



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Kerrie Romanow
Julie Edmonds-Mares

SUBJECT: SEE BELOW

DATE: April 30, 2012

Approved

Date

5/9/12

**SUBJECT: AMENDMENT TO CITY COUNCIL POLICY 7-8 ON LONG-TERM USE
OF CITY PARKLANDS FOR PRIVATE ENTERPRISE PURPOSES**

RECOMMENDATION

Amend City Council Policy 7-8 on Long-Term Use of City Parklands for Private Enterprise Purposes to:

- 1) Broaden the definition of "Agreements for Recreational Purposes" to include improvements to parklands that enhance the recreational use of the park by providing a necessary element of that use, such as supplying power or other utilities; and
- 2) Modify the restriction on allowable compensation under early termination to remove the constraint that the compensation amount be restricted to the lesser of the unrealized amortization of the capital investment or the fair market value.

OUTCOME

Approval of the amendment to Council Policy 7-8 will allow for long term agreements for solar installations on parklands to enhance recreational uses.

BACKGROUND

In October 2007, Council adopted the Green Vision, a 15 year plan that outlines ten ambitious goals for economic growth and environmental sustainability. Green Vision Goal #3 calls for the City to receive 100% of its electrical power from clean, renewable sources. City staff has been evaluating and pursuing cost effective options for the installation of renewable energy sources at City sites, and at this time, solar appears to be the most viable renewable energy source for City facilities.

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A leading mechanism to finance the installation of solar on City facilities is a solar power purchase agreement (PPA). Most solar PPAs require a lease or license back to the power provider that gives them the right to install and access their equipment on City land and buildings. The terms of these solar PPAs are typically 20 to 25 years.

Some of the sites where solar installations appear to be most feasible are located on City parklands. The San José City Charter restricts long-term (i.e. over three years) agreements on parklands. In November 2008, the voters of San José approved Measure M. This Measure led to the adoption of City Council Policy 7-8, "Long-Term Use of City Parklands for Private Enterprise Purposes," which provides for long-term agreements on parkland under specified circumstances in accordance with Charter Sections 1700 and 1700.1.

In a September 9, 2011, memo the City Attorney's Office outlined the current restrictions on the City entering into a solar PPA on parkland and indicated that the Council Policy 7-8 must be amended in order to allow for a solar PPA in a City park.

On September 27, 2011, Council authorized the City Manager or designee to execute PPAs with SolarCity for City facilities, including those sites on City parklands that meet other specific criteria (e.g. positive cash flow, CEQA clearance). City Council Policy 7-8 must be amended to enable the City to sign final, 20-year PPAs for solar installations planned on City parklands consistent with the limitations in the City Charter.

On October 2, 2011, this item was presented to the Parks and Recreation Commission. The Parks and Recreation Commission recognized the value of solar installations on parklands and cautioned that those installations should complement the parks and recreation facilities and not be detrimental to their use. The Commission made the following three recommendations:

- 1) Any solar installations should match and blend with the architecture and design of the park;
- 2) Any solar installations should not use available recreation or open space; and
- 3) Any funding generated or saved by the installation of solar facilities should directly benefit the parks and recreation services provided by the City.

ANALYSIS

City Council Policy 7-8 governs the conditions under which City Council may approve long-term agreements on City parklands pursuant to Charter Section 1700.1. The current Policy precludes the City from entering into a standard solar PPA, even on parkland that meets the size and community-serving amenity criteria outlined, due to the definition of "recreational use" therein. This definition is more restrictive than the City Charter requires, so broadening the definition of "recreational use" in the Policy would remedy this situation.

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Expanding the definition of “recreational use” used in the Policy to include improvements that enhance recreation in City parks by providing necessary services, such as supplying power, would not run counter to the intent of the Charter and would enable the City to procure clean, renewable electricity produced directly on the parklands themselves. Any project proposed for City parkland would still need to meet the size and community-serving amenity restrictions found in the Charter, along with the other financial and environmental restrictions required of any City solar project.

Without this amendment, installing solar on City parklands would require the City to fund the purchase and installation of the solar equipment as Public Works projects. Doing so would require significant investment on the City’s part and potentially require incurring debt through future bond issuances. If the City were to purchase and install its own solar equipment, it could not take advantage of the significant tax benefits that accrue to commercial solar development firms and that are passed on to the City under a solar PPA. Given the higher prices that would result, it is not currently financially feasible for the City to build and operate its own solar installations.

City Council Policy 7-8 contains language that requires that “all funds received by the City from long term agreements shall be used only for recreational purposes.” Staff is not recommending any changes to this language as any funding generated from solar agreements on parklands will be used to directly benefit the parks and recreation services provided by the City. However, since solar installations typically provide cost savings as opposed to revenue generation, staff is recommending updating Council Policy 7-8 to ensure that any cost savings are aligned with both Council Policy 7-8 and the Council direction regarding the City’s Energy Fund. Per Council direction, the first five years of utility cost savings that are generated from energy projects are transferred into the Energy Fund and then reinvested in additional energy projects. Therefore, City staff is recommending that the priority use for any savings generated from solar agreements on parklands will be invested in energy projects within the City’s parks and/or community centers. If no financially feasible projects are available in the City’s parks and community centers, then the savings would be diverted to a different City project. In addition, in order to preserve the long term integrity of the City’s parklands and open space, staff is recommending incorporating the Parks and Recreation Commission’s feedback into the policy update as follows: (1) Any solar installations should match and blend with the architecture and design of the park; and (2) Any solar installations should not use available recreation or open space.

In addition, City Council Policy 7-8 contains language governing the allowable compensation due to a non-City party under early termination (Section V.D), restricting it to the lesser of the unrealized amortization of the capital investment, or the fair market value. Removing the language, “whichever is lower,” would give staff more flexibility to negotiate agreements that are subject to other constraints, such as the internal revenue service (IRS) code, which can have conflicting requirements on the determination of that amount. All of the recommended amendments to the Policy are shown in Attachment A.

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PUBLIC OUTREACH

- 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)**

This action does not meet any of the above criteria, however this memorandum will be posted on the City's website for the May 22, 2012 City Council meeting.

EVALUATION AND FOLLOW-UP

The proposed policy modification is a public project clarification measure that will enable PPAs for future solar projects on City parkland.

POLICY ALTERNATIVES

Alternative: Retain existing Policy 7-8 and do not allow PPAs to be utilized for solar installations on City parkland.

Pros: Retaining the definition of "recreational use" currently used in Policy 7-8 would continue to restrict private development on City parkland.

Cons: Retaining current requirements would impede the City of San Jose's ability to meet Green Vision Goal 3, to provide 100% of the City's electricity from clean, renewable sources.

Reason for not recommending: The proposed amendment offers tangible benefits in enabling PPAs for the development of solar on City parkland without compromising the objectives of the City's Charter.

COORDINATION

This memorandum coordinated with the City Attorney's Office and the City Manager's Budget Office.

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FISCAL/POLICY ALIGNMENT

The recommended action aligns with Green Vision Goal 3, related to procuring 100% of San José's electricity from clean, renewable resources.

CEQA

CEQA: Not a Project, File No. PP10-068(b), Municipal Code or Policy.

/s/

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Acting Director
Parks, Recreation & Neighborhood Services

/s/

KERRIE ROMANOW
Acting Director
Environmental Services

For questions please contact Ashwini Kantak, Acting Assistant Director, Environmental Services Department, at 408-975-2553.

Attachment A – Amended City Council Policy 7-8

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

TITLE	LONG-TERM USE OF CITY PARKLANDS FOR PRIVATE ENTERPRISE PURPOSES	PAGE	1 of 6	POLICY NUMBER	7-8
EFFECTIVE DATE	February 4, 1986	REVISED DATE	October 28, 2008 May 22, 2012		
APPROVED BY COUNCIL ACTION	2/4/1986, Item 8(d); 10/28/2008, Item 5.2, Res No. 74646;				

BACKGROUND

The increasing demand to provide Parks and Recreation services beyond the City's ability to provide public funds has created an economic necessity to manage all available resources in the most effective manner. As a result, the City is moving toward increased fees for service and consideration of offering use of City parklands and buildings through long term agreements to entice private operators to fund capital improvements on parkland, operate programs in existing buildings and facilities, or to provide funding to otherwise increase revenues to the City for recreational purposes. All such long-term development agreements will be considered with the intent to enhance the public benefit of City parklands as further provided in this Policy.

On November 4, 2008, ~~the voters of San Jose~~ voters adopted shall consider Measure M, which ~~proposes adding a new Section (1700.1) to the San Jose City Charter entitled "Council Authority to Enter into Long-Term Agreements."~~ Measure M, ~~if approved, amends the San Jose City Charter to authorized the City Council to enter into agreements with non-City entities or individuals, for use of certain City parks for a term of up to 25 years, without voter approval of the Council determines that the agreement would benefit the community and specified conditions have been met.~~ Currently, ~~San Jose City Charter Section 1700 prohibits the City Council from granting permits, licenses, leases, concessions or other interests in a City park for more than three years, without voter approval.~~

~~The policy set forth herein shall be in effect only if the voters approve Measure M on November 4, 2008. A copy of Charter Section 1700 and proposed new Section 1700.1 of the San Jose City Charter are attached. If Measure M is not approved by the voters, this revised Policy 7-8 shall be of no force or effect and the previous Policy 7-8 shall remain in effect.~~

DEFINITIONS

For the purposes of this Policy the following definitions apply:

Agreement for Recreational Purposes: Means ~~the an agreement allowing use of City property for recreational programs, recreational activities, and other uses that enhance the recreational use of the specific park and/or recreational facility by providing a necessary element of the recreational use such as cost saving power supply (example: solar), providing necessary services that enhance the recreational purposes of the park (such as supplying utilities for the specific park and/or recreational facility), or for open space purposes, provided that the agreement may include a~~ *de minimus* non-recreational use if the non-recreational use is in support of the recreational purpose (example: use of a small office space may be provided for other administrative support for the recreational use but the space may not be used for other purposes).

Attachment A

Commercial Recreation Use: Means use by a person or non-City entity of all or a portion of a Public Park for a recreational purpose, including use of a recreational facility located on a Public Park.

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Community Serving Amenity: A Pool, Community Center or Reservable Sports Field or similar recreational improvement in a park, that is described in the City's approved master strategic plan for parks and community facilities. ("The Greenprint for Parks and Community Facilities and Programs.")

Long-Term Agreement: Means a permit, license, lease, concession or other agreement allowing development, use, operation or other form of occupancy of all or a portion of a Public Park, for a term of more than three years.

Parkland: is used herein to mean the same as "Public Park," and defined per Section 1700 of the City Charter to mean "any and all lands of the City which have been or are dedicated, improved and opened to the public for public park purposes."

POLICY

I. Guidelines for Application of City Charter 1700.01 on Public Parks

It is the policy of the City of San José that the following guidelines shall govern Long-Term Agreements for the use of the City's Public Parks by individuals and non City entities, ~~if approved by City Council~~ pursuant to the authority granted in City Charter Section 1700.1. This Policy is not intended to affect Long Term Agreements entered into by the City prior to the November 4, 2008, effective date of Measure M. Further, this policy does not limit the City Council's authority ~~received by from~~ other voter ~~approved~~ approvals of agreements in excess of 3 years on Public Parks ~~and~~ inventoried in ~~an~~ the attachment hereto.

II. Guidelines for Long Term Agreements Otherwise Authorized by the Voters

The Director, City Manager, or City Council may, in their discretion, decide to apply some or all of the principals and guidelines set forth herein, in evaluating or negotiating Long-Term Agreements authorized by the voters through ~~other~~ ballot measures other than Measure M, including, without limitation, Almaden Lake Park, Kelly Park, Lake Cunningham, Historical Museum, Happy Hollow Park, Police Activities League Stadium, Coyote Creek Chain, Columbus Park, Ramblewood Park and Silver Creek Linear Park.

III. Agreements Up to Three Years at a Time

Nothing in this Policy is intended to limit the City's ability to enter into short term agreements of up to three years at a time, in any Public Park.

IV. Non-City Funds

Due to high demand and fiscal constraints on City funds, PRNS should continue to seek non - City sources for funding to provide either capital investment, operating funds, or both where it is clearly in the public's best interest.

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V. Commercial Recreational Use

This Policy applies to all Long-Term Agreements in Public Parks for Commercial Recreational Use ~~which are~~ approved by City Council pursuant to City Council Charter Section 1700, unless otherwise specified by City Council Policy.

- A. City Council must find that the Long-Term Agreement enhances the designated recreational purposes of the Public Park while meeting requirements for affordable access to the Public Park.
- B. The recreational purposes of a park are designated by City Council pursuant to a parks master plan or similar City Council planning approval for development of a park. When the proposed recreational use is consistent with park use as shown in the park master plan, a Site Development Permit procedure would be followed if a new or expanded structure or improvement is proposed. If a proposed recreation use is not consistent with the park master plan, a Long-Term Agreement may not be approved unless the master plan is amended to incorporate such use. Determination of whether the proposed recreation use is consistent with the park master plan would be made by the Director of the Parks, Recreation and Neighborhood Services Department.
- C. Affordable access requirements will be outlined in each agreement, ensuring all amenities will provide periods where the City of San Jose fee structure, including scholarship components, is applied. The period of access time will be negotiated based on size of the amenity in relation to the parkland at the site and the value of the investment.
- D. All Long-Term Agreements shall provide the City with the right to terminate without cause no later than 10 years after the commencement date and no later than every 10 years thereafter and on such other terms satisfactory to City Council. To encourage major capital investments in Public Parks, if a Long-Term Agreement requires the non-City party to invest a significant capital investment to construct new recreational improvements or to make major renovations to existing improvements, City Council may, for example, condition the City's early termination rights upon the City paying reasonable compensation to the terminated party for the unrealized amortization of the major capital investment, or the fair market value of the capital improvement on the date of termination, ~~whichever is lower.~~
- E. All Long-Term Agreements shall be monitored and shall require the non-City party to cooperate in more detailed performance review by Parks, Recreation and Neighborhood Services Department on an annual basis.
- F. All Long-Term Agreements shall comply with ~~existing the City Charter.~~ Municipal Code provisions, or existing City Policies, ~~including such as,~~ but not limited to: Chapter 4.04 of the San José Municipal Code, the Naming of City Owned Land and Facilities (Policy Number 7-5), the Code of Ethics (Policy Number 0-15), the City's Zoning Code (Title 20 of the San Jose Municipal Code), Billboards on City Owned Land (Policy Number 6-4), the City Sign Ordinance (Title 23 of the San Jose Municipal Code), City procurement requirements, the Prevailing Wage and Living Wage Policies, Uses of Public Property (Policy Number 6-16), and the Revenue Generating Policy, Sponsorship and Contribution Guidelines (Policy Number 1-17).

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- G. In addition to the restrictions in the City Council Policy on Billboards on City Owned-Land (Policy Number 6-4), any Long-Term Agreement allowing signage or advertising on a Public Park shall condition installation of such signage on prior Director approval. The Director's decision, in part, shall include an evaluation of the aesthetic impact of such signage on the Public Park. Nothing herein is intended to allow a proliferation of billboards or signage to the extent of substantial detriment to the aesthetics of the Public Park, as determined by the Director.
- H. All funds received by the City from Long-Term Agreements shall be used *only* for recreational purposes. Examples of expenditures for recreational purposes are costs of running and administering recreational programs, and the cost of acquisition, construction, maintenance and operation of parks and recreational facilities.
- I. City Council may approve Long-Term Agreements only on Public Parks of more than five acres and that have at least one Community Serving Amenity and as otherwise provided in City Council Charter Section 1700.1, unless otherwise approved by the voters of San Jose.
- J. Any Long-Term Agreement approved by City Council:
1. Shall adhere to the Public Outreach Policy of the Department of Parks, Recreation and Neighborhood Services which provides for specific and timely means of outreach for projects based on size, complexity and potential interest by stakeholders. Public outreach meeting requirements on non-construction agreements will require the creation of a plan based on the size, complexity and potential interest by stakeholders, which will be approved by the Director of Parks, Recreation and Neighborhood Services.
 2. Shall conform to applicable Council policies for Environmental Review.
 3. Shall comply with the City's policies on prevailing wage and living wage, to the extent applicable.
 4. Shall be reviewed by the Parks and Recreation Commission for recommendation to Mayor and City Council.
- K. All installations authorized by a Long-Term Agreement for which the primary purpose is to lower utility costs for a specific Public Park and/or recreational facility shall:
- Match and blend with the architecture and design of the park or facility;
 - Not use available recreation or open space; and
 - Designate all savings which are earmarked for the City's Energy Fund and generated by the installation for energy projects on parkland to be prioritized for use for energy improvements at city parks and/or community centers. If no financially feasible projects are available in the City's parks and community centers, then the savings will be used to a different City energy project.

VI. Non-Recreational Use

It is the Policy of City Council that City Council shall not approve Long-Term Agreements that are not for Recreational Purposes as defined herein.

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VII. Director of PRNS Authority

The Director of PRNS is authorized to negotiate and execute agreements on any Public Park if the term shall not exceed three years at time provided that the value or expenditure of the agreement, whether made or received by the City, is within the contract authority of the City Manager.

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SAN JOSE CITY CHARTER

SECTION 1700. Parks.

Except as otherwise provided elsewhere in this Charter, the public parks of the City shall be inalienable unless otherwise authorized by the affirmative votes of the majority of the electors voting on such a proposition in each case; provided and excepting, however, that the same or any interest therein, or any concessions or privileges therein or in any building or structure situate therein, may be leased by the Council, or the Council may grant permits or licenses for the same, without any vote of any electors, if the term of each such lease or permit does not exceed three (3) years. As used herein "public parks" means any and all lands of the City which have been or are dedicated, improved and opened to the public for public park purposes.

SECTION 1700.1 Council Authority to Enter into Long-Term Agreements

The City Council may enter into long term leases, concessions, permits or other agreements ("Agreements") with individuals or non-City entities, to allow use of public parks for terms of up to 25 years at a time, without voter approval, if the Council determines that Agreement would benefit the community and that the following conditions have been met: (i) the Agreement would enhance the designated recreational purposes for the public park; (ii) the public park subject to the Agreement is more than 5 acres in size and has at least 1 Community Serving Amenity, as defined below; (iii) the Agreement complies with an adopted City Council policy for Long-Term Agreements in Parks, which defines community outreach standards, requirements for affordable access to the public park, periodic performance reviews, and early termination rights among other things; and (iv) any funds received by the City from the Agreement shall be used for recreational purposes. A "Community Serving Amenity" is defined as one of the following: Pool, Community Center or Reservable Sports Field or similar recreational improvements in a park and that is described in the City's approved master strategic plan for parks and community facilities. Nothing herein is intended to limit City Council's authority to enter into other long term agreements on parks which have been or may in the future be, approved by the voters.

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Long-Term Agreements Authorized By The Voters Through Ballot Measures:

Park Site	Ballot Measure	Year	Authorized Provision(s)
Tully Road Ballfields	D	Nov. 1982	Up to 20 year agreements
Almaden Lake Park	G	Nov. 1988	Up to 55 year agreements
Columbus Park	G	Nov. 1988	Up to 55 year agreements
Coyote Creek Chain: Includes creek and future trail, Stonegate Park, Singleton Landfill, other small parks in the chain.	G	Nov. 1988	Up to 55 year agreements
Kelly Park	G	Nov. 1988	Up to 55 year agreements
Lake Cunningham	M	Nov. 1990	Up to 55 year agreements
Police Athletic League	M	Nov. 1990	Up to 55 year agreements
Ramblewood Park	E	Nov. 2002	Forty (40) year lease with FMSD (Franklin McKinley School District)
Silver Creek Linear Park	K	June 2006	Construction of a Fire Station on the Silver Creek Linear Park