



**STAFF MEMORANDUM**

Date: 16 June 2011 **VERSION #7**  
To: Councilmember Sally Bagshaw, Chair, Parks & Seattle Center Committee  
All other Councilmembers  
From: Kieu-Anh King, Council Central Staff  
CC: Christopher Williams, Parks Superintendent  
Nathan Torgelson, Parks & Recreation Department  
Re: Upcoming Council Consideration of Council Bill No. 117196, relating to Building 11 at Magnuson Park

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**INTRODUCTION.**

At today’s Parks & Seattle Center Committee, the Committee will undertake preliminary consideration of Council Bill (CB) No. 117196, which amends and restates an existing agreement concerning the development of Building 11 in Magnuson Park. The City’s development partner, Building 11 LLC (“the LLC”) has proposed spending \$11.3 million to seismically retrofit, rehabilitate and improve the facility for a mixture of parks and recreation, restaurant, medical and other uses. This revised agreement, developed at the request of the LLC, is designed primarily to facilitate:

- (a) *The receipt of Federal Historic Rehabilitation Tax Credits*, by extending the initial lease term from 30 to 40 years, with one five-year extension. These tax credits, if received, are worth between \$1.5 million and \$1.8 million to the LLC.
- (b) *The sublease for Building 11 LLC’s primary subtenant, Virginia Mason Medical Center*, by adding a new provision to the “allowable uses” at Building 11, subject to applicable Land Use regulations.

In exchange for this consideration, the City receives additional benefits related to Water-based Recreation, Artist and Workshop Space, and increased rent, near the end of the lease term (details to be discussed in subsequent sections). This memorandum addresses the following:

- a) Building 11 Planning and Development History.
- b) Building 11 Legislative History.
- c) Details of the Existing Development Agreement and the Proposed Development Agreement.
- d) Benefits to City.
- e) Costs to City and Informational Items.

The Committee is tentatively scheduled to discuss and vote on this proposal at its next meeting, at 9:30 AM on Thursday, 7 July 2011. If the Committee forwards this legislation for Full Council consideration, this would occur on Monday, 11 July 2011.

**SECTION A: PLANNING AND DEVELOPMENT HISTORY.**

Building 11 is a long and slender building, about 600 feet by 70 feet, with a primary North-South axis, and is located at the North end of Magnuson Park. During the 1996 to 1999 period, following the closure of Naval Station Puget Sound, Building 11 was conveyed to the City for parks and recreation uses, in perpetuity. Under US Navy ownership, Building 11 had been used for storage, public works shops and

vehicle fleet shops. Building 11 was built between 1940 and 1944 and is in need of major seismic rehabilitation and facility upgrades.

Sand Point development is guided primarily by the Physical Development Management Plan for Sand Point, adopted by Council in 1997. Among other things, this Plan divided the Park into six activity areas, including North Shore Recreation Area, which includes Building 11. The Plan envisioned that this area would become a public park, with activated public spaces, shoreline access, a site for small, non-motorized boats, and potentially other water-related recreation. Following the Council's adoption of the Plan, the Parks Department conducted a series of community meetings and public hearings, to gather community input on fulfilling the vision for the North Shore Recreation Area and the larger Magnuson Park.

In 2005 the Parks Department issued an RFP for Building 11, requesting proposals to:

1. Identify service providers who offer recreational programs which would help achieve the Magnuson Park vision.
2. Preserve the integrity of the Historic District.
3. Relieve the city of the financial liability for building redevelopment and maintenance.
4. Identify development partners with the expertise and financial capability to improve facilities.

The RFP noted that proposals could "... include other accessory/related activities that ensure creation of a self-sustaining business model." In 2006 the LLC submitted the sole qualified bid to redevelop Building 11. Through 2006, 2007 and a portion of 2008, the Parks Department negotiated specific development and recreation-programming terms for Building 11, which were included in the First Proposal, sent to Council in July of 2008. The Parks & Seattle Center Committee, and the larger Council, has devoted considerable time and resources to fulfilling and implementing the goals of the Sand Point Physical Development Master Plan, particularly with regards to building and maintaining a new site for small, non-motorized boats and water-based recreation, as shown below.

## **SECTION B-1. LEGISLATIVE HISTORY – SUMMARY**

The Council has considered or will consider numerous items directly related to Building 11 redevelopment. The following is a brief summary of key legislative dates and actions. Details will follow in subsequent sections:

### **FIRST PROPOSAL** – Original Building 11 development proposal. C.B. No. 116273.

- Discussion #1. 22 July 2008, Parks & Seattle Center Committee. *(FAILED)*
  - Public Comment + Council Discussion + Vote.
- Discussion #2. 28 July 2008, Full Council. *(FAILED)*
  - Public Comment + Council Discussion + Vote.

### **SECOND PROPOSAL** – Revised Building 11 development proposal. Ord. No. 122814.

- Discussion #3. 09 September 2008, Parks & Seattle Center Committee. *(NO VOTE)*
  - Public Hearing + Public Comment.
- Discussion #4. 18 September 2008, Parks & Seattle Center Committee. *(NO VOTE)*
  - Public Comment + Council Discussion.

Discussion #5. 23 September 2008, Parks & Seattle Center Committee. (PASSED)  
- Public Comment + Council Discussion + Vote.

Discussion #6. 29 September 2008, Full Council. (PASSED)  
- Public Comment + Council Discussion. + Vote.

**THIRD PROPOSAL** – Further Revised Building 11 development proposal. C.B. No. 117196.

Discussion #7. 16 June 2011, Parks & Seattle Center Committee. (NO VOTE)  
- Public Comment + Council Discussion.

Discussion #8. 07 July 2011, Parks & Seattle Center Committee. (Possible Vote)  
- Public Comment + Council Discussion + Possible Vote.

Discussion #9. 11 July 2011, Full Council. (Possible Vote)  
- Public Comment + Council Discussion + Possible Vote.

**SECTION B-2. LEGISLATIVE HISTORY – DETAIL**

**FIRST PROPOSAL.** In July of 2008, the Council considered the first Building 11 development proposal (First Proposal), as proposed under C.B. No. 116273. The bill did not pass.

**Public Comment.** Public comment, which was considerable, focused on: (i) the need to maintain tenancy for and programming from Sail Sand Point, which was founded in 1998 and began providing services in 1999, (ii) the need to preserve public access to the shoreline, (iii) the benefits of public / private partnerships in financing large projects like these and to a lesser extent, (iv) opposition to privatization of the Park. Members of the audience were largely supportive of a private developer leasing the facility, and providing funds to redevelop the property, with the expectation of continued water-related recreational services. There were no public comments regarding artists or arts uses at Magnuson Park.

**Details.** The First Proposal included an initial lease term of 40 years, with one ten-year extension, for a total lease term of 50 years. The proposal included general terms about (i) water-related tenants, (ii) non-motorized boat rentals, (iii) restaurant space and exclusivity, (iv) commercial and office tenants, (v) parking spaces, (vi) public benefits provision and (vii) capital improvement rental offsets. The proposal included an implicit policy decision by Council, on whether or not non-Parks uses (e.g., commercial space) are appropriate in City parks.

**Issues and Resolution.** Staff and Councilmembers identified numerous issues with the proposal, primarily concerning (a) overly-broad language about the mix of building tenants, (b) vague language about water-related recreation requirements, (c) significant capital improvement rental offsets and (d) vague language regarding public benefits provision.

Staff presented the Committee with several options to consider for Building 11 development, which included:

- a) Having the City develop the property, ourselves,
- b) Conducting a new RFP,
- c) Working with the Parks Department and the developer to “tighten” the language in the proposal, and,
- d) Retaining a real-estate consultant to renegotiate the deal on the Council’s behalf.

The Committee instructed staff to work with the Executive and the Parks Department to develop specific language to address these issues. Staff, the Parks Superintendent and the Executive agreed to do so.

Based on these concerns, the Committee forwarded First Proposal to the Full Council with a Do Not Pass recommendation on 22 July 2008, upheld at the Full Council on 28 July 2008 by a 7-0 decision. (Councilmember Nick Licata and former Councilmember Richard McIver were excused from this meeting and did not vote.)

**SECOND PROPOSAL.** In September of 2008, the Council considered the second Building 11 development proposal (Second Proposal), as proposed under C.B. No. 116313, which was passed out of Committee on 23 September 2008. The bill, which would later become Ordinance No. 122814, was passed by the Full Council on 29 September 2008.

**Public Comment.** Public Comment, which was again considerable, focused on the same three to four major points: (i) Sail Sand Point, (ii) the need for shoreline access, (iii) the benefits of public / private partnerships and (iv) fear of privatization of the Park. A number of Magnuson Park artists also participated, testifying about their upcoming eviction from Building 11 if the Second Proposal were approved. The artists present encouraged the Council to vote to pass the Second Proposal and to try to maintain space for artists elsewhere in Magnuson Park, possibly in a redeveloped Building 30.

**Details.** The general outline of the Second Proposal was identical to the First Proposal, but included enhanced and/or improved provisions related to each of the items the Council had identified as needing improvement. Items modified include:

- 1) *Lease Term.*  
Modified from 50 years (40 year Initial Term, plus one ten-year Extension) to 45 years (30 + 5 + 5 + 5).
- 2) *Non-Motorized Boat Rentals.*  
Lease language modified to specifically require non-motorized boat rentals to the public.  
Added provision requiring affordability, based upon rates at the Center for Wooden Boats.
- 3) *Capital Improvement Rent Offset.*  
First five years of lease term: Capital offset reduced from 98% to 75%.  
After Year 5: Capital offset reduced from 90% to 67%.
- 4) *Public Benefits.*  
New provision added to allow Public Benefit Rent Offsets of 10% to 23% of rent due.  
New provision requires annual Public Benefits Proposal to the Parks Superintendent.  
New provision requires annual Public Benefits Report to be delivered to Superintendent, for review and submission to City Council.
- 5) *Assignment of Lease.*  
Language refined, and changed to prohibit Building 11 LLC from selling or transferring building lease for ten years.
- 6) *Restaurant Provisions.*  
New provision added, limiting restaurant space to no more than 10,000 square feet.  
Exclusivity provision changed to provide only ten years of restaurant exclusivity.
- 7) *Publicly Accessible Parking.*  
Parking Agreement now specifies publicly accessible parking adjacent to Building 11.
- 8) *Access to Shoreline.*  
Provision added to require that public access to shoreline areas not be inhibited by project development.

**SECTION C. DETAILS OF THE EXISTING DEVELOPMENT AGREEMENT AND THE PROPOSED DEVELOPMENT AGREEMENT (THIRD PROPOSAL).**

At today’s Parks & Seattle Center Committee, the Council will begin consideration of the third Building 11 development proposal (Third Proposal), included in C.B. No. 117196. Details on the Third Proposal, and changes relative to the Second Proposal, are included in the attached Proposal Matrix.

**SECTION D. BENEFITS TO CITY.**

The Third Proposal offers certain tangible benefits to the City, in consideration for changes to the Agreement made for the benefit of the LLC. Highlights of these benefits include:

- a) **Building 11 Rehabilitation.** The LLC will invest \$11.3 million to redevelop (and maintain for 30 to 45 years) an aging Navy public works building, which the City does not have the funds to redevelop on its own. The LLC will pay for all utilities, operations and maintenance. *(Existing Benefit)*
- b) **Public Benefits.** The LLC will provide public benefits worth between 10% and 23% of total rent due, over the life of the lease. In nominal terms, this totals \$2.2 million to \$5.2 million, to be delivered over 45 years. *(Existing Benefit)*
- c) **Additional Rent.** If Building 11 LLC secures Historic Redevelopment Tax Credits, as anticipated, in the amount of \$1.5 to \$1.8 million, the City retains 75% of the value of these tax credits, through a reduction in allowable Capital Improvement Offset against rent due. This may result in City receipt of \$1.125 to \$1.3 million in increased rent payments in Years 30 to 33 of the Agreement, as shown below: *(New Benefit)*

Calendar Year	2041	2042	2043	2044
Agreement Year	Year 30	Year 31	Year 32	Year 33
Nominal Value	\$201,930	\$390,005	\$399,457	\$133,608

- d) **Guaranteed Artist Studio Space.** This proposal requires that 5,000 square feet of space be dedicated to Artist Studios and Workshop Space, for the duration of the Agreement. There was no minimum requirement in the Second Proposal. It is unclear when Artist Space became elevated to a “Primary Parks and Recreation Use” under this proposal. *(New Benefit)*
- e) **Outdoor Public Spaces.** The LLC has proposed building three outdoor spaces:
  1. A 2,000 square foot outdoor dining deck, on the East side of the building, which will be open to the public (and restaurant patrons) at all times. *(New Benefit)*
  2. A 10,000 square foot outdoor children’s play area, on the East side of the building, which will be used exclusively by childcare users during childcare business hours, and open to the public otherwise. *(New Benefit)*
  3. A 1,000 square foot outdoor children’s play area, on the West side of the building, with the same conditions as Item 2 above. *(New Benefit)*

The Third Proposal includes shared-use provisions for each of these three spaces, but does not include any additional, related rent payment.

- f) **Elimination of “Out” Clause for Water-related Tenant Space.** The Second Proposal includes an “out” clause for Water-related Tenant Space, which allows the developer to waive the requirement for water-related uses, if (i) the developer cannot find suitable water-related tenants, and (ii) the Parks

Department cannot find suitable water-related tenants. This proposal eliminates this “out” clause. (*New Benefit*)

## **SECTION E. COSTS TO CITY AND INFORMATIONAL ITEMS.**

- 1) **Initial Lease Term – Extension to 40 Years.** To qualify for Federal Rehabilitation Tax Credits, Building 11 LLC’s lease term must be at least 40 years, ten years longer than the Initial Term in the existing Agreement (Second Proposal).
- 2) **Maximum Public Benefits Test.** The Second Proposal provides terms by which Building 11 LLC may “qualify” for any of the three five-year Extended Terms. One key provision requires Building 11 LLC, in the aggregate, to have provided the maximum public benefits (23% of Rent due) for the duration of the preceding term. Minimum public benefits are equal to 10% of Rent due. In other words, in order to continue the lease from Year 30 to Year 40, Building 11 LLC must provide the maximum public benefit of 23% of rent due. Under the terms in the Third Proposal, this “Maximum Public Benefits” test is not conducted until Year 40. The City would collect rent monies in lieu of public benefit that is not offset.

### ***Options for Council Consideration:***

- (a) Accept the proposal, as is. Do not require the Maximum Public Benefits test until Year 40.
- (b) Amend the proposal, requiring maximum public benefits from Year 30 to Year 40.

- 3) **Loss of Water-based Recreation Space.** The Third Proposal reduces the minimum ground-floor space required for Water-related Uses from 8,000 square feet to 5,000 square feet. This facilitates the new provision for Artist and Workshop Space, but reduces the minimum requirement for Water-based Recreation, a key component of the use and development plan for the North Shore Recreation Area.

### ***Options for Council Consideration.***

- (a) Accept the proposal, as is. Reduce the minimum area for Water-related Uses from 8,000 SF to 5,000 SF.
- (b) Amend the proposal. Restore the minimum area for Water-related Uses to 8,000 SF.
- (c) Amend the proposal. Restore the minimum area for Water-related Uses to 8,000 SF, and restore the “out” clause for 3,000 SF of that space.

NOTE: This change may require negotiations with Building 11 LLC, and may affect the remainder of the space proposal.

- 4) **Public Benefits – Recreation-based.** The Third Proposal includes identical public benefit language to the Second Proposal, and allows Building 11 LLC to apply for Public Benefit Rental Offsets for any free or subsidized services offered by any of its tenants. This broad language would theoretically allow Public Benefit Rental Offsets to be credited for subsidized or discounted medical services at the site, to the potential exclusion of recreation-related public benefits.

### ***Options for Council Consideration.***

- (a) Accept the proposal, as is. Allow for a broad definition of “public benefits,” to be credited against Rent due.
- (b) Amend the proposal. Specifically limit public benefits to recreational services and programs, or Magnuson Park-specific landscape and lighting improvements.



- 5) **Public Benefits – Cash Option.** The Second Proposal authorized the Parks Superintendent to execute a formal Public Benefits Agreement with Building 11 LLC, which was done last Summer. This Agreement includes a provision to allow the LLC to claim public benefit rent offsets for cash donations made by for-profit tenants that support programs conducted by non-profit tenants. This language might allow public benefit rent offsets to be granted for cash donations that do not directly support recreational services at Magnuson Park, but instead support operations (overhead, etc.) expense.

**Options for Council Consideration.**

- (a) Accept the proposal, as is. Allow cash donations to potentially support non programming-related expenses at Building 11 non-profits.
- (b) Amend the proposal. Specifically require that cash donations be linked to direct, non-duplicated recreational benefits provided by non-profit tenants.
- 6) **Institutional Use – Virginia Mason.** The Third Proposal includes modifications to the lease to expand the permitted uses at Building 11, to include a full range of medical services. The use of the facility for medical services requires approval by DPD, subject to land use requirements under the Sand Point Overlay District and the City's shoreline master plan. This modification was intended to indicate the range uses that might be allowed at Building 11, subject to underlying land use requirements.

While the Overlay allows Institutions, it prohibits Hospitals. This could preclude Virginia Mason from receiving a permit to occupy the building. Building 11 LLC has asked DPD to allow the use not as a Hospital but as an Institution, which is permitted outright. This request also requires approval of a shoreline conditional use permit for the change of use. The request is based on Building 11 LLC's assertion that Virginia Mason is an Institution, not a Hospital. The request is currently under review by DPD. The request must also be approved by the Washington State Department of Ecology to allow the use within the shoreline.

If DPD does not allow Virginia Mason at Building 11, the LLC will have two options:

- (a) Work with the Parks Department to draft a Text Amendment to the Sand Point Overlay, to allow a Hospital use at the Park. The Parks Department has indicated that this is highly unlikely.
- (b) Recruit traditional office tenants for this space. Office appears to be one of the historical, non-conforming uses allowed on the second floor of the building.
- 7) **Non-Profit Tenants at Building 11.** Staff reviewed all public comment offered at the Parks and Seattle Center Committee's previous discussions on Building 11 development to identify trends in public comment and to track any previous commitments made by the Council to retain nonprofit tenants at the site. Staff have also reviewed legislative history regarding Magnuson Park, plus the Second and Third Proposals for Building 11.

With the exception of Sail Sand Point, the City Council has not made an explicit policy commitment to retain any specific non-profit tenant at Building 11, beyond standard relocation assistance offered to all tenants who are evicted by a City action.

The Second and Third Proposals require the Parks Department to deliver the premises “free and clear” of all tenants, except those who “will remain on the Premises under a sublease with Lessee.” The Parks Department delivered eviction notices to seven non-profit tenants (artists counting as a single tenant) on March 15<sup>th</sup>. As of Wednesday, 15 June 2011, the LLC had offered continuing leases (at varying, but presumably higher current lease rates) to a majority of these tenants, though none have signed continuing leases. Details are as follows:

<u>Tenant</u>	<u>Status</u>
Artists (12)	Rejected LLC offer of \$15/ square foot; Considering City leaseback proposal of \$13/sf
Sail Sand Point	Board voted June 7 <sup>th</sup> on lease; decision not yet made public
Hobie Cats	LLC has given them draft letter of intent; likely to move out
Microplanet	Moved Out
Seattle Musical Theater	In process of moving out
Pro-Motion Events	In process of moving out
Lake City Junior Football	Moved Out

If you have any questions about this material, I am happy to meet with you anytime.

**ATTACHMENTS:**

- 1) Magnuson Park Map.
- 2) Shoreline Zone Map.
- 3) Building 11 Area Map.
- 4) Building 11 Lease Plan.
- 5) Proposal Matrix.
- 6) Public Benefits.
- 7) Operating Proforma / Financials