

2/3-91
ORDINANCE No.

114179

Live Defeatment

COUNCIL BILL No.

106973

The City of

AN ORDINANCE relating to the Seattle Center Department; authorizing the execution of a Licensing Agreement with Seattle Hockey Club Limited Partnership for use of certain Seattle Center premises for public ice skating and adding a new section to the Seattle Municipal Code to establish certain fees related to public ice skating opportunities.

Honorable President:

Your Committee on

Public

to which was referred the within report that we have considered the

COMPTROLLER FILE No.

Introduced:	OCT 3 1988	By:	<i>Sponga</i>
Referred:	OCT 3 1988	To:	<i>Public - Public (members)</i>
Referred:		To:	
Referred:		To:	
Reported:	OCT 10 1988	Second Reading:	OCT 10 1988
Third Reading:	OCT 10 1988	Signed:	OCT 10 1988
Presented to Mayor:	OCT 10 1988	Approved:	OCT 25 1988
Returned to City Clerk:	OCT 25 1988	Published:	
Vetoed by Mayor:		Veto Published:	
Passed over Veto:		Veto Sustained:	<i>OK</i>

10/5/88

Vote 6-0

Defunct

The City of Seattle--Legislative Department

Date Reported
and Adopted

REPORT OF COMMITTEE

President:

PANKS

Committee on

Public Grounds

was referred the within Council Bill No.

106973

that we have considered the same and respectfully recommend that the same:

10/5/88

PASS

2-0

SIBONGA

YES

WILLIAMS

YES

6-0

Committee Chair

GBD:jrs
9/20/88
ORD7

ORDINANCE 114179

AN ORDINANCE relating to the Seattle Center Department; authorizing the execution of a Licensing Agreement with Seattle Hockey Club Limited Partnership for use of certain Seattle Center premises for public ice skating and adding a new section to the Seattle Municipal Code to establish certain fees related to public ice skating opportunities.

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. As requested by the Director of Seattle Center and recommended by the Mayor in materials attached hereto, the Director of Seattle Center is hereby authorized to execute, for and on behalf of The City of Seattle, a Concession Agreement entitled "Winterfest Ice Rink Concession Agreement" substantially in the form attached hereto, under which the Seattle Hockey Club Limited Partnership is authorized to operate a concession in a portion of the Flag Plaza area to facilitate the Seattle Center's promotion of "WINTERFEST" on the dates of November 23, 1988, through January 2, 1989, upon such terms and conditions as are contained in, referred to, and incorporated into said agreement.

Section 2. There is added to the Seattle Municipal Code a new section, SMC 17.18.010, as follows:

17.18.010 Ice Rink Fees.

The Director shall charge and collect fees related to public ice skating opportunities provided at Seattle Center:

A. Ice skating rink admission:

Adults \$2.00

Child 12 years of age and under \$1.00

with no "in-and-out" privileges

B. Ice skate rental \$1.00

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Section 3. Any act consistent with the authority but prior to the effective date of this ordinance is hereby ratified and confirmed.

(to be used for all Ordinances except Emergency.)

Section 4. This ordinance shall take effect and be in force thirty days from and after its passage and approval, if approved by the Mayor; otherwise it shall take effect at the time it shall become a law under the provisions of the city charter.

Passed by the City Council the 10th day of October, 1988, and signed by me in open session in authentication of its passage the 10th day of October, 1988.

[Signature]
President of the City Council.

Approved by me this 25th day of October, 1988.

[Signature]
Mayor.

Filed by me this 25th day of October, 1988.

Norman J. Brooks
Attest: City Comptroller and City Clerk.

(SEAL)

Published

By *Theresa Dunbar*
Deputy Clerk.

Frankly
 PUBLISH DO NOT PUBLISH
CITY ATTORNEY *[Signature]*

WINTERFEST ICE RINK

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WINTERFEST ICE RINK
CONCESSION AGREEMENT

THIS AGREEMENT is made between The City of Seattle (hereinafter referred to as the "City"), acting by and through its Seattle Center Department and the Director thereof, and Seattle Hockey Club Limited Partnership with principal offices located at P.O. Box 39193, Seattle, Washington 98109. Telephone: (206) 728-9121 (hereinafter referred to as the "Concessionaire").

In consideration of their mutual covenants, the parties agree as follows:

1. A. TERM. The term of this Agreement shall commence on the 23rd day of November, 1988, and shall expire on the 2nd day of January, 1989 unless terminated earlier pursuant to the provisions hereof.
- B. OPTION. Concessionaire may renew this Concession Agreement for an additional Winterfest term so long as Concessionaire is not in default of any provision in this Concession Agreement. The prices charged for one additional term, as outlined in "Exhibit B" shall not be less than those stated in said "Exhibit B". Notice of the exercising of this option must be provided to the City in writing not later than July 1, 1989.
2. PREMISES.
 - A. Description of Premises Licensed: The City grants a license to the Concessionaire to, and the Concessionaire agrees to and shall, operate a concession on that portion of the Flag Plaza at Seattle Center outlined in Exhibit "A", (which exhibit is, by this reference, incorporated herein), which area shall be referred to as the Premises.
 - B. Nonexclusive License To Common Areas: The City hereby grants to the Concessionaire, and its officers, employees, agents, customers, and invitees nonexclusive rights during the term of this Agreement to use the Seattle Center common areas as from time to time constituted which use shall be in common with all other visitors and users of the Seattle Center, subject to rules and regulations for the use thereof as from time to time may be promulgated by the Seattle Center Director.
 - C. "Common Areas" Defined: For the purposes of this Agreement, the term "common areas", as used herein, means and includes any Seattle Center area designated by the City as being for the general use of tenants, licensees, concessionaires, patrons, employees, and invitees of the Seattle Center and not within the exclusive control of any tenant, licensee, or concessionaire, and shall include but not be limited to parking areas, landscaped areas, areaways, roads, walks, corridors, malls, public toilets, public stairs, ramps, elevators, escalators, and shelters.
3. USE OF PREMISES. The Concessionaire shall use the Premises for the following purposes only: Sale of ice skating rink admission tickets and the rental of ice skates provided by Concessionaire, as further described on Exhibit "B" (the authorized price list for such service and rental). Concessionaire shall not use, nor permit, or suffer the use of the Premises for any business, or purpose other than specified in this section, without the prior written consent of the Seattle Center Director. Any such consent may be subject to such conditions as the Seattle Center Director may deem appropriate.
4. FEES AND CHARGES.
 - A. Concessionaire's Obligations to Pay Fees and Charges:
 - (1) Corporate Sponsorship: The Concessionaire, as the corporate sponsor of the Winterfest Ice Rink, shall make a cash contribution of Twenty Thousand Dollars (\$20,000), to The City of Seattle Seattle Center in exchange for exclusive sponsorship rights identified in Section II, hereof.
 - (2) Distribution of Ice Rink Revenues: Gross receipts aggregating between \$0 and \$10,000.00 shall be paid to the Concessionaire after being counted by City staff; gross receipts aggregating between

\$10,000.01 and \$25,000.00 shall be retained by the City; and gross receipts aggregating between \$25,000.01 and \$35,000.00 shall be paid to the Concessionaire after being counted by City staff. Any other gross receipts shall be divided equally, with the City retaining one-half thereof and the Concessionaire being paid the remaining half.

- (3) A cellular phone shall be provided by City for the use by the Concessionaire during the term of this Agreement, which phone shall be returned to the Manager of Event Management for Seattle Center upon the expiration or earlier termination of this Agreement. Authorized numbers agreed to by City and Concessionaire can be used at no charge. Cost for any unauthorized numbers shall be paid for by Concessionaire within seven (7) days after the date of any invoice therefor.

- B. "Gross Receipts" Definition: As used in this agreement, the term "gross receipts" means and includes the total income on or from the Premises from the rental of skates and the ice skating admission charge. This includes special promotions or activities which occur outside the normal public hours of operation.

The term "gross receipts" does not mean or include the Washington State Sales Tax and any other tax imposed by any government agency directly on sales; nor any admission taxes collected by the Concessionaire nor additional premiums for insurance as required by Subsection 8.B, hereof.

5. TIME AND PLACE OF PAYMENT; DELINQUENCY CHARGE:

- A. The cash contribution of \$20,000 must be received by the close of business on November 23, 1988.
- B. All gross receipts derived from the renting of ice skates and the sale of ice skating rink admission fees must be deposited daily in the Seattle Center drop safe. A security guard will escort the Concessionaire's cashier to the vault room, where the daily cash collected will be placed in the drop safe.
- C. Such gross receipts shall be counted by not fewer than two (2) City staff the following City business day. Payments to the Concessionaire can be made, based on any mutually agreed upon terms; daily, weekly, bi-weekly, etc.
- D. The daily cash register tapes ("z" tapes) shall be submitted to the City at the same time as the daily gross receipts and in the same envelope or bag that the gross receipts are in.

6. BOOKS AND RECORDS: FINANCIAL REPORTS.

Books and Records: The Concessionaire shall keep true, separate, accurate, complete and auditable records, and maintain an accounting system having controls governing inventories and receipts, and detailed records of all income and expenses of all business conducted in, on, or from the Premises, which records and accounting system shall be subject to the approval of the City. The Concessionaire shall not destroy any dated daily cash register tapes during the full term of this Agreement and during the year following the expiration or earlier termination of this Agreement except upon the written approval of the City.

7. AUDIT. The Concessionaire shall permit the City, from time to time as the Seattle Center Director deems necessary, to inspect and audit in King County, Washington, at any and all reasonable times, all pertinent books and records of the Concessionaire or, to verify the accuracy of the payments previously made by the Concessionaire; and shall supply the City with, or shall permit the City to make, a copy of any books and records and any portion thereof, upon the Seattle Center Director's request. The Seattle Center Director shall notify the Concessionaire of the amount of any over- or under payments found. Any over-payments shall be a credit against any fees and charges subsequently due or shall be refunded to the Concessionaire; under-payments shall be immediately due and payable and shall be delinquent if not paid within ten (10) days after the date of such notice. The Concessionaire shall ensure that such inspection, audit and copying right of the

City is a condition of any lease, sub-concession agreement, or other arrangement under which any other person or entity is permitted to carry on a business activity in, on, or from the Premises.

8. LIABILITY.

A. Indemnity: The Concessionaire shall indemnify and hold the City harmless from any and all losses, claims, actions, damages, and expenses arising out of or resulting from any occurrence in or on the Premises or the Concessionaire's performance or lack of performance under this Agreement. In the event that any suit based upon such losses, claims, actions, damages, or expenses is brought against the City, the Concessionaire, upon notice of the commencement thereof, shall defend the same at its sole cost and expense; and if final judgment be adverse to the City, or the City and the Concessionaire jointly, the Concessionaire shall promptly satisfy the same. The liability described in this subsection shall not be diminished by the fact, if it be a fact, that any such death, injury, damage, loss, cost or expense may have been contributed to, or may be alleged to have been contributed to, in part, by the negligence of the City, its officers, employees, or agents; provided, that nothing contained in this subsection shall be construed as requiring the Concessionaire to indemnify the City against liability for damages arising out of bodily injury to persons or damage to property property caused by or resulting from sole negligence of the City, its employees, officers, or agents.

B. Insurance: The Concessionaire shall secure and maintain during the full term of this Agreement, at the expense of the City, insurance by one or more companies authorized to do business in the State of Washington as follows:

A general comprehensive policy of liability insurance under which:

(a) The City shall be named as additional insured.

(b) Liability limits shall be at least the following amount: \$300,000 combined single limit bodily injury or property damage liability subject to a \$500 deductible each claim.

(c) The premium for such single limit liability is to be adjusted by an additional \$15 per \$100 worth of ice skating receipts over the basic coverage of \$10,000 worth of ice skating receipts only.

9. LIENS AND ENCUMBRANCES. The Concessionaire shall keep the Premises free and clear of any liens and encumbrances arising or growing out of its use and occupancy of the Premises. At the request of the Seattle Center Director, the Concessionaire shall deliver to the Seattle Center Contracts and Concessions Manager, written proof of the payment of any item which could be the basis of such a lien, if not paid.

10. COVENANTS REGARDING CONCESSIONAIRE'S OPERATIONS.

A. Business Hours: The Concessionaire shall not leave the Premises unoccupied or vacant, but shall open and maintain its operation therein ready for the transaction of business with the public on such days and during such minimum operating hours as are designated by the Seattle Center Director, from time to time, as may be necessary for the repairs, and cleaning, or circumstances beyond the Concessionaire's control.

Minimum public operating hours for the ice skating and ice skate rentals are:

11 a.m. to 7 p.m. Sunday through Thursday

11 a.m. to 9 p.m. Friday and Saturday

B. Maximization of Gross Receipts: The Concessionaire shall carry on its business with diligence and efficiency and keep in stock, lines of merchandise of such size, quality and character so as to produce the

maximum amount of gross receipts. Concessionaire shall provide not less than 100 pairs of skates in sizes appropriate to the ice skate rental business.

- C. Personnel: The Concessionaire shall employ courteous, competent, and efficient help in such numbers, skills, and experience as to properly conduct its activities on the Premises. The Concessionaire shall have on the Premises, at all times it is open for business, a qualified representative authorized to represent the Concessionaire in dealings with the City, and shall keep the Seattle Center Director informed of the identity of such person. The Seattle Center Director shall have the right to disapprove any and all personnel used by the Concessionaire for any activity on the Premises.
- D. Deliveries: All deliveries shall be made to a delivery location or entrance, and during such periods as shall be designated by the Seattle Center Director.
- E. No Nuisances or Objectionable Activity: The Concessionaire shall not permit any excessive or objectionable noise, odor, dust, vibration, or other similar substance or condition to remain on or be emitted from the Premises; shall not interfere with access from the Seattle Center or any part thereof, including the Premises, or with the traffic thereon; shall not create any nuisance in or adjacent to the Seattle Center; and shall not do anything on the Seattle Center that will create a danger to life or limb.
- F. No Misbranding or Misrepresentation: The Concessionaire shall not offer for sale or rent on or from the Premises any merchandise or service that is misbranded, and shall not misrepresent the size, quality, capabilities, or other characteristics of any merchandise or service offered for sale or rent.
- G. Illumination of Premises: The Premises and all fixtures, furnishings, and trade equipment thereon shall be effectively illuminated during all hours the Concessionaire is open for business.

11. SPONSORSHIP RIGHTS: In consideration of the Concessionaire's corporate sponsorship, the Concessionaire will be entitled to and receive:

- A. Title billing on all advertising materials which are directly related to the promotion of the Winterfest Ice Rink and are in the control of Seattle Center.
- B. Billing on all Winterfest promotional materials as the corporate sponsor of the Winterfest Ice Rink.
- C. Permission to promote the Seattle Thunderbirds on the Premises including but not limited to season or individual game ticket sales; public events including photo sessions with Thunderbird players; special promotions with community groups and organizations; direct sale of Thunderbird sweaters and or T-shirts approved by the Seattle Center Director.

12. MAINTENANCE, CLEANING AND REPAIR.

- A. City's Responsibilities: The City shall maintain, clean, and repair the common areas as defined in subsection 2.C. of this agreement; and all fixtures and improvements installed by the City therein; together with the general grounds areas of the Seattle Center, all to the ordinary standard of maintenance, cleaning, and repair provided to other major use facilities at Seattle Center; and shall keep the same in good condition, normal wear and tear and damage and destruction by fire and other extraordinary casualty excepted. In accordance therewith, the City will provide or undertake general gardening and landscaping; sanitary control; removal of snow; removal of garbage and other refuse from the City's designated locations; and repair of water, sanitary sewer, and storm water lines connecting with similar lines on the Premises. In undertaking such maintenance, cleaning and repair, the City shall make a good faith effort to not unreasonably interfere with the Conces-

sionaire's business on and from the Premises. The Concessionaire waives all claims for damages, including for any loss of business, resulting from City maintenance, cleaning, and repair.

- B. Concessionaire's Responsibilities: The Concessionaire, at its own cost and expense, shall keep the Premises and additions thereto, at all times in a neat, clean, and sanitary condition, and shall permit no waste, damage, or injury thereto. The Concessionaire shall also preserve the Premises and all improvements, if any, in good repair, except for the effects of normal wear and tear and damage by fire or other unavoidable casualty. In carrying out such responsibilities the Concessionaire shall clean the ice rink ice at least once a day and more often as demand on ice warrants and/or conditions of ice require.

13. COMPLIANCE WITH LAW.

- A. General Requirement: The Concessionaire, at its sole cost and expense, shall perform and comply with all applicable laws of the United States and the State of Washington; the Charter and Ordinances of The City of Seattle; and rules, regulations, orders, and directives of their administrative agencies and the officers thereof.
- B. Licenses and Similar Authorizations: The Concessionaire, at no expense to the City, shall secure and maintain in full force and effect during the term of this Agreement, all required licenses, permits, and similar legal authorizations, and comply with all requirements thereof.
- C. Nondiscrimination and Affirmative Action: The Concessionaire agrees to comply with all state and local laws prohibiting discrimination with regard to race, color, sex, marital status, sexual orientation, political ideology, age, creed, religion, ancestry, national origin, or the presence of any sensory, mental or physical handicap. Consistent with that obligation, in the event the Concessionaire has three (3) or more employees during the term of this Agreement, the following provisions of Ordinance 109808 (SMC 20.44.040) shall be deemed to be incorporated herein:

"During the performance of this Agreement, the Concessionaire agrees as follows:

'The Concessionaire will not discriminate against any employee or applicant for employment because of creed, religion, race, color, sex, marital status, sexual orientation, political ideology, ancestry, national origin, or the presence of any sensory, mental or physical handicap, unless based upon a bona fide occupational qualification. The Concessionaire will take affirmative action to ensure ensure that applicants are employed, and that employees are treated during employment without regard to their creed, religion, race, color, sex, national origin, or the presence of any sensory, mental or physical handicap. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

The Concessionaire agrees to post in conspicuous places available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause. The Concessionaire will take affirmative action to ensure that all of its employees, agents and subcontractors adhere to these provisions; provided, nothing herein shall prevent an employer from giving preference in employment to members of his/her immediate family.

"Concessionaire will, upon request of the Director (as used here, Director means the Director of the Human Rights Department, or his/her designee) furnish to the Director on such form as may be provided therefor, a report of the affirmative action taken by the Concessionaire in implementing the terms of this provision, and will permit access to his records of employment, employment advertisements, application forms, other pertinent data and records requested by the Director for the purpose of investigation to determine compliance with these provisions.

'If, upon investigation, the Director determines that there is probable cause to believe that the Concessionaire has failed to comply with any of the terms of these provisions, the Concessionaire shall be so notified in writing. The Seattle Center Director shall give the Concessionaire an opportunity to be heard, after ten (10) days' notice. If the Seattle Center Director concurs in the findings of the Director of the Human Rights Department, then the Seattle Center Director may suspend or terminate this Agreement and evict the Concessionaire in accordance with law.

'Failure to comply with any of the terms of these provisions shall be material breach of this agreement.'

The foregoing provision will be inserted in all sub-Agreements entered into under this Agreement."

- E. Women's and Minority Business Enterprises Utilization: The Provisions of Seattle Ordinance 109113 (Women's and Minority Business Enterprise Utilization Ordinance), as amended, are hereby incorporated by reference and made a part hereof as if fully set forth herein.

During the term of this Agreement, the Concessionaire shall:

- (1) Continue to make every effort to utilize Minority Business Enterprise (MBEs) and Women's Business Enterprise (WBEs);
- (2) Require every subcontractor utilized by the Concessionaire for work under this Agreement to make every effort to utilize WBEs and MBEs; and
- (3) Maintain records reasonably necessary for monitoring compliance with provisions of Ordinance 109113, as amended.

Any substitutions for or other failure to utilize the WBEs or MBEs projected for use in this Agreement on the commitment forms must be approved in writing by the Seattle Human Rights Department and the Seattle Center Director.

Inasmuch as the Seattle Human Rights Department is authorized and empowered by Ordinance 109113 to monitor compliance with the Concessionaire's Women's and Minority Enterprise Utilization commitment during the term of this Agreement the Concessionaire shall furnish to such department within a reasonable time after a request has been made for the same, whatever reports or other information is reasonably necessary to determine compliance.

The failure of the Concessionaire to comply with applicable provisions of the Women's and Minority Business Enterprise Ordinance (Seattle Municipal Code, Ch. 20.46 - Ordinance 109113, as amended) shall be a material breach of contract.

- F. Applicable Law: This Agreement shall be construed under the law of the State of Washington.

14. CITY'S CONTROL OF BUILDINGS AND GROUNDS AND ACTIVITIES. Notwithstanding any other provision of this Agreement, the City, without liability of any kind, may:

- A. Increase, reduce, and change in any manner whatsoever the number, appearance, dimensions, and locations of the Seattle Center walks, buildings, landscaping, parking, and service areas, and may also make improvements, alterations, and additions to common areas;
- B. Regulate all traffic within and adjacent to the Seattle Center;
- C. Impose a reasonable charge for admission to the Seattle Center and facilities therein, including parking facilities;
- D. Erect, display and remove promotional exhibits and materials and permit special events on the Seattle Center grounds, buildings, and facilities including the common areas;
- E. Promulgate, from time to time, reasonable rules and regulations regarding the use and occupancy of any area of Seattle Center;
- F. Restrict or prohibit the parking on City-owned or leased property of motor vehicles owned or operated by the Concessionaire and any of its officers, employees, agents, suppliers, and invitees;
- G. Determine the days and hours the Seattle Center and various business operations will be open to the public;
- H. Change the size, number, and type and identity of other concessions, stores, businesses, and operations being conducted or undertaken at Seattle Center;

15. CITY'S RIGHT TO DISAPPROVE MERCHANDISE AND PRICES. In order to protect the public visiting Seattle Center from price gouging, the City reserves the right to:

- A. Prohibit Price Gouging: Disapprove the price of any item of merchandise, or service that is substantially higher than the price charged by a substantially similar business in the region, and prohibit the charging of such substantially higher price.
- B. Prohibit the Sale of Objectionable Materials: Prohibit the sale of any items of merchandise, or service that is unsafe; that portrays the City or Seattle Center or any aspect thereof in any incorrect, misleading, or unfavorable manner; that is inappropriate for a family-oriented recreation and entertainment facility such as Seattle Center; or that may create a substantial litter or other maintenance problem at Seattle Center; all of which shall be determined by the Seattle Center Director.

16. CITY'S RIGHT TO PREMISES: INSPECTION, REPAIR, AND IMPROVEMENT OF PREMISES AND OTHER PROPERTY.

- A. Access to Premises: The Concessionaire shall provide the City access to the Premises at all reasonable times to inspect the same and to make any repair, improvement, alteration or addition thereto or any property owned by or under control of the City, deemed necessary by the Seattle Center Director, but this right of access shall not impose on the City any obligation to make any repair, alteration, addition, or improvement except as specifically provided herein.
- B. Permitted Interference With Concessionaire's Operations: In inspecting, and in making repairs, alterations, additions, and improvements, the City may erect barricades and scaffolding in and outside of the Premises, and may otherwise interfere with the conduct of the Concessionaire's business and operations where such action is reasonably required by the nature of the City's work; and such interference shall not be deemed to be a breach or default under this Agreement. The City shall use its best efforts to minimize interference with access to and from the Premises and with the Concessionaire's business and operations in, on, or from the Premises.

C. **Suspension of Concessionaire's Operations and Obligations To Pay Fees and Charges:** In the event such inspection, repair, alteration, addition, or improvement work necessitates the temporary suspension of the Concessionaire's business or operations in, on, or from the Premises for a period of thirty (30) days or less, the Seattle Center Director shall notify the Concessionaire of such necessity and the anticipated beginning and ending dates of such suspension. The percentage of gross receipts due the City pursuant to Section 4, hereof, shall be prorated during each month in which the Concessionaire's business or operations are required by the City to be suspended pursuant to this section, and the Concessionaire shall have no obligation to pay such prorated fees and charges during the period that the Concessionaire's business or operations are suspended; such cancellation of the obligation to pay fees and charges shall constitute the totality of relief provided hereunder, and the Concessionaire waives all claims for damages and for any injury to and interference with its operations or business and losses occasioned by any such suspension.

D. **City's Retention and Use of Key to Premises:** For each of the aforesaid purposes, the City shall at all times have and retain a key with which to unlock all of the doors in, upon, and about the Premises, excluding the Concessionaire's vaults, safes, and files. The City shall have the right to use any and all means which the Seattle Center Director deems proper to open said doors in an emergency, in order to obtain entry to the Premises, without liability to the Concessionaire except for any failure to exercise due care for the Concessionaire's property. Any entry to the Premises obtained by the City by any of said means, or otherwise, shall not under any circumstances be construed or deemed to be a forcible or unlawful entry into, or a detainer of, the Premises or a termination of the Concessionaire's license to use and occupy the Premises or any portion thereof.

17. **ASSIGNMENT, TRANSFER OR SUBLEASE.** The Concessionaire shall not assign or transfer this Agreement or any rights hereunder or sublease any part of the Premises without the prior written consent of the Seattle Center Director. Neither this Agreement, nor any right, privilege, or interest conferred shall pass to any trustee or receiver in bankruptcy or to any receiver or assignee for the benefit of creditors; nor shall this Agreement or any rights, privilege, or interest be transferable by operation of law or proceeding of any court. If the Concessionaire is a partnership, limited or general, a withdrawal of a general partner, or change, voluntary or involuntary, by operation of law or otherwise, or a general partner thereof, shall be deemed an assignment. If the Concessionaire is a corporation, the merger, consolidation, or liquidation of the Concessionaire or any change in the ownership of or power to vote thirty-three and one-third percent (33-1/3%) or more of its capital stock, as held as of the date of execution of this Agreement, shall be deemed as assignment. In the event the Concessionaire in any manner permits anyone to occupy all or any portion of the Premises for any purpose including conducting business or other activities, whether or not business-related, not within the intendment of this Agreement, such permission shall be deemed an assignment. No assignment of this Agreement, with or without the Seattle Center Director's consent, shall release or relieve the Concessionaire of or from any of the obligations on the Concessionaire's part to be kept and performed under this Agreement. Any such assignment shall be subject to all the terms and provisions of this Agreement. In the event of any assignment of this Agreement, the Concessionaire shall cause to be delivered to the Seattle Center Director, in care of the Contracts and Concessions Office, simultaneously with such assignment, an instrument, in writing, executed by the assignee, in which the assignee shall assume and agree to perform all of the terms and provisions of this Agreement on the Concessionaire's part to be kept and performed that theretofore have not been fully performed.

18. **EXCUSE AND SUSPENSION OF OBLIGATIONS.** Whenever a party's performance under this Agreement is prevented by an act of God; war or war-like operations; civil commotion; riot; labor dispute including a strike, lockout, or walk-out; sabotage; or governmental regulation or control, performance of such affected obligation shall be suspended, but only for the duration of such condition.

19. DAMAGE AND DESTRUCTION.

- A. The Concessionaire shall submit a written report to the Seattle Center Director, in care of the Contracts and Concessions Office regarding the circumstances of any damage caused by any fire on the Premises, within twenty-four (24) hours after any such event.
- B. Obligation to Pay Fees and Charges in the Event of Damage or Destruction. In the event the Premises are destroyed by fire or other casualty not occasioned by an act or omission of the Concessionaire, or are damaged so extensively as to render the Premises unusable, the Concessionaire's obligation to pay fees and charges therefore shall be cancelled until the Premises are made usable; but in the event only a portion of the Premises are damaged or destroyed by fire or other casualty not occasioned by an act or omission of the Concessionaire and the Premises remain usable, the percentage of gross receipts payable to the City hereunder shall be prorated and the Concessionaire shall pay only the amount of such percentage of gross receipts that is proportionate to the extent of the Premises that remain usable for the purposes identified in Section 3, hereof.
- C. No Obligation for Rebuilding, Repair, and Restoration: The City shall have no obligation to rebuild, repair, and restore the Premises following any damage or destruction thereof.
- D. Concessionaire's Right to Terminate: Notwithstanding any other provision in this Agreement to the contrary, in the event that fifty percent (50%) or more of the Premises area is damaged or destroyed by fire or other casualty not occasioned by an act or omission of the Concessionaire, the Concessionaire may terminate this Agreement by providing notice thereof to the City.
- E. City's Right to Terminate: Notwithstanding any other provision of this Agreement to the contrary, in the event that fifty percent (50%) of the area on which the Premises are located is destroyed or is so damaged by fire or other casualty as to be untenable or unusable, or if the City desire to discontinue the Concessionaire's operations because of substantial destruction of the Seattle Center, regardless of whether the Premises are destroyed, damaged, or otherwise, the City may terminate this Agreement by providing prior written notice thereof to the Concessionaire.
- F. Notice of Termination: Any notice of termination pursuant to this section shall be provided within sixty (60) days after the occurrence of the damage or destruction and shall specify the effective date of such termination.

20. DEFAULT AND BREACH: TERMINATION THEREFOR.

- A. Act of Default and Breach of Concessionaire: The following acts and omissions shall constitute a default and material breach of this Agreement by the Concessionaire:
 - (1) The failure to pay to the City all of the sums due to it pursuant to Section 4, hereof; or
 - (2) The failure to comply with all of the requirements of Section 8, hereof, regarding insurance; or
 - (3) The violation of any law, Charter provision, ordinance, rule, regulation, order, or directive; or
 - (4) The abandonment or vacating of the Premises; or
 - (5) The assignment of the Concessionaire's interest in this Agreement without the prior written consent of the Seattle Center Director; or the filing of a voluntary or involuntary petition in bankruptcy, or for reorganization or an arrangement; or the adjudication of the Concessionaire as being bankrupt or insolvent; or the appointment of a receiver of or for the Concessionaire if such appointment,

adjudication or similar order or ruling remains in force or unstayed for a period of thirty (30) days; or

(6) The failure to perform or the violation of any other condition or covenant of this Agreement where such default or deficiency in performance was not remedied within a reasonable time.

B. City's Notice of Default and Breach: The Seattle Center Director shall provide written notice to the Concessionaire in the event the Concessionaire commits any act or omission specified in Subsection 20.A above, specifying the nature of the act or omission, the number of days (which shall not exceed five (5) days after the date of the notice) within which such failure must be corrected or the violation must be ceased or remedied to avoid termination, and the City's intention to terminate this Agreement in the event such act or omission has not been corrected within such stated period. The notice shall also describe special procedures provided by law, Charter, ordinance, rule, or regulation permitting the Concessionaire to have a hearing on such failure or violation.

C. Remedies Upon Termination: In the event the Concessionaire fails to correct, remedy, or cease such failure or violation within the time specified in the City's notice, the City may thereafter terminate this Agreement without any further proceedings, re-enter the Premises, lease and license others to use said Premises during any portion of the period of use remaining under this Agreement had it not been terminated, and receive payment therefor; Provided, that notwithstanding such termination and re-entry, the Concessionaire's liability for the sums to be paid to the City hereunder shall not be extinguished, and the Concessionaire shall pay to the City the difference between said sums and the sum the City receives for the use of the Premises by one or more other users during the period beginning and ending on the expiration date of this Agreement. Such payment shall be made monthly, within fifteen (15) days after the date of any invoice therefor provided to the Concessionaire by the City. Such termination and payments shall not relieve the Concessionaire from liability to the City for any damages caused by the Concessionaire's default and breach and expenses incurred in the leasing or relicensure of the Premises.

D. Default By The City: The City shall not be in default of any obligation to perform under this Agreement unless the City fails to perform such obligation within a reasonable time, which time shall not extend more than ten (10) days after written notice by the Concessionaire to the City specifying the particular obligation that the City has failed to perform; Provided, however, that if the nature of the City's obligation is such that more than ten (10) days are required for performance, then the City shall not be in default if the City commences performance within such ten (10) day period and thereafter diligently prosecutes the same to completion.

21. TERMINATION BY COURT DECREE. In the event that any court having jurisdiction renders a decision that has become final and that prevents the performance by the City of any of its obligations under this Agreement, either party may terminate this Agreement, without recourse, by providing written notice of termination to the other party, specifying the effective date thereof, as of which date all rights and obligations that accrued prior to the effective date of termination shall terminate.

22. SURRENDER OF PREMISES: HOLDING OVER.

A. Surrender and Delivery: Upon the expiration or termination date of this Agreement, whichever is earlier, the Concessionaire shall surrender the Premises and promptly deliver to the Seattle Center Director all keys the Concessionaire, its officers, agents, and employees may have to the Seattle Center and the Premises.

B. Removal of Concessionaire's Property: Prior to the expiration date of this Agreement, or in the event this Agreement is terminated, within fifteen (15) days after the termination date, whichever is earlier, the Concessionaire shall remove, at its sole expense, all fixtures, furnishings, trade equipment, and personal property owned or installed by the

discretion. Any approval, consent or permission of the Seattle Center Director required by this Agreement shall not be unreasonably withheld.

27. AMENDMENTS. No modifications or amendment of the terms hereof shall be effective unless in writing and signed by authorized representatives of the parties hereto. The parties hereto expressly reserve the right to modify this Agreement from time to time, by mutual agreement.
28. NO WAIVER. No waiver of full performance by either party shall be construed, or operate, as a waiver of any subsequent default of any of the terms, covenants and conditions of this Agreement. The payment or acceptance of fees for any period after a default shall not be deemed a waiver of any right or acceptance of defective performance.
29. REMEDIES CUMULATIVE. Rights under this Agreement are cumulative; failure to exercise on any occasion any right shall not operate to forfeit such right on another occasion. Each party shall also have any other remedy given by the law. The use of one remedy shall not be taken to exclude or waive the right to use another.
30. JOINT AND SEVERAL LIABILITY. In the event the Concessionaire is composed of more than one person, entity, or corporation, each of the persons, entities, and corporations composing the Concessionaire shall be jointly and severally liable under this Agreement.
31. USE OF LANGUAGE. Terms used in the neuter gender include the masculine and feminine; and terms used in the singular or plural include the other, as the context may require.
32. CAPTIONS. The titles of sections are for convenience only and do not define or limit the contents.
33. INVALIDITY OF PARTICULAR PROVISIONS. Should any term, provision, condition, or other portion of this Agreement or the application thereof be held to be inoperative, invalid, or unenforceable, the remainder of this Agreement or the application of such term or provision to person or circumstances other than those to which it is held invalid or unenforceable shall not be affected hereby and shall continue in full force and effect.
34. BINDING EFFECT. The provision, covenants, and conditions contained in this Agreement apply to bind the parties, their legal heirs, representatives, successors, and assigns.
35. PREVIOUS AGREEMENTS SUPERSEDED. The terms and conditions of this Agreement supersede the terms, obligations and conditions of any existing or prior agreement between the parties regarding the subject matter hereof.
36. NO BROKER. The Concessionaire represents and warrants that there is no claim for any brokerage commission or finder's fee in connection with the execution of this Agreement.
37. ENTIRE AGREEMENT. This Agreement, including the Exhibits and Addenda attached hereto and forming a part hereof, are all of the covenants, promises, agreements, and conditions, either oral or written, between the parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by affixing their signatures below:

CONCESSIONAIRE:

THE CITY OF SEATTLE:

SEATTLE HOCKEY CLUB
LIMITED PARTNERSHIP

SEATTLE CENTER DEPARTMENT

By: _____

R. J. Jewell

By: _____

Virginia Anderson
Virginia Anderson, Director

By: _____

Date: _____

12/14/88

Date: _____

Pursuant to
Ordinance No. _____

STATE OF WASHINGTON)

) ss

COUNTY OF KING)

I certify that I know or have satisfactory evidence that _____ signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the _____ of Seattle Hockey Club Limited Partnership to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____

Notary Public in and for the State
of Washington, residing at _____

My commission expires _____

STATE OF WASHINGTON)

) ss

COUNTY OF KING)

I certify that I know or have satisfactory evidence that _____ signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the _____ of Seattle Hockey Club Limited Partnership to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____

Notary Public in and for the State
of Washington, residing at _____

My commission expires _____

STATE OF WASHINGTON)

) ss

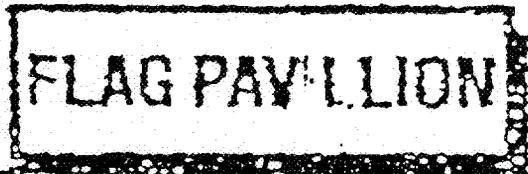
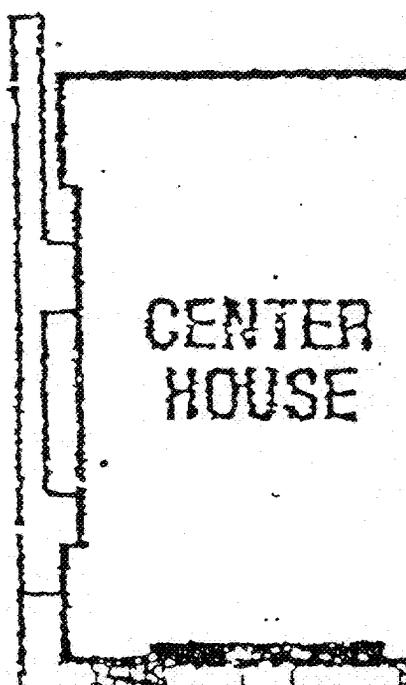
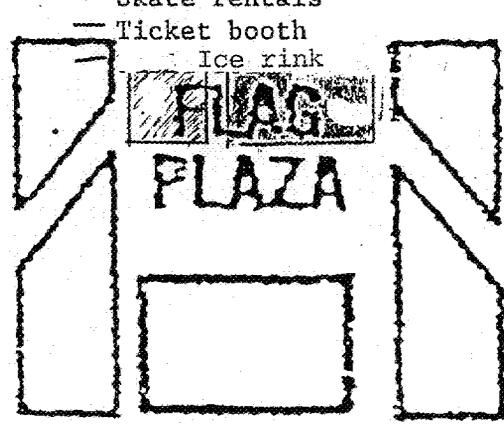
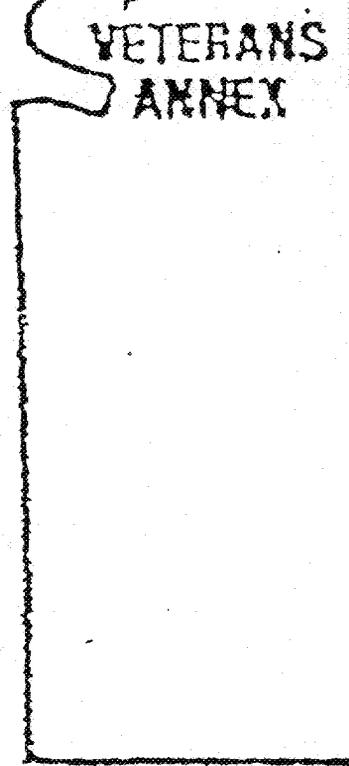
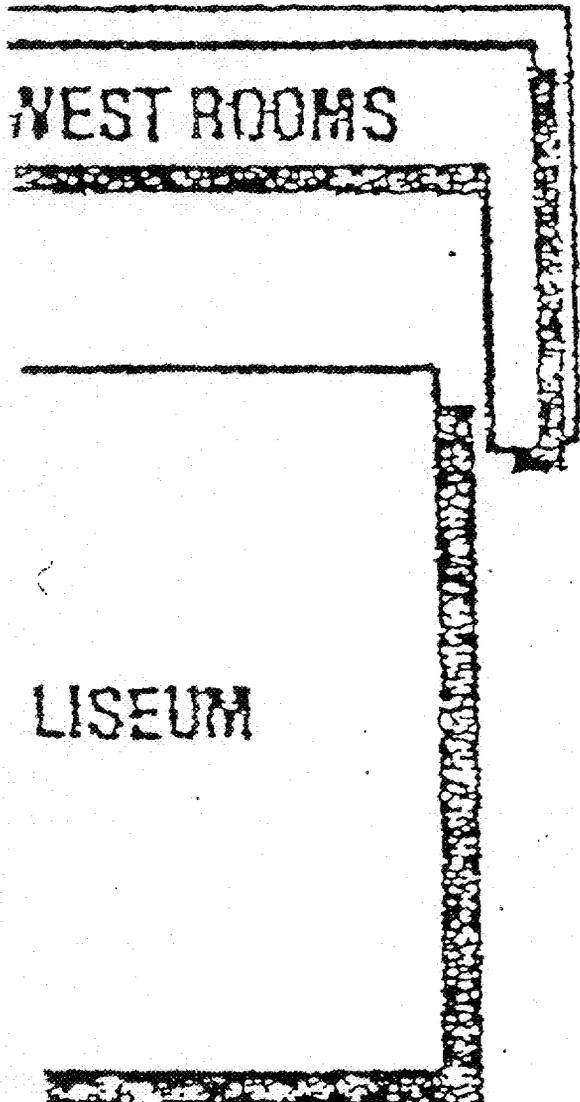
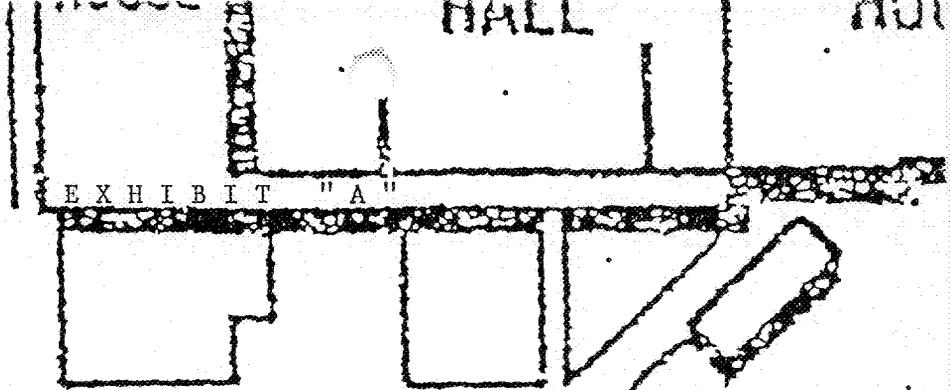
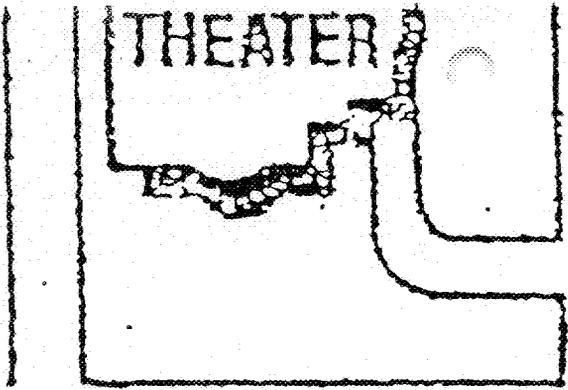
COUNTY OF KING)

I certify that I know or have satisfactory evidence that _____ signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the Seattle Center Director of The City of Seattle, the municipal corporation that executed the foregoing instrument, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

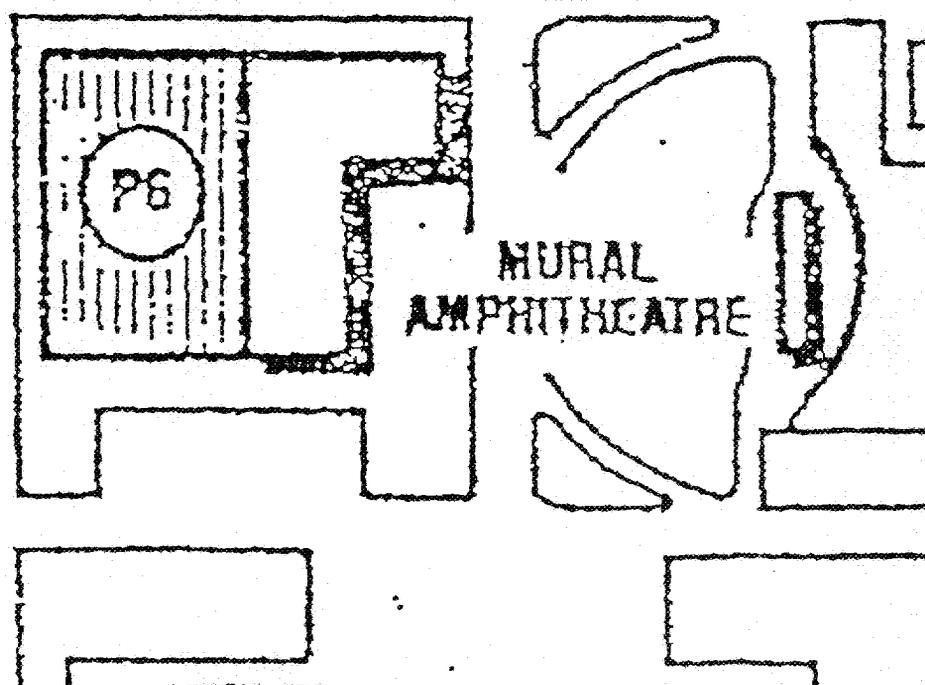
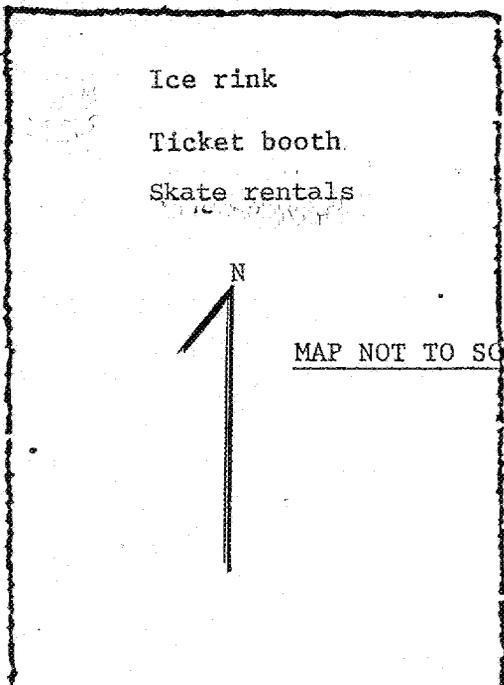
Dated: _____

Notary Public in and for the State
of Washington, residing at _____

My commission expires _____



PACIFIC ARTS CENTER



M E M O R A N D U M

DATE: 10/19/88

TO: Comptroller's Office - City Clerk
ATTN: Theresa Dunbar

FROM: Judy Carson

Attached for your information/XX files is a copy of a recently completed contract. If you have any questions, please call me at 625-4348. 684-7202

CONTRACT SUMMARY

Name of Contract: Winterfest Ice Rink Concession Agreement

Effective Dates: 11/23/88 - 1/2-89

Authorizing Ordinance: 114179 C.F. # _____

Fees and Charges: _____

Method of Payment: _____

Other Comments: _____

EXHIBIT B

ICE RINK PRICING

SCHEDULE

Minimum Corporate Sponsorship - \$20,000

Minimum Skating Rink Admission

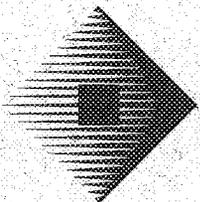
\$2.00 Adults

\$1.00 Children 12 and under

with no "in-and-out" privileges

Minimum Skate Rental Fee

\$1.00 All ages



SEATTLE CENTER

SEP 20 1988

840581

September 20, 1988

The Honorable Sam Smith, President
Seattle City Council
City of Seattle

VIA: Mayor Charles Royer
ATTENTION: Jim Ritch, Director
Office of Management and Budget

Dear Councilmember Smith:

Attached please find an ordinance authorizing a Licensing Agreement with Seattle Hockey Club Limited Partnership to operate a concession (ice rink) in a portion of the Flag Plaza from November 23, 1988 through January 2, 1989.

The Winterfest Ice Rink is the primary public participation activity associated with the annual Winterfest promotion. It is a family entertainment event that adds diversity to Seattle Center's programming in response to community needs.

This Agreement authorizes the Director of Seattle Center to charge and collect minimum fees related to public ice skating opportunities at Seattle Center, to exchange exclusive sponsorship rights for a cash contribution of \$20,000.00, and to distribute ice rink revenues as follows:

Gross receipts between \$0 - \$10,000 paid to concessionaire
Gross receipts between \$10,000.01 - 25,000.00 retained by the City
Gross receipts between \$25,000.01 - 35,000.00 paid to concessionaire
Additional gross receipts divided equally.

If you have any questions or concerns, please call Jim Weyermann at 684-7330.

Sincerely,

Virginia Anderson

Virginia Anderson

VA:bcc

Attachment

Charles Royer
Mayor
Virginia Anderson
Director

305 Harrison
Street

Seattle
Washington
98109

City of Seattle

Executive Department-Office of Management and Budget

James P. Ritch, Director
Charles Royer, Mayor



September 20, 1988

The Honorable Douglas Jewett
City Attorney
City of Seattle

OK
JR
9/20/88

Dear Mr. Jewett:

The Mayor is proposing to the City Council that the enclosed legislation be adopted.

REQUESTING
DEPARTMENT: Seattle Center

SUBJECT: An ordinance relating to the Seattle Center Department; authorizing the execution of a Licensing Agreement with Seattle Hockey Club Limited Partnership for use of certain Seattle Center premises for public ice skating and adding a new section to the Seattle Municipal Code to establish certain fees related to public ice skating opportunities.

Pursuant to the City Council's S.O.P. 100-014, the Executive Department is forwarding this request for legislation to your office for review and drafting.

After reviewing this request and any necessary redrafting of the enclosed legislation, return the legislation to OMB. Any specific questions regarding the legislation can be directed to Marian Merkel.

Sincerely,

Charles Royer
Mayor

by

James P. Ritch for

JAMES P. RITCH
Budget Director

JR/cm/lc

Enclosure

cc: Director, Seattle Center

TIME AND DATE STAMP

SPONSORSHIP

THE ATTACHED DOCUMENT IS SPONSORED FOR FILING WITH THE CITY COUNCIL BY
THE MEMBER(S) OF THE CITY COUNCIL WHOSE SIGNATURE(S) ARE SHOWN BELOW:

Adoree Sibonga

FOR CITY COUNCIL PRESIDENT USE ONLY

COMMITTEE(S) REFERRED TO: _____

PRESIDENT'S SIGNATURE

C-694-X

Affidavit of Publication

City of Seattle

ORDINANCE 114179

AN ORDINANCE relating to the Seattle Center Department, authorizing the execution of a Licensing Agreement with Seattle Hockey Club Limited Partnership for use of certain Seattle Center premises for public ice skating and adding a new section to the Seattle Municipal Code to establish certain fees related to public ice skating opportunities.

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. As requested by the Director of Seattle Center and recommended by the Mayor in materials attached hereto, the Director of Seattle Center is hereby authorized to execute, for and on behalf of The City of Seattle, a Concession Agreement entitled "Winterfest Ice Rink Concession Agreement" substantially in the form attached hereto, under which the Seattle Hockey Club Limited Partnership is authorized to operate a concession in a portion of the Flag Plaza area to facilitate the Seattle Center's promotion of "WINTERFEST" on the dates of November 23, 1988, through January 2, 1989, upon such terms and conditions as are contained in, referred to, and incorporated into said agreement.

Section 2. There is added to the Seattle Municipal Code a new section, SMC 17.18.010, as follows:

17.18.010 ICE RINK FEES.

The Director shall charge and collect fees related to public ice skating opportunities provided at Seattle Center:

A. Ice skating rink admission.

Adults -- \$2.00

Child 12 years of age and under with no "in-and-out" privileges -- \$1.00

B. Ice skate rental -- \$1.00

Section 3. Any act consistent with the authority but prior to the effective date of this ordinance is hereby ratified and confirmed.

Section 4. This ordinance shall take effect and be in force thirty days from and after its passage and approval, if approved by the Mayor; otherwise it shall take effect at the time it shall become a law under the provisions of the city charter.

Passed by the City Council the 10th day of October, 1988, and signed by me in open session in authentication of its passage this 10th day of October, 1988.

SAM SMITH,

President of the City Council.

Approved by me this 25th day of October, 1988.

CHARLES ROYER,

Mayor.

Filed by me this 25th day of October, 1988.

Attest: NORWARD J. BROOKS,

City Comptroller and City Clerk.

(Seal) By: THERESA DUNBAR,

Deputy Clerk.

File Stamp ordered by NORWARD J.

BROOKS, Comptroller and City Clerk.

Date of official publication in Daily

Journal of Commerce, Seattle, November

18, 1988. (C-694-X)

STATE OF WASHINGTON KING COUNTY—SS.

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 _____
Ordinance No. 114179

was published on November 10, 1988

V. Rain

Subscribed and sworn to before me on
November 10, 1988

Robert P. Jones

Notary Public for the State of Washington,
residing in Seattle.