SEATTLE CITY COUNCIL

Legislative Summary

CB 118459

Record No.: CB 118459

Version: 2

Type: Ordinance (Ord)

124832

Status: Passed

In Control: City Clerk

File Created: 07/16/2015

Final Action: 08/14/2015

Title: AN ORDINANCE relating to the ground lease between The City of Seattle and Experience Music Project authorized under Ordinance 118336; authorizing the Seattle Center Director to execute a second amendment to the ground lease.

Notes:

Sponsors: Godden

Attachments:

Drafter: ned.dunn@seattle.gov

	Date
Filed with City Clerk:	
Mayor's Signature:	
Vetoed by Mayor:	
Veto Overridden:	
Veto Sustained:	

Filing Requirements/Dept Action:

History of Legislative File

Legal Notice Published: ☐ Yes ☐ No

Version:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
1	Mayor	07/21/2015	Mayor's leg transmitted to Council	City Clerk			

Action Text: The Council Bill (CB) was Mayor's leg transmitted to Council. to the City Clerk

Notes:

Version:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
1	City Clerk	07/21/2015	sent for review	Council President's Office			

Action Text: The Council Bill (CB) was sent for review. to the Council President's Office

Notes:

Version:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
1	Council President's Office	07/23/2015	sent for review	Parks, Seattle Center, Libraries, and Gender Pay Equity Committee			

Action Text: The Council Bill (CB) was sent for review. to the Parks, Seattle Center, Libraries, and Gender Pay Equity Committee

Notes:

2	Full Council	08/03/2015	referred	Parks, Seattle Center, Libraries, and Gender Pay Equity Committee		

Action Text: The Council Bill (CB) was referred. to the Parks, Seattle Center, Libraries, and Gender Pay Equity Committee
Notes:

1	Parks, Seattle Center, Libraries, and Gender Pay Equity Committee	08/04/2015	pass			Pass

Action Text: The Committee recommends that Full Council pass the Council Bill (CB).
In Favor: 3 Chair Godden, Vice Chair Harrell, Bagshaw
Opposed: 0

2	Full Council	08/10/2015	passed			Pass

Action Text: The Council Bill (CB) was passed by the following vote and the President signed the Bill:
In Favor: 8 Councilmember Bagshaw, Council President Burgess, Councilmember Godden, Councilmember Harrell, Councilmember Licata, Councilmember O'Brien, Councilmember Okamoto, Councilmember Sawant
Opposed: 0

2	City Clerk	08/11/2015	submitted for Mayor's signature	Mayor		

Action Text: The Council Bill (CB) was submitted for Mayor's signature. to the Mayor
Notes:

2	Mayor	08/14/2015	Signed			

Notes:

2	Mayor	08/14/2015	returned	City Clerk		

Notes:

2	City Clerk	08/14/2015	attested by City Clerk			

Action Text: The Ordinance (Ord) was attested by City Clerk.
Notes:

CITY OF SEATTLE

ORDINANCE 124832

COUNCIL BILL 118459

AN ORDINANCE relating to the ground lease between The City of Seattle and Experience Music Project authorized under Ordinance 118336; authorizing the Seattle Center Director to execute a second amendment to the ground lease.

WHEREAS, in 1996, Seattle City Council enacted Ordinance 118336 authorizing the Seattle Center Director (Director) to execute a Memorandum of Understanding (MOU) with Experience Music Project regarding the development of the Experience Music Project at Seattle Center, and authorizing the Director to negotiate and enter into additional agreements, including a ground lease, consistent with the terms of the MOU; and

WHEREAS, Experience Music Project's full incorporated name is Experience Learning Community and its d/b/a name is Experience Music Project (EMP); and

WHEREAS, effective June 1, 1997, the City entered into the Ground Lease Between The City of Seattle (City) and Experience Music Project (Ground Lease), consistent with the terms of the MOU, for premises which EMP used to construct, maintain, and operate a museum to conserve, catalogue, and exhibit musical instruments, costumes, photographs, posters, and other objects which explore the history of rock and roll, popular music, and other various genres within the popular arts; and

WHEREAS, on May 27, 2010, the Director and EMP amended the Ground Lease to address certain matters consistent with the terms of the MOU; and

WHEREAS, the Ground Lease includes the right for EMP to be the sole facility on City-owned property at Seattle Center to operate a full service restaurant with a Class H liquor license, with the exception of KeyArena, Mercer Arena, one Armory restaurant, and the property eventually sold by the City to the Bill and Melinda Gates Foundation; and

WHEREAS, EMP's exclusive rights with respect to liquor sales at the Seattle Center limits the City's options for attracting new investment and a mix of tenants consistent with the Century 21 Master Plan; and

WHEREAS, in September 2014, the Seattle Center Advisory Commission adopted Nonprofit Long Term Lease Guidelines (Guidelines) for the leasing of property and facilities at the Seattle Center to help provide consistency for long term leases with nonprofit organizations; and

WHEREAS, under the Guidelines the City is required to receive a fair return for the use of public assets and the City may agree upon alternative methods of payment of rent to realize such return; and

WHEREAS, EMP has agreed to release its exclusive rights with respect to liquor sales, in part, in consideration for the ability to pay rent with cash and public benefits; and

WHEREAS, EMP and the City mutually desire to modify the terms of the Ground Lease to provide for EMP's payment of rent through measureable public benefits as well as cash, and to release EMP's liquor exclusivity rights; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. As requested by the Seattle Center Director and recommended by the Mayor, the Seattle Center Director or the Director's designee is authorized to execute for and on behalf of The City of Seattle an amendment to the June 1, 1997 Ground Lease Between The City of Seattle and Experience Learning Community d/b/a Experience Music Project substantially in the form of the Second Amendment to Ground Lease Between The City of Seattle and Experience Music Project attached as Attachment 1.

Section 2. 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.

Passed by the City Council the 10th day of August, 2015, and signed by me in open session in authentication of its passage this 10th day of August, 2015.

President ________ of the City Council

Approved by me this 14th day of August, 2015.

Edward B. Murray, Mayor

Filed by me this 14th day of August, 2015.

Monica Martinez Simmons, City Clerk

(Seal)

Attachment 1: Second Amendment to Ground Lease Between The City of Seattle and Experience Music Project

SECOND AMENDMENT TO
GROUND LEASE
BETWEEN
THE CITY OF SEATTLE AND
EXPERIENCE MUSIC PROJECT

This Second Amendment to Ground Lease between the City of Seattle and Experience Music Project ("Second Amendment") is made this ___ day of ____________________2015, by and between THE CITY OF SEATTLE, a municipal corporation of the State of Washington ("the City"), acting through its Seattle Center Director ("Director"), and EXPERIENCE LEARNING COMMUNITY, d/b/a EXPERIENCE MUSIC PROJECT ("EMP"), a Washington non-profit corporation.

WHEREAS, on June 1, 1997, the City and EMP entered into a ground lease, as amended on May 27, 2010 (as amended, collectively, the "Ground Lease") for premises on which EMP constructed, maintains and operates a museum to conserve, catalogue and exhibit musical instruments, costumes, photographs, posters and other objects which explore the history of rock and roll, popular music and other various genres within the popular arts; and to provide indoor and outdoor gathering spaces for musical events, impromptu music-making, education and performances; and all necessary or incidental activities reasonably related hereto (the "Museum") for an initial term of forty (40) years;

WHEREAS, EMP was granted exclusive rights with respect to liquor sales at the Seattle Center which limits the City's options for attracting new investment and a mix of tenants consistent with the Century 21 Master Plan;

WHEREAS, in September 2014, The Seattle Center Advisory Commission adopted Non-Profit Long Term Lease Guidelines (the "Guidelines") for the leasing of property and facilities at the Seattle Center to help provide consistency for long term leases with non-profit organizations at Seattle Center;

WHEREAS, pursuant to the Guidelines, the City is required to receive a fair return for the use of public assets and the City may agree upon alternative methods of payment of rent to realize such return;

WHEREAS, the City has agreed to modify the terms of the Ground Lease to provide for payment of rent through measureable public benefits as well as cash; and

WHEREAS, EMP's agreement to release its exclusive rights with respect to liquor sales will provide Seattle Center with the flexibility to successfully implement the City's vision for the Center campus to provide events, experiences and environments that delight and inspire the human spirit to build stronger communities.

NOW, THEREFORE, for the good and valuable consideration of the mutual covenants and conditions set forth in this Second Amendment, receipt of which is hereby acknowledged, the parties agree to amend the Ground Lease as follows:

I. Continued Effect of EMP Ground Lease Terms not Amended

1. By the terms of this Second Amendment, the parties hereby agree to amend the terms of the Ground Lease, and the parties agree that the terms of this Second Amendment are incorporated into the Ground Lease. In the event of any conflict between this Second Amendment and the Ground Lease related to matters in the Second Amendment, the provisions of this Second Amendment shall prevail. All of the terms and conditions of the Ground Lease not modified by this Second Amendment shall remain in full force and effect.

2. This Second Amendment shall be effective on the date signed by an authorized representative of each party, following authorization by an ordinance of the Seattle City Council.

3. Unless otherwise defined in this Second Amendment, all capitalized terms shall have the same meaning as given in the Ground Lease, and all references to the "Ground Lease" shall mean and include the Ground Lease, the First Amendment and the Second Amendment.

II. Amendment of Ground Lease

1. Section 5. Rent.

A. A new Subsection 5.4 is added to Section 5 of the Ground Lease as follows:

5.4 Total Annual Rent. Beginning on June 1, 2015, regardless of the effective date of this Second Amendment, and thereafter throughout the Initial Term and, if applicable, any Option Terms, EMP shall fulfill its annual rent obligation as described in Subsections 5.1 and 5.2 of the Ground Lease (the "Total Annual Rent") with a combination of "Monetary Rent" and "Public Benefit Rent" (as defined in Subsections 5.4.1-5.4.2 below). As used herein, the term "Lease Year" shall mean a period beginning on June 1, and ending on the following May 31st during the Initial Term and any Option Terms.

5.4.1 Monetary Rent. EMP shall fulfill fifty percent (50%) of its Total Annual Rent obligations through Monetary Rent. As used in this Ground Lease, "Monetary Rent" means that portion of Total Annual Rent which shall be paid in cash or by check.

5.4.2 Public Benefit Rent. EMP shall fulfill fifty percent (50%) of its Total Annual Rent obligation through Public Benefit Rent. As used in this Ground Lease, "Public Benefit Rent" means the value of the public programming and benefits of the types set forth in Exhibit A to this Second Amendment, which is incorporated herein by this reference, subject to the Director's confirmation of valuation as further described in Subsection 5.5. Public Benefit Rent may also include the value of other programs not identified in Exhibit A, subject to the approval of the Director as further described in Subsection 5.5. For the purposes of this Subsection 5.4.2 and Exhibit A, any tickets for admission to the Museum provided to and used by individuals or groups at free or reduced cost shall be valued at the net difference between such complimentary or discounted ticket and a comparable full price ticket. Factors for determining whether the full price ticket is comparable to a free or reduced cost ticket include method of purchase (where applicable), ticket type, age group, day, time, or any other variable that impacts ticket prices. The value attributed to Public Benefit Rent shall be net of sponsorships or subsidies provided by third parties to support the specific program for which Public Benefit Rent credit is claimed. Both the City and EMP acknowledge that those public benefits enumerated on Exhibit A provide consideration to the City and constitute a valuable benefit from EMP to the City and the citizens of Seattle. EMP hereby acknowledges that the public benefits provided by EMP under this Section 5.4 are made possible in part by the City's acceptance of the Public Benefit Rent. EMP and the City shall mutually determine appropriate methods of documenting such acknowledgment. Attendance calculations pursuant to Section 7 of the Ground Lease shall exclude the attendance from events, programs, tickets, or other elements for which Public Benefit Rent has been claimed.

B. A new Subsection 5.5 is added to Section 5 of the Ground Lease as follows:

5.5 Process for Crediting Public Benefit Rent. EMP and the City will use the following processes for crediting Public Benefit Rent against EMP's Total Annual Rent. The Director shall not unreasonably withhold, delay or condition any approval required in this Subsection 5.5.

5.5.1 EMP's Annual Public Benefit Rent Proposal. Beginning in 2016, no later than January 31 of each calendar year during the Initial Term and any Option Term, if applicable, EMP shall provide to the Director a written proposal of Public Benefit Rent in the upcoming Lease Year, along with the estimated value of each benefit proposed (the "Annual Public Benefit Rent Proposal"). The City and EMP hereby agree and acknowledge that provided the proposed Public Benefit Rent is a type set forth on Exhibit A (the "Pre-approved PBR"), it will not require approval of the Director for the type of benefit provided, but only approval by the Director of EMP's proposed value of such Pre-approved PBR. Within thirty (30) days after receiving EMP's Annual Public Benefit Rent Proposal, the Director: (i) shall approve or disapprove the computations associated with the value of the Pre-approved PBR; or (ii) if a program outside of the categories set forth on Exhibit A is proposed (the "Other PBR"), the Director shall reasonably approve or disapprove the program and its associated value. If the Director disapproves of any such element of the Other PBR, or disagrees with EMP's computation of the value for the Pre-approved PBR, the Director shall state the reasons, and within thirty (30) days of receiving the Director's disapproval, EMP shall submit a revised proposal for the Director's consideration. Within thirty (30) days of receipt of EMP's revised proposal, the Director shall review and/or approve or disapprove of the revised proposal as set forth above, and this process may continue until the Director has approved all Pre-approved PBR valuations or the program and value of benefits for the Other PBR. Upon the Director's approval of EMP' s Annual Public Benefit Rent Proposal (the "Approved Proposal"), the amount of Public Benefit Rent in the Approved Proposal shall be amortized evenly over the 12 months in the Lease Year, and the amount of Public Benefit Rent so allocated to each month shall be credited against the monthly installment of the Total Annual Rent for each month during the Lease Year; provided, however if this process has not been completed by June 1 of any Lease Year, then upon completion of said process, the amount of Public Benefit Rent in the Approved Proposal shall be amortized over the remaining months in the then current Lease Year, and the amount of Public Benefit Rent so allocated to each remaining month shall be credited against the monthly installment of Total Annual Rent for each remaining month during the Lease Year.

During each Lease Year, EMP may propose amendment(s) to the Approved Proposal, identifying alternative public benefits and/or the modifying the associated public benefit value. Subject to the Director's written approval of value (for Pre-approved PBR) or category and value (for Other PBR), the Approved Proposal will be amended and, if the amendment modifies the amount of Public Benefit Rent, the amortized and allocated amount of Public Benefit Rent shall be adjusted for each remaining month during the Lease Year.

The City and EMP agree and acknowledge that for the Lease Year commencing on June 1, 2015, the time frames set forth above will not be applicable. Therefore, for the Lease Year commencing June 1, 2015, the parties agree that EMP shall submit its Annual Public Benefit Rent Proposal within thirty (30) days of mutual execution of this Second Amendment, and the Director shall respond to such proposal within thirty (30) days of receipt, and the process shall thereafter proceed as set forth above; provided that it is agreed and acknowledged that the total annual Public Benefit Rent approved shall not be pro-rated for a partial year even if final approval occurs following the commencement of the first Lease Year that this Second Amendment is in effect, rather the total approved Public Benefit Rent shall be credited equally against the months remaining in the 2015-2016 Lease Year subject to Subsection 5.5.2.

5.5.2 EMP's Annual Public Benefit Rent Statement and Reconciliation. On or before June 30 of each calendar year during the Initial Term and any Option Term, if applicable, EMP shall provide to the City an Annual Public Benefit Rent Statement, which shall set forth in writing the value of the public benefits actually provided in the prior Lease Year ("Annual Public Benefit Rent Statement"). The Annual Public Benefit Rent Statement shall be supported by an itemized statement from EMP, and, if requested by the City in writing, shall also include receipts and/or gate receipts, with corresponding dollar values, as well as an itemized statement of time, direct labor costs and materials where applicable, along with corresponding dollar values, and any other reasonably relevant supporting documents to verify the value of the Public Benefit Rent claimed. Only those items identified in EMP's Approved Proposal, as amended, may be included in the Annual Public Benefit Rent Statement. EMP shall keep accurate records and accounts of all matters upon the basis of which the accounting is calculated and such accounts and records shall be subject to inspection and copying by the City. Within thirty (30) days of receipt of EMP's Annual Public Benefit Rent Statement, the Director shall review it, and may request more information, approve the entire amount, or provide EMP with a written statement indicating which amounts have not been approved. If Public Benefit Rent amounts have not been approved, EMP shall have thirty (30) days to provide documentation supporting the provision of alternative public benefits consistent with the Approved Proposal for that Lease Year and such alternative public benefits shall be subject to the Director's reasonable approval. EMP shall not be entitled to carry forward any excess public benefits provided in any Lease Year, nor shall EMP be entitled to any refund. If EMP fails to provide Public Benefit Rent in an amount equal to fifty percent (50%) of the Total Annual Rent in any Lease Year, EMP shall pay the deficiency in cash no later than thirty (30) days following the Director's determination of the Public Benefit Rent deficiency for the applicable Lease Year.

5.5.3 Dispute Resolution. Upon the occurrence of any dispute arising from the terms of this Section 5.5, the parties agree that they shall follow the process in Section 37 of the Ground Lease.

2. Subsection 33.3 Liquor Sales.

Subsection 33.3 of the Lease is deleted in its entirety.

3. Section 52. Labor Harmony

A new Section 52 is added to the Ground Lease as follows:

Section 52. Labor Harmony

The Seattle Center is a major civic center with millions of visitors and a mission to provide exceptional public events, experiences and environments that delight and build stronger communities. Events and concessions at the Seattle Center support Seattle Center operations and ensure the economic feasibility of Seattle Center. The Seattle Center has been impacted by labor disputes in the food service industry and has an interest in ensuring that future programs, events, and visitor experiences are not interrupted or interfered with by work stoppages or other labor disputes in food service operations.

Therefore, EMP agrees to take reasonable steps and make good faith efforts to avoid any work stoppages or labor disputes in its food service operations. Such reasonable steps may include, but are not limited to, requiring new or incoming food service operators at the Premises to sign labor peace agreements with the labor organizations that represent or are seeking to represent employees at the Premises.

4. **Counterparts.** This Second Amendment may be executed in any number of counterparts and all counterparts shall be deemed to constitute a single agreement. The execution and delivery of one counterpart by any party shall have the same force and effect as if the party had signed all other counterparts.

5. **No Further Amendments.** Except as amended hereby, the Ground Lease remains in full force and effect in accordance with its terms.

IN WITNESS WHEREOF, the parties hereto have executed this amendment the day and year indicated below:

CITY OF SEATTLE, a Washington municipal corporation	EXPERIENCE LEARNING COMMUNITY, d/b/a EXPERIENCE MUSIC PROJECT (EMP), a Washington non-profit corporation
By:______________________ Robert Nellams Director, Seattle Center	By:__________________________ Patty Isacson Sabee CEO + Director, EMP Museum
Date:____________________	Date:_________________________

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this _____ day of _____________, 2015, before me personally appeared Robert Nellams, the Director of the Seattle Center, of THE CITY OF SEATTLE, who executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

____

_______________________________(Print Name)
Notary Public in and for the State of Washington, residing at _______________________________
My Commission Expires: ______________________

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this _____ day of ______________, 2015, before me personally appeared Patty Isacson Sabee, the CEO and Director of EMP Museum, of EXPERIENCE LEARNING COMMUNITY, d/b/a EXPERIENCE MUSIC PROJECT (EMP), who executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that she was authorized to execute said instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

____

__________________________________(Print Name)
Notary Public in and for the State of Washington, residing at ______________________________
My Commission Expires: ____________________

EXHIBIT A

Pre-Approved Public Benefit Rent (Pre-Approved PBR)

Pre-Approved PBR includes the value of the following tickets, and services. All public benefits offered must occur on the Seattle Center campus to be eligible for Public Benefit Rent.

1. The value of free or discounted tickets, or scholarships for admission to the Experience Music Project (EMP) or its educational programs or events provided for and used by:

   (a) Preschool, elementary, and secondary children and their teachers;
   (b) Department of Social and Health Services Medical Card holders;
   (c) Foster children and their foster families through foster care organizations;
   (d) Homeless individuals through organizations for the homeless;
   (e) EBT (food stamp) card holders and their dependent children; and
   (f) Seattle public or private non-profit community based organizations of demonstrated effectiveness that are representative of the community or a significant segment of the community engaged in meeting human, educational, environmental, or public safety needs for a disadvantaged population.

2. The cost to EMP of busing school children to EMP programs at the Seattle Center;
3. The net difference between the rental rate paid to EMP for use of portions of the Premises by entities exempt from income taxation under 26 U.S.C.501(c)(3) and the rental rate paid to EMP by non-exempt entities for the same spaces for comparable use period(s);

SUMMARY and FISCAL NOTE

Department:	Contact Person/Phone:	Executive Contact/Phone:
Seattle Center	Kerry Smith 615-0358	Candice Livingston Foote 233-7274

1. BILL SUMMARY

Legislation Title: AN ORDINANCE relating to the ground lease between The City of Seattle and Experience Music Project authorized under Ordinance 118336; authorizing the Seattle Center Director to execute a second amendment to the ground lease.

Summary and background of the Legislation:
This legislation authorizes execution of a second amendment to the Ground Lease between the City of Seattle and Experience Music Project (EMP), a non-profit organization formed in 1992. Under this amendment EMP will pay rent with cash and measureable public benefits pursuant to the Seattle Center Non-Profit Long Term Lease Guidelines and will release its exclusive right to liquor sales in full service restaurants on City-owned property at Seattle Center. In addition, EMP will make good faith efforts to avoid work stoppages or labor disputes in its food service operations.

In late 1996, Seattle City Council enacted Ordinance 118336 authorizing Seattle Center to execute a Memorandum of Understanding (MOU) with Experience Music Project regarding the development of the Experience Music Project facility and related parking at Seattle Center as well as related detailed agreements, including a ground lease, consistent with the MOU. The ordinance required that the ground lease and the related agreements be consistent with the approved MOU. The MOU included specific items such as the rent, lease term, parking revenue sharing, compatibility with the Seattle Center Master Plan, and exclusive rights granted to EMP. Those exclusive rights are related to EMP's programming, use, and retail operations and included the right to be the only facility on City-owned property, with the exception of the KeyArena, the Mercer Arena, a restaurant in the Armory and future development of the site that was sold to the Bill and Melinda Gates Foundation, to operate a full service restaurant with a Class H liquor license. A Class H liquor license allowed the sale of liquor in addition to beer and wine. The ground lease was completed and was effective June 1, 1997.

Fully funded by EMP, the original Experience Music Project was opened to the public in 2000. The Science Fiction Museum, which opened in 2004, was also funded by EMP. The City invested $500,000 for utilities and infrastructure development for EMP, which was less than the tax benefits received by the City from construction of the facility.

In May 2010, the lease was amended to clarify which party was responsible for maintenance and repair of specific items and areas and to modify EMP's payment schedule from an annual rent payment to a monthly payment. That amendment was consistent with the terms of the MOU approved by Ordinance 118336, and so did not require City Council approval.

In 2014, the Seattle Center Advisory Commission approved Non-profit Long Term Lease Guidelines to help provide consistency in lease terms for non-profit tenants at Seattle Center. Those guidelines identified general terms that might affect the value of a lease and addressed the payment of rent through methods other than cash, including public benefits. The guidelines state:

> The public "…benefit provided must be measurable and needs to occur on the Seattle Center campus. If included, the public benefits will be required to be documented on an annual basis and are subject to the approval of the Seattle Center Director. The value of the item must be net of donations or subsidies provided by other entities to support the identified program. No rent credit or rent carry forward is given for the provision of benefits above the specified amount."

In addition to requiring a true value accounting of public benefits, the guidelines note that cash needs to be equal to, or larger than, any other component of the tenant's rent payments. To date, three Seattle Center tenants have rental terms consistent with the guidelines. Those tenants are Cornish College of the Arts, and the terms for the lease extensions of both Seattle Children's Theatre and Pacific Northwest Ballet's lease of the Phelps Center.

Under the ground lease, EMP's rent in 1997 was $301,963 per year. Every five years a CPI adjustment is made to the rent. For the first twenty years of the initial 40 year term, the CPI adjustment cannot exceed 20% of the then current basic rent. For the balance of the initial 40 year term, the CPI adjustment cannot exceed 5% of the then current rent. EMP's current rent is $443,087 and the next CPI adjustment, which is capped at 5%, will occur in 2017. The lease also includes two additional ten-year option terms, exercised at EMP's option. Rent during the option terms will be 8% of the fair market value of the land.

The amendment authorizes EMP to pay up to one-half of the annual rent, or $221,543 in the 2015/2016 lease year, in measureable public benefits. Public benefits include the value of free or discounted tickets for admission to the museum provided for and used by:

1. Preschool, elementary, and secondary children and their teachers;
2. Department of Social and Health Services Medical Card holders;
3. Foster children and their foster families through foster care organizations;
4. Homeless individuals through organizations for the homeless;
5. Food stamp card holders and their dependent children; and
6. Seattle community based organizations

In addition, the cost to EMP of busing school children to EMP programs at Seattle Center, use of portions of the Museum by other non-profit organizations, and other programs approved by the Seattle Center Director may be counted toward payment of the public benefit portion of the rent.

The public benefits must occur at Seattle Center and the City's role in provision of the benefits must be recognized. Prior to the beginning of each lease year, the Seattle Center Director will review and approve the proposed value of benefits EMP will be providing in the following year.

Throughout that lease year, the public benefit rent will be credited against the annual rent for up to 50% of the annual rent. At the end of the lease year EMP will provide a report documenting the benefits provided. If the value of the benefits provided is less than proposed, EMP will pay the difference in cash. EMP will only receive rent credit for up to half the rent and if the value of public benefits exceeds that amount, EMP will not receive rent credit for the excess value, either in that year or future lease years. The proposed public benefit lease terms are all consistent with the Non-profit Long Term Lease Guidelines.

EMP will release its rights with respect to liquor sales, in part, in consideration of the City's willingness to accept payment of rent in cash and public benefits. The ground lease includes the right for EMP to be the sole facility on City-owned property at Seattle Center to operate a full service restaurant with a Class H liquor license, with the exception of KeyArena, Mercer Arena, one Armory restaurant, and the property that was sold by the City to the Bill and Melinda Gates Foundation. These liquor sales rights limit the City's options for attracting new investment and a mix of tenants consistent with the Century 21 Master Plan and negotiations regarding those rights and the value associated with them have been ongoing for a number of years.

With the release of EMP's current liquor exclusivity, Seattle Center will have both immediate and long-term revenue opportunities that currently do not exist. For example, the McCaw Hall restaurant concessionaire and a few food service providers in the Armory have expressed interest in expanding their offerings to include liquor sales while another Armory merchant has suggested creating a lounge area adjacent to their location. Additional near-term opportunities to enhance revenues could emerge through the solicitation the Center is preparing to attract proposals for the use of several Center facilities, one or more of which could be used for food service or the new café envisioned at the Northwest Rooms could also be authorized to serve spirits. Release of the liquor exclusivity also expands the longer-term opportunities envisioned in the Century 21 Master Plan as well as potential future redevelopment of the current site of KCTS which could include food service. Further, if the Center is successful in attracting more and varied food and beverage tenants, secondary and tertiary benefits can start to accrue such as increased visitors which can impact parking revenue and on-site spending. The estimated impact of releasing the liquor exclusivity on just these listed examples increases Seattle Center's potential revenue by an estimated $110,000 to $275,000/year as shown in Attachment A. The greatest opportunity created by release of the liquor exclusivity is that over the remaining 42 years of the EMP lease there will be many options, as yet unimagined, to create exceptional experiences and environments at Seattle Center and those options will no longer be limited by EMP's exclusive liquor rights.

In addition, EMP will make good faith efforts to avoid any work stoppages or labor disputes in its food service operations, which may include requiring new or incoming food service operators to sign labor peace agreements with labor organizations representing or seeking to represent food service employees at EMP.

2. CAPITAL IMPROVEMENT PROGRAM

____ **This legislation creates, funds, or amends a CIP Project.**

3. SUMMARY OF FINANCIAL IMPLICATIONS

_X_ This legislation has direct financial implications.

Budget program(s) affected:				
Estimated $ Appropriation change:	**General Fund $**		**Other $**	
	2015	**2016**	**2015**	**2016**
Estimated $ Revenue change:	**Revenue to General Fund**		**Revenue to Other Funds**	
	2015	**2016**	**2015**	**2016**
			($129,234)	($221,544)
Positions affected:	**No. of Positions**		**Total FTE Change**	
	2015	**2016**	**2015**	**2016**
Other departments affected:				

3.a. Appropriations

____ This legislation adds, changes, or deletes appropriations.

Fund Name and number	Dept	Budget Control Level Name/#*	2015 Appropriation Change	2016 Estimated Appropriation Change
TOTAL				

Appropriations Notes:

3.b. Revenues/Reimbursements

__X__ This legislation adds, changes, or deletes revenues or reimbursements.

Anticipated Revenue/Reimbursement Resulting from this Legislation:

Fund Name and Number	Dept	Revenue Source	2015 Revenue	2016 Estimated Revenue
SC Operations & Maintenance – 11410	CEN	Lease	($129,234)	($221,544)
TOTAL			($129,234)	($221,544)

Revenue/Reimbursement Notes:
This legislation will modify the method of EMP's rent payment from cash to measureable public benefits for up to half of the annual rent. The EMP lease year runs from June 1 through May

31st. The annual rent beginning June 1, 2015 will be $443,087, and effective that date, the annual rent will be $221,543.50 in cash and an equal amount in measureable public benefits. The reduction in cash rent is $129,234 in 2015 and $221,544 in 2016. The amendment does not change the amount and timing of rent adjustments. The total rent amount will next increase by 5% in 2017 and by a maximum of 5% every 5 years thereafter through the end of the lease term in 2037. Release of the liquor exclusivity creates the opportunity for new or increased revenues from both existing and potential tenants. As shown in Attachment A, the potential incremental revenue from the identified opportunities ranges from an estimated $110,000 to $275,000 per year.

3.c. Positions

____ **This legislation adds, changes, or deletes positions.**

Total Regular Positions Created, Modified, or Abrogated through this Legislation, Including FTE Impact:

Position # for Existing Positions	Position Title & Department*	Fund Name & #	Program & BCL	PT/FT	2015 Positions	2015 FTE	Does it sunset? (If yes, explain below in Position Notes)
TOTAL							

* *List each position separately*

Position Notes:

4. OTHER IMPLICATIONS

a) **Does the legislation have indirect or long-term financial impacts to the City of Seattle that are not reflected in the above?**
This legislation will result in greater flexibility and potentially higher returns from food service providers at Seattle Center. Due to EMP's exclusive rights, food service providers that weren't in the excepted locations could only serve beer and wine. With EMP's release of the exclusive rights, existing and future food service providers will also be able to serve liquor and this will provide significant near- and long-term revenue opportunities to Seattle Center.

b) **Is there financial cost or other impacts of not implementing the legislation?**
If the legislation is not implemented, the current limits on where liquor may be served at Seattle Center will remain in effect and the potential for increased revenues from food service providers will not be possible. Not implementing the legislation will also leave unresolved the current dispute surrounding EMP's exclusive right to serve liquor.

c) **Does this legislation affect any departments besides the originating department?**

No

d) Is a public hearing required for this legislation?
No

e) Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation?
No

f) Does this legislation affect a piece of property?
No

g) Please describe any perceived implication for the principles of the Race and Social Justice Initiative. Does this legislation impact vulnerable or historically disadvantaged communities?
This legislation creates opportunities for historically disadvantaged communities to visit the Experience Music Project through the distribution of free or discounted tickets to disadvantaged populations.

h) If this legislation includes a new initiative or a major programmatic expansion: What are the long-term and measurable goals of the program? Please describe how this legislation would help achieve the program's desired goals.
No

i) Other Issues:
None

List attachments below:
Attachment A: Potential Revenues to Seattle Center from Release of Liquor Exclusivity

STATE OF WASHINGTON -- KING COUNTY

--ss.

327873

No.

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:124826-834 TITLE ONLY

was published on

08/26/15

The amount of the fee charged for the foregoing publication is the sum of $166.32 which amount has been paid in full.

MELISSA M. DOWD
STATE OF WASHINGTON
NOTARY PUBLIC
MY COMMISSION EXPIRES
11-24-15

Subscribed and sworn to before me on

08/26/2015

Notary public for the State of Washington,
residing in Seattle

Affidavit of Publication

State of Washington, King County

City of Seattle

The full text of the following legislation, passed by the City Council on August 10, 2015, 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 124826

AN ORDINANCE authorizing the Mayor to execute an Interlocal Agreement between the City of Seattle, Washington, and the North Highline Fire District that outlines the terms and conditions of payments to the North Highline Fire District to mitigate the financial impacts associated with the City of Seattle's annexation of the Duwamish Annexation Area.

Ordinance 124827

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

Ordinance 124828

AN ORDINANCE related to the Seattle Preschool Program; approving a Comprehensive Evaluation Strategy as required by Resolution 31527.

Ordinance 124829

AN ORDINANCE relating to gender identity and all-gender single-occupant restrooms in Seattle; amending the definition of "gender identity" in Sections 14.04.030, 14.06.020, 14.08.020, and 14.10.020 of the Seattle Municipal Code; amending the definition of "place of public accommodation" in Section 14.06.020 of the Seattle Municipal Code; amending Section 14.06.030 of the Seattle Municipal Code to clarify the right of individuals to use gender-specific facilities consistent with their gender identity; and adding a new Chapter 14.07 to the Seattle Municipal Code providing for all-gender restrooms in City-controlled buildings and places of public accommodation and prescribing enforcement procedures.

Ordinance 124830

AN ORDINANCE relating to the coordination of regional green business programs; authorizing the Directors of the Office of Economic Development, Seattle Public Utilities, and the Office of Sustainability and Environment, and the General Manager and Chief Executive Officer of the City Light Department, or their respective designees, to execute a memorandum of agreement between The City of Seattle, King County, by its Department of Natural Resources and Parks, the City of Bellevue, the City of Kirkland, Snohomish County, Puget Sound Energy, and Public Utility District No. 1 of Snohomish County, Washington to establish a regional green business program that coordinates and provides information about environmental sustainability services offered by all parties to the memorandum of agreement; authorizing the Director of the Office of Economic Development to accept funds under the memorandum of agreement, and appropriating and authorizing the disbursement of such funds in support of the regional green business program; increasing appropriations in the 2015 Adopted Budget for The City of Seattle's Office of Economic Development; and ratifying and confirming prior acts, all by a 3/4 vote of the City Council.

Ordinance 124831

AN ORDINANCE relating to the sale of City real property for residential development; authorizing the sale of the site located at 6th Avenue and Yesler Way to Stream Real Estate, LLC; authorizing the Director of Housing to execute, deliver, and administer the contract for sale of land, deed, and related documents; authorizing other actions related to the disposition and use of the property; and ratifying and confirming certain prior acts.

Ordinance 124832

AN ORDINANCE relating to the ground lease between The City of Seattle and Experience Music Project authorized under Ordinance 118336; authorizing the Seattle Center Director to execute a second amendment to the ground lease.

Ordinance 124833

AN ORDINANCE related to imposing a tax on engaging in the business of making retail sales of firearms and ammunition; amending Sections 5.30.010, 5.30.060, 5.55.010, 5.55.040, 5.55.060, 5.55.150, 5.55.165, 5.55.220, and 5.55.230 of the Seattle Municipal Code; and adding a new Chapter 5.50 to the Seattle Municipal Code.

Ordinance 124834

AN ORDINANCE requiring the reporting of lost and stolen firearms; and creating a new Chapter 10.78 of the Seattle Municipal Code.