

November 8, 2019  
UPDATED<sup>1</sup>

## MEMORANDUM

**To:** Seattle City Council  
**From:** Eric McConaghy, Analyst  
**Subject:** Resolution 31915 – Waterfront LID Final Assessment Roll; and  
Council Bill (C.B.) 119697 - LID Code Revisions

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During Council Briefing on November 12, staff from the City of Seattle’s Office of the Waterfront and Civic Projects (OWCP) will present the Mayor’s proposals for two pieces of legislation:

- (1) [Resolution 31915](#), Waterfront Local Improvement District (Waterfront LID) Notice of the Final Assessment Roll and
- (2) [Council Bill \(C.B.\) 119697](#), LID Code Revisions

The memo explains the final assessment roll for the Waterfront LID and describes what adopting Resolution 31915 and passing C.B. 119697 would accomplish. In brief:

- Adopting Resolution 31915 would establish February 4, 2020 as the date of the public hearing for the final assessment roll for the Waterfront LID and
- Passing C.B. 119697 would provide more flexibility to the City Clerk and the Hearing Examiner to fulfill their responsibilities dealing with a final assessment roll for a local improvement district.

The memo includes information for Council regarding ex parte communication because the Council’s consideration of the final assessment roll is a pending quasi-judicial proceeding. As such, Councilmembers may not have any direct or indirect communication with a proponent, opponent, or party of record about the merits of a particular Waterfront LID assessment outside a Council hearing or meeting considering the Waterfront LID.

Finally, this memo provides background information on the Central Waterfront Program and the Waterfront LID.

### **Final Assessment Roll**

In May 2018, Council adopted [Resolution 31812](#) declaring the City’s intent to construct the Seattle Central Waterfront Improvement Program and to create a local improvement district to

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<sup>1</sup> This memorandum was updated to correctly describe quasi-judicial pending status as provided by Council’s Quasi-Judicial Rules.

assess a part of the cost and expense of those improvements against the properties specially benefited by the improvements.

Resolution 31812 also notified all persons who object to such improvements to appear and present their objections at scheduled public hearings. It directed the City Clerk to give notice of the adoption of the resolution, provide information about the proposed Waterfront LID, and share notice of the hearings with potentially affected property owners. The Hearing Examiner subsequently conducted hearings, prepared a report, and delivered the report to Council for consideration before the Council's decision to form the Waterfront LID through [Ordinance 125760](#).

In passing Ordinance 125760 to establish the Waterfront LID in January 2019, Council ordered the preparation of the final assessment roll for the Waterfront LID. The final assessment roll for a local improvement district, like the Waterfront LID, is a listing of all properties in the local improvement district and the amount to be assessed against each property based on the increase in value accruing to each property, the special benefit, that is attributable to the construction of the local improvements.

The City contracted with an independent real estate consultant to complete a final benefit study to derive the amounts to be shown on the final assessment roll. The Director of Seattle Department of Transportation is expected to file the final assessment roll with the City Clerk on November 8, 2019. The final assessment roll filing will prompt Council's decision to establish the hearing date for appeals of individual assessments on the final assessment roll. Adopting Resolution 31915 would set the date for the hearing as February 4, 2020.

After the Hearing Examiner conducts a hearing for any appeals of individual assessments, the Hearing Examiner will deliver recommendations to the Council. After the Council hears any appeals of the Hearing Examiner's recommendations on the final assessment roll, the Council may adjust the final assessment roll. Then, Council may take action to confirm the final assessment roll. If Council wishes to confirm the final assessment roll, then State law requires Council to do so by ordinance.

### **Quasi-judicial Decision-making**

Quasi-judicial actions are those in which the Council is acting as a panel of judges, rather than a legislative body. Quasi-judicial actions are defined by the state statute on appearance of fairness as:

"...those actions of the legislative body, planning commission, hearing examiner, zoning adjuster, board of adjustment, or boards which determine the legal rights, duties, or privileges of specific parties in a hearing or other contested case proceeding..." (Revised Code of Washington (RCW) 42.36.010)

Along with declaring the City's intent to form the Waterfront LID, Resolution 31812 identified July 13, 2018, the first day of the public hearings on the Waterfront LID formation, as the date that the Council's consideration of the Waterfront LID became a pending quasi-judicial proceeding.

According to the [Council Quasi-Judicial Rules](#), the matter of an appeal of an individual's final assessment for a local improvement district is pending when the Hearing Examiner has filed the recommendation on the final assessment roll with the City Clerk. In this instance, the Council made the matter pending earlier than required in the Rules. It will remain a quasi-judicial matter until the final termination of all judicial appeals of the Council decision in the matter of the final assessment roll for the Waterfront LID.

While the matter of an appeal of an individual's final assessment for the Waterfront LID is pending as a quasi-judicial action before Council, no member of the City Council may engage in an ex parte communication. Therefore, Councilmembers may not have any direct or indirect communication with a proponent, opponent, or party of record about the merits of a particular assessment outside a Council hearing or meeting considering the Waterfront LID.

If communication with a Councilmember concerning the merits of a quasi-judicial matter pending before the City Council occurs outside of the City's hearing/meeting process, the Councilmember should:

- Place the substance of the written or oral communication on the quasi-judicial record;
- Provide for a public announcement of the content of the communication; and
- Provide an opportunity for persons to rebut the substance of the communication on the record.<sup>2</sup>

Failure to follow these steps could result in disqualification of a Councilmember from voting or in the Council's decision being overturned if challenged in court.

### **Resolution 31915**

To move forward with the process leading to the actual assessment of properties for the Waterfront LID, it is necessary for Council to fix a date for the public hearing of the final assessment roll. Council's adoption of Resolution 31915 would:

- Establish February 4, 2020 as the date of the public hearing for the final assessment roll for the Waterfront LID;
- Authorize and direct the City Clerk to give notice of the time and place for the public hearing on the final assessment roll for the Waterfront LID;
- Specify the required information contained in the notice for the public hearing;

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<sup>2</sup> Revised Code of Washington (RCW) 42.36.060. <https://app.leg.wa.gov/RCW/default.aspx?cite=42.36.060>. Last accessed 11/06/2019

- Direct the City Clerk to mail notice of the hearing at least 15 days before the date of the public hearing to the owners of property listed in the final assessment roll;
- Require also that notice of the public hearing be published in a newspaper at least 15 days in advance;
- Determine that the public hearing be held before a Hearing Examiner; and
- Direct the Hearing Examiner to reduce findings, recommendations, and decisions to writing and file them with the City Clerk following the conclusion of the public hearing.

Council could choose not to adopt Resolution 31915. This choice would halt the ongoing process toward assessing property within the boundaries of the Waterfront LID and stop or delay construction of projects included in the list of Waterfront LID Improvements.

### **C.B. 119697**

This ordinance would amend [Sections 20.04.090](#) and [20.04.270](#) of the Seattle Municipal Code (SMC) dealing with procedures for local improvement districts. The Executive is proposing these changes to provide more flexibility for the Hearing Examiner and the City Clerk to fulfill their responsibilities regarding the public process leading to the Council’s decision about the final assessment roll. The amendments also include improvements for grammar and readability.

Without C.B. 119697, the current requirement for the Hearing Examiner to complete and file with the City Clerk their findings and recommendations on a local improvement district within 20 days following the conclusion of the public hearing could be onerous for a local improvement district involving as many property owners as the Waterfront LID. The provisions of C.B. 119697 would remove the time restriction.

Similarly, C.B. 119697 would allow the City Clerk the flexibility to post or otherwise make available the Hearing Examiner’s findings and recommendations on the final assessment roll by removing from the SMC the requirement to mail the findings and recommendations within three days of their filing. This could significantly reduce cost and effort, especially in the case of a local improvement district involving as many property owners as the Waterfront LID.

The proposed ordinance also would remove a subsection of SMC 20.04.270 pertaining to including the costs of property descriptions as part of the cost of the LID improvements. OWCP staff have said that the charges listed in SMC 20.04.270 for property descriptions are based on outdated estimates. State law allows the City to include these costs as part of the cost and expense of local improvement districts.<sup>3</sup>

Not passing C.B. 119697 would likely mean higher costs and increased difficulty for the Hearing Examiner and the City Clerk to process LIDs for the City compared to passing the proposal.

### **Additional Background**

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<sup>3</sup>RCW 35.44.020. <https://app.leg.wa.gov/RCW/default.aspx?cite=35.44.020>. Last accessed 11/06/2019

Beginning in 2003, the City began the public process of designing and rebuilding its waterfront in conjunction with the removal of the Alaskan Way Viaduct and replacement of the aging Elliott Bay Seawall. The City plans to construct a park promenade along the water, construct a new surface street along Alaskan Way, rebuild Pier 58 and Pier 62, build an elevated connection from Pike Place Market to the waterfront, and improve east-west connections between downtown and Elliott Bay. This effort, known as the Central Waterfront Improvement Program (or Waterfront Seattle<sup>4</sup>), is a \$724 million multi-year investment that will be completed by 2024. It is led by OWCP.

As described above, Council's adoption of Resolution 31812 in May 2018 declared the City's intent to form the LID. In January 2019, Council passed Ordinance 125760 officially forming Local Improvement District No. 6751. The Waterfront LID was established in order to assess property in the area determined to have special benefits from the Waterfront LID Improvements (LID Improvements). The boundaries of the Waterfront LID, a cost estimate summary for Waterfront LID and the list of LID Improvements were approved with the passage of Ordinance 125670. See Attachment A for the list of LID Improvements.

Local improvement district assessments are levied on properties that receive a special benefit from the local improvement district improvements. A local improvement district assessment for an individual property cannot exceed that property's total special benefit. Assessments, at the option of the property owner, may be financed over a period of years.

The total assessment of the Waterfront LID was limited to \$160 million, plus financing and administrative costs. The total estimated cost of the LID Improvements is approximately \$347 million, including the planning, design, and construction, together with administration costs of the Waterfront LID and financing costs. The balance of the cost of the LID Improvements will be paid from other amounts available to the City, including philanthropic donations from individuals and organizations, consistent with the City's overall funding plan for the Central Waterfront Improvement Program.

### **Next steps**

After briefing and discussion during Council Briefing on November 12, Council may take action on the legislation during the regular Council meeting on November 18 or at a later Council meeting.

### **Attachments:**

Attachment A: Waterfront LID Improvements

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<sup>4</sup> More information on the progress to date on the replacement of the Seawall, the removal of the Viaduct and construction of Central Waterfront projects to date can be found at <https://waterfrontseattle.org/>. Last accessed 11/05/2019

cc: Kirstan Arestad, Exec Director  
 Dan Eder, Deputy Director

Attachment A – Waterfront Local Improvement District Improvements

| Element                            | Description  |
|------------------------------------|--|
| Promenade                          | A continuous public open space extending along the west side of Alaskan Way from King Street to Pine Street.   |
| Overlook Walk                      | An elevated pedestrian bridge situated at the terminus of the Pike/Pine corridor, would include several buildings, an elevated lid over the surface street, open space with excellent view amenities, and an accessible pedestrian pathway with many connections between the Pike Place Market and the waterfront. |
| Pioneer Square Street Improvements | Streetscape and new roadway/ sidewalk improvements to portions of S Main Street, S Washington Street, Yesler Way and S King Street from Alaskan Way/First Avenue east to 2nd Avenue S. The improvements would create pedestrian-friendly links from Pioneer Square to the waterfront.                              |
| Union Street Pedestrian Connection | A universally accessible pedestrian link between the new waterfront and Western Avenue. An elevated pedestrian walkway and elevator would extend from the southwest corner of Union Street and Western Avenue to the eastern side of Alaskan Way.  |
| Pike/Pine Streetscape Improvements | Pedestrian improvements along Pike and Pine streets from First Avenue to Ninth Avenue, providing enhanced pedestrian access to and from the Pike Place Market and waterfront.  |
| Waterfront Park                    | A rebuilt pier park located at the base of Union Street, would provide a unique atmosphere for social gathering/performance spaces with excellent view amenities.  |