AN ORDINANCE of the City of Kent, Washington, relating to Kent Cornucopia Days; granting a street use permit to Kent Lions Club for a public festival; specifying terms and conditions for such street use.

WHEREAS, Kent Cornucopia Days has been an annual festival celebrating the heritage of the Kent community; and

WHEREAS, the Cornucopia Days festival continues to grow in size annually; and

WHEREAS, Cornucopia Days is a result of the efforts of a number of private volunteers, citizens, civic groups, and nonprofit organizations; and

WHEREAS, the City of Kent is not the sponsor nor operator of the Kent Cornucopia Days festival; and

WHEREAS, it is appropriate to clarify the rights, responsibilities and relationships of those parties involved in the Kent Cornucopia Days' activities; NOW THEREFORE,
THE CITY OF KENT, WASHINGTON DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. A street use permit is hereby authorized from Thursday, July 9, 1992, 9:00 p.m., until Sunday, July 12, 1992, 11:00 p.m., for the following described public areas and right-of-ways which will be closed to normal vehicle traffic during the term of the permit except as otherwise noted below:

(A) Meeker Street from 6th Avenue to Railroad Avenue (4th Avenue to remain open),

(B) 2nd Avenue from Meeker Street to Gowe Street,

(C) 1st Avenue from new Kent Library to Titus Street with restricted access at 4th Avenue (Gowe Street to remain open),

(D) 2nd Avenue from Gowe Street to Titus Street, (with local access signs at Titus)

(E) 2nd Avenue from Meeker Street to Smith Street for the purposes of Saturday Market.

(F) Municipal parking lot between Smith and Harrison and 2nd and 4th Avenues; provided, however, that such closure shall be for the purposes of Cornucopia Carnival from 6:00 a.m., Wednesday, July 8, 1992 through 2:00 p.m., Monday, July 13, 1992.
(G) 5th Avenue behind Kent Elementary for children's parade and parade assembly; Saar Street north on 4th Avenue to Harrison Street; provided, however, that such closure shall be only for the purposes of the children's parade and only on Sunday, July 12, 1992 from 11:00 a.m. until 2:00 p.m.

(H) 4th Avenue from James Street (240th Avenue S.E.) to Saar Street for parade and parade assembly; and the two eastbound lanes of James Street and Borden Field from 1st Avenue to 4th Avenue; and First Avenue from Smith Street to James Street; provided, however, that such closure shall be for the purposes of the Cornucopia Parade on Sunday, July 12, 1992 from 11:30 a.m. until 4:00 p.m. The parade route proceeds southbound on 4th Avenue to Saar Street commencing at 2:00 p.m.

Section 2. The street use permit provided in Section 1 above is granted to the Kent Lions Club (hereinafter referred to as the "User") and its successors and assigns. By this permit, the User is authorized to conduct a public festival on said public property and right-of-way, to erect booths, conduct lawful and licensed games, provide entertainment, operate or authorize food and beverage services, and conduct such other activities consistent with a public festival at the times and in accordance with the provisions in Section 1.

Section 3. The permit granted hereby is conditioned upon and subject to User's satisfaction of the following conditions:
3.1. LICENSES AND TAXES. The User shall be liable for, and shall pay throughout the term of this use, all license and fees covering the business and activities conducted on the premises, and all unemployment insurance, social security, workers' compensation and other obligations applicable to its activities, and otherwise fulfill all fiscal obligations imposed by law or contract.

3.2. UTILITIES. The User, at the User's sole expense, shall provide, or shall otherwise pay for, when due, all costs for providing all utilities and other services and installation occasioned by the User's requirements. The City shall not be liable for any injury, loss or damage caused by or resulting from any interruption or failure of utility services due to any causes whatsoever, except the City's sole negligence.

3.3. LIABILITY.

3.3.1. Indemnification: The User, its successors or assigns shall indemnify, defend and hold the City harmless from any and all claims, actions, damages and/or judgments whatsoever arising out of any and all activity, use and occupation of said public property and right-of-way pursuant to the subject permit including claims arising by reason of accident, injury or death caused to persons or property of any kind unless caused by the City's sole negligence.

3.3.2. Assumption of Risk: The placement and storage of personal property on said public right-of-way by the
3.3.3. **Insurance:** During the term of this permit and any extension thereof, the User shall secure and maintain a policy of standard form comprehensive general liability insurance with an insurance company licensed to do business in the State of Washington, providing protection and indemnification against any and all claims for injury or disability to person, damage to property or for loss of life, which may arise from or be related to this activity or the permit granted herein, including the liability of the City its officers, officials, agents or employees for such to the User and any of the User's officers, employees and agents, and any liability of the User as such to the City, its officers, employees and agents, arising out of or in connection with the occupancy and use of the public right-of-way as well as any and all claims and risks in connection with any acts or omissions performed by User by virtue of the rights granted pursuant to this permit. Said policy limits shall be in the amount of one million dollars ($1,000,000) for injury to or loss of life of any individual person; in the aggregate for personal injuries suffered in each occurrence; and for property damage suffered in each occurrence. Said policy must specifically name The City of Kent, its officers, employees and elected officials as additional insured parties thereunder and must stipulate that the coverages provided by said policy shall not be terminated, reduced, or otherwise changed in any respect without providing at least thirty (30) days prior written notice to The City of Kent. In any event, no termination, reduction or change in coverage shall occur after June 10, 1992,
or 30 days prior to the scheduled event for which this permit has been issued. Notwithstanding any provision herein to the contrary, the failure of the User to comply with the provision of this section shall subject this Street Use Permit to immediate termination without notice and without recourse by any person in order to protect the public interest. The applicant shall furnish a certificate of such insurance coverage to the City prior to issuance of permit, and may be required, at the City's discretion, to provide a copy of the entire insurance policy.

3.3.4. Adjustments of Claims: The User shall provide for the prompt and efficient handling of all claims from third parties for bodily injury, property damage or theft arising out of the activities of the User under this permit. The User agrees that all such claims, whether processed by the User or User's insurer, either directly or by means of an agent, will be handled by a person with a permanent office in the Kent-Seattle area.

3.4. USE AND CARE OF PREMISES.

3.4.1. General Condition: The premises shall at all times be kept in a neat, clean, safe and sanitary condition, and kept and used in accordance with the laws of the State of Washington and ordinances of The City of Kent, and in accordance with all authorized rules and regulations of the King County Health Department, Kent Fire Marshal, Kent Building Inspector, and other proper officers of The City of Kent, at the sole cost and expense of the User. The User shall not permit any waste, damage, or injury to the public property or right-of-way; shall
not permit any objectionable noise or odor to escape or to be admitted from said public areas or permit anything to be done upon said premises that in any way will create a nuisance.

3.4.2. **Alterations:** The User shall not make, or cause to be made, any alteration, addition or improvement in said public right-of-way other than those authorized above without first obtaining the written consent of the City for such work.

3.4.3. **Access:** The City reserves for itself, its officers, employees, agents and contractors, free access to said premises at all reasonable times for the purposes of emergency response and other public safety demands, inspection, cleaning, or other City responsibilities.

3.5. **NON DISCRIMINATION.** The User shall comply with all federal, state and local laws and ordinances prohibiting discrimination in employment or public accommodation with regard to age, sex, race, color, creed, national origin, marital status or physical or mental handicap.

3.6. **RELATIONSHIP.** In no event shall the City be construed, or held to have become in any way or for any purpose a partner, associate, or joint venturer of the User or any party associated with the User in the conduct of the User's activities relating to Cornucopia Days. This permit does not constitute the User the agent or legal representative of the City for any purpose whatsoever.
3.7. **AMENDMENTS.** The City expressly reserve the right to amend the terms of this permit from time to time as may be necessary to preserve the public health, safety and welfare. Provided, however, that no amendment, alternation or modification of the terms or conditions of this permit shall be valid and binding unless made in writing to the User within fourteen (14) days of the effective date of said amendment, alternation or modification.

3.8. **NO WAIVER OF DEFAULT.** The City does not waive full compliance with the terms and conditions of this permit by acceptance of the permit fees. No waiver of default by the City of any of the terms, covenants and conditions hereof to be performed, kept and observed by the User shall be construed as, or operate as, a waiver of any subsequent default of any of the terms, covenants and conditions herein contained, to be performed, kept and observed by the other party.

3.9. **SURRENDER OF PREMISES.** At the expiration or termination of this permit, including any extensions thereof, whichever is earlier, the User shall quit and surrender said premises, without notice and in as good condition as received at commencement of the term, ordinary wear and tear uncontrollable by the User excepted.

3.10. **CONSTRUCTION AND DISPUTE RESOLUTION.** This street use permit shall be construed under all the applicable laws, statutes, ordinances, rules and regulations of the United States, State of Washington, County of King and the City of Kent in case
of a dispute between the parties. Jurisdiction of any resulting litigation shall be in King County Superior Court.

If legal action is instituted, the User agrees to pay all of the City's reasonable costs and attorney fees incurred in connection therewith.

3.11. The User shall not interfere with the City's maintenance and use of the right-of-way, or the operation of the Kent Saturday Market or other licensed businesses and premises. The User shall also be responsible for obtaining necessary permits for use of property administered by the Department of Parks and Recreation.

3.12. The City of Kent, its agents and employees, will perform no maintenance, repair work of any kind on User's installations, equipment, or appurtenances without first obtaining permission from the User. Provided, however, the City may perform such maintenance, repair or work in an emergency.

3.13. INVALIDITY OF PROVISIONS. Should any term, provision, condition or other portion of this permit be held to be inoperative, invalid or void, the same shall not affect any other term, provision, condition or other portion of this permit; and the remainder of this permit shall be effective as if such term, provision, condition or portion had not been contained herein.
Section 4. FEES AND CHARGES

4.1. FEE. The fee for the above identified permit shall be twenty-five dollars ($25.00) payable in advance to the City Treasurer at Kent City Hall, 220 4th Avenue South, Kent, Washington 98032-5895 on or before July 3, 1992, plus five percent of gross receipts from street fair booth sales, not to exceed five hundred dollars ($500.00) payable to the City Treasurer on or before September 21, 1992. A copy of User's proof of insurance certificate shall be submitted at the time this fee is paid.

4.2. AUDIT. The User shall permit the City, as City deems necessary, to inspect and audit in Kent, Washington at any and all reasonable times, all pertinent books and records of the User and any subcontractors or other person or entity that is in connection with, or related to the User under this permit to verify the accuracy of accounting records, including trust accounts if any; and shall supply City with, or shall permit the City to make, a copy of any books and records and any portion thereof, upon the City's request.

4.3. The User shall have the right to charge user fees or festival permits for the areas described in Section 1, above. The User shall also be granted the authority to charge user fees or festival permits to street vendors and merchants within two blocks of the area described in Section 1 above. The User's right to charge festival permit and user fees shall extend only for the term of this street use permit, and shall not apply to
merchants and businesses with current business licenses within the areas designated herein.

Section 5. An authorized representative of user shall execute an agreement with the City confirming acceptance of the conditions herein. The Mayor is authorized to execute said agreement and such other documents necessary to the administration of this ordinance.

Section 6. Two hour parking restrictions as provided in Chapter 10.06 Kent City Code for the following streets are eliminated during the period of Cornucopia Days, and shall not be enforced during said period: Central Avenue to Union Pacific Railroad and James Street to Willis Street.

Section 7. A sufficient number of handicap parking spaces shall be provided in close proximity to festival site on 2nd Avenue between Gowe St. and the post office driveway.

Section 8. Any act consistent with the authority and prior to the effective date of this ordinance is hereby ratified and confirmed.

Section 9. Effective Date. Pursuant to Leonard v. Bothell, 87 Wn.2d 847 (1976), this ordinance shall take effect and be in force five (5) days from the time of its final passage as provided by law.

DAN KELLEHER, MAYOR

Not signed by the Mayor
ATTEST:

BRENDA JACOBER, CITY CLERK

APPROVED AS TO FORM:

ROGER A. LUBOVICH, CITY ATTORNEY

THOMAS C. BRUMBAUGH, REITING

PASSED the 16th day of June, 1992.
APPROVED the _____ day of __________, 1992.
PUBLISHED the 19th day of June, 1992.

I hereby certify that this is a true copy of Ordinance No. 3048, passed by the City Council of the City of Kent, Washington, and approved by the Mayor of the City of Kent as hereon indicated.

BRENDA JACOBER, CITY CLERK

(SEAL)