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ORDINANCE NO. B-61

AN ORDINANCE creating the Mercer Island Development Authority; authorizing a charter and bylaws therefor; establishing a Board of Directors to govern the affairs of the authority; and providing how the authority shall conduct its affairs.

WHEREAS, by Chapter 37, Laws of 1974, extraordinary session, as amended by Chapter 332, Laws of 1985, regular session and codified as RCW 35.21.730 through RCW 35.21.757 (the "Act"), the Legislature of the State of Washington authorized cities to create public corporations, commissions and authorities; and

WHEREAS, the City Council of the City of Mercer Island, Washington (the "City Council") has determined that a public authority should be created for the City of Mercer Island, Washington pursuant to the Act.

NOW, THEREFORE, THE CITY OF MERCER ISLAND, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Authority Created--City Liability Limited.

A. Authority Created. A public authority is hereby created to undertake, assist with and otherwise facilitate the acquisition, construction, development, equipping, leasing, operation and maintenance of a city hall at 9611 S.E. 36th Street in the City. To the extent appropriate and consistent with the needs and objectives of the City, the Authority will acquire and manage real property, secure financing, undertake the construction and development of, lease the city hall to the City, and otherwise accomplish all purposes required for development and operation of a city hall. Unless authorized by ordinance of the City, the Authority shall have no purpose other than the development, operation and maintenance of a city hall in the City.

B. City Liability Limited. The Authority is an independent legal entity exclusively responsible for its own debts, obligations and liabilities. All liabilities incurred by the Authority shall be satisfied exclusively from the assets and credit of the Authority; no creditor or other person shall have any recourse to the assets, credit, or services of the City on account of any debts, obligations, liabilities, acts, or omissions of the Authority.

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Section 2. Name. The name of the public authority shall be the Mercer Island Development Authority.

Section 3. Definitions. As used herein, the term:

A. "Act" means Chapter 37, Laws of Washington, 1974, extraordinary session, as amended by Chapter 332, Laws of Washington, 1985, regular session and codified as RCW 35.31.730 through RCW 35.21.757.

B. "Board of Directors" or "Board" means the governing body vested with the management of the affairs of the Authority.

C. "Bonds" means any bonds, promissory notes, interim certificates, debentures, certificates of indebtedness or other obligations issued by the Authority pursuant to the Act, this ordinance and the Charter.

D. "Bylaws" means the rules adopted for the regulation or management of the affairs of the Authority adopted by this ordinance and all subsequent amendments thereto.

E. "Charter" means the articles of organization of the Authority adopted by this ordinance and all subsequent amendments thereto.

F. "City" means the City of Mercer Island, Washington.

G. "City Clerk" means the Clerk of the City Council or a person authorized to act on his or her behalf.

H. "City Council" means the legislative authority of the City.

I. "Director" means a member of the Board.

J. "Manager" means the Manager of the City.

K. "Open Public Meetings Act" means Chapter 42.30 RCW, as now or hereafter amended.

L. "Public Authority" or "Authority" means the Mercer Island Development Authority created under this ordinance.

M. "State" means the State of Washington.

Section 4. Powers--Generally. Except as otherwise limited by the State constitution, state statute, and ordinances of the City, this ordinance, or the Charter, the Authority shall have and may exercise all lawful powers necessary or convenient to effect the purposes for which the Authority is organized and to perform

authorized corporate functions, including, without limitation, the power to:

- A. Own and sell real and personal property;
- B. Contract for any corporate purpose with the United States, the State, and any political subdivision or agency of either, and with individuals, associations and corporations;
- C. Sue and be sued in its name;
- D. Lend and borrow funds;
- E. Do anything a natural person may do;
- F. Provide and implement such municipal and community services and functions as the City Council may by ordinance direct;
- G. Receive and administer federal, state, local or private funds, goods, or services for any lawful public purpose;
- H. Purchase, lease, exchange, mortgage, encumber, improve, use, or otherwise transfer or grant security interests in real or personal property or any interests therein; grant or acquire options on real and personal property; and contract regarding the income or receipts from real and personal property;
- I. Issue Bonds in conformity with applicable provisions of State law in such principal amounts as in the discretion of the Authority shall be necessary or appropriate to provide sufficient funds for achieving any corporate purposes; provided, however, that all Bonds or liabilities occurring thereunder shall be satisfied exclusively from the assets, properties or credit of such Authority, and no creditor or other person shall have any recourse to the assets, credit or services of the City thereby, unless the City Council shall by resolution or ordinance expressly guarantee such Bonds;
- J. Contract for, lease, and accept transfers, gifts or loans of funds or property from the United States, a state, and any municipality or political subdivision or agency of either, including property acquired by any such governmental unit through the exercise of its power of eminent domain, and from corporations, associations, individuals or any other source, and to comply with the terms and conditions therefor;
- K. Manage, on behalf of the City, any property acquired by gift, purchase, construction, lease, assignment, default, or exercise of the power of eminent domain;

L. Initiate, carry out, and complete such improvements of benefit to the public consistent with its Charter;

M. Lend its funds, property, credit or services for corporate purposes, or act as a surety or guarantor for corporate purposes;

N. Provide advisory, consultative, training, educational, and community services or advice to individuals, associations, corporations, or governmental agencies, with or without charge;

O. Control the use and disposition of corporate property, assets, and credit;

P. Invest and reinvest its funds;

Q. Fix and collect charges for services rendered or to be rendered, and establish the consideration (if any) for property transferred;

R. Maintain books and records as appropriate for the conduct of its affairs;

S. Conduct corporate affairs, carry on its operations, and use its property as allowed by law and consistent with the Act, this ordinance, its Charter and its Bylaws; name corporate officials, designate agents, and engage employees, prescribing their duties, qualifications, and compensation; secure the services of consultants for professional services (including lawyers, accountants and others), technical assistance, or advice;

T. Exercise and enjoy such other powers as may be authorized by law.

Section 5. Limitation of Powers. The Authority in all activities and transactions shall be limited in the following respects:

A. The Authority shall have no power of eminent domain nor any power to levy taxes or special assessments.

B. The Authority may not incur or create any liability that permits recourse by any party or member of the public to any assets, services, resources, or credit of the City. All liabilities incurred by the Authority shall be satisfied exclusively from the assets and credit of the Authority; no creditor or other person shall have any recourse to the assets, credit, or services of the City on account of any debts, obligations, liabilities, acts, or omissions of the Authority.

C. All funds, assets, or credit of the Authority shall be applied toward or expended upon services, projects, and activities authorized by the Charter. No part of the net earnings of the Authority shall inure to the benefit of, or be distributable as such to, the Directors, officers of the Authority or other private persons, except that the Authority is authorized and empowered to:

1. Compensate Authority officials and others performing services for the Authority, including legal counsel, a reasonable amount for services rendered, and reimburse reasonable expenses actually incurred in performing their duties;

2. Assist Authority officials as members of a general class of persons to be assisted by an Authority-approved project or activity to the same extent as other members of the class as long as no special privileges or treatment accrues to such corporate official by reason of his or her status or position in the Authority;

3. Defend and indemnify any current or former Board member or employee and their successors, spouses and marital communities against all costs, expenses, judgments, and liabilities, including attorneys' fees, reasonably incurred by or imposed upon him or her in connection with or resulting from any claim, action, or proceeding, civil or criminal, in which he or she is or may be made a party by reason of being or having been a corporate official, or by reason of any action alleged to have been taken or omitted by him or her as such official, provided that he or she was acting in good faith on behalf of the Authority and within the scope of duties imposed or authorized by law. This power of indemnification shall not be exclusive of other rights to which corporate officials may be entitled as a matter of law;

4. Purchase insurance to protect and hold personally harmless any of its officials (including its employees and agents) from any action, claim, or proceeding instituted against the foregoing individuals arising out of the performance, in good faith, of duties for, or employment with, the Authority and to hold these individuals harmless from any expenses connected with the defense, settlement, or monetary judgments from such actions, claims, or proceedings. The purchase of such insurance and its policy limits shall be discretionary with the Board, and such insurance shall not be considered to be compensation to the insured individuals. The powers conferred by this subsection shall not be exclusive of any other powers conferred by law to purchase liability insurance; and

5. Sell assets for a consideration greater than their reasonable market value or acquisition costs, charge more for services than the expense of providing them, or otherwise secure an increment in a transaction, or carry out any other transaction or activity, as long as such gain is not the principal object or purpose of the Authority's transactions or activities and is applied to or expended upon services, projects, and activities as aforesaid.

D. The Authority shall not issue shares of stock, pay dividends, make private distribution of assets, make loans to its Directors or employees or otherwise engage in business for private gain.

Section 6. Charter. The Charter of the Authority (the "Charter"), attached hereto and incorporated herein as Exhibit A of this ordinance, is hereby approved. Upon the effective date of this ordinance, the Charter shall be issued in duplicate originals, each bearing the City seal attested by the City Clerk. One original shall be retained by the City Clerk and filed as a public record; a duplicate original shall be provided to the Authority. The City Clerk shall give notice of the issuance of the Charter to the Secretary of State.

Section 7. Commencement of Authority's Existence; Compliance with Charter. The Authority shall commence its existence upon the issuance of the Charter. The Authority shall conduct its affairs in accordance with the Charter.

Section 8. Board of Directors. A board of directors (the "Board of Directors" or "Board") is hereby established to govern the affairs of the Authority. All corporate powers of the Authority shall be exercised by or under the authority of the Board of Directors and the business, property and affairs of the Authority shall be managed under the direction of the Board of Directors, except as may be otherwise provided for by law or in the Charter. The members of the City Council shall serve ex officio as the members of the Board of Directors.

Section 9. Organizational Meeting. The City Council shall call an organizational meeting of the initial Board members within thirty days of the effective date of this ordinance, giving at least two days' advance written notice to each, unless waived in writing. At such meeting, the Board shall organize itself.

Section 10. Board Review and Concurrence.

A. At least once each year, the Board shall review monthly statements of income and expenses which compare budgeted expenditures to actual expenditures. The Board shall review all

such information at its meetings, the minutes of which shall specifically note such reviews and include such information.

B. General or particular authorization or review and concurrence of the Board by resolution shall be necessary for any of the following:

1. Adoption of an annual budget and a separate capital budget;

2. Transfer or conveyance of an interest in real estate other than release of a lien or satisfaction of a mortgage after payment has been received and the execution of a lease for a current term more than one year;

3. The contracting of debts, issuances of Bonds, and the mortgaging or pledging of authority assets or credit to secure the same;

4. An action by the Authority as a surety or guarantor;

5. All unbudgeted expenditures and all capital expenditures in excess of twenty-five thousand dollars (\$25,000), and all other transactions in which: (i) the consideration exchanged or received by the Authority exceeds the greater of one percent of the previous year's operating budget or twenty-five thousand dollars (\$25,000); (ii) the performance by the Authority shall extend over a period exceeding one year from the date of execution of an agreement therefor; or (iii) the Authority assumes duties of, or assigns duties to, the City, the State, the United States or other governmental entity;

6. Certification of annual reports and statements to be filed with the City Clerk as true and correct in the opinion of the Board and of its members except as noted;

7. Proposed amendments to the Charter and Bylaws;
and

8. Such other transactions, duties, and responsibilities as the Charter shall repose in the Board or the Board may reserve.

Section 11. Proposing Charter Amendments.

A. The Authority may propose to the City Council that its Charter be amended by resolution of its Board passed by a procedure outlined in its Charter at a regular or special meeting

of which two days' advance written notice was given to Board members.

B. Information regarding a proposed Charter amendment shall be provided to members of the Board two days prior to the meeting at which a vote will be taken and shall include the proposed amendment and a statement of its purpose and effect.

Section 12. Charter Amendment. After adoption of a proposed Charter amendment by the Board of Directors, the Authority shall file two complete copies of the Charter with the City Clerk. The Charter may be amended only by ordinance of the City Council. If the City Council approves the proposed amendment, the revised Charter shall be issued in duplicate originals, each bearing the City seal and attested by the City Clerk. One original copy shall be retained by the City Clerk as a public record and the other original shall be delivered to the Authority. A Charter amendment proposed by the Authority shall take effect and become a part of the Charter upon issuance of the revised Charter by the City Clerk.

Section 13. Bylaws.

A. The initial Bylaws (the "Bylaws") of the Authority, attached hereto and incorporated herein as Exhibit B of this ordinance, are hereby approved. The power to alter, amend, or repeal the Bylaws or adopt new ones shall be vested in the Board unless otherwise provided in the Charter or the Bylaws.

B. As necessary and appropriate, the City Council may amend the Bylaws by ordinance.

Section 14. Corporate Offices and Officers; Fidelity Bond. Each corporate official responsible for handling accounts and finances shall file as soon as practicable with the Authority a fidelity bond in an amount determined by the Authority to be adequate and appropriate, and may hold the corporate office only as long as such a bond continues in effect.

Section 15. Code of Ethics--Conflict of Interest.

A. No member of the Board or any officer or employee of the Authority shall derive a personal profit, direct or indirect, from any contract or in the sale to the Authority or to a contractor supplying the Authority of any land or rights or interests in any land, material, supplies, or services.

B. The Board may adopt additional conflict of interest and ethical rules it considers appropriate.

Section 16. Equal Employment Opportunity. The Authority shall comply with all applicable federal, state and local laws, regulations, rules and standards relating to equal employment opportunity.

Section 17. Access to Records.

A. The Authority shall keep an official journal containing the minutes of proceedings at all meetings of the Board and the resolutions of the Board.

B. Any person shall have access to records and information of the Authority to the extent required by State law. Minutes with respect to closed executive sessions need not be made available.

Section 18. Meetings of the Board.

A. The Board shall meet at least one (1) time each year; special meetings of the Board may be called as provided by the Charter, the Bylaws and the Open Public Meetings Act. Board meetings may be held in conjunction with City Council meetings.

B. The Board shall be the governing body of a public agency as defined in the Open Public Meetings Act, and all meetings of the Board shall be held and conducted in accordance with the Open Public Meetings Act.

C. All Board meetings, including executive Committee meetings, all other permanent and ad hoc committee meetings shall be open to the public to the extent required by the Open Public Meetings Act or otherwise by law. The Board and committees may hold executive sessions to consider matters enumerated in the Open Public Meetings Act, or privileged matters recognized by law, and shall enter the cause therefor upon its official journal.

Section 19. Quorum. The Charter or Bylaws shall establish the requirements for a quorum. The act of a majority of the Board present at a meeting at which a quorum is present shall be the act of the Board; provided, however, that:

A. A quorum to commence a Board meeting shall be no fewer than a majority of the Board's total membership.

B. Any resolution authorizing or approving an action described in Section 10 of this ordinance shall require an affirmative vote of a majority of the Board members voting on the issue.

Section 20. Deposit of Public Funds. All moneys belonging to or collected for the use of the Authority, coming into the hands of any corporate official or officer thereof, shall be

deposited in a qualified public depository as determined by the Washington Public Deposit Protection Commission. Such moneys may be invested at the direction of the Board, by resolution, in investments which would be lawful for the investments of City funds.

Section 21. Establishment and Maintenance of Office and Records. The Authority shall:

A. Maintain a principal office at a location within the limits of the City;

B. File and maintain with the City Clerk a current listing of all Authority officials, their positions and their business numbers, the address of its principal office, and a current set of its Bylaws; and

C. Maintain all of its records in a manner consistent with the Preservation and Destruction of Public Records Act, Chapter 40.14 RCW, as now or hereafter amended.

Section 22. Reports and Information. The Authority shall:

A. On April 30 of each year, beginning on April 30, 1989, file an annual report with the City Clerk and the City Council containing a certified statement of assets and liabilities, income and expenditures and changes in its financial position during the previous year; a summary of significant accomplishments; a list of depositories used; a projected operating budget for the current fiscal year; a summary of projects and activities to be undertaken during the current year; a list of Authority officials and a list of officials bonded pursuant to Section 14 of this ordinance.

Section 23. Audits and Inspections. The Authority shall, at any time during normal business hours and as often as the City Council or the State Auditor deem necessary, make available to the City Council and the State Auditor for examination all of its financial records, and shall permit the City Council and State Auditor to audit, examine and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all the aforesaid matters. The City Council and State Auditor shall have no right, power or duty to supervise the daily operations of the Authority, but shall oversee such operations only through their powers to audit, modify the Charter and Bylaws and to remove Board members all as set forth in this ordinance, all for the sole purpose of correcting any deficiency and assuring that the purposes of the Authority are reasonably accomplished.

Section 24. Termination. If the City Council makes an affirmative finding that termination is warranted for any reason, the existence of the Authority may be terminated by ordinance of the City Council at or after a public hearing, held with notice to the Authority and affording it a reasonable opportunity to be heard and present testimony.

Section 25. Dissolution--Statement. Upon enactment of an ordinance by the City Council for termination of the Authority, the Authority shall file a dissolution statement setting forth:

- A. The name and principal office of the Authority;
 - B. The debts, obligations and liabilities of the Authority, including conditions of grants and donations, and the property and assets available to satisfy the same; the provisions to be made for satisfaction of outstanding liabilities and performance of executory contracts; and the estimated time for completion of its dissolution;
 - C. Any pending litigation or contingent liabilities;
- and
- D. A list of persons to be notified upon completion of dissolution.

The City Council shall review the statement filed and oversee the dissolution to protect the public interest, or if so authorized by law, authorize or initiate proceedings in the Superior Court for the appointment and supervision of a receiver for such purposes. Upon satisfactory completion of dissolution proceedings, the City Council shall indicate such dissolution by inscription of "charter cancelled" on the original charter of the Authority, on file with the City Clerk and, when available, on the duplicate original of the Authority, and the existence of the Authority shall cease. The City Clerk shall give notice thereof to the Secretary of State and other persons requested by the Authority in its dissolution statement.

Section 26. Dissolution--Disposition of Assets. Upon dissolution of the Authority and the winding up of its affairs, the City Council may provide for the transfer of the rights, assets and property of the Authority to a qualified entity or entities which will fulfill the purposes for which the authority was chartered. Otherwise, title to all remaining property or assets of the authority shall vest in the City upon the dissolution of the Authority.

Section 27. Insurance. The Authority shall maintain in full force and effect public liability insurance in an amount sufficient to cover potential claims for bodily injury, death or disability and for property damage, which may arise from or be related to projects and activities of the Authority, naming the City as an additional insured; provided, however, the City may pursuant to a lease or contract with the Authority agree to provide all or part of such insurance.

Section 28. Unauthorized Representation. All persons who assume to act for the Authority without actual authority to do so shall be liable for the debts and liabilities incurred or arising as a result thereof.

Section 29. Ancillary Authority. The Manager, Director of Finance and City Clerk are granted all such power and authority as reasonably necessary or convenient to enable them to administer this ordinance efficiently and to perform the duties imposed in this ordinance.

Section 30. Construction. This ordinance shall be liberally construed so as to effectuate its purposes and the purposes of the Act.

Section 31. Effective Date. This ordinance shall be effective five days after its passage and publication.

PASSED by the Council of the City of Mercer Island, Washington, at a regular meeting thereof, held this 8th day of February, 1988.

CITY OF MERCER ISLAND,
WASHINGTON

By 

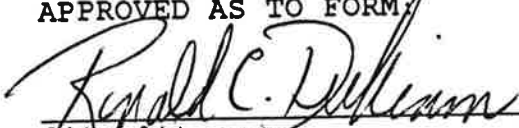
Mayor

ATTEST:



City Clerk

APPROVED AS TO FORM:



City Attorney

Published: 2/17/88

Background Information on Funding of City Hall and the Mercer Island Development Corporation

Auditors Report 1/01/2003 12/31/2003 NOTE 1 - SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES, page 25

The Mercer Island Development Authority (MIDA) has been included as a component unit within the reporting entity. The City has complete oversight responsibility for this public corporation, which was created in February 1988 for the purpose of acquiring and financing a new city hall. In 1988, the MIDA issued revenue bonds in the amount of \$4,979,000, which are being redeemed by lease payments made by the City.

Mercer Island 1999-2000 Biennial Budget Budget Summary – City Debt – Non-Voted Debt - City Leases page D-10

The City may enter into lease obligations, but the debt incurred as part of the lease must be included in calculations showing the debt of the City. Lease debt, like non-voted debt is normally paid for out of the general revenues of the City.

The major lease debt presently outstanding is for a 20 year lease for the building remodeled for the offices of City Hall which include the administrative and police functions of the City. The building itself is owned by a public development authority called the Mercer Island Development Authority (MIDA). MIDA issued a \$54,979,000 revenue bond to remodel the building and then leased the building to the City for the same period as the bonds. The lease payments are set at the same amount as the debt service on the revenue bonds.

The money to pay the lease payments/debt service was raised by a special vote of the Mercer Island citizens who agreed to raise "the limit on property taxes for the purpose of remodeling a city hall". From a legal standpoint, the debt is classified by the City as a city lease. To the Mercer Island taxpayers, however, the transaction is paid for just like the City's voted debt issues, by an addition to the property tax.

Mercer Island 2009-2010 Biennial Budget

1996 MIDA Refunding – This is a refunding of the original \$4,979,000 bond to remodel the offices at City Hall. Under the original bond issue, the building was owned by a public development authority called the Mercer Island Development Authority (MIDA). The City then leased the building back from MIDA at the same cost as the debt service. When the bonds were refunded, they were reissued as non-voted general obligation bonds.

The money to pay the lease payments/debt service was raised by a special vote of the Mercer Island citizens who agreed to raise "the limit on property taxes for the purpose of remodeling a city hall". From a legal standpoint the debt is classified as a non-voted debt issue. To the Mercer Island taxpayers, however, the transaction is paid for just like the City's voted debt issues - by a property tax levy. This debt was paid off in December 2008.