



**MUNICIPALITY OF ANCHORAGE
ASSEMBLY MEMORANDUM**

No. AM 869-2023

Meeting Date: November 7, 2023

1 **From: Vice Chair Zaletel and Chair Constant**

2
3 **Subject: AO 2023-116 – AN ORDINANCE OF THE ANCHORAGE**
4 **MUNICIPAL ASSEMBLY AMENDINGAN ORDINANCE OF THE**
5 **ANCHORAGE MUNICIPAL ASSEMBLY APPROVING A FIVE (5)**
6 **YEAR LEASE BETWEEN THE MUNICIPALITY OF ANCHORAGE**
7 **(LESSOR) AND O’MALLEY ICE AND SPORTS CENTER, LLC**
8 **(TENANT) FOR PREMISES LOCATED AT 1600 GAMBELL**
9 **STREET, 1741 WEST NORTHERN LIGHTS BOULEVARD AND 534**
10 **EAST 16TH AVENUE FOR THE CONTINUED OPERATION OF THE**
11 **GEORGE M. SULLIVAN ARENA, THE DEMPSEY ANDERSON ICE**
12 **ARENA, AND THE BEN BOEKE ICE ARENA.**

13
14 This proposed ordinance brings before the Assembly a transaction that resulted in
15 a very long term (5 years plus one 5--year extension option) agreement between
16 the Municipality of Anchorage (MOA) and O’Malley Ice and Sports Center LLC
17 (Tenant), transferring control and use of three valuable and beloved municipal
18 facilities - the Dempsey Anderson Ice Arena, Ben Boeke Ice Arena and the George
19 M. Sullivan Arena (“Arenas”). This arrangement started out in an RFP competitive
20 procurement process in the Purchasing Department, resulting in a professional
21 services agreement, and next became a “restated” professional services agreement
22 adding the Sullivan arena and requiring a substantial Amendment No. 1 (p. 59 of
23 Exhibit A to the ordinance). Complicating the required public process, the
24 compensation to the Tenant under the restated professional services agreement is
25 based on projected revenues derived from the Tenant in operating the facilities.
26 Because the Administration views this stream of income as speculative or unknown,
27 the Administration asserted in worksessions on this subject that the transaction did
28 not trigger the Title 7 contract obligation amounts requiring Assembly approval for
29 the contract or for Amendment No. 1.

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

1 provisions more typical of a lease than a use agreement, the Assembly’s approval
2 should have been sought.

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

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

26
27 In the meantime, this already-executed transaction continues to roll forward in effect
28 and without the required Assembly approval or public process. This ordinance is
29 intended to immediately place the transaction before the public and the Assembly.
30 Approval of the ordinance would ratify the agreement; if the ordinance is rejected
31 the agreement would in effect be nullified; and it may be postponed to a time certain
32 for particular changes to be made that the Assembly could approve.

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34 Prepared by: Assembly Counsel’s Office
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36 Respectfully submitted: Meg Zaletel, Assembly Vice Chair
37 District 4, Midtown Anchorage
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39 Christopher Constant, Assembly Chair
40 District 1, North Anchorage