Ordinance No. 123720

Council Bill No. 117293

AN ORDINANCE relating to the Department of Parks and Recreation, authorizing the Superintendent of Parks and Recreation to enter into an egress easement agreement with Seattle School District No. 1 over portions of vacated N. 42nd Street between Woodlawn Avenue N. and Densmore Avenue N., and to execute a covenant restricting the use of property at Wallingford Playfield to satisfy permit requirements related to the construction of a new gymnasium on the Hamilton International Middle School property; authorizing acceptance of reimbursed City-incurred costs related to the egress easement agreement and covenant; superseding the requirements of Ordinance 118477, which adopted Initiative 42, for the purposes of this ordinance; and ratifying and confirming certain prior acts.

CF No.

Date Introduced: Sept. 19, 2011	
Date 1st Referred: Sept. 19, 2011	To: (committee) Parks and Seattle Center
Date Re - Referred:	To: (committee)
Date Re - Referred:	To: (committee)
Date of Final Passage: 9.26.11	Full Council Vote: 9-0
Date Presented to Mayor: 9.27.11	Date Approved: Sept. 30, 2011
Date Returned to City Clerk: Sept. 30, 2011	Date Published: T.O. ✓ F.T.
Date Vetoed by Mayor:	Date Veto Published:
Date Passed Over Veto:	Veto Sustained:

The City of Seattle - Legislative Department

Council Bill/Ordinance sponsored by: Sally Bagshaw
Councilmember

Committee Action:

9/22/11 PASS 1-0

9.26.11 Passed 9-0

This file is complete and ready for presentation to Full Council. Committee: _____ (initial/date)

Law Department

Law Dept. Review | OMP Review | City Clerk Review | Electronic Copy Loaded | Indexed

ORDINANCE 123720

AN ORDINANCE relating to the Department of Parks and Recreation, authorizing the Superintendent of Parks and Recreation to enter into an egress easement agreement with Seattle School District No. 1 over portions of vacated N. 42nd Street between Woodlawn Avenue N. and Densmore Avenue N., and to execute a covenant restricting the use of property at Wallingford Playfield to satisfy permit requirements related to the construction of a new gymnasium on the Hamilton International Middle School property; authorizing acceptance of reimbursed City-incurred costs related to the egress easement agreement and covenant; superseding the requirements of Ordinance 118477, which adopted Initiative 42, for the purposes of this ordinance; and ratifying and confirming certain prior acts.

WHEREAS, the City of Seattle ("City") adopted Resolution Number 28865, committing the City's support to the Seattle School District's ("SSD") Building Excellence Capital Improvement Program ("BEX"); and

WHEREAS, Hamilton International Middle School is adjacent to Wallingford Playfield and has been redeveloped as part of the BEX; and

WHEREAS, SSD and the City, through the Department of Parks and Recreation ("DPR"), executed a Memorandum of Agreement (fully executed as of July 2, 2009) ("MOA") "for the purpose of defining and limiting a mutually beneficial arrangement whereby, in conjunction with SSD's renovation of Hamilton International Middle School, SSD will make certain improvements to DPR property and, after making such improvements, DPR and SSD will cooperate in shared use and maintenance of the vacated street area;" and

WHEREAS, a new gymnasium constructed as part of the redevelopment of Hamilton International Middle School will enhance sports and other activities for students and members of the community, and will be available for programming by DPR; and

WHEREAS, City of Seattle Department of Planning and Development ("DPD") Project Numbers 6147629 and 6215479 require emergency exiting egress from SSD's property through Wallingford Playfield to the street rights-of-way; and

WHEREAS, DPD Project Numbers 6147629 and 6215479 require a thirty-foot no-build zone adjacent to the doors and windows in the north gym wall; and

WHEREAS, the egress easement agreement and no-build covenant authorized by this ordinance are intended to satisfy DPD permit conditions for the Hamilton International Middle School gymnasium, allowing SSD to obtain a permanent Certificate of Occupancy; and

WHEREAS, the public will realize enhanced educational and recreational opportunities in the form of community access to the new gym and outdoor basketball courts located on SSD property and SSD's construction of an outdoor plaza, amphitheater, and garden located on DPR property; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The Superintendent of Parks and Recreation ("Superintendent"), or his designee, is authorized, on behalf of the City of Seattle, to enter into an egress easement agreement with the Seattle School District, substantially in the form of Attachment 1, attached hereto and incorporated by this reference. The legal description of the egress easement is as follows:

The north one-half of vacated North 42nd St as vacated per City of Seattle Ordinance 98969, between the west margin of Densmore Ave North and the east margin of Woodlawn Ave North.

Section 2. The Superintendent or his designee is authorized, on behalf of the City of Seattle, to execute a covenant restricting use of real property referred to as Wallingford Playfield, substantially in the form of Attachment 2, attached hereto and incorporated by this reference. The legal description of the restricted area is as follows:

The south 30 feet of the east 116 feet of the north one-half of vacated North 42nd St as vacated per City of Seattle Ordinance 98969, between the west margin of Densmore Ave North and the east Margin of Woodlawn Ave North.

COUNCIL CLERK

Section 3. The Superintendent is further authorized to accept reimbursement from SSD for all administrative expenses accrued in processing the egress easement agreement and the covenant in an amount not to exceed of $15,000, which is to be deposited in the Parks and Recreation Fund.

Fund	**Department**	**Budget Control Level**	**Amount or Reimbursement**
Operating Fund (10200)	Parks and Recreation	Planning and Development (K370C)	$15,000

Section 4. For purposes of this ordinance, the requirements of Ordinance 118477, which adopted Initiative 42, are hereby superseded.

Section 5. Any acts consistent with the authority and prior to the effective date of this ordinance are hereby ratified and confirmed.

COUNCIL CLERK

Section 6. This ordinance shall take effect and be in force 30 days after its approval by the Mayor, but if not approved and returned by the Mayor within 10 days after presentation, it shall take effect as provided by Municipal Code Section 1.04.020.

Passed by the City Council the 26th day of September, 2011, and signed by me in open session in authentication of its passage this 26th day of September, 2011.

President _____ of the City Council

Approved by me this 30th day of September, 2011.

Michael McGinn, Mayor

Filed by me this 30th day of September, 2011.

Monica Martinez Simmons, City Clerk

(Seal)

Attachment 1: Egress Easement Agreement

Attachment 2: No-Build Covenant

Terry Dunning
DPR Wallingford Easement ORD ATT 1
June 21, 2011
Version #5

Return Address:
City of Seattle Department of Parks and Recreation
800 Maynard Avenue South
Third Floor
Seattle, WA 98134-1334
ATTN: Property Management

Please print or type information **WASHINGTON STATE RECORDER'S Cover Sheet** (RCW 65.04)

Document Title(s) (or transactions contained therein): (all areas applicable to your document **must** be filled in)1. Egress Easement Agreement 2. _____
3. _____ 4. _____

Reference Number(s) of Documents assigned or released: n/a

Additional reference #'s on page n/a of document

Grantor(s) (Last name, first name, initials)
1. The City of Seattle, a municipal corporation acting by and through its Department of Parks & Recreation
2. _____

Additional names on page n/a of document.

Grantee(s) (Last name first, then first name and initials)
1. Seattle School District No. 1, a municipal corporation
2. _____

Additional names on page n/a of document.

Legal description (abbreviated: i.e. lot, block, plat or section, township, range)

GRANTOR:
Lots 1 through 12, inclusive, Block 13, and 1 through 12, inclusive, Block 14, Lake Union Addition to the City of Seattle, according to the plat recorded in Volume 1 of Plats, page 238, in King County , Washington;

TOGETHER WITH that portion of vacated Densmore Avenue North, vacated North 42nd Street, and vacated alley in said Block 14 which attaches by operation of law as provided by City of Seattle Ordinance Number 98969.

GRANTEE:
All of Block 17, Lake Union Addition to the City of Seattle, according to the plat recorded in Volume 1 of plats, page 238, in King County, Washington;

TOGETHER WITH that portion of North 42nd St. adjacent as vacated by the City of Seattle Ordinance No. 98969, recorded under recording number 6659167, which was attached by operation of law.

Additional legal is on page 1 of document.

Assessor's Property Tax Parcel/Account Number ☐ Assessor Tax # not yet assigned
GRANTOR: 4083301190
GRANTEE: 4083301505

The Auditor/Recorder will rely on the information provided on the form. The staff will not read the document to verify the accuracy or completeness of the indexing information provided herein.

I am requesting an emergency nonstandard recording for an additional fee as provided in RCW 36.18.010. I understand that the recording processing requirements may cover up or otherwise obscure some part of the text of the original document.

_____ Signature of Requesting Party

EGRESS EASEMENT AGREEMENT

COUNCIL CLERK

This Egress Easement Agreement ("Easement Agreement") is made this _____ day of_____, 2011, by The City of Seattle, a municipal corporation acting by and through its Department of Parks and Recreation ("Grantor") for the benefit of the Seattle School District No. 1, a municipal corporation ("Grantee").

RECITALS

WHEREAS, the Grantor is the owner of the property affected by this Easement Agreement, commonly known as the Wallingford Playfield, located at 4225 Wallingford Avenue North in Seattle, King County, Washington, parcel number 408330-1190 and legally described as:

> Lots 1 through 12, inclusive, Block 13, and 1 through 12, inclusive, Block 14, Lake Union Addition to the City of Seattle, according to the plat recorded in Volume 1 of Plats, page 238, in King County , Washington;
>
> TOGETHER WITH that portion of vacated Densmore Avenue North, vacated North 42nd Street, and vacated alley in said Block 14 which attaches by operation of law as provided by City of Seattle Ordinance Number 98969.

("Parks Property"); and

WHEREAS, the Grantee is the owner of the property adjacent to the Wallingford Playfield, commonly known as Hamilton International Middle School, located at 1610 North 41st Street in Seattle, King County, Washington, parcel number 408330-1505 and legally described as:

> All of Block 17, Lake Union Addition to the City of Seattle, according to the plat recorded in Volume 1 of plats, page 238, in King County, Washington;
>
> TOGETHER WITH that portion of North 42nd St. adjacent as vacated by the City of Seattle Ordinance No. 98969, recorded under recording number 6659167, which was attached by operation of law.

("District Property"); and

WHEREAS, the Grantee desires to occupy and use the District Property as more specifically described in the plans and specifications contained in the Seattle Department of Planning and Development building permit application number 6147629 and revised by permit number 6215479; and

COUNCIL CLERK

WHEREAS, Grantee needs an easement across a portion of the Parks Property for the building egress required for the District Property by Section 1001.1 of the 2003 Seattle Building Code (SBC), on the terms and conditions described herein, and Grantor is willing to grant an egress easement subject to certain terms and conditions.

AGREEMENT

NOW, THEREFORE, in consideration of good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

1. Easement. Grantor hereby grants to Grantee, for the benefit of the District Property, a non-exclusive easement for the purpose of providing a continuous, unobstructed and undiminished path of egress or exit, as shown on Exhibit A, from District Property over and through the Parks Property to Woodlawn Avenue North to the East and Densmore Avenue N to the West, both public ways, legally described as: The north one-half of vacated North 42nd St as vacated per City of Seattle Ordinance 98696, between the west margin of Densmore Ave North and the east margin of Woodlawn Ave North.

2. Indemnification. Grantee shall indemnify, defend, and hold the Grantor harmless from any and all losses, claims, actions and damages suffered by any person or entity by reason of or resulting from any negligent, reckless, or intentionally wrongful act or omission of the Grantee or any of its officers, employees, students, or agents on the Parks Property, provided, that in the event the Grantor determines that one or more principles of government or public law are involved, the Grantor retains the right to participate in such action.

In the event both parties are held to have been liable in any suit arising out of their acts or omissions under this Easement Agreement, the costs and expense arising therefrom shall be prorated between the parties according to the relative degrees of their liability.

For purposes of this Easement Agreement only, each of the parties specifically and expressly waives, with respect to the other, its immunity and limitation on liability under any industrial insurance legislation including but not limited to Title 51 RCW, and acknowledges that this waiver was specifically entered into after mutual negotiation.

3. Maintenance Responsibilities. As provided in that certain Memorandum of Agreement between Grantor and Grantee, fully executed as of July 2, 2009 ("MOA"), Grantee is responsible, at its sole cost and expense, for maintaining, including both daily, routine upkeep maintenance and long-term repair/replacement maintenance, the two (2) staircases (installed by Grantee), including railings, that provide required emergency pedestrian egress from the District Property across Parks Property. (The staircases,

COUNCIL CLERK

located on Parks Property at the northwest and northeast corners of a hard surface play court, provide egress to Woodlawn Avenue North and directly to Wallingford Playfield, respectively.) As additional consideration, and pursuant to the MOA, Grantee is also responsible, at its sole cost and expense, for maintaining, including both daily, routine upkeep maintenance and long-term repair/replacement maintenance, the entire hard surface play court, including the portion on Parks Property, and the accessory elements associated with the play court, for example, railings and lighting.

4. Binding Effect of Easement. This Easement Agreement and its terms and conditions shall constitute covenants running with the land affected or benefited thereby and the rights and obligations of the parties herein shall inure to the benefit of and be binding upon their respective successors and assigns, so long as means of egress from a building to a public way is required by SBC Section 1001 or a like successor provision, and may not be terminated, extinguished, suspended or modified, except with the express, written consent of the City of Seattle Department of Planning and Development, or its functional successor.

5. Termination of Easement. If there is a change in ownership of the District Property or a change in the ownership of the building located on the District Property, or if the building on the District Property is no longer being used as a public school, this Easement Agreement shall be automatically terminated, subject to the written consent of the Seattle Department of Planning and Development or its functional successor.

(Signature on following page)

The City of Seattle

_____
By: Christopher Williams
Title: Acting Superintendent of Parks and Recreation

Seattle School District No. 1

By: _____
Name: _____
Its: _____

STATE OF WASHINGTON)
) ss
COUNTY OF KING)

On this ____ day of _____, 2011, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____, to me known to be the _____Superintendent of Parks and Recreation of The City of Seattle, a Washington municipal corporation, the municipal corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said municipal corporation for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument.

WITNESS MY HAND AND OFFICIAL SEAL hereto affixed the day and year first above written.

_____

_____
(TYPE OR PRINT NAME)
[SEAL] Notary Public in and for the State
of Washington, residing at _____.
My Commission expires on _____.

STATE OF WASHINGTON)
) ss
COUNTY OF KING)

On this ____ day of _____, 2011, I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it as the _____ of the SEATTLE SCHOOL DISTRICT NO. 1 OF KING COUNTY, WASHINGTON to be the free and voluntary act of such entity for the uses and purposed mentioned in the instrument.

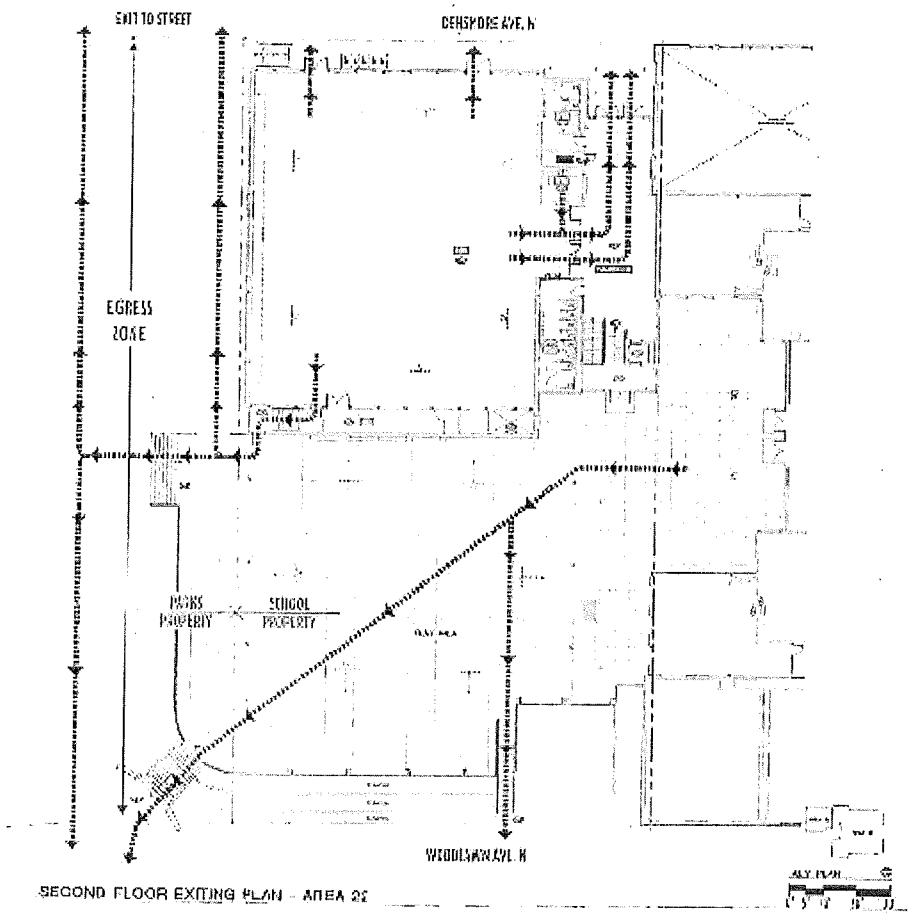
WITNESS MY HAND AND OFFICIAL SEAL hereto affixed the day and year first above written.

_____

_____
(TYPE OR PRINT NAME)
[SEAL] Notary Public in and for the State
of Washington, residing at _____.
My Commission expires on _____.

EXHIBIT A

PATH OF EGRESS



HAMILTON INTERNATIONAL MIDDLE SCHOOL

Terry Dunning
DPR Wallingford Easement ORD ATT 2
July 25, 2011
Version #5

Return Address:
City of Seattle Department of Parks and Recreation
800 Maynard Avenue South
Third Floor
Seattle, WA 98134-1334
ATTN: Property Management

Please print or type information **WASHINGTON STATE RECORDER'S Cover Sheet** (RCW 65.04)

Document Title(s) (or transactions contained therein): (all areas applicable to your document **must** be filled in)

1. No Build Covenant 2. _____
3. _____ 4. _____

Reference Number(s) of Documents assigned or released: n/a

Additional reference #'s on page n/a of document

Grantor(s) (Last name, first name, initials)
1. The City of Seattle, a municipal corporation acting by and through its Department of Parks & Recreation
2. _____, _____

Additional names on page n/a of document.

Grantee(s) (Last name first, then first name and initials)
1. Seattle School District No. 1, a municipal corporation
2. _____

Additional names on page n/a of document.

Legal description (abbreviated: i.e. lot, block, plat or section, township, range)

GRANTOR
Lots 1 through 12, inclusive, Block 13, and 1 through 12, inclusive, Block 14, Lake Union Addition to the City of Seattle, according to the plat recorded in Volume 1 of Plats, page 238, in King County , Washington;

TOGETHER WITH that portion of vacated Densmore Avenue North, vacated North 42nd Street, and vacated alley in said Block 14 which attaches by operation of law as provided by City of Seattle Ordinance Number 98969.

GRANTEE:
All of Block 17, Lake Union Addition to the City of Seattle, according to the plat recorded in Volume 1 of plats, page 238, in King County, Washington;

TOGETHER WITH that portion of North 42nd St. adjacent as vacated by the City of Seattle Ordinance No. 98969, recorded under recording number 6659167, which was attached by operation of law.

Additional legal is on page ____ of document.

Assessor's Property Tax Parcel/Account Number ☐ Assessor Tax # not yet assigned
GRANTOR: 4083301190
GRANTEE: 4083301505

The Auditor/Recorder will rely on the information provided on the form. The staff will not read the document to verify the accuracy or completeness of the indexing information provided herein.

I am requesting an emergency nonstandard recording for an additional fee as provided in RCW 36.18.010. I understand that the recording processing requirements may cover up or otherwise obscure some part of the text of the original document.

_____ Signature of Requesting Party

NO-BUILD COVENANT

This No-Build Covenant ("Covenant") is made by The City of Seattle, a municipal corporation acting by and through its Department of Parks and Recreation ("Grantor") for the benefit of Seattle School District No. 1, a municipal corporation ("Grantee").

RECITALS

WHEREAS, the Grantor is the owner of the property affected by this covenant, commonly known as the Wallingford Playfield, located at 4225 Wallingford Avenue North in Seattle, King County, Washington, parcel number 408330-1190 and legally described as:

> Lots 1 through 12, inclusive, Block 13, and 1 through 12, inclusive, Block 14, Lake Union Addition to the City of Seattle, according to the plat recorded in Volume 1 of Plats, page 238, in King County , Washington;
>
> TOGETHER WITH that portion of vacated Densmore Avenue North, vacated North 42nd Street, and vacated alley in said Block 14 which attaches by operation of law as provided by City of Seattle Ordinance Number 98969.

("Parks Property"); and

WHEREAS, the Grantee is the owner of the property adjacent to the Wallingford Playfield, commonly known as Hamilton International Middle School, located at 1610 North 41st Street in Seattle, King County, Washington, parcel number 408330-1505 and legally described as:

> All of Block 17, Lake Union Addition to the City of Seattle, according to the plat recorded in Volume 1 of plats, page 238, in King County, Washington;
>
> TOGETHER WITH that portion of North 42nd St. adjacent as vacated by the City of Seattle Ordinance No. 98969, recorded under recording number 6659167, which was attached by operation of law.

("District Property"); and

WHEREAS, the Grantee desires to occupy and use the District Property ("the gymnasium") as more specifically described in the plans and specifications contained in the Seattle Department of Planning and Development building permit application number 6147629 and revised by permit number 6215479; and

WHEREAS, the north exterior wall of the gymnasium must comply with Section 704.8, Allowable Area of Openings of the 2003 Seattle Building Code in order for the Grantee to occupy and use the gymnasium; specifically the maximum area of protected and unprotected

openings permitted in an exterior wall in any story shall not exceed the values set forth in Table 704.8; and

WHEREAS, the Grantee desires to have an unlimited area of protected exterior wall opening, and the 2003 Seattle Building Code, Table 704.8 provides that an unlimited area would be allowed if the fire separation distance were greater than 30 feet; and

WHEREAS, the Grantee desires a greater floor area for the building, and the 2003 Seattle Building Code section 506.2 allows increased frontage for having more than 25 percent of its perimeter on a public way or open space having a minimum width of 20 feet; and

WHEREAS, the Grantor enters into this Covenant freely and voluntarily;

NOW THEREFORE, the Grantor:

1. Covenants that it will observe, consent to, and abide by the conditions and obligations described herein, and hereby grants to Grantee a No-Build Zone to reflect those protected and unprotected exterior wall opening requirements found in Section 704.8 of the 2003 Seattle Building Code, specifically provide a minimum fire separation distance of 30 feet for unlimited opening and also increasing the percentage of the perimeter on open space for purpose of allowing increased frontage as provided in Section 506.2, as shown on Exhibit A (the "No-Build Zone"). Such No-Build Zone is legally described as:

   The north 30 feet of the east 116 feet of the north one-half of vacated North 42nd St as vacated per City of Seattle Ordinance 98696, between the west margin of Densmore Ave North and the east Margin of Woodlawn Ave North.

2. Acknowledges that the covenants contained herein are covenants running with the land and shall be binding upon the Grantor, its successors and assigns, heirs, grantees, or lessees of Parks Property, beginning on the date of recording in the County's records office. Each and every contract, deed, mortgage or other instrument covering or conveying the Parks Property, or any portion thereof, shall be conclusively held to have been executed, delivered and accepted subject to such covenants, regardless of whether such covenants are set forth in such contract, deed, mortgage or other instruments.

3. Covenants that no buildings or structures shall be erected within the herein defined No-Build Zone.

DEFAULT: If a violation of any of the foregoing covenants occurs, the City, acting through its Department of Planning and Development or functional successor, or the Grantee, may, after thirty days notice to the Grantor, and if applicable, its successors and assigns, heirs, grantees, or lessees of the Parks Property, institute and prosecute any proceeding at law or in equity to abate, prevent, or enjoin any such violation or to compel specific performance by the Grantor of its obligations hereunder. No delay in enforcing the provisions hereof as to any breach or violation

shall impair, damage or waive the right of the City or the Grantee to enforce the provisions hereof or to obtain relief against or recover for the continuation or repetition of such breach or violations or any similar breach or violation hereof at any later time.

TERMINATION: This Covenant shall remain in effect and not be removed by any party as long as it is necessary to satisfy the requirements of the 2003 Seattle Building Code and its successors. However, if the Seattle Building Code is amended to eliminate the necessity of the No Build Area or if the building on the District Property is demolished or remodeled such that it does not require the No Build Area under the Seattle Building Code, this Covenant shall automatically terminate, subject to the written consent of the Seattle Department of Planning and Development or its functional successor.

(Signature on following page)

IN WITNESS HEREOF, Grantor has executed this Covenant on the _____day of _____ _____, 2011.

The City of Seattle

_____
By: Christopher Williams
Title: Acting Superintendent of Parks and Recreation

STATE OF WASHINGTON)
) ss
COUNTY OF KING)

On this ____ day of _____, 2011 before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____, to me known to be the _____Superintendent of Parks and Recreation of The City of Seattle, a Washington municipal corporation, the municipal corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said municipal corporation for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument.

WITNESS MY HAND AND OFFICIAL SEAL hereto affixed the day and year first above written.

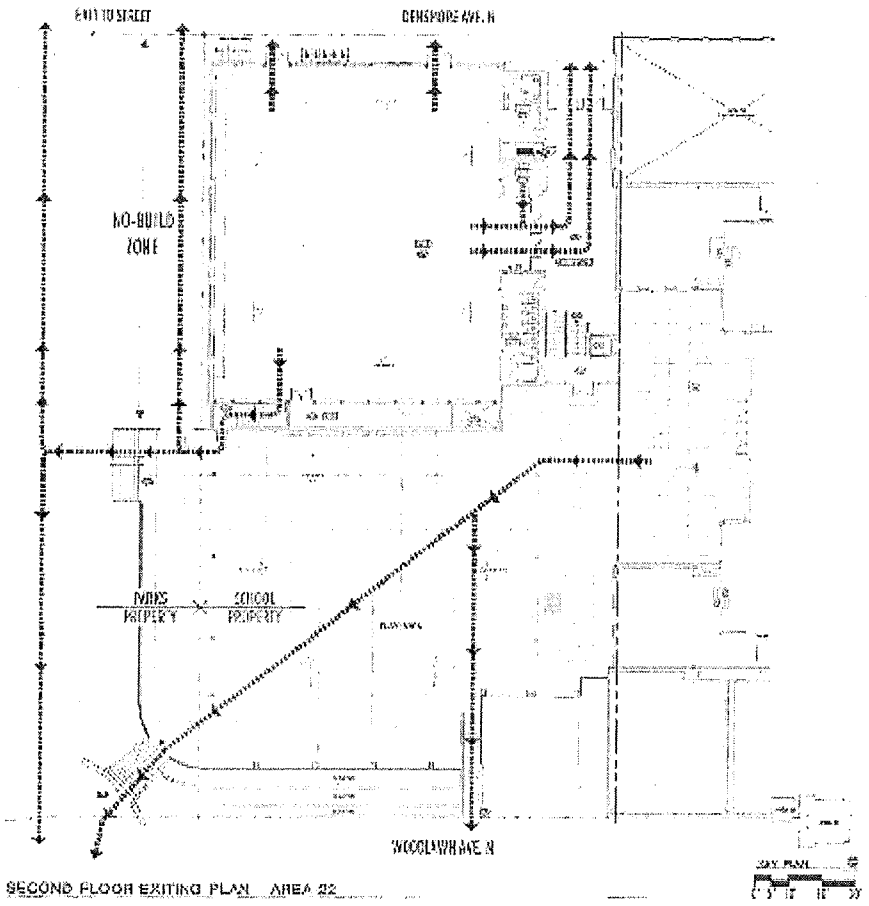
_____

_____
(TYPE OR PRINT NAME)
[SEAL] Notary Public in and for the State of Washington, residing at _____.
My Commission expires on _____.

COUNCIL CLERK

EXHIBIT A

NO-BUILD ZONE



HAMILTON INTERNATIONAL MIDDLE SCHOOL

Form revised: December 14, 2010

FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	CBO Analyst/Phone:
Parks and Recreation	Terry Dunning/684-4860	Amy Williams/233-2651

Legislation Title:
AN ORDINANCE relating to the Department of Parks and Recreation, authorizing the Superintendent of Parks and Recreation to enter into an egress easement agreement with Seattle School District No. 1 over portions of vacated N. 42nd Street between Woodlawn Avenue N. and Densmore Avenue N., and to execute a covenant restricting the use of property at Wallingford Playfield to satisfy permit requirements related to the construction of a new gymnasium on the Hamilton International Middle School property; authorizing acceptance of reimbursed City-incurred costs related to the egress easement agreement and covenant; superseding the requirements of Ordinance 118477, which adopted Initiative 42, for the purposes of this ordinance; and ratifying and confirming certain prior acts.

Summary of the Legislation:
The proposed legislation authorizes an easement agreement for emergency exit from Hamilton International Middle School (Hamilton) across Wallingford Playfield, as required for the school's permanent Certificate of Occupancy. In addition, the proposed legislation authorizes the Superintendent of Parks and Recreation to execute a covenant prohibiting structures on Wallingford Playfield property within thirty feet of the north gymnasium wall, also to ensure safe emergency exit per building code requirements.

Background:
In 1994, the City Council adopted Resolution 28865, committing the City's support to the Seattle School District (SSD)'s Building Excellence Capital Improvement Program ("BEX"). Hamilton International Middle School (Hamilton), which is adjacent to Wallingford Playfield, was redeveloped as part of the BEX program.

Because of the proximity of Wallingford Playfield to Hamilton, SSD agreed to fund several improvements at the playfield in conjunction with the redevelopment of the school. An MOA was signed in 2009, and the improvements included a plaza, amphitheater, and a relocated community garden. The redevelopment of Hamilton also included a new, full-sized school gym that Parks is able to use for recreation programs, if funding for programming is available. The new full-sized gym at Hamilton provides benefits both to the students as well as the community at large. In addition, the new facility provides year-round public restrooms, which benefit the community, as Wallingford Playfield's restrooms are closed during winter months. The public will also benefit from outdoor basketball courts on the paved plaza west of the gym.

To meet emergency exit requirements from the new gym, the Department of Planning and Development (DPD) is requiring SSD to obtain an easement across part of Wallingford Playfield. In addition, DPD is requiring a covenant from Parks and Recreation (DPR) that restricts the development of any structures in the Playfield area adjacent to the doors and windows on the north side of the gym wall. Both the easement and the covenant authorized in this legislation are required before DPD will issue a permanent Certificate of Occupancy for the school.

DPR recommends that Ordinance 118477, adopting Initiative 42, be superseded for purposes of this legislation for the following reasons: the City and community continue to benefit from the gym improvements at Hamilton; the egress easement and covenant will not result in any significant impacts on park use; and there is no reasonable or practical alternative.

Please check one of the following:

____ **This legislation does not have any financial implications.**
(Stop here and delete the remainder of this document prior to saving and printing.)

__X__ **This legislation has financial implications.**

Appropriations: N/A

Fund Name and Number	Department	Budget Control Level*	2011 Appropriation	2012 Anticipated Appropriation
TOTAL	**N/A**	**N/A**	**N/A**	**N/A**

Appropriations Notes:

Anticipated Revenue/Reimbursement: Resulting from this Legislation:

Fund Name and Number	Department	Revenue Source	2011 Revenue	2012 Revenue
Parks and Recreation Fund (10200) Planning and Development (K370C)	Parks and Recreation	Reimbursement from Seattle School District	Up to $15,000	
TOTAL			**Up to $15,000**	

Revenue/Reimbursement Notes: DPR will be reimbursed by SSD for staff time preparing the easement and covenant, up to a total of $15,000.

Total Regular Positions Created, Modified, or Abrogated through this Legislation, Including FTE Impact: N/A

Position Title and Department	Position # for Existing Positions	Fund Name & #	PT/FT	2011 Positions	2011 FTE	2012 Positions*	2012 FTE*
TOTAL	N/A	N/A	N/A	N/A	N/A	N/A	N/A

Position Notes:

Do positions sunset in the future? N/A

Spending/Cash Flow: N/A

Fund Name & #	Department	Budget Control Level*	2011 Expenditures	2012 Anticipated Expenditures
TOTAL	N/A	N/A	N/A	N/A

Spending/Cash Flow Notes:

What is the financial cost of not implementing the legislation?
Not implementing this legislation will forego up to $15,000 in revenue from SSD reimbursement to DPR for staff costs related to preparing the easement and covenant. Also, SSD would not be able to get a permanent Certificate of Occupancy for Hamilton Middle School, resulting in unknown costs for the District.

Does this legislation affect any departments besides the originating department? No.

What are the possible alternatives to the legislation that could achieve the same or similar objectives? There are none.

Is the legislation subject to public hearing requirements? No.

Other Issues: None.

List attachments to the fiscal note below:
Attachment A: Memorandum of Agreement with Seattle School District #1 (July 2009)
Attachment B: Wallingford Playfield Easement and Covenant Location Map

MEMORANDUM OF AGREEMENT
Concerning
WALLINGFORD PLAYFIELD and HAMILTON SCHOOL

THIS MEMORANDUM OF AGREEMENT is made by and between SEATTLE SCHOOL DISTRICT NO. 1, a municipal corporation (hereinafter "District"), and THE CITY OF SEATTLE, a municipal corporation acting by and through its DEPARTMENT OF PARKS AND RECREATION (hereinafter "City," referring to the corporate entity; or "Parks," referring specifically to a Department of City government) concerning City-owned property under the jurisdiction of Parks, known as WALLINGFORD PLAYFIELD, and adjacent District-owned property known as HAMILTON SCHOOL. The properties share a common boundary which is the centerline of North 42nd Street, between Woodlawn Avenue North and Densmore Avenue North, as vacated by Ordinance 98969.

1. PURPOSE

This Memorandum of Agreement is entered into for the purpose of defining and limiting a mutually beneficial arrangement whereby, in conjunction with District's renovation of Hamilton School, the District will make certain improvements to park property and, after making such improvements, Parks and the District will cooperate in shared use and maintenance of the vacated street area.

The parties acknowledge that this Agreement is associated with the District seeking an easement from the City for the purpose of providing required emergency pedestrian egress from the school property across park property.

2. TERM

The term of this Agreement shall commence on the final date of signature to this Agreement and continue for three (3) years after Physical Completion of the District's work on Parks' property. Physical Completion means that Parks has inspected and accepted all work and given final approval of all construction and improvements, at which time the Warranty Period commences.

3. IMPROVEMENTS

The improvements the District will make to Parks property include, but are not limited to: a portion of a hard surface play court; an outdoor plaza and amphitheatre, usable as outdoor classroom space; landscaped areas; crushed rock pathways; drainage system improvements, including a catch basin; irrigation; lighting; two (2) staircases; and railings; all as specified in Plans approved by Parks June 2, 2009 under Parks Tracking Number WP92401-L36, and permitted by the Department of Planning and Development under Project #6147629 and 6215479. These plans and permits are incorporated into this Agreement by reference.

All work shall be consistent with Parks design and construction standard specifications and details and subject to approval and acceptance by the Park Engineer.

The District may make no changes or substitutions to the plans, as approved by Parks, EXCEPT after Parks' review and written approval. The Park Engineer shall be given a minimum of five (5) business days (M - F) to review and respond to any requests from the District for revisions to the approved plans. Allocation of costs for any changes, substitutions, or revisions to the approved plans requested by Parks will be determined through negotiation between the parties.

4. CONSTRUCTION PERIOD
Construction is anticipated to begin on or about September 1, 2009 and be completed within 240 days. The District shall notify the Park Engineer no fewer than two (2) business days prior to start of construction.

Completion is interpreted as Physical Completion, meaning that Parks has inspected and accepted all work and given final approval for all construction and improvements on park property, at which time the Warranty Period commences.

5. CONSTRUCTION REQUIREMENTS
Prior to the start of construction, the District shall erect safety fencing around the construction area and maintain it throughout the construction period to prevent public access to the construction area and assure the public's safe use of the non-work areas of Wallingford Playfield. Throughout the construction period, the District shall take whatever other safety precautions deemed prudent to assure the public's safe use of the remainder of Wallingford Playfield that is not included in the construction area.

The District must request permission and receive approval from the Park Engineer in advance of any temporary construction access or activities that may adversely affect or restrict public access to non-work areas of Wallingford Playfield.

6. PERMITS; INSPECTIONS
All costs for permits and required inspections are the responsibility of the District.

Parks staff shall be allowed access to the site at all times to view work in progress and to inspect as deemed necessary or desirable by Parks. Parks must notify the District's on-site construction representative of presence prior to entering the construction area.

Construction inspection requests may be made by telephone to Parks Inspection Hotline, 206-684-7034.

The District must request inspection by no fewer than two (2) business days' prior notice to Parks and receive responding acknowledgement from Parks for: a) underground utilities including drainage or water systems alterations or improvements PRIOR to closing any open construction trench; and b) final inspection at completion of construction.

The District must contact the Utility Notification Center at 811 or 800-424-5555 or www:callbeforeyoudig.org for utility locates. The District shall call Parks Inspection Hotline at (206) 684-7034 for utility locates within park property no less than 48 hours prior to construction.

7. RECORD DOCUMENTS
The District must provide Parks with a full set of Record Documents for all work on park property with all "as built" information prior to Physical Completion.

8. WARRANTY PERIOD
The District shall warrant all materials and workmanship of all construction and improvements to park property, including plant materials, utility installations, hard surfaces, and accessory elements such as railings and light fixtures, for one year beyond Physical Completion.

During the one-year Warranty Period, the District will replace any dead or unhealthy plants, as determined by Parks..

9. ESTABLISHMENT PERIOD and PAYMENT
The Establishment Period, the period of time necessary to assure healthy establishment of the plant materials, is defined as three (3) years following Parks' final inspection and formal acceptance or approval at Physical Completion of construction. During this three-year period, the District shall pay for projected costs to be incurred by Parks to irrigate and maintain the planted areas.

The District shall make a one-time payment to Parks in the amount $85,133.50 to cover such irrigation and maintenance costs, payable in full within thirty (30) days of Parks' formal acceptance/approval of work at Physical Completion. This amount was calculated on the basis of the cost of one-half of a fulltime equivalent District maintenance staff person for three years, escalated at 4% per year for inflation, starting from 2008 costs. The amount includes $323.50 as estimated cost for irrigation water, which will be supplied by a separate zone of Parks' irrigation system, to terraced planting areas on District property at the south edge of the hard surface play court. At the end of the plant Establishment Period, the irrigation line to the District property will be terminated.

At the end of the plant Establishment Period, the District has no further obligation to maintain Parks property or improvements EXCEPT as specified in paragraph 10, below.

10. POST-WARRANTY PERIOD and POST-ESTABLISHMENT PERIOD RESPONSIBILITIES
The District shall be responsible for maintaining, including both daily, routine upkeep maintenance and long-term repair/replacement maintenance, the entire hard surface play court, including the portion on park property, and the accessory elements associated with the play court, for example, railings and lighting.

The District shall be responsible for maintaining, including both daily, routine upkeep maintenance and long-term repair/replacement maintenance, the two (2) staircases that provide required emergency pedestrian egress from the school property across Parks' property. The staircases, located on Parks' property at the northwest and northeast corners of the hard surface play court, provide egress to Woodlawn Avenue North and direct to Wallingford Playfield, respectively.

COUNCIL CLERK

The District shall bear no responsibility for plant materials or improvements on Parks property after the Warranty Period, EXCEPT payment for care during the plant Establishment Period, as described at paragraph 9, above.

11. EASEMENT

Parks agrees to propose legislation to the City Council which would grant an easement to the District for required emergency pedestrian egress from school property by two (2) staircases that will be constructed on Parks property. The District shall pay all costs associated with obtaining and recording the easement, including City staff time incurred in preparing and processing the necessary documents. If requested by the District, Parks will provide an accounting of the expenditures.

Parks Accounting will assign a charge number, and City staff time and other costs will be charged against the account. Total cost is anticipated not to exceed $15,000.00. Parks will bill the District incrementally and the District will reimburse Parks within 30 days of billing.

12. INDEMNIFICATION

District shall indemnify and hold the City harmless from any and all losses, claims, actions, and damages suffered by any person or entity by reason of or resulting from any negligent, reckless, or intentionally wrongful act or omission of the District or any of its officers, employees, students, or agents on the park property. If, as a consequence of any such act or omission, any suit or action is brought against the City, the District, upon notice of commencement of the action, shall defend the suit or action at no cost and expense to the City, and promptly satisfy any final judgment adverse to the City; provided, that in the event the City determines that one or more principles of governmental or public law are involved, the City retains the right to participate in such action.

In the event that both parties are held to have been, or agree to be treated as having been, jointly liable in any suit arising out of their acts or omissions under this Agreement, the costs and expense arising therefrom shall be prorated between the parties according to the relative degrees of their liability.

The indemnification obligations set forth in this section shall survive termination of this Agreement.

For purposes of this Agreement only, each of the parties specifically and expressly waives, with respect to the other, its immunity and limitation on liability under any industrial insurance legislation including but not limited to Title 51 RCW, and acknowledges that this waiver was specifically entered into after mutual negotiation.

13. DAMAGE OR DESTRUCTION

In the event the property or improvements thereon are partially or wholly destroyed or damaged by fire, earthquake, or other casualty, neither the District nor the City shall be required to repair or rebuild the same. If either party requests permission from the other

to repair or rebuild improvements located on the other party's property, such permission shall not be unreasonably withheld.

14. LIENS AND ENCUMBRANCES
The District shall keep the park property free and clear of any liens and encumbrances arising out of the use or occupancy of the park property by the District. At the City's or Parks' request, the District shall furnish the City with written proof of payment of any item which, if not paid, would or might constitute the basis for such a lien on the park property.

15. COMPLIANCE WITH LAWS
The District shall comply fully with all federal and state statutes and City ordinances now or hereafter in force with respect to the park property and District's use or activities thereon. The District warrants and represents to City that the District shall use the park property only for lawful purposes.

16. HAZARDOUS SUBSTANCES
District shall be responsible for complying with all federal, state and local laws and regulations in regard to the handling and disposing of hazardous substances that the District or District's contractor(s) brings onto or uses on park property.

17. NOTICES
All notices, statements, demands, requests, consents, approvals, authorizations, offers, agreements, appointments, or designations under this Agreement by either party to the other shall be in writing and shall be sufficiently served upon the other party if sent by certified mail, return receipt requested, postage prepaid, and addressed as follows, or to such other address as either party may inform the other by notice:

To the City:

Department of Parks and Recreation
Property and Acquisition Services
800 Maynard Avenue South
Seattle, WA 98134

To the District:

Seattle School District No. 1
Property Management Office
2445 3rd Avenue South
Seattle, WA 98134

18. MISCELLANEOUS
The paragraph and section headings are for convenience only and shall not be used to expand or interpret the meaning of any part of this Agreement.

Time is of the essence.

If any portion of this Agreement shall be deemed void, illegal or unenforceable, the balance of this Agreement shall not be affected.

This Agreement shall be interpreted under the laws of the State of Washington.

The parties agree that the Superior Court of the State of Washington for King County shall have sole jurisdiction over any question, claim, loss or injury arising under this Agreement.

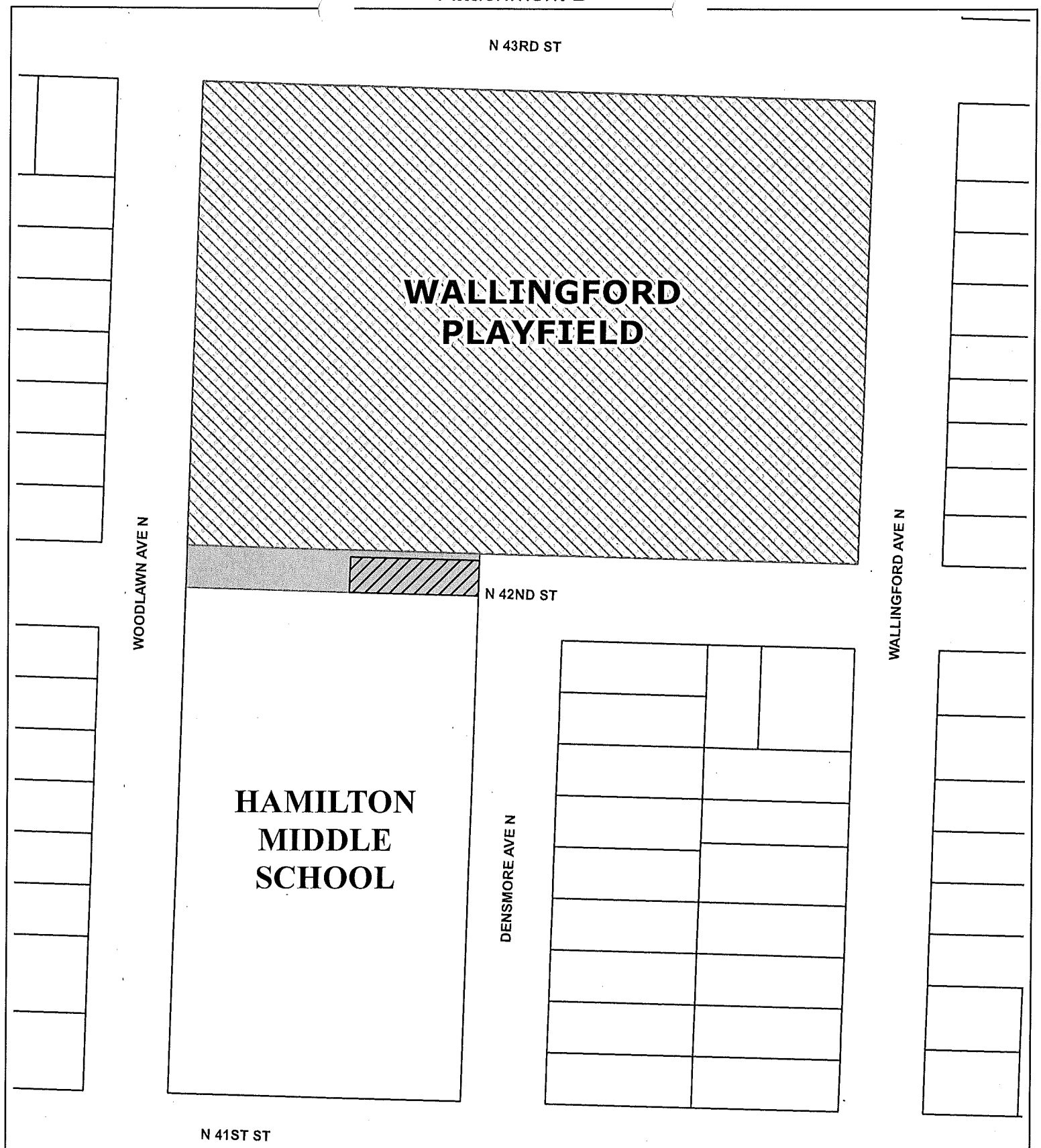
For Seattle School District No. 1:

name	title	date
[illegible signature]	CFOO	6/26/09

For The City of Seattle:

name	title	date
[illegible signature]	Supt	7/2/09

Department of Parks and Recreation



Wallingford Playfield Easement and Covenant Location Map

SEATTLE PARKS AND RECREATION

Legend
- No-Build Zone
- Emergency Egress Easement
- Wallingford Playfield
- Parcel Boundary

50 0 50
Feet
1 inch = 100 feet

N W E S

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Map date: June 8, 2011

City of Seattle
Office of the Mayor

August 2, 2011

Honorable Richard Conlin
President
Seattle City Council
City Hall, 2nd Floor

Dear Council President Conlin:

I am pleased to transmit the attached proposed Council Bill authorizing the Superintendent of Parks and Recreation to execute an egress easement agreement and a restrictive covenant necessary for the redevelopment of Hamilton Middle School and the enhancement of Wallingford Playfield. The proposed legislation authorizes an easement for emergency exit from Hamilton across the playfield, as required for the school's permanent Certificate of Occupancy. In addition, the proposed legislation authorizes a restrictive covenant prohibiting structures within 30 feet of the north gymnasium wall to keep the emergency exit area open per building code requirements.

This Council Bill follows the July 2009 Memorandum of Agreement (MOA) between the City and Seattle School District No. 1 (SSD). By the MOA, SSD agreed to make certain improvements on park property for the benefit of the public, including a plaza, amphitheater and community garden. Part of the Hamilton redevelopment included building a new, full-sized school gym. The gym provides enhanced student and community use, as well as providing year-round public restrooms (Wallingford Playfield's restrooms are closed during winter months). The best emergency exit route from the gym is through the north doors and across park property. The Department of Planning and Development requires the egress easement and restrictive covenant included in this legislation as permit conditions and as conditions to the issuance of a final certificate of occupancy.

Approval of this legislation ensures safe emergency exit from Hamilton Middle School across park property. Thank you for your consideration of this legislation. Should you have any questions, please contact Terry Dunning at 684-4860.

Sincerely,

Michael McGinn
Mayor of Seattle

cc: Honorable Members of the Seattle City Council

Michael McGinn, Mayor
Office of the Mayor
600 Fourth Avenue, 7th Floor
PO Box 94749
Seattle, WA 98124-4749

Tel (206) 684-4000
Fax (206) 684-5360
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mike.mcginn@seattle.gov

STATE OF WASHINGTON – KING COUNTY

--ss.

277354 No.
CITY OF SEATTLE,CLERKS OFFICE

Affidavit of Publication

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

CT:123714-123721 TITLE

was published on

10/17/11

The amount of the fee charged for the foregoing publication is the sum of $ 150.15, which amount has been paid in full.

Subscribed and sworn to before me on

10/17/11

Notary public for the State of Washington,
residing in Seattle

JENNIFER A. PATZER
COMMISSION EXPIRES
NOTARY
PUBLIC
STATE OF WASHINGTON

Affidavit of Publication

State of Washington, King County

City of Seattle

The full text of the following legislation, passed by the City Council on September 26, 2011, and published below by title only, will be mailed upon request, or can be accessed at http://clerk.seattle.gov. For information on upcoming meetings of the Seattle City Council, please visit http://www.seattle.gov/council/calendar. Contact: Office of the City Clerk at (206) 684-8344.

ORDINANCE NO. 123714

AN ORDINANCE establishing a Seattle Tourism Business Improvement Area; levying special assessments upon hotel businesses within the area; providing for the deposit of revenues in a special account and expenditures therefrom; providing for collection of and penalties for delinquencies; providing for the establishment of a Ratepayers Advisory Board, and providing for an implementation agreement with a Program Manager.

ORDINANCE NO. 123715

AN ORDINANCE relating to Seattle Department of Parks and Recreation; authorizing the Superintendent of Parks and Recreation to enter into an easement agreement granting and conveying a permanent subsurface tunnel easement under portions of the Cheasty Greenspace to the Central Puget Sound Regional Transit Authority and to accept payment therefor; finding that the grant of a permanent subsurface tunnel easement meets the requirements of Ordinance 118477, adopting Initiative 42, to the extent applicable; ratifying and confirming the grant of temporary surface rights on portions of the Cheasty Greenspace to the Central Puget Sound Regional Transit Authority for temporary construction purposes and authorizing acceptance of payment therefor; and exempting the grant of temporary surface rights from the requirements of Ordinance 118477, to the extent applicable.

ORDINANCE NO. 123716

AN ORDINANCE relating to State of Washington restrictions on the use of certain property under the jurisdiction of the Department of Parks and Recreation; authorizing the Superintendent of Parks and Recreation to grant to the State of Washington a Deed of Right limiting the use of certain property in the Duwamish Head Greenspace to conservation purposes and to accept the release of a Deed of Right limiting the use of certain property in the Cheasty Greenspace to public recreation purposes.

ORDINANCE NO. 123717

AN ORDINANCE relating to the business license tax; amending the Seattle Municipal Code to provide that all return or tax information is confidential, privileged, and subject to disclosure in the manner provided by RCW 82.32.330; and amending Section 5.55.200 of the Seattle Municipal Code in connection therewith.

ORDINANCE NO. 123718

AN ORDINANCE relating to the Seattle Center Department; authorizing the Seattle Center Director to execute a ten year lease agreement, with additional options to extend, with Friends of KEXP; under which agreement KEXP will renovate and lease space in the Northwest Rooms and a portion of the adjacent courtyard at Seattle Center for use as KEXP's radio broadcast studios and offices, performance spaces, a cafe, a shared use outdoor stage, and other uses supporting KEXP's operations.

ORDINANCE NO. 123719

AN ORDINANCE relating to economic development; authorizing the Council President to sign a letter of understanding with Wyndham Publications, Inc. to sponsor the creation of an economic development and tourism publication consisting potentially of a three-book series about the City with the working title, Seattle: The Emerald City; and ratifying and confirming prior acts.

ORDINANCE NO. 123720

AN ORDINANCE relating to the Department of Parks and Recreation,

authorizing the Superintendent of Parks and Recreation to enter into an egress easement agreement with Seattle School District No. 1 over portions of vacated N. 42nd Street between Woodlawn Avenue N. and Densmore Avenue N., and to execute a covenant restricting the use of property at Wallingford Playfield to satisfy permit requirements related to the construction of a new gymnasium on the Hamilton International Middle School property; authorizing acceptance of reimbursed City- incurred costs related to the egress easement agreement and covenant; superseding the requirements of Ordinance 118477, which adopted Initiative 42, for the purposes of this ordinance; and ratifying and confirming certain prior acts.

ORDINANCE NO. 123721

AN ORDINANCE appropriating money to pay certain audited claims and ordering the payment thereof.

Publication ordered by the City Clerk

Date of publication in the Seattle Daily Journal of Commerce, October 17, 2011.

10/17(277354)