

August 9, 2022

MEMORANDUM

To: Finance and Housing Committee
From: Eric McConaghy, Analyst
Subject: Increased Funding for Seattle Aquarium's Ocean Pavilion – Council Bills 120396 and 120397

On August 11, 2022, the Finance and Housing Committee (Committee) will discuss and potentially vote on recommendations on two, interdependent Council Bills (CB). Together, the two bills would increase the City's funding for Seattle Aquarium's Expansion Project, also known as the Ocean Pavilion, from \$34 million to \$54 million with Seattle Aquarium Society (SEAS) committing to reimburse the City for the additional funding and associated costs:

1. [CB 120396](#), Aquarium Expansion Interfund Loan ordinance and
2. [CB 120397](#), the Aquarium Expansion Operations and Management Agreement (OMA) and Funding Agreement ordinance.

This memorandum (1) provides an introduction to the Ocean Pavilion project; (2) describes the proposed legislation; (3) outlines the legislative background related to the Ocean Pavilion; and (4) outlines next steps.

Introduction

The City owns the Seattle Aquarium and the non-profit SEAS operates the Seattle Aquarium for the City according to the Operations and Management Agreement authorized in 2009 via [Ordinance 123205](#). The Ocean Pavilion Project includes a new aquarium building, the accessible rooftop on the Ocean Pavilion that includes public open space, a public stair on the west façade of the Ocean Pavilion, and a public stair and elevator on the south façade of the Ocean Pavilion. The City and SEAS have integrated the Ocean Pavilion with the City's Overlook Walk Project: the bridge from the Pike Place Marketfront over Alaskan Way to the roof of the Ocean Pavilion, stairs extending west towards Pier 62, and stairs wrapping the north side of the Ocean Pavilion. SEAS updated the Public Assets and Homelessness Committee regarding the Ocean Pavilion project status on July 20, 2020. The briefing materials and video of the meeting [are available online](#).

The City has affirmed the location and integration of the Ocean Pavilion Project with the Overlook Walk Project through multiple legislative actions (see Legislative Background section on page 4) as part of the City's overall planning for the capital projects of the [Central Waterfront Program](#). The City has committed increasing levels of funding to SEAS for the Ocean Pavilion Project since 2013.

The Executive reports that due to the COVID-19 pandemic and related economic conditions SEAS has experienced labor and material cost increases simultaneously with delays in expected project funding from private and public sources for the Ocean Pavilion Project. This has resulted in SEAS having insufficient cash to support the project in the near term. SEAS requested additional funding to address this cashflow issue from the City to support the ongoing project work in 2022 and 2023.

Without additional funding in the short term, SEAS would wait for actual contributions of the expected private philanthropic and public funding for the Ocean Pavilion to pay construction costs. The delay would likely increase the cost of the project significantly and would adversely affect the cost and timing for the City's completion of the Overlook Walk Project because the two projects are interdependent. The City and SEAS are also in close coordination for the Ocean Pavilion Project and the City's Main Corridor (new Alaskan Way) Project. The proposed CBs comprise the Executive's proposal to provide additional funding to SEAS that would cover the costs of the Ocean Pavilion Project that currently outrun SEAS' available cash.

To date, the City has committed \$34 million of the total estimated cost of \$160 million to complete the Ocean Pavilion Project. The Executive's proposal would reset the maximum City commitment to \$54 million with SEAS committing to reimbursing the City for the additional \$20 million plus associated costs through a new Enhanced Facility Fee (EFF) according to a monthly schedule with full reimbursement by the end of June 2030.

CB 120396, Aquarium Expansion Interfund Loan

CB 120396 would establish the necessary financial elements necessary to disburse \$20 million to SEAS for the Ocean Pavilion beginning in 2022. Approval of CB 120396 would:

- Create a new 2023 Multipurpose tax-exempt limited tax general obligation (LTGO) Bond Fund;
- Authorize an interfund loan of \$20 million from REET I Capital Projects Fund to the new Fund. This interfund loan would allow the City to begin disbursing funds to SEAS in 2022; that loan serves as a bridge until the City authorizes and completes anticipated bond sales in 2023;
- Increase appropriations in the Aquarium Expansion CIP; and
- Amend the CIP project page for the Aquarium Expansion CIP

The proposed legislation specifies that the new 2023 Multipurpose LTGO Bond Fund would receive the principal proceeds and any premium received from the sale and delivery of LTGO bonds in 2023 "for the purpose of paying all or part of the costs of various elements of the City's capital improvement program and other City purposes approved by ordinance." The Director of City Finance would be authorized to loan \$20 million from the REET I Capital Projects Fund to the 2023 Multipurpose LTGO Bond Fund to provide bridge financing for expenditures related to the Ocean Pavilion project until the City receives proceeds from LTGO bond sales.

The proposed ordinance states the City's intention to sell LTGO bonds to repay the interfund loan and requires the repayment to be completed by the end of 2023.

Consistent with the City debt management policies, the Director of City Finance and the City Budget Director determined that this interfund loan request is consistent with the Debt Management Policies adopted by Resolution 31553 and the Debt Management Policy Advisory Committee considered and approved the proposed interfund loan.

Central Staff recommendation on CB 120396

Council should only approve CB 120396 if CB 120397 is approved. The interfund loan, new fund, changes to appropriations and expected bond sales that would be authorized by CB 120396, do not make sense without the amendments to two agreements between the City and SEAS that approval of CB 120397 would authorize. Specifically, without the amendments proposed in CB 120397, the City would not have a plan to generate revenues to cover the debt service on the LTGO bond issuance; the bond process would be used to pay back the interfund loan that provides immediate funding to address SEAS short-term funding constraints.

CB 120397, Amendments to the Aquarium Expansion Operations and Management Agreement (OMA) and Funding Agreement.

CB 120397 would authorize the Superintendent of the Department of Parks and Recreation, the Director of Finance, and the Director of the Office of the Waterfront, acting jointly, to execute amendments to: (a) the Ocean Pavilion Funding Agreement and (b) the Seattle Aquarium Operations and Management Agreement (O&M Agreement). The amendments to the Agreements would be mutually contingent upon execution.

The City authorized execution of the Ocean Pavilion Funding Agreement by [Ordinance 126015](#) in 2019 and executed the agreement with SEAS on June 30, 2020 (*see Legislative Background section for more information*). See Attachment A of CB 120397 for the proposed amendment to the Ocean Pavilion Funding Agreement.

The proposed amendments to Ocean Pavilion Agreement would:

- Increase the City's funding commitment to SEAS for the Ocean Pavilion project from \$34 million to \$54 million and
- Make the increased funding of \$20 million contingent upon the execution of an amendment to the O&M Agreement requiring that SEAS pay a new fee, the Enhanced Facility Fee (EFF), "to reimburse the City for its costs incurred in making the additional funding available and to reflect the value of the improved facility;" and
- Commit SEAS to secure the balance of the funding, without additional City funding beyond the funding included in this agreement, needed to fully fund the Ocean Pavilion.

As mentioned above, the City authorized execution of the O&M Agreement by Ordinance 123205 in 2009. The City and SEAS executed the agreement with SEAS in January 2010. See Attachment B of CB 120397 for the proposed amendment to the O&M Agreement.

By executing the proposed amendments to the O&M Agreement:

- SEAS would agree to pay the EFF¹ on a regular schedule;
- SEAS and the City would agree to Corrective Actions to be taken if SEAS fails to make payments on time; and
- The City would express the intent to issue bonds as the funding source for the additional Ocean Pavilion funding (but would not be required to issue bonds).

The proposal would address the risk that SEAS would make late EFF payments or fail to make payments by requiring the City to draw from a required reserve (funded by the bond sales) and, if the reserve is depleted, directing any funding provided by the City to SEAS in connection with its operation of the Aquarium facility to cover EFF payments.

Central Staff recommendation on CB 120397

Approval of CB 120397 is a policy choice to continue support for SEAS' Ocean Pavilion consistent with previous legislative decisions described in the next section. The proposed legislation would address SEAS financial difficulties, unforeseen at the time of executing the current agreements regarding the Ocean Pavilion Project, but cannot entirely mitigate the additional financial risk to the City of providing additional funding for the Ocean Pavilion. This risk is that, if for some reason SEAS is unable to complete the EFF payments to entirely reimburse the City, the City would have to cover the outstanding debt service without that additional revenue.

Rejecting CB 120397 or taking no other action to provide support to SEAS would mean near-certain cost increases and delays to the Ocean Pavilion Project and the City's inter-related projects. Central Staff does not have complete estimates of these costs but recognizes their significance.

Legislative Background - Ocean Pavilion Project

In 2013, the City passed [Ordinance 124121](#), authorizing the execution of an Memorandum of Understanding (MOU) Concerning Renovation and Expansion of the Seattle Aquarium and Development of the Central Waterfront Project between the City and SEAS ("[2013 MOU](#)"). In 2013, the City and SEAS signed the 2013 MOU which appropriated \$1 million to SEAS for design and planning of an Aquarium expansion located over water to the south of Pier 59. The MOU directed the City to coordinate design efforts with SEAS, so that a potential expansion would be consistent with the overall Central Waterfront design and vision.

¹ The EFF payment would be in addition to existing SEAS debt service reimbursements to the City for past capital improvements to the Aquarium

The 2013 MOU also identified a potential City contribution not to exceed \$45 million toward the Aquarium expansion. In 2014, the City's anticipated contribution to the Aquarium expansion project was reduced, shown as \$33.5 million on the project page for the Aquarium Expansion project in the [Department of Parks and Recreation portion](#) of the Adopted 2015 – 2020 Capital Improvement Plan (CIP).

In 2015, the City approved SEAS's Master Plan by [Resolution 31603](#). By approving the Master Plan, the City Council directed the Office of the Waterfront and DPR to advance the design and environmental review of the Aquarium expansion, today known as the Ocean Pavilion, at the Overlook Walk Location.

Also in 2015, the City passed [Ordinance 124908](#), amending the 2013 MOU to increase the City's maximum compensation to SEAS for 50 percent of its expenditures for the Aquarium Expansion Project engineering, design, and consultant services incurred beginning January 1, 2013 from \$1 million to \$1.8 million.

In 2017, the City Council passed [Ordinance 125422](#), authorizing a second amendment to the 2013 MOU that reaffirmed the City's commitment to the Ocean Pavilion concept as the Aquarium Expansion, outlined the design process to reach 30 percent schematic design, required SEAS to fund 30 percent schematic design, and committed the City and SEAS to develop a funding plan and new memorandum of understanding to be brought to the City Council for consideration.

In 2018 Council passed [Ordinance 125630](#) authorizing the execution of the 2018 MOU and replacing and superseding the 2013 MOU. The passing of Ordinance 125630 increased the maximum amount of City funding for design and development of the proposed Ocean Pavilion project from \$1.8 million to \$4.7 million to reimburse SEAS up to 50 percent of eligible costs. The 2018 MOU also reiterated the City's anticipated total funding of \$34 million as described in the City's 2018-2023 Capital Improvement Program (CIP).

Additionally, the 2018 MOU stated that the City would reimburse SEAS for construction costs of the Ocean Pavilion according to a Project Development Agreement (PDA). The ordinance specified actions prerequisite for the execution of the PDA as (1) completion of 60 percent design development, including cost estimates; (2) SEAS providing the Director of the City Budget Office with a cost estimate and comprehensive funding plan; (3) Council being provided with a report on the feasibility of the comprehensive funding plan and (4) Council authorization of execution of the PDA by ordinance.

The City approved the Ocean Pavilion Funding Agreement via Ordinance 126015 in 2019 authorizing the execution of a funding agreement for the Ocean Pavilion Project and the execution of a later construction agreement for the Ocean Pavilion Project between the City and SEAS without further Council approval. Significantly, Ordinance 126015 found that the

authorized funding and construction agreements together would satisfy the intent and purpose of the PDA specified in Ordinance 125630 and the 2018 MOU and amended Ordinance 125630 to delete the language specifying actions prerequisite for the execution of the PDA (see above).

By approving CB 126015 the Council agreed to authorize the Executive to execute a funding agreement with SEAS committing the City to funding \$34 million of the Ocean Pavilion project without the opportunity to review a feasibility report on a comprehensive funding plan based on a cost estimate for the Ocean Pavilion project and agreed to authorize the Executive to execute a future construction agreement with SEAS without the opportunity to review the construction agreement.

Approving CB 126015 was a policy decision, like the decision before the Council in this legislative package, to continue the City's history of support for and trust in SEAS to raise funds for the Ocean Pavilion and to complete the project. Note that in the recitals of Ordinance 126015, "the City and SEAS recognize(d) that SEAS' efforts to secure funding commitments from private individuals, corporations, foundations and governments sources other than the City of Seattle are, in part, supported by a funding commitment from the City *before* (emphasis mine) it is feasible to negotiate some of the elements of the PDA that were anticipated under the 2018 MOU."

Next steps

If the Committee votes on recommendations to Council on CB 120396 and CB 120397 on August 11, then Council could consider and take final action on August 16.

cc: Esther Handy, Director
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