

MEMORANDUM

To: Gregg Mandsager, City Administrator
From: Richard Klimes, Director of Parks and Recreation *Richard Klimes*
Date: February 13, 2012
Re: Resolution Setting a Public Hearing – Proposed Concession Lease Agreement

INTRODUCTION:

Please accept this memo and the attached information as a request to hold a public hearing for the proposed concession lease agreement for Kent Stein Park, Soccer Complex, and the Aquatic Center.

BACKGROUND:

The City and Happy Joes Pizza, Muscatine, IA, are mutually interested in a two (2) year agreement for concession operations. Due to the length of the agreement, it is mandatory to have a Public Hearing by resolution prior to City Council approval of the proposed lease agreement. The proposed agreement and submitted request for proposal will be included with the agenda information for the March, 1, 2012, City Council Meeting.

RECOMMENDATION/RATIONALE:

At this time the City staff would recommend that the City Council set the Public Hearing by Resolution for Thursday, March 1, 2012, 7:00 P.M.

BACKUP INFORMATION:

1. Resolution setting the Public Hearing
2. Public Notice

Thank you for your time and attention to this matter. Please contact me if you have any questions, comments, or concerns.

C: Matt Beatty, Program Supervisor
Nick Gow, Athletic Facilities Manager

RESOLUTION NO. _____

A RESOLUTION SETTING THE TIME AND PLACE OF A PUBLIC HEARING
CONCERNING A PROPOSED CONCESSION AGREEMENT

RESOLVED, by the City Council of Muscatine, Iowa as follows:

SECTION 1: The City Council of Muscatine, Iowa intends to enter into a concession agreement with Happy Joes Pizza, Muscatine, IA to provide concessions at the Muscatine Soccer Complex, Kent Stein Park and the Muscatine Aquatic Center for a period of two (2) years.

SECTION 2: The City Council of Muscatine, Iowa will hold a public hearing on the proposed agreement at 7:00pm on March 1, 2012 in the Council Chambers at City Hall, Muscatine, Iowa.

SECTION 3: The City Clerk shall give notice of such public hearing by publication of a notice in the Muscatine Journal not less than four (4) nor more than twenty (20) days, prior to the date set for the public hearing, the notice shall be in the following form:

(NOTICE OF PUBLIC HEARING ATTACHED)

PASSED, APPROVED, AND ADOPTED THIS
16th DAY OF FEBRUARY, 2012.

ATTEST:

CITY COUNCIL OF THE
CITY OF MUSCATINE, IOWA

Gregg Mandsager, City Clerk

Mayor

PUBLIC NOTICE

NOTICE OF TIME AND PLACE OF A PUBLIC HEARING CONCERNING A PROPOSED CONCESSION AGREEMENT

Public Notice is hereby given that the City Council of the City of Muscatine, Muscatine, Iowa will hold a public hearing to hear comments on a proposed concession agreement to provide concessions at the Muscatine Soccer Complex, Kent Stein Park and the Muscatine Aquatic Center for a period of two (2) years. Said hearing will be held in the City Council Chambers, City Hall, Muscatine, Iowa, on March 1, 2012 at 7:00pm. All interested persons are invited to attend and will be given an opportunity to be heard relative to this matter.

Gregg Mandsager, City Clerk

.CONCESSION AGREEMENT
Muscatine Aquatic Center, Soccer Complex and Kent Stein Park

It is hereby agreed by and between the City of Muscatine, Iowa hereinafter referred to as City, and Happy Joes Pizza, Muscatine, IA hereinafter referred to as Lessee, as follows:

1. That the City hereby leases to the Lessee the Concession Buildings and rights for food and drink concession at the Muscatine Soccer Complex, Kent Stein Park and the Muscatine Aquatic Center located in the City of Muscatine, Iowa for the period from March 2, 2012 to November 30, 2012 and March 1, 2013 to November 30, 2013.
2. That the Lessee at all times indicated herein shall furnish food and drink over-the-counter or through vending machines to adequately serve the public that may be using the concession buildings and agrees that at all times during the period of this contract Lessee will maintain sufficient equipment and merchandise to adequately serve the public in said concession buildings.
3. The Lessee, in consideration of the leasing of said concession areas, agrees to pay to the City a minimum of 20% of the gross receipts (total sales net of applicable sales tax) from sales at Kent Stein Park, the Muscatine Soccer Complex and the Muscatine Aquatic Center. Lessee shall no later than the tenth (10th) day of each month following any sales, report to the City the total sales for the preceding calendar month and pay the percentage due for such month. Sales are to be reported by facility, by day, on a form provided by the City of agreed to by the City.

The Lessee shall enter all sales into cash registers provided by the City and offer receipts to all concession customers. All cash register tapes are to be retained by the Lessee throughout the term of this agreement and are to be made available to the City upon request. The register tapes are to include a notation as to the facility and the date of the sales. The sales totals on the register tapes should reconcile to the amounts reported on the monthly sales report. Over-rings, if any, on the register tapes should be noted as such with the signature of the individual responsible next to the incorrect entry, and the register totals manually revised with the change(s). Any cashier overages should be noted on the tapes and overages will be subject to the commission rate noted above. Cashier shortages, if any, are the responsibility of the Lessee and are subject to the commission rate.

All cash register tapes are to be submitted to the City with the monthly sales report for review by the City. These tapes will be returned to the Lessee to retain throughout the term of this agreement.

The Lessee will also make available on request, copies of the Lessee's quarterly sales tax reports or other evidence supporting the total sales reported. The City shall have the right to examine the accounting records of the Lessee from time to time and the Lessee agrees to promptly produce said accounting records at the request of the City.

4. That the Lessee agrees to obtain all necessary licenses, permits, and certificates, as

required by Federal law, State law, or local Ordinance, at Lessee's expense.

5. That the Lessee agrees to assume full and absolute responsibility for, and to defend, hold harmless and indemnify, the City and its Officers, Employees, and Agents, for any and all claims, damages and losses in any way resulting from the maintenance, operation, or use of the food concession equipment, leased area or buildings covered by this agreement. Such responsibility includes, but is not limited to, losses from the consumption or otherwise of food items; physical damage to property owned by the City, the Lessee, the Lessee's employees, or private individuals; and any and all consequential and economic damages.

Prior to the effective date of the lease, the Lessee shall file a certificate of insurance with the City, with the right of fifteen (15) day notice of cancellation, naming the City as additional insured. The Lessee shall purchase liability insurance in the amount of at least one million (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate for bodily injury and property damage claims and shall include product liability.

6. That all items, quantities and prices must be standard for the trade and a complete listing must be provided to the City. The listing and subsequent changes must be approved in writing by the Director of Parks and Recreation of the City. The Lessee must conform to the rules, regulations and ordinances of the City of Muscatine and agrees not to sell or have in said concession any alcoholic beverages or tobacco products.
7. The Lessee agrees to keep all food, equipment, and food service areas in a clean and sanitary condition, according to all appropriate food handling regulations. The City and other authorized sanitary inspectors shall have the right to enter and inspect the premises at any time. Any directives by authorized inspectors of the City shall be complied with immediately. Any violation which is the subject of a written corrective notice, which has not been rectified within seventy-two (72) hours, shall be cause for immediate cancellation of this agreement by the City.
8. That the Lessee agrees to observe all laws of the State of Iowa, all Ordinances of the City of Muscatine, Iowa, and all Federal laws applicable to Lessee on said premises.
9. That the Lessee agrees not to assign this agreement or sublet the premises without the expressed written consent of the City.
10. That the City will furnish the buildings and in-place equipment to the Lessee as is during the lease period. The Lessee must clean, maintain and repair the buildings and in-place equipment during the use periods of this contract. The buildings and all food equipment shall be cleaned and all food removed within five (5) days after closing for the season each year.
11. That the Lessee may not make permanent changes or improvements to the leased

premises without the expressed written consent of the City, and said improvement shall become the property of the City upon termination of this agreement without further compensation to the Lessee.

12. That the Lessee shall be responsible for any utility payments and charges which become necessary in the operation of the premises covered by this agreement.
13. That the lessee agrees to keep the concession buildings and surrounding grounds for fifty (50) feet around on all sides of the concession buildings free of debris, papers and trash at all times.
14. That the Lessee agrees to keep said concession buildings open during periods of activity and hours mutually agreed upon. The Parks and Recreation Department office will inform the Lessee of additional scheduled activities. All activities are subject to weather and elements.
15. That the Lessee shall have exclusive concession sales privileges for the Muscatine Soccer Complex, Kent Stein Park and the Muscatine Aquatic Center with the exception of special events which have been or will be approved by the City.
16. That the City shall supply to the Lessee a First Aid Kit which the Lessee shall make available to users of said facilities in the event of injury.
17. That upon failure to pay the monies agreed upon herein, or to comply with any of the stipulations or conditions of this agreement by the said Lessee, the City may elect to declare forfeiture of this agreement and may take possession of the premises within seven (7) days notice at any time and may bring action for forcible entry and detainer as allowed by Law for recovery of possession. Failure of the City to declare the forfeiture of this agreement shall not operate as a waiver of any noncompliance.
18. That the City shall have a lien for all costs, as herein described at any time remaining unpaid upon any and all property of the Lessee, used or kept on or above said premises, during the existence of this agreement whether or not such property is exempt from execution and attachment. No demand for the monies herein described shall be necessary to entitle the City to the right herein agreed upon.
19. The Lessee agrees to pay nine (9) percent per annum on all past due monies payable under this agreement, and pay all reasonable expenses and attorney's fees connected with the enforcement of the provisions of this agreement with which the Lessee has failed to comply.
20. That the City or Lessee may terminate this agreement by providing written notice of said termination to the other at least thirty (30) days prior to the date of termination. The City reserves the right to terminate this agreement within seven (7) calendar days written notice if the Lessee does not perform the terms and conditions of this agreement.

21. That the Lessee shall not permit any of the following practices:

- a. To discharge from employment or refuse to hire any individual because of their race, creed, color, national origin, religion, age, sex, marital status, political affiliation, or disability.
- b. To discriminate against any individual in the terms, conditions, or privileges of employment because of their race, creed, color, national origin, religion, sex, marital status, political affiliation, or disability.
- c. To discriminate against any individual in the performance of any obligation or the extension of services under this contract because of their race, creed, color, national origin, religion, age, sex, marital status, political affiliation, or disability.

22. Prior to November 30, 2013, the date the completion of this agreement period, said Lessee and City agree to enter good faith negotiations for an extension and/or adjustment of the terms and conditions to be mutually agreed upon by said Lessee and City.

DATED AND EXECUTED AT MUSCATINE, IOWA THIS _____ DAY OF

The City of Muscatine, Iowa

MAYOR: _____

CITY CLERK: _____

LESSEE: Happy Joes Pizza

BY: _____

Address

City

State

Zip