

Ordinance No. 124675

Council Bill No. 11828

AN ORDINANCE relating to the Bell Harbor Marina; authorizing the Mayor to execute a Termination of Agreement and Release of the Memorandum of Understanding between the City and the Port of Seattle for the operation and maintenance of the marina; and ratifying and confirming prior acts.

Related Legislation File:

Date Introduced and Referred: <u>12/1/14</u>	To: (committee): <u>Finance and Culture</u>
Date Re-referred:	To: (committee):
Date Re-referred:	To: (committee):
Date of Final Action: <u>12/15/14</u>	Date Presented to Mayor: <u>12/16/14</u>
Date Signed by Mayor: <u>12/19/14</u>	Date Returned to City Clerk: <u>12/19/14</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]*

Committee Action:

Date	Recommendation	Vote
<u>12/10/14</u>	<u>Pass</u>	<u>2-0 (NL, JG)</u>

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

Full Council Action:

Date	Decision	Vote
<u>12/15/14</u>	<u>Passed</u>	<u>8-0 (excused: Clark)</u>

Law Department

CITY OF SEATTLE

ORDINANCE 124675

COUNCIL BILL 118281

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5 AN ORDINANCE relating to the Bell Harbor Marina; authorizing the Mayor to execute a
6 Termination of Agreement and Release of the Memorandum of Understanding between
7 the City and the Port of Seattle for the operation and maintenance of the marina; and
8 ratifying and confirming prior acts.

9
10 WHEREAS, since 1994, the Port of Seattle ("Port") has operated the Bell Harbor Marina
11 ("Marina") pursuant to a Memorandum of Understanding ("Agreement") with the City
12 that was part of a plan extending back to the 1980s to stimulate economic development
13 in the area near Piers 63 and 66 on the Seattle Central Waterfront; and

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15 WHEREAS, the Agreement provides that the Port will operate and maintain the Marina and that
16 the City and Port will share in the costs of major maintenance for the facility, the City's
17 share being 30%; and

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19 WHEREAS, the Agreement contains no termination date but does provide for re-evaluation of
20 the parties' financial contribution prior to the 25th anniversary of the commencement of
21 Marina operations; and

22
23 WHEREAS, since 2010, the City and Port have engaged in discussions concerning the Marina's
24 operations and current and future capital maintenance needs and have determined that it
25 is in their mutual best interests to terminate the Agreement and for the Port to assume
26 responsibility for future operations and maintenance; and.

27
28 WHEREAS, the City and the Port wish to memorialize their agreement, including the City's
commitment to satisfy and terminate its current and future major maintenance obligations
by paying the Port that sum of money described in Attachment 1 to this ordinance; NOW,
THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The Mayor or his designee is designee is hereby authorized to execute,
deliver, and perform, for and on behalf of The City of Seattle, an agreement ("Agreement")
substantially in the form of the agreement attached hereto as Attachment 1 and identified as



1 "Termination of Agreement and Release," that will terminate the November 21, 1994,
2 Memorandum of Understanding between the City and the Port of Seattle for the operation of the
3 Bell Harbor Marina for the consideration stated in the Agreement, subject to the parties'
4 compliance with the conditions of the Agreement.

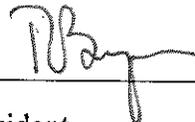
5 Section 2. Any act consistent with the authority and prior to the effective date of this
6 ordinance is hereby ratified and confirmed.

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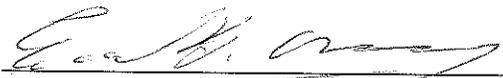


1 Section 3. This ordinance shall take effect and be in force 30 days after its approval by
2 the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it
3 shall take effect as provided by Seattle Municipal Code Section 1.04.020.

4 Passed by the City Council the 15th day of December, 2014, and
5 signed by me in open session in authentication of its passage this
6 15th day of December, 2014.

7
8 
9 President _____ of the City Council

10
11 Approved by me this 19th day of December, 2014.

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13 
14 Edward B. Murray, Mayor

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16 Filed by me this 19th day of December, 2014.

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18 
19 Monica Martinez Simmons, City Clerk

20 (Seal)

21
22 Attachments

23 Attachment 1: TERMINATION OF AGREEMENT AND RELEASE
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TERMINATION OF AGREEMENT AND RELEASE

THIS TERMINATION OF AGREEMENT AND RELEASE is executed this ____ day of ____, 2014, by the PORT OF SEATTLE ("Port") acting through its Executive Director, and the CITY OF SEATTLE ("City") acting through the Mayor of Seattle.

RECITALS

On November 21, 1994, the City and the Port executed that certain Memorandum of Understanding ("Agreement"), a copy of which is attached hereto, concerning the development and operation of a public moorage facility commonly known as the Bell Harbor Marina ("Marina") between Piers 63 and 66 on the Seattle Central Waterfront.

The Agreement provides that the Port will operate and maintain the Marina and that the City and Port will share in the costs of major maintenance for the facility.

The Agreement contains no termination date but does provide for re-evaluation of the parties' financial contribution prior to the 25th anniversary of the commencement of Marina operations.

Since 2010, the City and Port have engaged in discussions concerning the Marina's operations and current and future capital maintenance needs and have determined that it is in their mutual best interests to terminate the Agreement and for the Port to assume responsibility for future operations and maintenance.

The City and the Port wish to memorialize their agreement, including the City's commitment to satisfy its outstanding and future major maintenance obligations by paying the Port the amount of \$2 million, as set forth below.

AGREEMENT

NOW, THEREFORE, the City and Port agree as follows:

1. **Termination.** The City agrees to pay the Port the sum of \$2 million in two equal installments, payable January 1, 2015, and January 1, 2016. Upon payment of the second installment (the "Termination Date") the Agreement, including all of the rights, privileges and burdens thereunder, shall terminate and shall thereafter be of no further force and effect.
2. **Release.** On the Termination Date, the City and the Port shall be released from all remaining obligations under the Agreement.



3. **Indemnification.** From and after the Termination Date, the Port agrees to indemnify, release and hold the City harmless from any claims or liabilities of any nature whatsoever arising out of changes to the Marina's moorage design included in the building permit application for the Marina filed October 12, 1993.

4. **Authority.** Each signatory of this Termination of Agreement and Release represents hereby that he or she has the authority to execute and deliver the same on behalf of the party hereto for which such signatory is acting.

5. **Counterparts.** This Termination of Agreement and Release may be executed in any number of counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute but one and the same instrument.

6. **Governing Law; Interpretation.** This Termination of Agreement and Release shall be construed in accordance with the laws of the State of Washington and shall be construed by a fair and reasonable interpretation of the words used in it without regard to which party drafted or caused to be drafted the provision or provisions.

PORT OF SEATTLE

By _____
Ted Fick
Chief Executive Officer

CITY OF SEATTLE

By _____
Edward B. Murray
Mayor

FISCAL NOTE FOR CAPITAL PROJECTS ONLY

Department:	Contact Person/Phone:	CBO Analyst/Phone:
City Budget Office	Aaron Blumenthal 3-2656	3-2656

Legislation Title: AN ORDINANCE relating to the Bell Harbor Marina; authorizing the Mayor to execute a Termination of Agreement and Release of the Memorandum of Understanding between the City and the Port of Seattle for the operation and maintenance of the marina; and ratifying and confirming prior acts.

Summary and background of the Legislation:

In 1994, Mayor Norm Rice signed an MOU with the Port of Seattle obligating the City to fund construction of Bell Harbor Marina and share a portion of major maintenance costs into the future. The City contributed \$1.7 million from the Cumulative Reserve Subfund in 1995 toward construction costs. Under the MOU, the Port was obligated to cover major maintenance from operating revenue, and where costs could not be recovered, the City and Port would enter into a cost share for maintenance, where the City pays 30% of total maintenance costs. The City's share was also not to exceed predetermined caps set over two ten-year periods and one five-year period starting in 1996. Total cap over the 25 year period was \$3.8M in 2014 dollars. The Port was obligated but failed to provide the City with proper documentation prior to requests for funding, at least through 2012.

Since 2012, the Port provided financial detail showing no contributions to the major maintenance fund for the marina, and requested the City contribute its 30% cost share for past and future maintenance needs, totaling between \$3 million and \$4 million dollars, depending on inflation factors and year of expenditure. In meeting the interests of both parties to preserve the marina and honor the spirit of the original agreement, the City and the Port agreed to exit the current MOU, with the City additionally contributing \$2 million for maintenance over two years.

Project Name:	Project I.D.:	Project Location:	Start Date:	End Date:
Bell Harbor Marina	K732491	2203 Alaskan Way S	Q1 2015	Q4 2016

Please check any of the following that apply:

This legislation creates, funds, or anticipates a new CIP Project.

This legislation does not have any financial implications.

This legislation has financial implications.

Appropriations:



Fund Name and Number	Department	Budget Control Level*	Proposed 2015 Appropriation	New 2015 Appropriation (if any)	2016 Anticipated Appropriation
	Parks and Recreation	K72447 – Docks/Piers/Floats/Seawalls/Shorelines	1,000,000		1,000,000
TOTAL			1,000,000		1,000,000

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

Appropriations Notes:

This project is included in the 2015-19 Proposed CIP budget, and will not need additional appropriations if adopted.

Spending Plan and Future Appropriations for Capital Projects (000s):

Spending Plan and Budget	2014	2015	2016	2017	2018	2019	Total
Spending Plan		1,000	1,000				1,000
Current Year Appropriation							
Future Appropriations							

Spending Plan and Budget Notes:

Funding Source: REET I

Funding Source (Fund Name and Number, if applicable)	2014	2015	2016	2017	2018	2019	Total
REET I		1,000	1,000				
TOTAL		1,000	1,000				

Funding Source Notes:

Other Implications:

- a) **Does the legislation have indirect financial implications, or long-term implications?**
No.
- b) **What is the financial cost of not implementing the legislation?**
If this legislation is not implemented, the City and the Port may need to resolve this dispute through litigation, possibly resulting in a judgment that may be more than \$2 million.
- c) **Does this legislation affect any departments besides the originating department?**
No.
- d) **What are the possible alternatives to the legislation that could achieve the same or**



similar objectives?

None.

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:



City of Seattle
Edward B. Murray
Mayor

November 4, 2014

Honorable Tim Burgess
President
Seattle City Council
City Hall, 2nd Floor

Dear Council President Burgess:

I am pleased to transmit the attached proposed Council Bill that commits \$2 million in capital funding to support one-time facility maintenance on the Bell Harbor Marina. These funds are included in my 2015-2016 Proposed Budget. This Bill also introduces an agreement between the Port of Seattle and the City of Seattle for both parties to exit the ongoing Memorandum of Understanding obligating additional maintenance funding from the City to the Port.

The City and the Port entered into a cost-sharing agreement to fund ongoing capital and maintenance of the Bell Harbor Marina in 1996, requiring the City to pay 30% of all costs not recovered through the operations of the marina. The agreement required the Port to provide financial and design information to the City in advance of any proposed maintenance, as well as contribute all available revenues from marina fees to maintenance needs, after operating costs were recovered.

In 2012, the Port contacted the City and requested funding to support past and planned maintenance projects. As of June 2014, these projects were estimated to cost at least \$2.5 million, and if paid in 2014, would be capped at \$3.8 million under the limits set forth in the MOU. The City and the Port agreed that a one-time contribution of \$2 million from the City to the Port, as well as termination of the agreement and all future City obligations to support the marina represented a mutually agreeable outcome.

The funding and termination agreement made available by this Council Bill supports both parties' interests in the ongoing operation of the Bell Harbor Marina, as well as clarifying the future obligations of the City to support Port activity at this site.

Thank you for your consideration of this legislation. Should you have questions, please contact Aaron Blumenthal at 233-2656.

Sincerely,


Edward B. Murray
Mayor of Seattle

cc: Honorable Members of the Seattle City Council

Office of the Mayor
Seattle City Hall, 7th Floor
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Seattle, Washington 98124-4749

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Hearing Impaired use the Washington Relay Service (7-1-1)
www.seattle.gov/mayor



STATE OF WASHINGTON -- KING COUNTY

--SS.

319380

No. 124672,673,674,675,676

CITY OF SEATTLE, CLERKS OFFICE

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

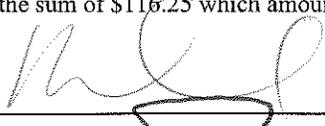
CT:TITLE ONLY ORDINANCES

was published on

01/15/15

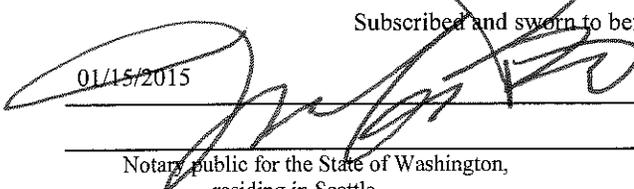
The amount of the fee charged for the foregoing publication is the sum of \$116.25 which amount has been paid in full.





Subscribed and sworn to before me on

01/15/2015



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 December 15, 2014, 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. 124672

AN ORDINANCE relating to Seattle Public Utilities; accepting easements granted to the City of Seattle for installation, operation, and maintenance of water mains, fire and domestic water services, water service vaults, hydrants, water facilities, water supply pipelines, water meters, access and appurtenances necessary for water utility purposes at various locations in Seattle and unincorporated King County, Washington; placing the easements under the jurisdiction of Seattle Public Utilities; and ratifying and confirming certain prior acts.

ORDINANCE NO. 124673

AN ORDINANCE relating to Seattle Public Utilities; accepting easements situated in southeast Seattle granted to the City of Seattle for installation, operation and maintenance of sewer lines necessary for drainage and wastewater utility purposes; placing the easements under the jurisdiction of Seattle Public Utilities and ratifying and confirming certain prior acts.

ORDINANCE NO. 124674

AN ORDINANCE relating to the Seattle Monorail; authorizing the Director of the Seattle Center to execute a concession agreement granting Seattle Monorail Services the right to operate and maintain the Monorail system for ten years, with an additional ten year extension by mutual agreement; authorizing the Director to enter into project agreements for Monorail capital improvements and major maintenance projects as provided for in the agreement; authorizing the Director to establish Monorail fares within the limitations provided in the agreement; and ratifying and confirming certain prior acts.

ORDINANCE NO. 124675

AN ORDINANCE relating to the Bell Harbor Marina; authorizing the Mayor to execute a Termination of Agreement and Release of the Memorandum of Understanding between the City and the Port of Seattle for the operation and maintenance of the marina; and ratifying and confirming prior acts.

ORDINANCE NO. 124676

AN ORDINANCE authorizing, in 2014, acceptance of funding from non-City sources; authorizing the heads of the Executive Department, Department of Information Technology, Department of Neighborhoods, Seattle Fire Department, Seattle Police Department, Seattle City Light and the Seattle Department of Transportation to accept specified grants and private funding and to execute, deliver, and perform corresponding agreements; and ratifying and confirming certain prior acts.

Date of publication in the Seattle Daily Journal of Commerce, January 15, 2015.

1/15(319380)