From: Vice Chair Zaletel and Chair Constant


This proposed ordinance brings before the Assembly a transaction that resulted in a very long term (5 years plus one 5--year extension option) agreement between the Municipality of Anchorage (MOA) and O’Malley Ice and Sports Center LLC (Tenant), transferring control and use of three valuable and beloved municipal facilities - the Dempsey Anderson Ice Arena, Ben Boeke Ice Arena and the George M. Sullivan Arena (“ Arenas”). This arrangement started out in an RFP competitive procurement process in the Purchasing Department, resulting in a professional services agreement, and next became a “restated” professional services agreement adding the Sullivan arena and requiring a substantial Amendment No. 1 (p. 59 of Exhibit A to the ordinance). Complicating the required public process, the compensation to the Tenant under the restated professional services agreement is based on projected revenues derived from the Tenant in operating the facilities. Because the Administration views this stream of income as speculative or unknown, the Administration asserted in work sessions on this subject that the transaction did not trigger the Title 7 contract obligation amounts requiring Assembly approval for the contract or for Amendment No. 1.

The Anchorage Municipal Charter Sec. 10.02(8) requires the Assembly to enact an ordinance to “convey or lease, or authorize the conveyance or lease, of any interest in the lands of the municipality.” Regardless of the name given to this transaction, the substantive and material terms of this transaction mean it is essentially a lease or conveyance of an interest in three significant municipal facilities. This Charter provision that requires an ordinance (and therefore Assembly approval) has been implemented in Title 25, Chapter 25.30, Disposal of Municipal Land, requiring an ordinance to dispose of an interest in land (easement, licenses, right-of-way, leases, conveyances) and Title 7, Chapter 7.15, General Contracting Procedures, specifically AMC 7.15.040 and .080, requiring Assembly approval of contracts and amendments thereto prior to their execution. And although there are exceptions under both titles for small transactions, these exceptions were never intended to authorize the conveyance or lease of a large facility for five to ten years without Assembly approval and public process. As this particular contract contains
provisions more typical of a lease than a use agreement, the Assembly's approval should have been sought.

This proposed ordinance refers to the transaction as a lease due to some unusual contract provisions. For instance, the vast majority of municipal contracts provide the Municipality with the authority to terminate for convenience (for any reason) and limit the contractor's right to terminate for convenience. In this transaction, the operator may terminate for convenience upon limited notice, while the Municipality must provide 36 months to terminate – effectively limiting the right of the Municipality to terminate for convenience for 3 years. See Amendment No. 1, to Amended and Restated Contract for Professional Services with O'Malley Ice and Sports Center, LLC dated September 8, 2023, Item 11, (Exhibit A to AO, p. 60). This is similar to leases of Municipal real property that generally limit the right of the Lessor (in this case the MOA) to terminate for convenience. In addition, the transaction may be extended for one five-year period, and the consent to the extension cannot be unreasonably withheld by the MOA – essentially giving the Tenant a 10-year term. See Amended and Restated Contract, Sec. 3.B. (Id., Exhibit A to AO, p. 3)

Upon the Assembly's discovery of the circumvention of the required approval based on an interpretation by the Administration, Chair Constant and Vice-Chair Zaletel submitted AO 2023-107 and AO 2023-108, amending Titles 7 and 25 to provide additional language implementing the Charter requirement. These proposed ordinances would explicitly capture within Title 7 any contract where the compensation is based on an operator's or tenant's use of municipal property. Both ordinances are currently set for public hearing on November 21, 2023.

In the meantime, this already-executed transaction continues to roll forward in effect and without the required Assembly approval or public process. This ordinance is intended to immediately place the transaction before the public and the Assembly. Approval of the ordinance would ratify the agreement; if the ordinance is rejected the agreement would in effect be nullified; and it may be postponed to a time certain for particular changes to be made that the Assembly could approve.

Prepared by: Assembly Counsel's Office

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