



Legislation Text

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File #: CB 118717, Version: 1

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**CITY OF SEATTLE**

**ORDINANCE \_\_\_\_\_**

**COUNCIL BILL \_\_\_\_\_**

AN ORDINANCE providing for certain remedial actions with respect to the City's Limited Tax General Obligation Improvement and Refunding Bonds, 2007, including providing for the defeasance and redemption of certain of those bonds that are currently outstanding; creating a new fund for the expenditure of disposition proceeds; authorizing the execution of a defeasance trust agreement and the carrying out of a defeasance plan and directing the use of additional disposition proceeds; authorizing certain transfers necessary to carry out the foregoing; authorizing the purchase of certain investments and the use of their proceeds; and ratifying and confirming certain prior acts; all by a 3/4 vote of the City Council.

WHEREAS, pursuant to Ordinance 119155, passed by the City Council on September 21, 1998, and Resolution 29858, adopted by the City Council on October 28, 1998, The City of Seattle, Washington (the "City"), issued its \$60,805,000 Limited Tax General Obligation Bonds, 1998, Series F (the "1998F Bonds"), to pay part of the cost of the City's acquisition of a public parking facility in downtown Seattle consisting of the Garage Unit of Pacific Place, a condominium (the "Garage"); and

WHEREAS, pursuant to Ordinance 122286, passed by the City Council on November 20, 2006, and Resolution 30980, adopted by the City Council on April 18, 2007 (collectively, the "2007 Bond Legislation"), the City issued its \$95,550,000 Limited Tax General Obligation Improvement and Refunding Bonds, 2007 (the "2007 Bonds"); and

WHEREAS, pursuant to an allocation set forth in Resolution 30980, the City allocated a portion of the 2007 Bonds (the "2007 Garage Refunding Bonds") to refinancing costs of the Garage that had been previously financed by the 1998F Bonds by refunding all of the then-outstanding 1998F Bonds, leaving no unrefunded 1998F Bonds remaining outstanding; and

WHEREAS, pursuant to the 2007 Bond Legislation, the City reserved the right to use money available from any lawful source to pay when due the principal of and interest on all or any portion of the 2007 Bonds pursuant to a defeasance plan; and

WHEREAS, pursuant to an ordinance to be presented to the City Council for approval on or about the date of this ordinance, the City has determined that it is in the best interests of the City to sell the Garage to Madison Acquisitions II LLC (the “Purchaser”), and, if passed by the City Council, will approve and authorize the execution and delivery by the Director of the Department of Finance and Administrative Services, on behalf of the City, of a Purchase and Sale Agreement for Sale of Real Property (the “Purchase and Sale Agreement”), by and between the City and the Purchaser for the sale of the Garage to the Purchaser in a *bona fide* arm’s-length transaction, which sale is expected to close on or before September 30, 2016 (the “Closing Date”); and

WHEREAS, under the terms of the Purchase and Sale Agreement, the City will receive from Purchaser on the Closing Date exclusively cash consideration for the sale of the Garage, which the City has determined, based upon a competitive process conducted on behalf of the City by a commercial real estate broker who solicited and received multiple purchase offers, to be an amount not less than the fair market value of the Garage; and

WHEREAS, in order to preserve the exclusion of interest on the 2007 Bonds from gross income of the owners thereof for federal income tax purposes, the City has determined to take certain remedial actions in respect of the 2007 Garage Refunding Bonds, as permitted by Treasury Regulations Section 1.141-12 (d), including using a portion of the Disposition Proceeds (defined in Section 1 of this ordinance) of the sale of the Garage to establish a yield-restricted defeasance escrow to defease all of the outstanding principal of the 2007 Garage Refunding Bonds more particularly described in Schedule 1 to the Defeasance Trust Agreement authorized by this ordinance (the “2007 Defeased Bonds”), and to call, pay, and redeem the 2007 Defeased Bonds on or before October 1, 2017, which is their earliest optional

redemption date and a date less than ten and one-half years after the issue date of the 2007 Defeased Bonds; NOW, THEREFORE,

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

**Section 1. Definitions.** As used in this ordinance, the following words shall have the meanings:

“**2007 Bonds**” means the City’s outstanding Limited Tax General Obligation Improvement and Refunding Bonds, 2007, dated May 2, 2007.

“**2007 Defeased Bonds**” means the 2007 Garage Refunding Bonds described in Schedule 1 to the Defeasance Trust Agreement.

“**2007 Garage Refunding Bonds**” means that portion of the 2007 Bonds that was allocated to carry out the refunding plan for the City’s then-outstanding 1998F Bonds and thereby to refinance part of the cost of the Garage as specified in Exhibit B to Resolution 30980 adopted by the City Council on April 18, 2007.

“**Bond Counsel**” means a lawyer or a firm of lawyers, selected by the City, of nationally recognized standing in matters pertaining to bonds issued by states and their political subdivisions.

“**Bond Fund**” means the City’s General Bond Interest and Redemption Fund, previously created by Ordinance 112112 and established and to be used for the payment of the principal of, premium, if any, and interest on the 2007 Bonds.

“**City**” means The City of Seattle, Washington, a municipal corporation duly organized and existing under the laws of the State of Washington.

“**City Council**” means the City Council of the City, as duly and regularly constituted from time to time.

“**Closing Date**” means the date of closing of the sale of the Garage pursuant to the Purchase and Sale Agreement.

“**Defeasance Plan**” means:

(a) the deposit into the defeasance trust account established with the Defeasance Trustee of Disposition Proceeds of an amount, available for this purpose in the City’s Garage Defeasance Subfund,

sufficient to acquire the Escrow Obligations and provide any required beginning cash balance;

(b) the payment out of the defeasance trust account of the principal of and interest on the 2007 Defeased Bonds when due up to and including October 1, 2017, and on October 1, 2017, the redemption of all of the remaining principal of the 2007 Defeased Bonds at a price of par; and

(c) the payment of the legal and administrative costs and expenses of carrying out the foregoing elements of the Defeasance Plan.

**“Defeasance Trust Agreement”** means a Defeasance Trust Agreement between the City and the Defeasance Trustee substantially in the form attached hereto as Attachment 1 and by this reference incorporated herein, with such changes as are consistent with this ordinance and are approved by the Director of Finance.

**“Defeasance Trustee”** means the defeasance trustee hereafter selected by the Director of Finance, and any successor thereto, as defeasance trustee under the Defeasance Trust Agreement.

**“Director of Finance”** means the Director of the Finance Division of the Department of Finance and Administrative Services of the City, or any other officer who succeeds to substantially all of the responsibilities of that office.

**“Disposition Proceeds”** means the amount received by the City from the sale of the Garage pursuant to the Purchase and Sale Agreement, determined in accordance with Treasury Regulations Section 1.141-12 and other applicable provisions of the Internal Revenue Code.

**“Escrow Obligations”** means United States Treasury Certificates of Indebtedness, Notes, and Bonds - State and Local Government Series, or other direct, noncallable obligations of the United States of America purchased to accomplish the defeasance of the 2007 Defeased Bonds.

**“Garage”** means a public parking facility in downtown Seattle, located beneath the Pacific Place retail complex, consisting of the Garage Unit of Pacific Place, a condominium.

**“Garage Disposition Proceeds Fund”** means the Garage Disposition Proceeds Fund to be created pursuant to Section 3 of this ordinance.

“**Garage Defeasance Subfund**” means the Garage Defeasance Subfund to be created in the Bond Fund described in Section 3 of this ordinance.

“**Parking Garage Operations Fund**” means the fund created by Ordinance 119158 for the collection of revenues, and for the payment of budgeted expenditures associated with the Garage, including operating expenses and transfers to the Bond Fund in respect of debt service on the 2007 Garage Refunding Bonds.

**Section 2. Deposit and Use of Disposition Proceeds.**

(a) On the Closing Date, the City shall deposit all Disposition Proceeds into the Parking Garage Operations Fund to be immediately transferred as follows:

(1) the amount necessary to carry out the Defeasance Plan shall be transferred to the Garage Defeasance Subfund to carry out the Defeasance Plan; and

(2) all remaining Disposition Proceeds (i.e., an amount equal to the total Disposition Proceeds less only the amount the amount necessary to carry out the Defeasance Plan) shall be transferred to the Garage Disposition Proceeds Fund to be used for such budgeted municipal purposes that the Director of Finance determines, in reliance on the opinion of Bond Counsel to the City, would be eligible expenditures for proceeds of tax-exempt governmental bonds or would otherwise meet the applicable requirements of the Internal Revenue Code.

(b) The City will neither take any action nor make or permit any use of the Disposition Proceeds, or other funds of the City treated as proceeds of the 2007 Bonds, that will cause interest on the 2007 Bonds to be included in gross income for federal income tax purposes. The City also covenants that it will, to the extent the arbitrage rebate requirement of Section 148 of the Code is applicable to the Disposition Proceeds, take all actions necessary to comply (or to be treated as having complied) with that requirement and the payment of any penalties if elected or required to be paid under Section 148 of the Code to prevent interest on the 2007 Bonds from being included in gross income for federal income tax purposes.

**Section 3. Creation of New Fund and Subfund.**

(a) Creation of the Garage Disposition Proceeds Fund. The City Council hereby authorizes and directs the Director of Finance to create a special fund designated as the “Garage Disposition Proceeds Fund,” which account is to be maintained for the sole purpose of tracking the expenditure of the remaining Disposition Proceeds after the carrying out of the Defeasance Plan.

(b) Creation of the Garage Defeasance Subfund within the Bond Fund. The City Council hereby authorizes and directs the Director of Finance to create within the Bond Fund a special account designated as the “Garage Defeasance Subfund,” which account is maintained for the sole purpose of implementing the Defeasance Plan.

**Section 4. Defeasance of 2007 Defeased Bonds.**

(a) Appointment of Defeasance Trustee; Authorization for Defeasance Trust Agreement. The Director of Finance is hereby authorized and directed to appoint a Defeasance Trustee, negotiate appropriate financial terms for such appointment, and enter into the Defeasance Trust Agreement with the Defeasance Trustee.

(b) 2007 Defeased Bonds. The Director of Finance is authorized and directed, in consultation with appropriate City officials and staff, Bond Counsel and the City’s financial advisors, to carry out the defeasance of the 2007 Defeased Bonds in accordance with the Defeasance Plan and this ordinance. A particular description of the 2007 Defeased Bonds shall be set forth in Schedule 1 to the Defeasance Trust Agreement.

(c) Acquisition of Escrow Obligations. A sufficient amount of money on deposit in the Garage Defeasance Subfund shall be transferred to the Defeasance Trustee to be used to discharge the obligations of the City relating to the 2007 Defeased Bonds under the 2007 Bond Legislation, by providing for the payment of the amounts required to be paid under the Defeasance Plan. To the extent practicable, such obligations shall be discharged fully by the Defeasance Trustee’s simultaneous purchase of the Escrow Obligations, bearing such interest and maturing as to principal and interest in such amounts and at such times

so as to provide, together with a beginning cash balance, if necessary, for the payment of the amount required to be paid under the Defeasance Plan. The Escrow Obligations shall be listed and more particularly described in Exhibit A attached to the Defeasance Trust Agreement. The City shall deliver to the Defeasance Trustee with the Defeasance Trust Agreement (1) a verification by a nationally recognized independent certified public accounting firm acceptable to the Defeasance Trustee confirming that the payments of principal of and interest on the Escrow Obligations, if paid when due, and any other money held by the Defeasance Trustee will be sufficient to carry out the Defeasance Plan; and (2) an opinion of Bond Counsel to the effect that the interest on the 2007 Defeased Bonds will remain excluded from gross income for federal income tax purposes under Sections 103 and 148 of the Federal Tax Code.

(d) Administration of Defeasance Plan. The Defeasance Trustee is authorized and directed to purchase the Escrow Obligations and to make the payments required to be made by the Defeasance Plan from the Escrow Obligations and money deposited with the Defeasance Trustee pursuant to this ordinance. All Escrow Obligations and the money deposited with the Defeasance Trustee and any income therefrom shall be held irrevocably and applied in accordance with the provisions of the 2007 Bond Legislation, this ordinance and the Defeasance Trust Agreement. All necessary and proper fees, compensation, and expenses of the Defeasance Trustee for costs incidental to the establishment of the escrow to accomplish the defeasance of the 2007 Defeased Bonds, including verification fees, bond counsel's fees, and other related expenses, shall be paid by the City from Disposition Proceeds for that purpose.

(e) Authorization for Replacement Bonds. If necessary or desirable, the City may issue replacement bonds in principal amounts reflecting the defeased and nondefeased portions of the 2007 Bonds. The replacement bonds shall be printed, executed, and authenticated in the same manner as the 2007 Bonds.

**Section 5. Findings and Determinations Concerning Defeasance Plan.** The City Council finds and determines that it is in the best interest of the City and its taxpayers that the City carry out the Defeasance Plan and hereby ratifies and approves the Defeasance Plan.

**Section 6. Transfer Authorizations.**

(a) Transfer to Garage Defeasance Subfund. The City Council hereby authorizes and directs the Director of Finance to transfer or deposit, immediately upon receipt, Disposition Proceeds from the Parking Garage Operations Fund to the Garage Defeasance Subfund in the amount necessary, up to \$59,000,000, to carry out the Defeasance Plan for the 2007 Defeased Bonds.

(b) Transfer to Garage Disposition Proceeds Fund. The City Council hereby authorizes and directs the Director of Finance to transfer or deposit the Disposition Proceeds not needed to carry out the Defeasance Plan, immediately upon receipt, from the Parking Garage Operations Fund to the Garage Disposition Proceeds Fund, to be used in accordance with Section 2 of this ordinance. If, when the Defeasance Plan has been carried out, any Disposition Proceeds remain from the original amount transferred to the Garage Defeasance Subfund, the Director of Finance is authorized and directed to transfer, or cause to be transferred, such remaining amount to the Garage Disposition Proceeds Fund for use in accordance with Section 2 of this ordinance.

**Section 7. General Authorization.** The Mayor and the Director of Finance and each of the other appropriate officers of the City are each authorized and directed to do everything as in their judgment may be necessary, appropriate, or desirable in order to carry out the terms and provisions of, and complete the transactions contemplated by, this ordinance, including, without limitation, the preparation and timely filing with the Internal Revenue Service pursuant to Treasury Regulations Section 1.141-12(d)(3) of written notice of the establishment pursuant to this ordinance of the defeasance escrow for the 2007 Defeased Bonds.

**Section 8. Severability.** The provisions of this ordinance are declared to be separate and severable. If a court of competent jurisdiction, all appeals having been exhausted or all appeal periods having run, finds any provision of this ordinance to be invalid or unenforceable as to any person or circumstance, such offending provision shall, if feasible, be deemed to be modified to be within the limits of enforceability or validity. However, if the offending provision cannot be so modified, it shall be null and void with respect to the particular person or circumstance, and all other provisions of this ordinance in all other respects, and the



offending provision with respect to all other persons and all other circumstances, shall remain valid and enforceable.

**Section 9. Ratification of Prior Acts.** Any action taken consistent with the authority of this ordinance, after its passage but prior to the effective date, is ratified, approved, and confirmed.

**Section 10. Headings.** The section headings in this ordinance are used for convenience only and shall not constitute a substantive portion of this ordinance.

**Section 11.** 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 \_\_\_\_\_ day of \_\_\_\_\_, 2016, and signed by me in open session in authentication of its passage this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
President \_\_\_\_\_ of the City Council

Approved by me this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
Edward B. Murray, Mayor

Filed by me this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_

Monica Martinez Simmons, City Clerk

(Seal)

**Attachments:**

Attachment 1 - Defeasance Trust Agreement