

Ordinance No. 121875 [121875]

Council Bill No. 115295

AN ORDINANCE relating to transferable development rights; authorizing the offering and sale of transferable development rights from the Benaroya Hall Music Center; and authorizing related agreements, deeds and actions.

The City of Seattle - Legislative Department

Council Bill/Ordinance sponsored by: Peter Stanbury

Councilmember

Committee Action:

~~3-0~~ 3-0 RC ~~3-0~~ JG, PS

8-1-05 Passed 9-0

CF No. _____

Date Introduced: <u>JUN 20 2005</u>		
Date 1st Referred: <u>JUN 20 2005</u>	To: (committee) <u>Urban Development & Planning</u>	
Date Re - Referred:	To: (committee)	
Date Re - Referred:	To: (committee)	
Date of Final Passage: <u>8-1-05</u>	Full Council Vote: <u>9-0</u>	
Date Presented to Mayor: <u>8-2-05</u>	Date Approved: <u>8/8/05</u>	
Date Returned to City Clerk: <u>8/8/05</u>	Date Published: <u>3p. 8/11/05</u>	T.O. <input checked="" type="checkbox"/> F.T. <input type="checkbox"/>
Date Vetoed by Mayor:	Date Veto Published:	
Date Passed Over Veto:	Veto Sustained:	

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

Law Department

Law Dept. Review OMP Review City Clerk Review 3 Electronic Copy Loaded Indexed

ORDINANCE 121875

AN ORDINANCE relating to transferable development rights; authorizing the offering and sale of transferable development rights from the Benaroya Hall Music Center; and authorizing related agreements, deeds and actions.

WHEREAS, under the City's Land Use Code certain Downtown properties, including the Benaroya Hall block, are eligible to send transferable development rights ("TDR") for use on other Downtown lots; and

WHEREAS, by Ordinance 119051, the City Council authorized certain agreements with respect to the sale of TDR from the Benaroya Hall site and the proceeds thereof; and

WHEREAS, the City desires to make remaining TDR from the Benaroya Hall site available for sale without requiring approval by ordinance of each receiving site;

NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The Mayor or his designee is authorized, for and on behalf of The City of Seattle, to offer for sale, and to sell and convey, up to 150,000 square feet of transferable development rights ("TDR") from the Benaroya Hall site, legally described on Attachment A to this ordinance, consistent with the terms of this ordinance. The Mayor and his designees each are authorized to execute, deliver, perform, administer, and enforce one or more agreements ("Agreements") for sale consistent with the terms set forth in Attachment B to this ordinance, with such additional terms and conditions as the Mayor or his designee shall find to be appropriate to effect the intent of this ordinance that the terms offered to developers be commercially reasonable while protecting the City and requiring reasonably firm commitments to purchase. Upon performance by a buyer in accordance with the terms of an Agreement, the Mayor and his designees each are further authorized to deliver a duly executed deed for the TDR



1 sold, substantially in the form of Attachment A to this Ordinance. Any earnest money, extension
2 payments, and the proceeds of sale of the TDR shall be deposited in the Development Rights
3 Subfund (00179).

4 **Section 2.** The Mayor and his designees are hereby authorized, for and on behalf of the
5 City, to negotiate, execute, deliver, record, accept, modify, perform, and administer, as
6 appropriate, any additional documents that may be reasonably required in order to implement or
7 enforce any Agreement or that may be necessary or appropriate to implement the intent of this
8 ordinance.
9

10 **Section 3.** The Fleets and Facilities Director is hereby authorized to execute, for and on
11 behalf of The City of Seattle, a "First Revision to the First Amendment to & Restatement of the
12 Lease & Concession Agreement" with B H Music Center (the tenant and concessionaire under
13 said Agreement), in substantially the form of Attachment C to this ordinance.
14

15 **Section 4.** This ordinance shall take effect and be in force thirty (30) days from and after
16 its approval by the Mayor, but if not approved and returned by the Mayor within ten (10) days
17 after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.
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1 Passed by the City Council the 13th day of August, 2005, and signed by me in open
2 session in authentication of its passage this 13th day of August, 2005.

3
4 Jandrago
President _____ of the City Council

5 Approved by me this 8th day of August, 2005.

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7
8 Gregory J. Nickels
Gregory J. Nickels, Mayor

9
10 Filed by me this 11 day of Aug, 2005.

11 Judith E. Rippen
City Clerk

12 (Seal)

- 13
14 Attachment A: Form of Special Warranty Deed—Development Rights
15 Attachment B: Basic Terms for Sale of Benaroya Hall TDR
16 Attachment C: First Revision to the First Amendment to & Restatement of the Lease &
17 Concession Agreement Between B H Music Center and the City of Seattle
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ATTACHMENT A

After recording, return to:

[buyer]

**FORM OF
SPECIAL WARRANTY DEED—DEVELOPMENT RIGHTS ONLY**

Reference numbers of related documents: Not applicable.

Grantor: The City of Seattle, a Washington municipal corporation

Grantee: _____

Legal Descriptions:

1. Abbreviated form:

TDR from Block 2, A. A. Denny's Second Addition to Seattle, Volume 1, page 30.

2. Additional legal description are on page ____ below.

Assessor's Property Tax Parcel Account Number(s):

TDR Sending Lots

197470-0025-06, 197470-0055-09, 197470-0030-09

[Optional text: TDR Receiving Lot
_____]

The Grantor, THE CITY OF SEATTLE, a Washington municipal corporation, for and in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, bargains, sells and conveys to Grantee, _____, a _____, the following real property:

_____ square feet of Transferable Development Rights ("TDR"), pursuant to Seattle Municipal Code Chapter 23.49, from the real property in the City of Seattle known as the Benaroya Hall Music Center, which is legally described as follows:



LOTS 1-12, INCLUSIVE, BLOCK 2, ADDITION TO THE TOWN OF SEATTLE, AS LAID OUT BY A. A. DENNY (COMMONLY KNOWN AS A. A. DENNY'S SECOND ADDITION TO THE CITY OF SEATTLE), ACCORDING TO THE PLAT RECORDED IN VOLUME 1 OF PLATS, PAGE 30, RECORDS OF KING COUNTY, WASHINGTON,

EXCEPT THE WESTERLY 12 FEET OF LOTS 1, 4, 5, 8, 9 AND 12 CONDEMNED IN KING COUNTY SUPERIOR COURT CAUSE NO. 7097 FOR THE WIDENING OF 2ND AVENUE, AS PROVIDED BY ORDINANCE 1107; AND EXCEPT THE EASTERLY 9 FEET OF LOTS 2, 3, 6, 7, 10 AND 11 CONDEMNED IN KING COUNTY SUPERIOR COURT CAUSE NO. 54135 FOR THE WIDENING OF 3RD AVENUE, AS PROVIDED BY ORDINANCE 14345;

TOGETHER WITH THOSE PORTIONS OF THE ALLEY ADJOINING SAID LOTS THAT ATTACHED BY OPERATION OF LAW PURSUANT TO SEATTLE VACATION ORDINANCE 113486;

SITUATE IN THE COUNTY OF KING, STATE OF WASHINGTON.

[Optional Text: This conveyance is made in accordance with the terms of that certain Agreement for Purchase and Sale of Transferable Development Rights between Grantor and Grantee, dated _____, 2005, certain terms of which are not merged into this Deed and survive the delivery of this Deed to Grantee to the extent provided in such Agreement.] The Grantor covenants that it will forever warrant and defend title to the TDR conveyed hereunder against all persons lawfully claiming or to claim the same TDR by, through or under Grantor. Grantor hereby expressly limits the covenants and warranties of this deed to those herein expressed, and does hereby exclude all covenants and warranties arising or to arise by statutory or other implication.

[Optional Text: The undersigned Grantee hereby designates the following described property, located at _____, Seattle, Washington, as the receiving lot for all of the above TDR, for purposes of Seattle Municipal Code Ch. 23.49:

Pursuant to SMC Section 23.49.014D2, notice is hereby given by Grantee that _____ square feet of the above TDR are intended to be used for a project on the above receiving lot that received a Master Use Permit issued by the Seattle Department of Planning and Development under Project No. _____ and, therefore, are not available for retransfer unless such project shall be abandoned, except to the extent that such project may be modified to require fewer than all the TDR conveyed hereunder, as determined by such Department.]



ACKNOWLEDGMENT

STATE OF _____)
) ss.
COUNTY OF _____)

On this _____ day of _____, 200__ before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____, to me personally known (or proven on the basis of satisfactory evidence) to be the _____ of _____, a _____, the party that executed the within and foregoing instrument as _____ of _____, a _____, and acknowledged said instrument to be the free and voluntary act and deed of said _____ for the uses and purposes therein mentioned, and on oath stated that (s)he was authorized to execute the said instrument.

WITNESS my hand and seal hereto affixed the day and year in this certificate above written.

(seal or stamp)

Print Name _____
NOTARY PUBLIC in and for the State
of Washington, residing at _____
My commission expires _____



ATTACHMENT B

BASIC TERMS FOR SALE OF BENAROYA HALL TRANSFERABLE DEVELOPMENT RIGHTS (TDR)

The Mayor or designee may, but is not required to, conduct a public solicitation for bids, or may publish listing price for TDR, subject to prior sale. Any binding commitment by the City to sell TDR will be made only upon signing of a definite purchase and sale agreement (an "Agreement"). An Agreement shall contain in substance the terms set forth below:

1. **Amount of TDR.** The Agreement shall specify a minimum amount of square feet of TDR that the buyer commits to buy, and a maximum amount that the City commits to sell. The maximum commitment of the City under all agreements for sale of Benaroya Hall, plus all such TDR actually sold after June 1, 2005, shall not exceed a cumulative amount of 150,000 square feet. If the maximum amount is greater than the minimum, then the price should reflect the option value to the buyer, or there should be an option payment in addition to earnest money for the buyer's minimum commitment.

2. **TDR Warranties; Acknowledgment.** The City will represent and warrant to buyer that, as of the date of execution of the Agreement:

(a) City is the owner of sufficient TDR to satisfy its commitment; and

(b) Subject to compliance by the Buyer with all applicable conditions to the use of TDR under the Land Use Code, and subject to all other applicable laws, regulations, ordinances and permits that affect the project on the receiving lot, the TDR are usable under the City of Seattle Land Use Code on the date of the Agreement to achieve floor area exceeding the base floor area ratio (FAR) in the specified zone of the receiving lot, (or in listed zones, such list to be consistent with the Land Use Code as then in effect).

No other representations or warranties by City shall be required in the Agreement.

Buyer shall acknowledge that it understands that applicable conditions include, without limitation, maximum limits on chargeable FAR and limits on the percentage of additional FAR that may be achieved through TDR that is not Housing TDR, alone or in combination with certain bonuses.

3. **Purchase Price.** Buyer shall agree to pay a purchase price of not less than the then prevailing market price for TDR other than housing TDR, as determined by the Mayor or his designee, but in any event not less than \$15.00 per square foot of TDR, to be paid in full in cash on delivery of the deed.

4. **Transfer of Title/Closing.**

(a) The Agreement may provide for more than one closing date, and for deeds for installments of TDR, provided that full payment is made for TDR as conveyed.



(b) Title shall be conveyed by special warranty deed(s).

(c) Buyer shall pay all costs of recording, title insurance if applicable, and, if Buyer requires an escrow, all fees and costs of the escrow agent.

5. Earnest Money. The Agreement may require the buyer to deliver to the City or into escrow cash earnest money. In case of default, retention of earnest money by the City may be the sole remedy.

6. Timing. The buyer shall be required to close the purchase of at least the minimum amount of TDR under the Agreement a specified number of months from the date of the Agreement, which may be subject to one or more extensions in return for nonrefundable extension payments to the City that do not apply to the purchase price.

7. Conditions.

(a) Buyer's obligation to purchase TDR may be subject to reasonable conditions related to the permitting process for buyer's project.

(b) Availability of title insurance shall not be a condition to buyer's obligation. Buyer may obtain title insurance or title reports at Buyer's own expense.



ATTACHMENT C

**FIRST REVISION TO THE
FIRST AMENDMENT TO & RESTATEMENT OF
LEASE AND CONCESSION AGREEMENT**

BETWEEN

**B H MUSIC CENTER
&
THE CITY OF SEATTLE**



This **FIRST REVISION TO THE FIRST AMENDMENT TO & RESTATEMENT OF LEASE AND CONCESSION AGREEMENT BETWEEN B H MUSIC CENTER & THE CITY OF SEATTLE** ("Revision") is entered into as of the _____ day of _____, 2005, by and between B H Music Center, a Washington non-profit corporation ("BHMC"), and The City of Seattle, a city of the first class in the State of Washington ("City"), in order to amend the terms and conditions of that certain First Amendment To & Restatement Of Lease And Concession Agreement Between B H Music Center & The City of Seattle executed by the City on July 15, 1998 (the "Amended Lease").

RECITALS

- A. Since the Amended Lease was entered into by the parties to this Revision, (a) the City made the "in-lieu payment" in the amount of \$5 million pursuant to Section 6B of the Amended Lease, and incurred debt, including interfund debt, to finance and refinance such payment; (b) BHMC made payments to the City to defray interest on such debt; (c) the City sold 323,000 square feet of TDR from the concert hall site and applied the proceeds thereof, together with earnings thereon, to the City's debt on such bonds and on an interfund loan made in lieu of refunding certain of the bonds; and (d) the City has amended its Land Use Code in ways that affect, among other things, the provisions that regulate the use of transferable development rights ("TDR") from the downtown concert hall and the amount of such TDR that may be transferred.
- B. The parties agree that in light of the foregoing, section 6.D of the Amended Lease should be amended and section 6.G should be stricken.

NOW, THEREFORE, in consideration of the mutual promises, conditions, and performances described in this Revision, the parties hereto agree as follows:

AGREEMENT

Section 1. Section 6.D of the Amended Lease is hereby revised to read as follows:

D. Disposition of Proceeds from the Sale of Premises TDRs

The term "Premises TDRs" shall mean all transferable development rights transferred from the site of the Premises prior to the date of the First Revision to this Lease and all additional transferable development rights that may be transferred from the site of the Premises hereafter under the Land Use Code of the City as in effect on the date of the First Revision to this Lease. In the event City remits an "in lieu" payment to Tenant pursuant to Subsection 6.B(2) hereof, all proceeds received by either party after July 31, 1998, from the sale of Premises TDRs, including proceeds from the sales of the TDRs authorized by Ordinance _____, shall be disposed in the following order of priority.

(1) City shall retain or, if Tenant has initially received such proceeds, be paid by Tenant, the portion of such proceeds that is required to retire portions of any debt incurred by City to remit the "in lieu" payment or to refinance such original debt (which debt shall be



structured by City to allow flexibility and principal repayment without penalty or additional payments of any kind, with a goal of ensuring that interest does not accrue any longer than needed, and which debt may include interfund loans made from City cash balances).

(2) If Tenant fails to timely remit to City the amount Tenant is required to pay City pursuant to Subsection 6.F hereof, City may also retain or, if Tenant has initially received such proceeds, Tenant shall pay to the City, the portion of such proceeds that equals the aggregate amount paid by City as interest on any debt associated with such "in lieu" payment (*i.e.*, whether the original debt or any refinanced debt).

(3) If Tenant has paid any amount to City pursuant to Subsection 6.F hereof, and if the amount of Premises TDR sales proceeds received after July 31, 1998 exceeds the aggregate amount City has retained or has been paid pursuant to Subsections 6.D(1) and 6.D(2) hereof, whatever amount of such excess Premises TDR sales proceeds as is equal to the aggregate sum paid by Tenant to City pursuant to Subsection 6.F hereof shall be remitted to or retained by Tenant to reimburse such Tenant payments.

(4) All remaining Premises TDR sales proceeds received after July 31, 1998 shall be divided evenly between City and Tenant. City's share of such excess proceeds shall be made available to Tenant as the Supplemental Operations Reimbursement to be paid pursuant to Subsection 11.E hereof. Tenant's share of such excess proceeds shall be remitted to or retained by Tenant and expended by Tenant at Tenant's discretion in support of the Premises and/or Premises operation.

Section 2. Section 6.G of the Amended Lease is hereby stricken and shall have no force or effect.

Section 3. All capitalized terms used in this Revision shall have the same meaning that they have in the Amended Lease, unless otherwise expressly stated in this Revision.

Section 4. The parties acknowledge that the terms of Article VIII of the Master Agreement Between Owner and Design/Builder between the City and the Seattle Symphony Orchestra dated October 30, 1995, as amended by the Amendment to Master Agreement between such parties on June 3, 1996, under which the rights of the Seattle Symphony Orchestra were assigned to BHMC by an assignment contingently approved by the City Council by Resolution 29438 (the "Master Agreement"), have been superseded in their entirety by the terms of the Amended Lease.

Section 5. The parties acknowledge and agree that City debt for purposes of Section 6 of the Amended Lease includes any external financing such as, but not limited to, bonds, notes, BANs, and lines of credit, or internal loans within the City's accounts used to repay any portion of any debt incurred for the in-lieu payment, or to repay any portion of debt issued directly or indirectly to refund such original debt, and that interest reimbursed and to be reimbursed by BHMC under Section 6F of the Lease includes interest now accrued and hereafter accruing on external financing and internal loans. The rate of interest on internal loans shall be computed at the rate of return of the City's Consolidated (Residual) Cash Pool as determined from time to



time by the Finance Director of the City. BHMC shall pay the amount of interest accrued on any such internal loan annually on June 30 if then billed by the City. Whether or not a payment on account of such interest shall have become due, the City shall have the right to deduct the full amount of accrued interest on any such internal loan from any proceeds of Premises TDR, any other provision of the Amended Lease notwithstanding. City debt for purposes of Section 6 of the Amended Lease also includes any debt incurred by the City to retire any such internal loans, wholly or in part.

IN WITNESS WHEREOF, the authorized representative(s) of each of the parties hereto has/have executed this Agreement by signing in the spaces below.

B H MUSIC CENTER

THE CITY OF SEATTLE

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____



FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	DOF Analyst/Phone:
Legislative	Rebecca Herzfeld, 615-1674	Not Applicable

Legislation Title:

AN ORDINANCE relating to transferable development rights; authorizing the offering and sale of transferable development rights from the Benaroya Hall Music Center; and authorizing related agreements, deeds and actions.

• **Summary of the Legislation:**

This bill authorizes the Mayor or his designees to offer transferable development rights (TDR) from the Benaroya Hall Music Center (BHMC) without requiring approval by ordinance of each receiving site. This authorization would facilitate the sale of the remaining rights from Benaroya Hall. The bill also authorizes the Mayor or his designees to execute amendments to the Amended Lease between the City and BHMC to clarify how revenues from TDR proceeds are to be disbursed and to remove limits on TDR sales that are no longer needed.

• **Background:**

General market conditions since the events of September 2001 have made it take longer than expected to repay from TDR proceeds earmarked for this purpose the remainder of the \$5 million in bonds issued for a portion of the original construction costs of Benaroya Hall. BHMC is paying interest on these bonds, to be reimbursed from additional TDR proceeds after the bonds are retired, under the City's agreement with BHMC. The purpose of the proposed legislation is to help address the concern of BHMC regarding repayment of the bonds and reimbursement of its interest payments, by facilitating the sale of TDR from Benaroya Hall. The bill would also clarify the disposition of funds from the sale of such TDR. A companion bill is also proposed that would revise the Land Use Code provisions for the amount and use of TDR from Benaroya Hall.

• *Please check one of the following:*

This legislation does not have any financial implications. *(Stop here and delete the remainder of this document prior to saving and printing.)*

This legislation has financial implications. *(Please complete all relevant sections that follow.)*



STATE OF WASHINGTON – KING COUNTY

--SS.

188982
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:121871,873,875-877

was published on

08/12/05

The amount of the fee charged for the foregoing publication is the sum of \$ 79.50, which amount has been paid in full.

Subscribed and sworn to before me on

08/12/05

Notary public for the State of Washington,
residing in Seattle



Affidavit of Publication

State of Washington, King County

City of Seattle

TITLE-ONLY PUBLICATION

The full text of the following ordinances, passed by the City Council on August 1, 2005, 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. 121873

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

ORDINANCE NO. 121871

AN ORDINANCE authorizing the Superintendent of Parks and Recreation to sign an Air Space Lease, Maintenance Agreement and Supplemental Agreement #2 to Agreement GM 376 with the Washington State Department of Transportation for use of land for Boren-Pike-Pine Park.

ORDINANCE NO. 121877

AN ORDINANCE relating to City streets, changing the name of a segment of Aurora Avenue North, under the Aurora Bridge, to Troll Avenue North and superseding Ordinance 102981 to the extent inconsistent.

ORDINANCE NO. 121876

AN ORDINANCE relating to the Northgate Coordinated Transportation Investment Plan (CTIP); authorizing the Director of the Seattle Department of Transportation or her designee to execute agreements with Central Puget Sound Regional Transit Authority, Washington State Department of Transportation, Wallace Properties, Inc., Mullally Development Company and Kauri Investments, Ltd., for planning funds; authorizing the acceptance and deposit of the funds to be received; and increasing an appropriation to the Seattle Department of Transportation in the 2005 Budget; all by a three-fourths vote of the City Council.

ORDINANCE NO. 121875

AN ORDINANCE relating to transferable development rights; authorizing the offering and sale of transferable development rights from the Beharoya Hall Music Center; and authorizing related agreements, deeds and actions.

Publication ordered by JUDITH PIPPIN,
City Clerk

Date of publication in the Seattle Daily
Journal of Commerce, August 12, 2005.

8/12(188982)