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October 12, 1998
poolord2
clerk 10/13/98

Introduced By:

Proposed No.:

98-625

ORDINANCE NO. **13308**

AN ORDINANCE relating to use of King County swimming pools; requiring use agreements executed in 1998 for use by organizations other than King County, repealing ordinance 13306, and declaring an emergency.

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

SECTION 1. Findings of Fact.

The council makes the following findings in support of the enactment of this ordinance on an emergency basis:

1. The county has a reasonable interest in prohibiting the use of county-owned pools by any school districts that have not entered into written pool use agreements with the county.
2. Under the requirements of current county law (specifically the requirements of Ordinance #13306) the executive has been unable to reach agreement with certain school districts regarding the terms governing district pool use.

1 3. Under the requirements of Ordinance 13306, a number of swimming and diving
2 events have been canceled. Unless the school districts and the county are able
3 immediately to enter into written agreements regarding pool use that are
4 acceptable to all parties, there is a risk that a number of school swimming and
5 diving meets will be canceled and that the county-wide interscholastic girl's
6 competitive swimming and diving seasons may be disrupted or lost.

7 4. The opportunity to practice for competitive swimming and diving meets is an
8 important health and safety consideration for schoolchildren participating in such
9 competitions and the continued closure of county-owned pools to certain school
10 districts and the disruption of the competitive swimming and diving seasons are
11 circumstances that would significantly affect hundreds of school children that
12 participate in competitive water sports in King County.

13 SECTION 2. No school district shall be allowed to use any King County swimming
14 pool unless it has executed in 1998 a use agreement for use of the pool. Except for school
15 districts that have executed an agreement in 1998 and delivered it to King County prior to
16 the effective date of this ordinance, no school district shall be allowed to use any King
17 County swimming pool unless it has executed in 1998 a use agreement for use of the pool in
18 the form attached as Exhibit 1 to this ordinance.

19 SECTION 3. The council finds as a fact and declares that an emergency exists and
20 that the enactment of this ordinance as an emergency ordinance is necessary for the
21 immediate preservation of public peace, health or safety or for the support of county
22 government and its existing public institutions.

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SECTION 4. Ordinance 13306 is hereby repealed.

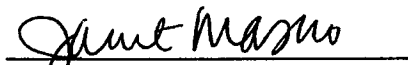
INTRODUCED AND READ for the first time this 12th day of
October, 1998.

PASSED by a vote of 11 to 0 this 12th day of October,
1998.

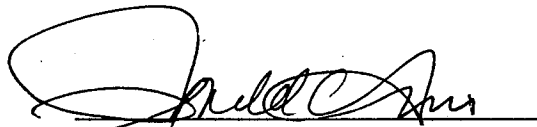
KING COUNTY COUNCIL
KING COUNTY, WASHINGTON


Chair

ATTEST:


Deputy Clerk of the Council

APPROVED this 13 day of October, 1998.


King County Executive

Attachments: Use Agreement 10/12/98

KING COUNTY DEPARTMENT OF PARKS

POOL USE AGREEMENT

October 12, 1998

THIS POOL USE AGREEMENT is made and entered into this _____ day of _____ between

_____, hereinafter referred to as the "School District", and King County, a legal subdivision of the State of Washington, hereinafter referred to as "King County", for the use, by the School District, of a certain Swimming Pool, showers, locker rooms and related facilities, hereinafter referred to as Swimming Pool.

WHEREAS School District, desires to use King County facilities for conducting certain programs of instruction in swimming and aquatic sports and King County desires to have the School District use the King County Swimming Pool located at _____, and other King County pools for such purposes; and

WHEREAS King County is willing to allow the School District to use the above-referenced Swimming Pool in return for payment of rent, and the School District is willing to pay rent at an hourly rate for its use of the Swimming Pool, therefore, in consideration of the promises herein the parties agree as follows:

1. TERM OF AGREEMENT, HOURS AND RATE OF RENT

The term of this Pool Use Agreement shall be for the _____ school year. The School District shall be entitled to use the Swimming Pool beginning _____ . The specific hours of pool use shall be determined and agreed upon by the School District and the County Pool Manager of the above-referenced pool. The Hourly School Program Schedule may be adjusted only upon written notice to the County Pool Manager of the above-referenced pool for the following:

- a) The Instructional Program Hours as agreed upon.
- b) The Interscholastic Program Hours as agreed upon.

In addition, when King County has not scheduled the pool's use to others, the School District may upon reasonable notice to King County, request permission to use the Swimming Pool for additional hours on school or non-school days. King County shall not unreasonably withhold its permission.

The School District shall pay King County \$ _____ per hour for pool use in 1998 and \$ _____ per hour in 1999. The 1998 and 1999 rates are set forth in King County Ordinances.

In the event that the parties fail to timely execute a new Pool Use Agreement upon the expiration of this agreement, the terms of this Pool Use Agreement shall remain in full force and effect, until a new Pool Use Agreement is executed or until this Pool Use Agreement is terminated pursuant to Section 10 herein.

2. SUPERVISORY AND INSTRUCTIONAL PERSONNEL

The person or persons empowered by the School District with supervision and responsibility for the various school aquatic programs shall have current lifeguard training certification, current CPR certification, and current first aid certification. School District personnel acting as dive coaches may substitute United States Diving National Safety Certification. Swim coaches may substitute United States Swimming Safety Training for Swim Coaches.

The School District assumes full responsibility for ensuring compliance with this section (2) and acknowledges that King County is not responsible for ensuring compliance with this section.

3. EQUIPMENT

Equipment necessary for the School District program shall be provided by School District except when King County, by separate written agreement, provides equipment for use in the School District's program.

4. SAFETY REGULATIONS

School District programs shall be conducted in conformance with all applicable safety regulations adopted by the State of Washington as now enacted or as hereinafter amended.

The School District assumes full responsibility for ensuring compliance with this section (4) and acknowledges that King County is not responsible for ensuring compliance with this section.

5. PROCEDURE FOR NEEDS AND COMPLAINTS

Each party shall designate a person who shall be responsible for handling the administrative needs with respect to their use of the above-referenced Swimming Pool. Suggestions and/or complaints between the parties shall be transmitted through such persons.

6. INDEMNIFICATION/HOLD HARMLESS

The School District shall protect, defend, indemnify and save harmless King County, its officers, officials, employees, and agents, from any and all claims, demands, suits, penalties, losses, damages, judgments, attorney's fees and/or costs of any kind whatsoever, arising out of or in anyway resulting from acts or omissions of the School District, its officers, employees, agents and/or subcontractors, in the use of the facilities that are the subject of this Pool Use

Agreement.

Except for damages caused by the sole negligence of King County, the School District's obligations under this section shall include, but not be limited to:

(a) the duty to promptly accept tender of defense and provide defense to King County at the School District's own expense;

(b) indemnification for such claims whether or not they arise from the sole negligence of the School District or the concurrent negligence of the School District and King County or another party;

(c) the duty to indemnify and defend King County from any claim, demand, and/or cause of action brought by or on behalf of any of the School District's employees or agents. The foregoing duty is specifically and expressly intended to constitute a waiver of the School District's immunity under Washington's Industrial Insurance Act, RCW Title 51, as respects King County only, and only to the extent necessary to provide King County with a full and complete indemnity and defense of claims made by the School District's employees. The parties acknowledge that these provisions were mutually negotiated and agreed upon by them.

In the event that King County incurs attorney fees and/or costs in the defense of claims for damages within the scope of this section, such fees and costs shall be recoverable from the School District. In addition, King County shall be entitled to recover from the School District attorney's fees and costs incurred to enforce the provisions of this section (6).

(d) Notwithstanding the foregoing provisions of section (6), and except for allegations of negligence involving warnings and/or failure to post signs for School District swimming programs, King County will defend and indemnify the School District for allegations of improper maintenance of the Swimming Pool (including chlorine levels) and/or allegations of latent defect in design, construction or otherwise in the facility, unless the School District, its employees or students cause such defect(s).

7. INSURANCE

The School District agrees to maintain commercial general liability insurance with King County added as a named additional insured or other similar liability coverage acceptable to King County covering injuries to persons and damage to property, covering all of the activities pertaining to this Pool Use Agreement.

By requiring such insurance coverage, King County shall not be deemed to,

or construed to, have assessed the risks that may be applicable to the School District in this Pool Use Agreement. The School District shall assess its own risks and, if it deems appropriate and/or prudent, maintain greater limits or broader coverage than is herein specified.

SCOPE AND LIMITS OF INSURANCE

Coverage shall be at least as broad as:

- (i) General Liability: Insurance Services Office form number (CG00 01 Ed. 11-88) Covering Commercial General Liability, with a limit of not less than: \$5,000,000 combined single limit per occurrence, \$5,000,000 aggregate.

The policy shall include but not be limited to:

- (a) coverage for premises and operations;
- (b) contractual liability (including specifically liability assumed herein);
- (c) Employers Liability or "Stop-Gap" coverage.

- (2) Automobile Liability: Insurance Services Office form number (CA 00 01 Ed. 12-90) Covering Business Automobile Coverage, symbol 1 "any auto"; or the combination of symbols 2, 8, & 9, for a limit of not less than \$1,000,000 combined single limit per occurrence.

- (3) Workers' Compensation: Workers' Compensation coverage, as required by the Industrial Insurance Act of the State of Washington, statutory limits.

Deductibles and Self-Insured Retentions

The deductible and/or self-insured retention of the insurance coverage shall not limit or apply to King County and shall be the sole responsibility of the School District.

Other Insurance Provisions

The insurance coverages required by this Pool Use Agreement are to contain or be endorsed to contain the following provisions where applicable:

- (A) Liability Coverages:
 - (i) King County, its officers, officials, employees and agents are to be covered as additional insured as respects liability arising out of activities by or on behalf of the School District in connection with this Pool Use Agreement.
 - (ii) To the extent of the School District's negligence,

insurance coverage shall be primary insurance as respects King County, its officers, officials, employees and agents. Any insurance and/or self-insurance maintained by King County, its officers, officials, employees and/agents shall not contribute with the School District's insurance or benefit the School District in any way.

- (iii) The School District's insurance coverage shall apply separately to each insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.

(B) All Policies.

Coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except by the reduction of the applicable aggregate limit by claims paid, until after forty-five (45) days prior written notice has been given to King County.

(C) Acceptability of Insurers.

Unless otherwise accepted by King County, insurance coverage is to be placed with insurers with a Best's rating of no less than A: VIII, or, if not rated by Best's, with minimum surpluses the equivalent of Best's surplus size VIII.

(D) Verification of Coverage.

The School District shall furnish King County with certificates of insurance and endorsements required by this Pool Use Agreement. The certificates and endorsements for each policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be on forms approved by King County and are to be received and approved by King County prior to the commencement of activities associated with this Pool Use Agreement. King County reserves the right to require complete certified copies of all required policies at any time.

8. SEVERABILITY

If any provision of this agreement or the application of any term or provision to any person or circumstance is invalid or unenforceable, the remainder of this agreement, or the application of the term or provision or persons or circumstances other than those as to which it is held invalid, or unenforceable, will not be affected and will continue in full force.

9. NON-WAIVER

Failure of King County to insist on strict performance of the terms,

agreements and conditions herein contained, or any of them, shall not constitute or be construed as a waiver or relinquishment of King County's right thereafter to insist on compliance with any such term, agreement, or condition, but the same shall continue in full force and effect.

10. TERMINATION

This Pool Use Agreement may be terminated by King County or by the School District upon written notice to the other party at least thirty (30) days in advance of the intended termination date.

By _____

By _____

King County Parks Representative
Representative

School District

Date _____

Date _____

10/12/98