date
1	City of Seattle, HSD	Homeless Feeding Program – Operation Sack Lunch	Year to year, automatically renewing annually	AA-1-12666	1-17-02154	4/19/2011
2	City of Seattle, SCL	I-5 Transmission Line Station's Landscaping	Indefinite	AA-1-07215	1-17-02371	11/6/1979
3	City of Seattle, SDOT	Cougar Mountain Radio Site	On holdover, expires in 2022	WF-1-11367	1-17-03521	5/31/2002
4	City of Seattle, Department of Administrative Services	Seattle Municipal Tower	Expires on May 4, 2064, but can be renegotiated	AA-1-10494	1-17-04819	3/28/1988
5	City of Seattle, Parks	Old Colman School Playground Ground Lease & I-90	Expires in 2017, but can be renewed	RA-1-10542	1-17-05677	4/25/1997
6	City of Seattle, Parks	Day Street Ramp & I-90	Expires in 2052, but can be renewed	AA-1-10543	1-17-05679	4/25/1997
7	City of Seattle, Parks	Air Space Leases & I-90	Expires in 2017, but can be renewed	AA-1-10546	1-17-05680	4/25/1997
8	City Of Seattle, Executive Services Department	Charles Street Interchange	Expires on February 28, 2015	AA-1-10891	1-17-05807	3/1/2010
9	City of Seattle, Parks	Plymouth Pillars Park	Expires in 2016	AA-1-11481	1-17-06633	2/3/2006
10	City of Seattle, Parks	I-5 Colonnade	Indefinite	AA-1-11623	1-17-06970	3/4/2005
11	City of Seattle, SDOT	Mountain to Sound Trail	Expires in 2023, but may be renewed	TR-1-12702	1-17-08803	3/21/2013
12	City of Seattle, SPU	S. Transfer Station Bike/Pedestrian Pathway	Month to month, automatically renews	AA-1-13053	1-17-09488	12/16/2012



13	City of Seattle, Parks	Two parcels of land for parks	Expires in 2015	AA-7-05522	7-17-02191	6/27/1975
14	City of Seattle, Parks	North Passage & South Passage Parks	Expires in 2016	AA-7-05395	7-17-02066	8/19/1976

Section 3. The Director of the Department of Finance and Administrative Services, or his designee, is hereby authorized to execute, for and on behalf of the City of Seattle, a Lease Amendment with the Washington State Department of Transportation, substantially in the form attached hereto as Attachment 1.

Section 4. This ordinance shall take effect and be in force 30 days after its approval by the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.



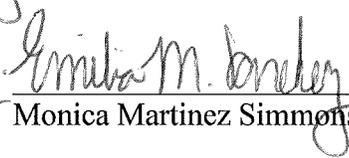
1 Passed by the City Council the 8th day of July, 2013, and
2 signed by me in open session in authentication of its passage this
3 8th day of July, 2013.

4
5
6 
President _____ of the City Council

7
8
9 Approved by me this 16th day of July, 2013.

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11 
12 Michael McGinn, Mayor

13
14
15
16
17 Filed by me this 17th day of July, 2013.

18
19 
20 for Monica Martinez Simmons, City Clerk

21 (Seal)

22 Attachment 1: Lease Amendment
23
24
25
26
27
28



Chris Potter/hjh
FAS WSDOT Lease Amendments ORD ATT 1
May 23, 2013
Version #9

L E A S E A M E N D M E N T

1. The City leases of WSDOT property identified in Section 2. below are hereby amended to include the following section:

TENANT'S FUNDS AVAILABLE TO SATISFY INDEMNITY CLAIMS.

A. TENANT's indemnity obligations under this Lease are limited to funds that have been appropriated and are available at the time an indemnity claim is made. TENANT's annual appropriations available to satisfy an indemnity claim are the funds available in (1) the Budget Control Level (BCL) under which the lease was made; (2) any associated BCL controlled and authorized for transfer by TENANT; and (3) the Judgment and Claims Subfund. In addition, the City maintains excess liability insurance coverage, disbursements of which do not require City appropriation.

B. For 2013 the amount appropriated in the Judgment and Claims Subfund is \$21,533,963 (which includes \$9,745,897 for litigation expenses; \$3,750,000 to pay claims; and \$6,500,000 to satisfy unanticipated claims); and the amount of excess liability insurance coverage is \$40 million.

C. The Seattle Department of Finance and Administrative Services, or successor department, shall notify WSDOT annually of any changes to the City's appropriation structure, or to the appropriation amounts, set forth in part (B) above. Such notice will be sent to:

DEPARTMENT OF TRANSPORTATION (Mailing Address)
Attn.: Property Management Program Manager
P.O. Box 47338
Olympia, WA 98504-7338;

or

DEPARTMENT OF TRANSPORTATION (Physical Address)
Attn.: Property Management Program Manager
7345 Linderson Way S.W.
Tumwater, WA 98501



2. The leases to be amended are:

	Tenant	Description	Term	WSDOT Lease #	WSDOT IC #	Commencement Date
1	City of Seattle, HSD	Homeless Feeding Program – Operation Sack Lunch	Year to year, automatically renewing annually	AA-1-12666	1-17-02154	4/19/2011
2	City of Seattle, SCL	I-5 Transmission Line Station’s Landscaping	Indefinite	AA-1-07215	1-17-02371	11/6/1979
3	City of Seattle, SDOT	Cougar Mountain Radio Site	On holdover, expires in 2022	WF-1-11367	1-17-03521	5/31/2002
4	City of Seattle, Department of Administrative Services	Seattle Municipal Tower	Expires on May 4, 2064, but can be renegotiated	AA-1-10494	1-17-04819	3/28/1988
5	City of Seattle, Parks	Old Colman School Playground Ground Lease & I-90	Expires in 2017, but can be renewed	RA-1-10542	1-17-05677	4/25/1997
6	City of Seattle, Parks	Day Street Ramp & I-90	Expires in 2052, but can be renewed	AA-1-10543	1-17-05679	4/25/1997
7	City of Seattle, Parks	Air Space Leases & I-90	Expires in 2017, but can be renewed	AA-1-10546	1-17-05680	4/25/1997
8	City Of Seattle, Executive Services Department	Charles Street Interchange	Expires on February 28, 2015	AA-1-10891	1-17-05807	3/1/2010
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10	City of Seattle, Parks	I-5 Colonnade	Indefinite	AA-1-11623	1-17-06970	3/4/2005
11	City of Seattle, SDOT	Mountain to Sound Trail	Expires in 2023, but may be renewed	TR-1-12702	1-17-08803	3/21/2013
12	City of Seattle, SPU	S. Transfer Station Bike/Pedestrian Pathway	Month to month, automatically renews	AA-1-13053	1-17-09488	12/16/2012
13	City of Seattle, Parks	Two parcels of land for parks	Expires in 2015	AA-7-05522	7-17-02191	6/27/1975
14	City of Seattle, Parks	North Passage & South Passage Parks	Expires in 2016	AA-7-05395	7-17-02066	8/19/1976



Chris Potter/hjh
FAS WSDOT Lease Amendments ORD ATT 1
May 23, 2013
Version #9

IN WITNESS WHEREOF, the parties have executed this Lease Amendment as of the date last written below.

Accepted and Approved by:

CITY OF SEATTLE, DEPARTMENT OF
FINANCE AND ADMINISTRATIVE
SERVICES

WASHINGTON STATE DEPARTMENT OF
TRANSPORTATION

By: _____ By: _____

Cynthia Tremblay,

Title: _____ Property Management Program Manager

Dated: _____ Dated: _____

APPROVED AS TO FORM

By: _____

Assistant Attorney General

_____, 2013



Chris Potter/hjh
FAS WSDOT Lease Amendments ORD ATT 1
May 23, 2013
Version #9

WSDOT AGENCY ACKNOWLEDGMENT

STATE OF WASHINGTON)
) ss
COUNTY OF THURSTON)

On this _____ day of _____, 2013 before me personally appeared Cynthia Tremblay, to me known to be the duly appointed Property Management Program Manager, and that she executed the within and foregoing instrument and acknowledged the said instrument to be the free and voluntary act and deed of said State of Washington, for the uses and purposes therein set forth, and on oath states that she was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the _____ day of _____, 2013.

(Signature)

(Print or type name)
Notary Public in and for the State of
Washington

residing
at _____

My commission expires



FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	CBO Analyst/Phone:
Finance and Administrative Services	Chris Potter/x6-1576	Jennifer Devore/x5-1238

Legislation Title:

AN ORDINANCE relating to the Department of Finance and Administrative Services; authorizing the amendment of certain lease agreements with the Washington State Department of Transportation, to clarify that the City's indemnity obligations are limited to funds that have been appropriated and are available at the time an indemnity claim is made, and to specify the resources available to meet the City's indemnity obligations.

Summary of the Legislation:

This legislation authorizes the amendment of fourteen current leases between the City and the Washington State Department of Transportation (WSDOT) executed between 1975 and 2013. A new section is proposed to be added to each lease in order to clarify that the indemnity obligations of the City, as Tenant, are not open-ended. The proposed Lease Amendment notifies WSDOT that the City's indemnity obligation is limited to funds that have been appropriated and are available at the time that an indemnity claim is made. The new proposed language then documents the City's appropriation structure and specifies the funds currently appropriated that could be used to pay for an indemnity claim. The City's Department of Finance and Administrative Services (FAS) is further obligated to notify WSDOT each year of any changes to the City's appropriation structure, or to the appropriation amounts.

Background:

In 2011, the Law Department began to identify a need to address how certain grants of City indemnities were offered in a variety of contracts, including leases. During negotiations with WSDOT over a new City lease of WSDOT property in 2012, the City proposed language clarifying that the City's indemnity obligations are limited to funds appropriated and available at the time an indemnity claim is made. In response, WSDOT sought assurance that the City would have sufficient funds available to satisfy future indemnity claims.

Because the City cannot guarantee that funds will be available in the future, the City instead agreed to document, in current and future City leases of WSDOT property, the City's appropriation structure. Therefore, the new proposed language explains that the City satisfies indemnity claims through funds available in the Budget Control Level (BCL) under which the lease was made, through any associated BCL controlled for transfer, and through the City's



Judgment and Claims Subfund. The new language also notes that the City maintains excess liability insurance coverage.

The lease amendment language also specifies the funds the City has currently appropriated. For 2013 the amount appropriated for the Judgment and Claims Subfund is \$21,533,963 (which includes \$9,745,897 for litigation expenses; \$3,750,000 to pay claims; and \$6,500,000 to satisfy unanticipated claims); and the amount of excess liability insurance coverage is \$40 million. The new language requires FAS to notify WSDOT each year if such amounts, or the appropriation structure, changes.

While specifically identifying resources available to meet indemnities is a change in practice, this ordinance does not materially affect the way the City plans for or meets its indemnity obligations.

Please check one of the following:

This legislation does not have any financial implications.

This legislation has financial implications.

Other Implications:

- a) **Does the legislation have indirect financial implications, or long-term implications?**
The long-term implication for FAS is that FAS must notify WSDOT each year if the appropriation amounts listed, or the City's appropriation structure, changes.
- b) **What is the financial cost of not implementing the legislation?**
The financial cost of not implementing the legislation would be that WSDOT could decide to terminate any or all of the affected leases. In this case, the City would need to find alternate locations for a number of uses, which could have significant financial cost. For example, cancellation of Agreement AA-1-10891 would necessitate the purchase or lease of land to support operations at the Charles Street Campus.
- c) **Does this legislation affect any departments besides the originating department?**
Yes, this legislation affects several departments which have entered into leases with WSDOT, including Human Services Department, Seattle City Light, Seattle Department of Transportation, Department of Parks and Recreation, and Seattle Public Utilities, as well as the Mayor's Office. A list and description of leases to be amended is included within the Ordinance text, and is also attached to this Fiscal Note as Exhibit A. A list of the leases is also included in Attachment 1 to the Ordinance.



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

This legislation is a global amendment to fourteen separate leases. It would be possible for each lease to be amended separately so that Council could take each one up in turn. However, since the amendment merely documents certain appropriated funds for 2013, and clarifies the City's indemnity obligations, there is little benefit from taking each agreement up separately.

e) Is a public hearing required for this legislation?

No.

f) Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation?

No.

g) Does this legislation affect a piece of property?

No.

h) Other Issues:

List attachments to the fiscal note below:

Exhibit A – List of Existing WSDOT Leases to be Amended

Exhibit A
Existing WSDOT Leases to be Amended

	Tenant	Description	Term	WSDOT Lease #	WSDOT IC #	Commencement Date
1	City of Seattle, HSD	Homeless Feeding Program – Operation Sack Lunch	Year to year, automatically renewing annually	AA-1-12666	1-17-02154	4/19/2011
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13	City of Seattle, Parks	Two parcels of land for parks	Expires in 2015	AA-7-05522	7-17-02191	6/27/1975
14	City of Seattle, Parks	North Passage & South Passage Parks	Expires in 2016	AA-7-05395	7-17-02066	8/19/1976





City of Seattle
Office of the Mayor

May 28, 2013

Honorable Sally J. Clark
President
Seattle City Council
City Hall, 2nd Floor

Dear Council President Clark:

I am pleased to transmit the attached proposed Council Bill that authorizes the amendment of fourteen current leases between the City and the Washington State Department of Transportation (WSDOT) executed between 1975 and 2013. Each lease would be amended to add a new section clarifying that the indemnity obligations of the City, as Tenant, are not open-ended, but are limited to funds that have been appropriated and are available at the time an indemnity claim is made.

Efforts to amend these leases began in 2012, during negotiations over a new City lease of WSDOT property. While the City sought to specify that the City's indemnity funds were limited to appropriated and available funds, WSDOT wanted assurance that the City would have sufficient funds available to satisfy future indemnity claims.

The parties agreed that the City will document the City's appropriation structure in current and future City leases of WSDOT property. The lease amendment further obligates the Department of Finance and Administrative Services to notify WSDOT each year of any changes to the City's appropriation structure, or to the appropriation amounts. While specifying resources available to meet indemnities is a change in practice, this legislation will not materially affect the way the City plans for or meets its indemnity obligations.

Resolving this outstanding issue with WSDOT will allow the City to move forward with several outstanding leases supporting City operations. Thank you for your consideration of this legislation. Should you have questions, please contact Chris Potter at 386-1576.

Sincerely,

Michael McGinn
Mayor of Seattle

cc: Honorable Members of the Seattle City Council

Michael McGinn, Mayor
Office of the Mayor
600 Fourth Avenue, 7th Floor
PO Box 94749
Seattle, WA 98124-4749

Tel (206) 684-4000
Fax (206) 684-5360
TDD (206) 615-0476
mike.mcginn@seattle.gov



STATE OF WASHINGTON -- KING COUNTY

--SS.

300885
CITY OF SEATTLE, CLERKS OFFICE

No. 124217,218,219,224,225,26

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; TITLE ONLY ORDINANCES

was published on

08/02/13

The amount of the fee charged for the foregoing publication is the sum of \$132.00 which amount has been paid in full.



Affidavit of Publication

Ramella Colubry

Subscribed and sworn to before me on
08/02/2013 *[Signature]*

Notary public for the State of Washington,
residing in Seattle

State of Washington, King County

City of Seattle Title Only Ordinances

The full text of the following legislation, passed by the City Council on July 8, 2013, and published below by title only, will be mailed upon request, or can be accessed at <http://clerk.seattle.gov>. For information on upcoming meetings of the Seattle City Council, please visit <http://www.seattle.gov/council/calendar>.

Contact: Office of the City Clerk at (206) 684-8344.

ORDINANCE NO. 124217

AN ORDINANCE relating to the City of Seattle archives and records management activities; combining the duties and responsibilities for archives and records management in one division of the Office of the City Clerk; creating a Seattle Archives and Records Management Program; amending Seattle Municipal Code (SMC) Chapter 3.122; repealing SMC Chapter 3.123; amending SMC Chapter 3.42.040; repealing SMC Chapter 3.42.050; and amending SMC Chapter 3.125.

ORDINANCE NO. 124218

AN ORDINANCE relating to Seattle Public Utilities; authorizing the purchase of approximately 1,972 square feet of real property commonly called the Wood Property located at 1054 South Elmgrove Street; authorizing the Director of Seattle Public Utilities to execute any necessary documents and agreements, accept or deliver any necessary deeds, and take any other actions reasonably necessary on behalf of the City.

ORDINANCE NO. 124219

AN ORDINANCE authorizing Seattle Public Utilities to establish institutional controls relating to the long-term protection of the environmental remediation of Slip 4 of the Lower Duwamish Waterway consisting of development and execution of an environmental covenant with U.S. Environmental Protection Agency that will place restrictions on City of Seattle real property; negotiate and execute a lot line adjustment with 1st South Properties, L.L.C.; negotiate and execute a nonexclusive storm water drainage outfall facility easement with 1st South Properties, L.L.C.; and pursue and establish a permanent Regulated Navigation Area within Slip 4 through coordination with the U.S. Department of Homeland Security.

ORDINANCE NO. 124224

AN ORDINANCE relating to the Department of Finance and Administrative Services; authorizing the amendment of certain lease agreements with the Washington State Department of Transportation, to clarify that the City's indemnity obligations are limited to funds that have been appropriated and are available at the time an indemnity claim is made, and to specify the resources available to meet such obligations.

ORDINANCE NO. 124225

AN ORDINANCE related to the regulation of watercraft noise on Seattle waterways; amending by adding a section to 25.08.485 of the Seattle Municipal Code to authorize the Seattle Police Department to regulate noise from audio systems.

ORDINANCE NO. 124226

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

Date of publication in the Seattle Daily Journal of Commerce, August 2, 2013.

8/2(300885)