

Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Lee Price, MMC
City Clerk

SUBJECT: PUBLIC-PRIVATE
PARTNERSHIP UPDATE

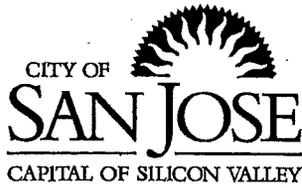
DATE: 06-11-09

RECOMMENDATION

As recommended by the Rules and Open Government Committee on June 3, 2009 and outlined in the attached memos previously submitted to and approved by the Rules and Open Government Committee:

- (a) Accept the report on the status of the public-private partnership case studies;
- (b) Adopt a resolution:
 - (1) Rescinding Council Policy 1-8 "City Fees for Community Projects for which Donations Have Been Received;" and
 - (2) Approving Revised Council Policy 1-17 "Revenue Generating Policy Fundraising, Sponsorship and Contribution Guidelines" as further described in the memorandum submitted to the Rules and Open Government Committee.
- (c) Direct staff to return to the Rules and Open Government Committee after the July City Council recess with proposed modifications to Council Policy 7-5 "Naming of City-Owned Land and Facilities."





Memorandum

TO: RULES & OPEN GOVERNMENT
COMMITTEE

FROM: Ed Shikada
Albert Balagso

SUBJECT: PUBLIC-PRIVATE PARTNERSHIP
UPDATE

DATE: May 14, 2009

Approved

Date

5/17/09

RECOMMENDATION

It is recommended that the Rules & Open Government Committee:

- 1) Accept this report on the status of the public-private partnership case studies;
- 2) Agendize for Council's consideration adoption of a Resolution:
 - a. Rescinding Policy 1-8 (City Fees for Community Projects for which Donations have been Received);
 - b. Approving revised Policy 1-17 (Revenue Generating Policy Fundraising, Sponsorship and Contribution Guidelines as further described in this memorandum;
 - c. Approving revised Policy 7-5 (Naming of City-owned Land and Facilities) as further described in this memorandum.

OUTCOME

This report updates the Rules Committee on the status of staff's work to facilitate public-private partnerships. Acceptance of this report will update the City Council on the public-private partnership activities. City Council approval of the proposed actions would rescind Policy 1-8 "City Fees for Community Projects for which Donations have been Received" and incorporate key elements of policy 1-8 into the proposed revised Policy 1-17; and revise Policies 1-17 "Revenue Generating Policy Fundraising, Sponsorship and Contribution Guidelines" and Policy 7-5 "Naming of City-Owned Land and Facilities."

BACKGROUND

On June 12, 2007, the City Council directed staff to proceed with implementation of a proposed framework for advancing and encouraging public-private partnerships. The anticipated outcome of this initiative was to facilitate the establishment of new public-private partnerships to enhance the improvement, operation, and maintenance of City facilities. On February 12, 2008, the City Council accepted staff's report on the Public-Private Partnership Case Study Wrap-up and Recommendations.

The final report addressed the goals of the study by examining the legal, policy and administrative experiences to advancing 11 partnership case studies, and by gathering input on the community's perspective on the barriers and opportunities to public-private partnerships. A number of strategies were recommended for the City to pursue to enhance future public-private partnerships. The top priorities included: 1) creating a framework for evaluating and selecting future collaborative opportunities; 2) establishing a citywide Parks Foundation; 3) increasing the City's volunteer management, marketing and recognition efforts; 4) reviewing and updating relevant city policies applicable to furthering public-private partnerships and, 5) drafting a compendium of best practices for staff, partners, and elected officials.

Council further directed staff to agendaize periodic reports to an appropriate City Council Committee and solicit City Council feedback to prioritize specific partnership proposals for advancement as needed. Over the past year, staff has continued to advance public-private partnerships and address key policy issues to help facilitate future public-private partnerships.

ANALYSIS

This report provides an update to the Rules Committee on the key public-private partnership activities over the past year in the five priority areas discussed above, identifies anticipated work in the coming year, and advances amendments to key policies for Council consideration to help advance future public-private partnerships.

Priority 1: Facilitate an on-going framework to evaluate, prioritize, and advance partnerships to effectively deliver services to the community.

In the pilot phase of staff's work, the concept of "public-private partnerships" was primarily associated with partnerships between the City and businesses, nonprofit organizations, individual donors, or the community to enhance the improvement, operation, and/or maintenance of public facilities beyond levels possible through current City funding. Efforts over the past year have significantly expanded this notion and Departments city-wide are making broader connections to partnerships to demonstrate new technology, foster economic growth, and bring the community together to meet common needs.

Council's approval in June of 2008 of the City's Demonstration Partnership Policy provided a key tool to assist staff to take advantage of private sector innovation, technological knowledge and entrepreneurial spirit. The policy established a framework for engaging and evaluating partnerships with the goal of developing, testing, and demonstrating emerging technologies,

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Subject: Public-private Partnership Update

May 14, 2009

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products and service innovations in the market place. Such innovations are critical to achieve the Green Vision and have the potential to reduce City operating costs, provide environmental benefits, and improve City service delivery.

In order to facilitate the on-going evaluation of partnership opportunities Deputy City Manager Ed Shikada was formally designated as the City's public-private partnership coordinator. In earlier efforts to explore innovative service delivery models to address the City's current fiscal challenges, Ed Shikada led the work toward the establishment of public-private partnerships. In this role, the coordinator serves as the point of contact for partnership opportunities, helps identify partnership priorities and needs, and assists in the development of partnership agreements.

In the initial pilot program staff tracked 11 public-private partnerships. At the end of the pilot study nine of the partnerships had achieved significant project milestones at an estimated benefit to the City of over \$1 million dollars. The projects listed below are the original 11 case studies. As noted in staff's wrap-up report to Council in February 2008, work continued on the Moitozo Park and the Palmia Park case studies.

1. McEnery Park – Turf maintenance agreement
2. Guadalupe River Park & Gardens Masterplan – Design guidelines agreement
3. Guadalupe River Park & Garden – Minor Public Works irrigation project
4. Happy Hollow Park and Zoo – Promotion and support agreement
5. Moitozo Park – Litter and graffiti removal project
6. Municipal Rose Garden – Supplemental park maintenance through volunteers
7. North San Jose Development - Park maintenance agreement
8. Police Athletic League (PAL) Stadium – Promotion and support agreement
9. Police Athletic League (PAL) Stadium – Donated restroom design
10. Palmia Park – Supplemental park maintenance agreement
11. Ryland Pool – Community volunteer agreement for pool renovation project

Over the past year, staff has worked on the remaining two case studies and nine new public-private partnerships. Of these 11 projects, eight have again achieved significant milestones and three agreements could not be reached due to the City's requirements for prevailing wage.

Moitozo Park (remaining project from initial case studies) - Involved efforts to put in place an agreement with Irvine Company to provide litter pick-up and basic maintenance assistance at Moitozo Park. Agreement could not be reached due to requirements for prevailing wage.

Palmia Park (remaining project from initial case studies) - Involved an agreement with Barbaccia Properties to maintain Palmia Park, adjacent to their property. Agreement could not be reached due to requirements for prevailing wage.

San Jose Rose Garden Events - The Friends of the San José Rose Garden and the City Parks maintenance staff have continued their outstanding service in maintaining the Rose Garden resulting in official reinstatement for National Accreditation by the All-America Rose Selections

group in December 2008. Between July 2008 and May 2009, the Rose Garden efforts netted four service days, with a total of 436 volunteers and 1,200 cumulative hours of service.

Roosevelt Park Roller Hockey Rink - As part of the City's overall budget and revenue strategies, PRNS is developing a Request for Qualifications for a private operator of the Roosevelt Hockey rink as part of a revenue sharing agreement. PRNS is planning to release this RFQ by December 2009.

Cunningham Skate Park - Staff continues to work with local business and customers to further explore the sponsorship and revenue enhancement strategies as part of PRNS' revenue generation plans. One challenge identified by the Skate Park customers is the requirement for adults to wear knee and elbow pads which restricts their ability to perform a large portion of advanced techniques. As such many adults and advanced skaters are not attending nor does staff have the ability to attract rentals for special Pro skating events. Staff is working with the Attorney's Office and Risk Management to revise these requirements to capture a much broader ranges of customers to this world class skate park.

Hitachi - The Hitachi Corporation downsized their land holding on Cottle Road in order to modernize its remaining facilities at this site, which was developed by IBM. Based on the proposed residential development approximately 17.5 acres for three new parks has been dedicated. All three parks are near complete and the City has accepted ownership of the new parkland. Hitachi has agreed to provide park maintenance of the sites through March 2010. Staff continues to pursue discussions with Hitachi toward the establishment of a Special Parks District to support an enhanced level of ongoing maintenance.

PRNS Sports League "Home Base Program" - As part of the Community Sports Field Study approved November 2008, PRNS will be pursuing the development of a Request for Proposals (RFP) to solicit partnership agreements with local private sport league operations to receive priority use based on an exchange of options that could include enhanced maintenance support, capital development, or financial contributions. PRNS target is to release the RFP by December 2009.

Green Mobility - The Green Mobility Showcase project, led by the Department of Transportation, is designed to test strategies to significantly reduce energy consumption and includes demonstration projects on charging stations for plug-in hybrids and electric vehicles, LED streetlights, pervious pavers, green concrete (sidewalk), and solar powered cooling station. Four smart plug-in vehicle chargers were installed in December 2008-January 2009. A new, upgraded version of the charger will be substituted later this year that will allow higher voltage/faster charging and provide connections consistent with the new vehicles that will be rolling off production lines later this year. The sidewalk reconstruction job, which includes green concrete and pervious pavers, will get underway in early May. That project will also lay out conduit for two new streetlights, additional charging stations, and the cooling stations and will tie all of the streetlights, chargers and cooling station to a newly installed meter. The Department of Transportation plans to issue an RFI later this year for potential partners to construct the first demonstration cooling station.

Automated Transit Network Project – A request for interest was conducted to evaluate the interest in testing the viability of an automated transit network to improve linkages between public transit hubs and areas of housing, employment, and entertainment. In the coming year the City is working to: 1) establish a partnership with VTA, 2) hire a consultant team to provide expert advice and conduct a request for proposals (RFP), 3) issue an RFP for design/op/main of automated transit network system.

Harvard University – An agreement was reached with Harvard University Graduate School of Design for students to produce several designs for a world class transit hub of the Diridon Station area.

Park Avenue – A private property owner on Park Avenue (between Market and Almaden Blvd.) requested to maintain parking median, on behalf of tenants, to higher level of service. Agreement could not be reached due to requirements for prevailing wage.

Federal Stimulus Funding – An agreement was reached with Gilbane Building Company to provide donated services to assist the City in creating, prioritizing, and bundling capital projects in an attempt to maximize the City's opportunity to obtain federal stimulus funding.

As the City continues to face unparalleled fiscal challenges, over the next year, staff will continue efforts to seek new partnership opportunities to:

1. Take advantage of private sector innovation, access to capital financing, technological knowledge, managerial efficiency and entrepreneurial spirit.
2. Foster economic growth by developing new opportunities and increasing competition
3. Provide opportunities for efficiency gains e.g., more cost-effective delivery of services, better asset utilization, accelerated delivery of projects, etc.
4. Bring community together to meet common needs

Priority 2: Establish a Citywide Parks Foundation to raise funds for City Parks and provide operational support to the Department of Parks, Recreation, and Neighborhood Service

The development of the San José Parks Foundation continues to move forward with a goal of fully incorporating before the end of the fiscal year. At the beginning of the 2008-2009 Fiscal Year, PRNS expanded the Community Planning Committee to convene a broader cross section of community representatives. This Planning Committee, comprised of representatives from businesses, non-profits, past Park & Recreation and Youth Commissioners, and park advocates, is meeting on a monthly basis to develop the Foundation's initial Vision, Mission and Goal statements, Articles of Incorporation and Bylaws and the Board of Trustees recruitment strategy.

The next steps for the Community Planning team will be to recruit an initial 4-6 Board of Trustees, Development of a two-year action plan, and file for 501(c)3 Non-Profit incorporation status by June 30, 2009. The Foundation will operate independently. PRNS will have up to three voting Ex-Officio Trustees to help support and guide the Foundation.

Priority 3: Implement a pilot "Volunteer Management Program" to provide maintenance support at targeted City parks.

The first year goals of this effort are to develop a series of volunteer opportunities in our parks through the City, redraft Council Policy 3-1 "Volunteer Help for Park Improvement," and develop Department wide procedures for staff and volunteers. Since the establishment of the Volunteer Management Unit, staff has organized 15 one-day volunteer service projects throughout neighborhood parks, and continues to provide support to extraordinary community efforts by the Friends of the San José Rose Garden.

Over 1,500 volunteers dedicated 5,322 hours at one-time events held at multiple locations across the City including, Alviso Park, Guadalupe River Trail, Silver Creek Linear Trail, Starbird Park, Lake Cunningham, Hank Lopez Community Center, Parque de Los Pobladores Park, Carabelle Park, and the Almaden Winery. Some of our community partners that supported these efforts included a variety of business and service organizations including Sun Power Corporation, Almaden Cycle Touring Club, San José State's Environmental Club, Penzak Jewish Community Center, After School All-Stars, City Year, St. Lawrence High School Academy, and Cisco.

Measure M – Long Term Agreements in City Parks

As part of the public-private partnership effort the City placed Measure M on the November 4, 2008 election ballot. Seventy-six percent of the voters approved Measure M amending the City Charter to extend the duration of long-term agreements in certain city parks for up to 25 years. The ability to provide long-term lease partnerships will allow PRNS to pursue greater private partnership opportunities and encourage capital investment. The Roosevelt Hockey Rink partnership discussed earlier will be the first application of this new policy. As part of the budget and revenue strategies staff will continue to look at how this policy can support efforts across the park and recreation system.

Priority 4: Review and update City policies applicable to furthering public-private partnerships.

Staff has continued its work to evaluate City policies in order to facilitate public-private partnerships in a more efficient manner. Over the past year, four City policies were evaluated through this lens:

1. Policy 7-8, "Long-term Use of Parklands for Private Enterprise Purposes"
2. Policy 1-8 "City Fees for Community Projects for which Donations have been Received"
3. Policy 1-17 "Revenue Generating Policy Fundraising, Sponsorship and Contribution Guidelines"
4. Policy 7-5 "Naming of City-Owned Land and Facilities"

Staff evaluated these policies to ensure alignment with the critical insights and the lessons learned from the initial public-private partnership case study work and to provide the structure

necessary for staff to openly pursue new partnerships. In addition, staff sought to clarify policy intent and processes. The key elements and recommended changes to the policies are presented below. For comparison purposes, the current Council adopted policies may be found in the Council Policy Manual on the City Clerk's website or accessed directly by going to the following links:

- Policy 7-8 http://www.sanjoseca.gov/clerk/cp_manual/CPM_7_8.pdf
- Policy 1-8 http://www.sanjoseca.gov/clerk/cp_manual/CPM_1_8.pdf
- Policy 1-17 http://www.sanjoseca.gov/clerk/cp_manual/CPM_1_17.pdf
- Policy 7-5 http://www.sanjoseca.gov/clerk/cp_manual/CPM_7_5.pdf

Policy 7-8 "Long-term Use of Parklands for Private Enterprise Purposes";

Policy 7-8 was revised and approved by Council on October 28, 2008 with implementation contingent on approval of Measure M (which was subsequently approved by Voters on November 4, 2008). As such, the Policy now reflects the ability to provide long term leases on parkland for up to 25 years on City parks of 5 acres or larger, without voter approval, conditioned upon compliance with specified conditions and policies. This policy strengthens the City's position to be offer a greater range of revenue enhancing partnerships within the Parks and Recreation system. The developing request for proposals for the Roosevelt Hockey Rink will be the first application of this policy.

Policy 1-8 "City Fees for Community Projects for which Donations have been received" and Policy 1-17 "Revenue Generating Policy Fundraising, Sponsorship and Contribution Guidelines"

In conducting the review of Policy 1-8, staff identified a number of inter-related procedures that very strongly aligned with Policy 1-17, and in an effort to create a more streamlined approach toward the development of sponsorships and donations, staff is recommending to rescind Policy 1-8 and incorporate its purpose and into the revised Policy 1-17 presented below.

Policy 1-17 was established in 2004, and was revised to update the policy better encourage and support individual Departments to pursue donations, sponsorships and other fundraising activities with the purpose to create opportunities for partnerships and enhance revenue for department priorities. (See attachment A). The policy was reviewed by a number of Departments including: Parks, Recreation, and Neighborhood Services; Library; Fire; Airport; Office of Cultural Affairs; General Services; and the Attorney's office; private corporation partners; the Library, Park and Recreation, and Youth Commissions.

Some of the key elements of the proposed revisions to the policy 1-17 include:

1. Incorporate language, intent and process from Policy 1-8.
2. Requirement for Director of a Department to submit to the City Manager's office a written Sponsorship, Donation, and/or Fundraising plan to be implemented by Departmental staff.

3. The identification of the types of donor or sponsorship recognition that is available.
4. Provide the administration with the authority to create a sponsorship level and grant naming rights for interior rooms in City-owned buildings and other "Amenities," as defined in the policy.
5. The provision of a "net benefit analysis" to be conducted by staff.

Through work with multiple departments the revised policy more strongly supports the efforts of Departments to develop and manage their individual sponsorship programs. PRNS, Fire, Airport, and OED have actively developed fundraising program plans to support their efforts for the Cunningham Skate park, Airport advertisement, the Fire Department's Heart Safe City program, and OED's Amgen Bike Tour.

Policy 7-5 Naming of City-Owned Land and Facilities

Policy 7-5 was originally established in 1972 and revised in 1993 (see Attachment B). The intent of the revisions is to update the naming Policy to align the new public-private partnership strategies to create more opportunities for departments to generate revenue through an exchange of naming rights. The policy was reviewed by a number of Departments including: Parks, Recreation, and Neighborhood Services; Library; Fire; Airport; Office of Cultural Affairs; General Services; and the Attorney's office; private corporation partners; the Library, Park and Recreation, and Youth Commissions.

Some of the key elements of the new policy include:

1. Concepts learned from the public-private partnership effort to create more opportunities to generate revenue through an exchange of naming rights.
2. Naming rights for interior rooms and amenities (as defined in the policy) will be approved by the City Manager and managed through a Department's written Sponsorship, Donation, and/or Fundraising plan.
3. Municipal Code provision updates regarding contract authority.

Prevailing Wage Policy (Resolution #61144)

As part of the public-private partnership case study wrap-up report in February 2008, the Council approved a number of exclusions from the City's requirement to pay prevailing wages. In efforts to revise the City's prevailing wage policy to incorporate the Council's action, staff is developing guidelines to help determine when prevailing wage should be applied and when it should not. Once completed, staff will return to Council for final approval of the prevailing wage resolution.

Priority 5: Develop a tool box of resources for use by internal City staff to aid the development of future P3 agreements.

A follow-up action to the initial case study pilot was to develop a resource compendium to serve as a practical means for staff and elected officials to learn from the experience of

other partnerships in implementing projects. To address this recommendation staff is proposing to establish an internal wiki that would provide a discussion forum for staff to share partnership ideas, barriers to successful partnerships and potential solutions; recognize successful P3s, and; provide resources for internal City staff to aid in the development of public-private partnership agreements. Currently the wiki is being evaluated among other potential pilot projects as a part of the work of the City-wide Web 2.0 Policy Team.

EVALUATION AND FOLLOW-UP

Staff will agendize periodic reports to an appropriate City Council Committee, and solicit City Council feedback to prioritize specific partnership proposals for advancement as needed.

PUBLIC OUTREACH/INTEREST

- Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

COORDINATION

This staff report has been coordinated with the City Attorney's Office.

FISCAL/POLICY ALIGNMENT

The recommendations presented in this report are consistent with the FY 09-10 Budget Balancing Strategies. #7 specifically directs staff to consider alternative service delivery mechanisms (appropriate community partnerships, public-private partnerships, etc.) to ensure no service overlap, reduce and/or share costs, and use our resources more efficiently and effectively.

COST SUMMARY/IMPLICATIONS

The investment of time necessary to establish a partnership, as well as meet partnership obligations is extraordinarily demanding in this period of multiple priorities, and at times requires a higher level of investment than a straight purchase or the City providing the service. Currently, City staff will absorb the cost to advance as many public-private partnership opportunities and activities to the extent reasonable and feasible within existing resources.

The new Volunteer Management Program and seed funding for the Parks Foundation is currently funded with the Parks Reserves through FY 2010-2011.

BUDGET REFERENCE

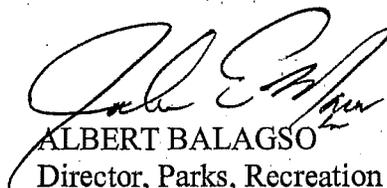
Not applicable.

CEQA

Not a project.



ED SHIKADA
Deputy City Manager



ALBERT BALAGSO
Director, Parks, Recreation & Neighborhood
Services

For questions, please contact Ed Shikada at (408) 535-8190 or Albert Balagso at (408) 793-5553.

Attachment A

City of San José, California

COUNCIL POLICY

TITLE: DONATION, SPONSORSHIP AND FUNDRAISING POLICY	PAGE 1 of 10	POLICY NUMBER 1-17
	EFFECTIVE DATE 00/00/00	REVISED DATE 01/XX/09

APPROVED BY COUNCIL ACTION ON

Purpose

To encourage and support departments in the development of partnerships to aid in revenue generation, Fundraising, and Sponsorship efforts that is consistent with existing City policies, procedures and applicable laws.

Background

The City of San José has a tradition of creative and innovative solutions that sustain ongoing services for our residents and continues to look for ways in which Public-Private Partnerships provide Donations, funding, and volunteer assistance to support and enhance City services.

Policy

It is the Policy of San José to encourage and support individual Departments to pursue Donations, Sponsorships and other Fundraising activities with the purpose to create opportunities for partnerships and enhance revenue for department priorities. Individual Departments, through the approval of the City Manager and/or City Council, shall develop Sponsorship and Fundraising programs that meet the requirements set forth in this Policy.

General Provisions

1. This policy is intended to establish a framework to direct the City Departments and the City Manager in establishing Donation, Sponsorship, and Fundraising guidelines so that the Departments may properly consider and address the different economic, procedural and legal issues that may be associated with Donation and Sponsor solicitation and recognition.
2. This policy is intended to support the City's ability to increase revenue and partnerships and does not limit the City's ability to apply for grant funding.

Attachment A

3. The City encourages the acceptance of Donations or Sponsorships if the Donation or Sponsorship provides a significant enhancement to the City, enhances or reduces costs the City would incur in the absence of its acceptance, or if it otherwise benefits the City in a manner that provides a net savings to the City.
4. The City encourages Donations of materials with the understanding that such items have a useful life. Once a Donation is accepted, it becomes City property and the City may decide to maintain, replace or dispose of the item unless the Donation is explicitly accepted by the City subject to restrictions.
5. Unrestricted Donations are preferable to restricted Donations.
6. Definitions of terms used in this policy are set forth in Section 7 of this Policy.

Authority

1. The Director of each Department shall submit to the City Manager for approval, written Sponsorship, Donation, and/or Fundraising programs to be implemented by Departmental staff.
2. The City Manager is hereby authorized to approve Sponsorship, Donation and/or Fundraising programs and to issue requests for proposals to engage in similar Donation or Sponsorship solicitation activity. City Council approval is required if any of the following conditions are met:
 - a. Accept any Donation or Sponsorship with a value or term in excess of the level which Donation or Sponsorship be accepted by the City Manager under Chapter 4.04 of the San Jose Municipal Code (including a fair market valuation of in-kind contributions);
 - b. Grant any Donor or Sponsorship recognition rights with a value in excess of amount the City Manager's contracting authority as set forth in Chapter 4.04 of the San Jose Municipal Code; or
 - c. Name any City property after any individual or entity unless expressly provided otherwise in the City Council naming policy (such as interior rooms of city-owned buildings and amenities on city-owned land).
3. The City Manager may delegate authority to the Department Director to approve a Department's Sponsorship, Donation and/or Fundraising program which delegation may not exceed the City Manager's authority unless also approved by City Council. A Director may request the City Manager to delegate authority under this Policy and the City Manager's approval shall be in writing.

Attachment A

Department Process

Guidelines

1. Individual departments shall develop their Donation, Sponsorship, and/or Fundraising program in consultation with the City's Attorney's Office and which shall be approved by the City Manager, that shall set forth:
 - a. The types of Donor or Sponsor recognition that is available for specified value of Donorship or Sponsorship, subject to City Council approval if the value of recognition is beyond the contracting authority of the City Manager;
 - b. Individual Department's may offer official City endorsement of entity, product, or service based on the City Manager approved Sponsorship Program and Sponsorship Agreement, and further subject to City Council approval if the value of official City endorsement is beyond the contracting authority of the City Manager;
 - c. The Sponsorship level or range of Sponsorship levels for the naming of the City property not covered by the City's Naming Policy such as the interior¹ of a City-owned building with a specialized function such as a library, or animal shelter, the interior of City buildings commonly used for public meetings such as City Hall or Community Centers, the exterior walls of City buildings, plazas or paseos owned by the City, and other amenities;
 - d. Specified or Maximum sizes and identification of location(s) of any signage in recognition of the Donation or Sponsorship and any restrictions on the text of the recognition signage; and
 - e. A Net Benefit Analysis shall be conducted which may only to be utilized for the City's purposes for internal review of the proposed Donation or Sponsorship and is not intended to provide any third party benefit. This Net Benefit Analysis shall include evaluation of factors such as:
 - i. The administrative costs of obtaining the Donation or Sponsorship;
 - ii. The anticipated additional costs and/or anticipated savings in the following areas:
 1. Capital costs;
 2. On-going operational costs;
 3. On going Maintenance costs;
 4. Repair costs;
 5. Clean-up costs;
 - iii. Costs for compliance with any restriction on the Donation or Sponsorship or estimated reduction in value of benefit due to the restriction;
 - iv. Any additional potential liability that the City may assume by accepting the Donation or Sponsorship including any requests for deviation from the City's

Attachment A

typical standard requirements, such as the level of indemnification, insurance, bonding, or warranties requested. Requests for modification of an indemnification provision in relation to a Donation or Sponsorship would follow Administrative Policy regarding Mutual Indemnification in Donated Services.

- v. Costs of management of City's obligations of a Donation or Sponsorship;
 - vi. The financial ability of the donor or Sponsor if some of these costs are to be covered by the Sponsor or Donor; and
 - vii. The City's ability to fund any uncovered costs set forth above.
2. The Department staff designated to oversee the Department's Donation, Sponsorship and/or Fundraising activities will ensure that the proposed Donation, Sponsorship and/or Fundraising program does not conflict with existing Municipal Code provisions, City policy or existing City Sponsorships. Department staff shall also ensure that the City property involved is not subject to restrictions that would limit or prohibit the proposed Donation or Sponsorship.ⁱⁱ
 3. The Department staff accepting items donated to the City will ensure that the items are safe and durable, and meet any applicable City design or quality specifications, standards, and policies.
 4. The Department's Donation, Sponsorship and/or Fundraising program shall set forth the conditions for acceptance of funds, which conditions shall be fair, impartial and shall not discriminate on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, national origin, or political views of the proposed Donor.
 5. Any Department considering acceptance of a Donation or Sponsorship that may impact or affect other Departments, shall consult with those Departments prior to acceptance of the proposed Donation or Sponsorship.ⁱⁱⁱ
 6. It shall be the goal of any Departmental Donation, Sponsorship and/or Fundraising program to find Donors or Sponsors providing the highest net benefit to the City, along with consideration of the quality of product or service to be received by the City.
 7. All Donations in cash shall be deposited and recorded with the Finance Department and deposited within the current gift trust fund policies.
 8. Unaccepted Donations will be returned to the Donor.
 9. Donations, including unrestricted cash Donations, made directly to the City shall be recorded on the City's "Donation Acceptance Form."

Attachment A

Sponsorship Agreements

After the selection of a Sponsor by the City Council, City Manager or Department Head, as appropriate, the terms of the Sponsorship, including any expectation of a significant return or recognition, shall be set forth in a written Sponsorship Agreement approved as to form by the City Attorney.

City Manager may include renewals of a Sponsorship agreement at the City's option, provided that the aggregate of all of the renewals is within the City Manager's contracting authority level under the Municipal Code. Any renewal shall be subject to annual appropriation of City Council if City funding is involved. Sponsorship Agreements or Donation Agreements involving City parks may also be subject to the term limitation of Section 1700 of the City Charter or the Municipal Code.

Costs, Accounting and Record Keeping

Departments shall maintain records that provide an audit trail for the receipt of all Sponsorships and Donations. Departments shall also comply with the following requirements:

1. All Donations and Sponsorships and the revenue, products, and services received shall be recorded and maintained for at least the expected life of the item or service, or for a specific time frame that has been established in the Donation Agreement or Sponsorship Agreement.
2. The City shall document and maintain records of the anticipated net benefit from the Donation or Sponsorship.
3. Donations or Sponsorships paid for with a monetary contribution shall not be paid to staff in cash unless approved, in advance, by the Department Director and receipt of cash is properly documented.
4. A record of all Sponsorships and Donations including name, type, contact name if a company, amount, and disposition of Sponsorship shall be kept up-to-date and accurate.
5. All funds, products, services, etc. resulting from the Donation, Sponsorship and/or Fundraising program or shall be used as specified in the Donation or Sponsorship Agreement or if not indicated, as directed by the City Manager. All funds, products, services, etc. resulting from a "citywide" Donation or Sponsorship not specified for a specific program, and over the City Manager's Donation or Sponsorship contract authority level under the Municipal Code shall be designated for use by City Council which designation may be made by resolution, approval of an agreement or through City Council appropriation action or other Council approval.
6. All funds generated by Donations or Sponsorships must be appropriated by City Council prior to being spent by City departments.
7. Departments shall report any Donations or Sponsorships received by the Department through reports to City Manager.

Attachment A

Other Donations or Contributions

1. Real Property Contributions

- a. Restricted Donations of real property may be offered to the City for specified purposes. The City will review the conditions of the restrictive Donations of real property and determine if the benefits to be derived warrant the acceptance of the Donation. All Donations of title to real estate, no matter how small, require City Council approval after proper investigation and due diligence is conducted by staff.
- i. For any buildings and structures donated to the City, the City administration shall also conduct its net benefit analysis. It is the policy of the City of San José that the following apply to Donations of buildings or structures:
 1. The Donor may pay the cost for moving and/or construction of a donated structure and that:
 - a. The City may pay the insurance and/or bonding required or assume the liability risk under its current self-insurance provisions where appropriate.
 - b. Costs for project-related architectural, engineering and inspection costs incurred by City, including staff time, should preferably be paid by Donor but may be subject to mutual contribution by City and Donor if set forth in the Donation Agreement. A Donation involving real estate is more complex than cash Donations and the Donation Agreement documenting a real estate-related Donation should be prepared by and approved by the City Attorney's Office.
 - ii. For buildings and structures which are donated and approved by City Council, affecting City parks, and accepted by the Director of the Parks, Recreation and Neighborhood Services Department:
 1. If the approved Donation is anticipated during an upcoming fiscal year, and if the City Manager or Designee agrees that payment of the project-related architectural, engineering and inspection costs is to the City's benefit, these project-related estimates should be requested during the annual budget process and subject to appropriation by City Council. If the approved Donation is not anticipated during the annual budget process, the Director of PRNS will determine if any existing Capital funds are eligible and appropriate to be used to accept the donation. If there is no eligible and appropriate existing Capital funds, the Director of PRNS will return to Council with a funding recommendation.
 2. The cost allocation method stated here for PRNS projects should also be utilized by other City departments in the event that a donation of real property proposal is presented to them. It is hoped that this method of allocating costs will encourage future Donations of community projects to the City.

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2. Works of Art Contributions

If a contribution is proposed related to a work of public art covered by the City's Art in Public Places ordinance, currently found in Chapter 22.08 of the San Jose Municipal Code, the City's review and acceptance of public art the proposed contribution shall be conducted in accordance with the City's Art in Public Places ordinance, which shall include the review and recommendation of the City's Arts Commission and compliance with any policies adopted regarding donations of works of public art. Any time a Donation of a work of art or a contribution toward the acquisition of a work of art that would not ordinarily be covered by the City's Public Art Ordinance is proposed for the City, the City Department that operates or maintains the site of the proposed work of art shall submit the proposed Donation to the Arts Commission for the Arts Commission's recommendation regarding acceptance of the proposed Donation of public art.

Definitions

Fundraising: Any activity conducted with the intent of soliciting Donations, Sponsorships or other financial contributions to the City or to a particular Department or activity of the City. Fundraising activities may include, but are not limited to, City grant proposals, City responses to Request for Proposals issued by other agencies, foundations or funding agencies, endowment programs, adoption or pledge drives, and contacting individuals, companies, foundations, or other entities with the primary purpose of receiving financial support for the City.

Sponsorship: A "Sponsorship" typically means a person or entity provides the City with financial support for an activity, City program or City facility typically in exchange for the City providing more than nominal recognition of its financial support, which distinguished a Sponsorship from a Donation. Financial assistance provided by a Sponsor may consist of cash and/or in-kind contributions.

Donation: A Donation to the City means a person or entity providing the City with financial support or property of a value exceeding the City's payment for such item. Furthermore, a Donor typically does not expect to receive a substantial return or recognition from the City in return for the Donation. A Donation may consist of cash, real property (land) or an in-kind Donation. Donations may be unrestricted or restricted by the Donor.

Stock Donations: Stocks are the proprietorship element in a corporation usually divided into shares and represented by transferable stock certificates. Current rules require the City to immediately sell stock Donations upon receipt unless the stock was received through a gift or bequest with restrictions on its sale.

In-Kind Contributions: A contribution of an item or object other than cash or real property, which would serve a useful purpose in the provision of City services. Examples of in-kind contributions may include equipment or materials or services.

Donor: A company or individual who provides the City, or one of the City departments or other

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agencies, an item or service without expectation of significant return or recognition.

Restricted Donation: A Donation made to the City where the Donor has restricted its use to a specified purpose.

Sponsor: A company, organization or individual who provides the City with funding support for a program, activity or facility in the form of a Sponsorship, and who expects significant recognition in return.

Sponsorship Agreement: A negotiated agreement between the City and a corporate entity whereby the City makes a Sponsorship opportunity available and enters into an agreement with a business to pay a fee in cash, products, services or a combination thereof, for recognition rights related to certain identified City owned commercial or marketable assets. A Sponsorship Agreement may, permit a limited form of advertising opportunity for a commercial entity in exchange for the fee paid to the City, subject to the terms of this Policy and subject to the approval of the City Manager and the City Attorney's Office.

Unrestricted Donations: A Donation made to the City where the Donor has placed no limitation on its use.

Amenity: An "Amenity" is an improvement located which is less than the entire portion of a City property, such as a wall on a park, a plaza in front of a City building, a trail located along City property, an interior room or rooms in a building. An fully enclosed structure such as a City building with walls and roof (examples being community center, stand-alone gym, a warehouse, or stand-alone building housing a restroom and locker room) is more substantial than an Amenity and City Council approval is required before granting naming rights. An Amenity may include any of the following if located on City property: plazas located that constitute only a portion of a larger parcel of City property, gazebos, archways, paths, athletic facilities that are not fully enclosed structures, playing fields, portions of aquatic facilities that are not enclosed structures or City buildings, picnic areas, tot lots, play structures, hard courts, and trail segments. If the administration is unsure if a specific City improvement is an Amenity or more substantial than an Amenity, the City Manager shall seek direction from the City Council Rules Committee.

Works of Art: Includes, but is not limited to, physical art that may be an integral part of a public site or building, or that may be integrated with the work of other design professionals. Examples of public works of art include sculptures, murals and paintings, earthworks, neon, glass, organic materials, mosaics, photographs, prints, film, any combination of media forms, or hybrids of any media.

Disclaimers

1. Different forms of contributions to the City present different opportunities and challenges. Therefore, it is not possible to establish blanket guidelines to cover all types of Donation or Sponsorship activity that the City may decide to pursue.
2. Unless expressly stated otherwise, the City does not intend to modify or change the non-

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public forum status of any City property by providing Donor recognition or Sponsorship recognition on City property.

3. The making of a Donation or Sponsorship to the City will not provide any extra consideration to the Donating or Sponsoring party in relation to any City procurement, any regulatory activities of the City, or other City business. No City employee or other City Official is authorized to offer any such extra consideration to a donating party.
4. Any Donation or Sponsorship which, if accepted, would obligate the City to enter into a service or procurement agreement should be reviewed under the City procurement process.
5. The City encourages Donations of materials with the understanding that such items have a useful life, and that the City assumes no responsibility for replacement or upkeep. Once a Donation is accepted, it becomes City property and the City may maintain, replace or dispose of the item unless the Donation is explicitly restricted.
6. The City cannot guarantee the tax deductibility of a Donation, but may provide the donating party with a letter of acknowledgement and a statement of the City's intended use.
7. City staff shall maintain the highest standard of ethics in Fundraising activities. All Donations or Sponsorships must directly enhance the City ability to provide goods or services to the public or for another valid public purpose, and may not be used for financial personal gain of any City employee.
8. City employees, whose primary responsibility is the procurement of services, supplies, materials and equipment or public works, should not engage in solicitation of Donations or Sponsorships.
9. City employees may only solicit Donation or Sponsorships pursuant to the individual Department's Donation, Sponsorship, and/or Fundraising programs approved by the City Manager. City employees working in an enforcement or regulatory City position (i.e. Police and Fire, Code Enforcement, and Environmental Services) shall not solicit Donations or Sponsorships from the public while they are wearing a City uniform, unless they receive explicit permission from the City Manager via their Department's written Donation, Sponsorship, and/or Fundraising programs.
10. No Donated materials nor any Sponsorship or Donor recognition may include obscene or pornographic material.
11. If, in the interests of public health, safety and welfare, a Department or the City Manager desires to prohibit certain types of Contributions, the Administration shall consult with the City Attorney's Office to determine whether the Donation guidelines may contain such prohibitions.

End Notes

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ⁱ Proposed concurrent revisions to City Council Policy 7-5, "Naming of City-Owned land and Facilities" states that, "Naming of interior rooms of City facilities and Amenities may be approved by City Manager without City Council approval based upon guidelines established in Council Policy 1-17..."

ⁱⁱ These could include, but are not limited to, Chapter 4.04 of the San José Municipal Code, the Naming of City owned land and facilities (See Policy Number 7-5, Naming of City-Owned Land and Facilities) and the Code of Ethics (Policy Number 0-15), the City's Zoning Code (Title 20 of the SJ Municipal Code) and Sign Ordinance (Title 23 of the SJ Municipal Code), City procurement requirements, the Prevailing Wage and Living Wage Policies, Uses of Public Property (Policy Number 6-16), the California Environmental Quality Act, and the Long-term Use of City Parklands for Private Enterprise Purposes (Policy Number 7-8). One example of property-specific issues to be considered when developing Donor recognition guidelines and other contribution recognition guidelines is whether the property was funded through tax-exempt bonds. Donor recognition guidelines for such types of property shall take into account IRS regulations, among other factors specific to those properties.

ⁱⁱⁱ A Department shall be deemed affected by a proposed Donation if it is likely that the Department would incur additional cost or staff time if the Donation were accepted. For example, other Departments may incur costs to provide management, support, maintenance, and repair or enforcement activity in relation to the Donation or Sponsorship.

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**City of San José, California
COUNCIL POLICY**

TITLE: Naming of City-Owned Land and Facilities	PAGE 1 of 4	POLICY NUMBER 7-5
	EFFECTIVE DATE 00/00/00	REVISED DATE XX/XX/09

APPROVED BY COUNCIL ACTION ON

Purpose

To establish Council policy regarding the determination of names to be given to City-owned land and facilities.

Policy

It is the policy of the City of San José that City-owned land and facilities are named after a public hearing held by the appropriate Commission (or appropriate Council Committee, if no Commission is appropriate); which will then develop a recommendation to be reviewed by the City Council. City Council shall make the final determination regarding names of City owned land and facilities, unless otherwise provided herein.

It is the Policy of the City of San José to encourage:

1. Naming which reflects the City's ethnic and cultural diversity;
2. The recognition of distinct geographic, environmental or developmental features, or names of historical significance in naming City lands and facilities;
3. The recognition of individuals who have made a significant contribution to the community, state, nation or the world;
4. Naming of new facilities as early in the planning process as possible; and
5. Significant funding support from private donors for the construction and/or on-going maintenance and operations of City lands and facilities in exchange for naming options.

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Background

Various individuals, civic groups, and homeowner associations have requested that City-owned facilities and land such as parks, athletic fields, the airport and the golf course, be named after venerated individuals, geographic features, or prominent organizations. Furthermore, potential donors and sponsors may be willing to contribute significant funds to assist the City in construction, maintenance, or operations of City lands and other City facilities, in exchange for the name of the land or facility. In order to provide an accessible and convenient process for persons wishing to participate in the naming of public facilities, the City of San José establishes this policy.

Implementation Guidelines

GENERAL PROVISIONS

1. For the naming or renaming of City-owned facilities or land, a public hearing by the appropriate Commission or Council Committee shall be held in order for the proper body to develop a recommendation to the City Council.
 - a. It is City preference not to change existing names except when no other appropriate City facility is available.
 - b. Consideration shall be given to the naming of City-owned land after individuals, groups or private companies only when the land or the money for its purchase has been donated by them, or if an individual has provided extraordinary contributions to the community, state, nation or the world, or if the individual, group or private company has made a substantial financial contribution to the City for the improvement, upkeep or operation of the land.
2. The City Council may offer, as part of a capital campaign, naming rights to City-owned land or facilities in exchange for financial contributions to the City in the form of donations or sponsorships. The terms of the offer of naming rights shall be in accordance to City Council Policy 1-17 (Regarding Fundraising, Donations and Sponsorships) and pursuant to a Department's approved Fundraising and Sponsorship Guidelines unless otherwise approved by City Council.
3. This Policy is intended to apply to the naming of City lands such as entire parks and naming of City buildings or other City facilities that are more substantial than an Amenity (defined below) and requires City Council to approval in conformance with this policy. Any capital campaign materials and all Fundraising and Sponsorship Guidelines shall indicate that no naming rights may be granted and the City shall not be obligated to name land, parks and any facility that is not an Amenity, notwithstanding any payment to the City, unless and until City Council has approved the naming of the land or facility pursuant to this policy.

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- a. The San Jose Municipal Code established limits upon the City Managers' contracting authority in Chapter 4.04 of the San Jose Municipal Code, as it may be amended from time to time. Current language requires City Council approval for any Donation over \$250,000 and/or for a Sponsorship agreement over \$250,000 or 3 years in length.
- b. If funds are solicited in exchange for name recognition at an already historically named City facility, staff shall make reasonable efforts to have the donor or sponsor to agree to retain the existing historic name into a newly recommended name while still acknowledging the funding support of the donor or sponsors. Nothing herein limits the requirement of City Council approval for naming rights pursuant to this policy.

(1) An example would be "[insert sponsor's name]'s Roosevelt Park"

4. The naming of interior rooms of City-owned facilities, smaller areas within a park, and other "Amenities" on City-owned land will not require City Council approval and are not otherwise subject by this Policy but shall be subject to the City Manager's approval established in Council Policy 1-17.
 - a. Amenity: An "Amenity" is an improvement located which is less than the entire portion of a City property, such as a wall on a park, a plaza in front of a City building, a trail located along City property, an interior room or rooms in a building. An fully enclosed structure such as a City building with walls and roof (examples being community center, stand-alone gym, a warehouse, or stand-alone building housing a restroom and locker room) is more substantial than an Amenity and City Council approval is required before granting naming rights. An Amenity may include any of the following if located on City property: plazas located that constitute only a portion of a larger parcel of City property, gazebos, archways, paths, athletic facilities that are not fully enclosed structures, playing fields, portions of aquatic facilities that are not enclosed structures or City buildings, picnic areas, tot lots, play structures, hard courts, and trail segments. If the administration is unsure if a specific City improvement is an Amenity or more substantial than an Amenity, the City Manager shall seek direction from the City Council Rules Committee.
 - b. It will be the responsibility of the Department to work with the City Manager's Office and City Attorney's Office to develop guidelines for Amenities and interior naming opportunities as a part, internal Sponsorship Guidelines of the Department's responsible for management of the property as referenced in City Policy 1-17 (Revenue Generating Policy Fundraising, Sponsorship and Contribution Guidelines).¹
5. The Department staff will ensure that implementation of this policy does not conflict with existing Municipal Code provisions or existing City policy.
 - a. These could include, but are not limited to, Chapter 4.04 of the San José Municipal Code, the Revenue Generating Policy – Fundraising, Sponsorship, and Contribution Guidelines (See Policy Number 1-17, Naming of City-Owned Land and Facilities), the Code of Ethics (Policy Number 0-15), the City's Zoning Code (Title 20 of the SJ Municipal Code) and Sign Ordinance (Title 23 of the SJ Municipal Code), City procurement requirements,

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the Prevailing Wage and Living Wage Policies, Uses of Public Property (Policy Number 6-16), the California Environmental Quality Act, and the Long-term Use of City Parklands for Private Enterprise Purposes (Policy Number 7-8).

THE NOMINATION PROCESS

All requests to City Council including those developed by City or Agency Staff for naming or re-naming of City-owned lands and facilities must be submitted to the City Clerk and contain detailed justification for the request, except for names that are put forward at the public hearings on proposed names held by the applicable Commission, Council Committee, or City Council.

1. Any person may recommend a name by submitting a written request to the Office of the City Clerk.
 - a. The proposal will provide the minimum of information contained on the form provided by the City Clerk.
2. The City Clerk will transmit the form and supporting documents to the proper Commission or Council Committee for review and scheduling of a public hearing before a recommendation is made to the Council. If it is unclear which Commission or Council Committee would be appropriate for review, the naming request shall be made to the City Council Rules Committee. The request for consideration of a name for City land or City facility shall follow all appropriate public noticing regulations for the identified Commission or Council Committee.
3. Any person may speak on the proposed name and may suggest one or more new names for the City property.
4. After action has been taken on the nomination by the appropriate Commission or Council Committee, the recommendation will be sent back to the City Clerk to be placed on the City Council agenda.
5. The Clerk will notify the petitioner of the date for Council consideration and/or the subsequent action by City Council.

END NOTES

¹ Staff in the respective department will work with City Attorney's Office in order to determine the restrictions, including without limitation federal tax law restrictions related to naming opportunities. Assuming that it is determined that naming opportunities may proceed, the Department may include a list of the significant interior naming opportunities and naming opportunities of other "Amenities" and corresponding sponsorship or giving levels. Interior naming opportunities and naming of other Amenities may also be offered at existing facilities. The respective Department Head will submit the list as part of their Donation and Sponsorship Guidelines to the City Manager, for approval.