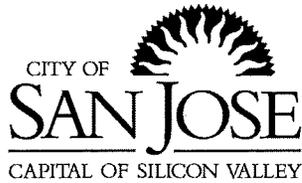


SUPPLEMENTAL*Memorandum*

TO: Rules and Open Government
Committee

FROM: Lee Price, MMC
City Clerk

SUBJECT: Public-Private Partnership Update

DATE: June 5, 2009

REASON FOR THE SUPPLEMENTAL:

Consideration of Council Policies as part of the Public-Private Partnership Update was considered by the Rules and Open Government Committee at its meeting of June 3, 2009. The Committee continued the discussion to its meeting of June 10th. At the request of Mayor Reed, copies of the legislative draft (red-line) versions of the Council Policies (#1-8, 1-17 and 9-5) are attached for comparison purposes.

Lee Price, MMC
City Clerk

COUNCIL POLICY

REVENUE GENERATING POLICY FUNDRAISING, SPONSORSHIP AND CONTRIBUTION GUIDELINES

POLICY NUMBER 1-17

PURPOSE

To encourage and support This citywide policy is intended to provide a framework and a process to assist 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.

DEFINITIONS (MOVED DEFINITIONS SECTION 7 OF REVISED POLICY)

• **Fundraising:** Any activity conducted with the intent of soliciting contributions 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.

• **Contribution:** A "contribution" to the City may consist of a donation or a sponsorship. A donation may consist of cash, a grant, real property (land) or an in-kind donation. Donations may be unrestricted or restricted by the donor.

• **Sponsorship:** A "sponsorship" typically means a person or entity provides the City with a includes the sponsor's financial support contribution and involvement in a particular event, for an activity, City program or City facility typically in exchange for the City providing more than or public structure, with associated nominal recognition of its financial support, which distinguished a Sponsorship from a Donation. between the sponsor and the City for the 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.

A contribution to the City that is made without expectation of a significant return or recognition.

• **Stock Donations:** Stocks are the proprietorship element in a corporation usually divided into shares and represented by transferable stock certificates. Per eCurrent 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.

- **Grant:** An award donation of funds for a specific use and/or general program purpose, typically awarded for a specific use and/or general program purpose, usually after a funding application has been submitted and approved. Grants are typically made to the City by the federal, state or county governments, private and community foundations, and corporations or businesses.

- **Donor:** A company or individual who provides the City, or one of the City departments or other 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 or one of the City's departments or other agencies, and who provides funding support for a program, activity or facility to the City 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:** A physical structure of a City owned property that does not include a building suitable for occupancy. A Minor Amenity may include minor plazas, gazebos, archways, interior rooms, paths, athletic facilities and playing fields, aquatic facilities, picnic areas, tot lots, play structures, hard courts, and trail segments.

- **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, photo- graphs, prints, film, any combination of media forms, or hybrids of any media.

(INCLUDED A NEW BACKGROUND STATEMENT)

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.

GENERAL PROVISIONS

1. (moved to last section "Disclaimers" #1) Different forms of contributions to the City present different opportunities and challenges. ~~For example, not all City-owned property will have the same practical or legal issues that should be considered when the City proposes to make a portion of that property available for contributor recognition or contributor acknowledgment.~~ Therefore, it is not possible to establish blanket guidelines to cover all types of contributor activity that the City may decide to pursue.

This policy is intended to establish a framework to guide the City Departments in establishing donation and sponsorship programs and donor and sponsor recognition policies so that the Departments may properly consider and address the different economic, procedural and legal issues that may be associated with donation solicitation and donor recognition.

(moved to last section "Disclaimers" #2) Unless expressly stated otherwise, the City does not intend modify or change the non-public forum status of any City property by providing donor recognition or sponsorship recognition on City property.

2. (section modified slightly and moved to section 6 "Guidelines" and end note ii in new Policy) The terms of any contributor solicitation program or any contributor recognition proposed by the City must be consistent with applicable laws and City ordinances, plans and policies. These could include, but are not limited to, 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 Long-term Use of City Parklands for Private Enterprise Purposes (Policy Number 7-8).

3. (Addressed in new Section 5 "Authority") Solicitation of Sponsorship and Donations by Departmental staff shall be under the supervision of the Department Director. The City Manager's office will provide City Council a year-end report on accomplished revenue generating activities by the departments.

4. Contributor recognition guidelines shall set forth the types of donor or sponsor recognition that are available for specified donorship or sponsorship levels. 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. (Moved to end note ii) Donor recognition guidelines for such types of property shall take into account IRS regulations, among other factors specific to those properties.

As a further example which is merely illustrative and not comprehensive, separate analysis may need to be conducted for proposed donation programs involving the following City property or City assets: the interior of a City-owned building (This section clarified and moved to Section 6 "Department Process/Guidelines point "c" and aligns to "re-written Naming Rights Policy") 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, City parks, City streets, sidewalks and other City public right of way, City publications and other City media productions.

(Moved to Section 6 "Department process/Guidelines/point 4) Contributor solicitation programs and contributor recognition guidelines adopted by any The Department's Donation, Sponsorship and/or Fundraising 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. (Moved to Section 6 "Department process/Guidelines/point 2) The Department staff designated to oversee the Department's donation activities will ensure that the proposed Donation or Sponsorship 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. ~~Departmental staff shall also be responsible for consulting with the City Attorney's Office to prepare the donation program guidelines and materials.~~

6. (Moved to Section 7 "Disclaimers" #3) The making of a Donation or Sponsorship Contributions to the City will ~~NOT~~ not provide any extra consideration to the donating or sponsoring party in relation to any City procurement, ~~s (this does not apply to a contribution which lowers the bid price of the procurement),~~ any regulatory activities of the City, or other City business and operations. No City employee or other City Official is authorized to offer any such extra consideration to a donating party. This includes, but is not limited to; making donations will not improve the donating party's status as a City vendor nor the City's position with respect to regulatory issues that may involve the donating party.

7. (Moved to Section 6 "Department process/Guidelines/point 3) Department staff accepting Items donated ~~contributed~~ to the City will ensure that the items are ~~must be~~ safe

and durable, and meet any applicable City design or quality specifications, standards, and policies.

8. (Moved to Section 7 "Disclaimers" #5) The City encourages donations ~~contributions~~ 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 consistent with any donor restrictions ~~on a Restricted Donation. In the absence of donor restrictions, the City may maintain, replace or dispose of an item, as it deems appropriate.~~

9. (Moved to Section 7 "Disclaimers" #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. ~~The City cannot validate the donor's estimate of the fair market value of a non-cash donation.~~

10. (Moved to Section 7 "Disclaimers" # 7) All Donations must be directly related to providing 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.

11. (Moved to Section G "Department Process/Guidelines # 7) All donations in cash shall be deposited and recorded with the Finance Department and deposited within the current in a special trust fund established by City Council or the Gift Trust Fund policies.

~~established pursuant to Section 4.80.700 of the San José Municipal Code. Currently City Council action is required to accept donations over the limit set forth in Chapter 4.04 of the San José Municipal Code, as it may be amended from time to time.~~

12. (Moved to Section 5 "Authority" #2) The City Manager is hereby authorized to approve Sponsorship, Donation and/or Fundraising ~~programs or Sponsorship Programs prepared on behalf of City Departments~~ and to issue requests for proposals ~~or to engage in similar donation or sponsorship solicitation activity, provided that City Council approval is required before the City:~~

- a. ~~(i) may a~~ Accept any donation or sponsorship with a value in excess of donation or sponsorship amount that may be accepted by the City Manager under Chapter 4.04 of the San José Municipal Code (including a fair market valuation of in-kind contributions);
- b. ~~g~~ 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 José Municipal Code; or
- c. ~~(iii) n~~ 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), or (iv) has a term of more than one year

3. Added The City Manager may cede approval authority of a Department's Sponsorship, Donation and/or Fundraising program to the Department Director with acceptance and approval of a written request.

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GUIDELINES OF NET BENEFIT OF CONTRIBUTIONS TO THE CITY.

(Revised into Section 4 "General Provisions" Sections 3 4-The City encourages the may acceptance of donations or sponsorships if the donation or sponsorship provides a significant contributions if the contribution enhancement to the Citys 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, as further provided below, or provides a significant enhancement to the city.

2. (Revised in Section 6 "Department Process/Guidelines" section "e" and incorporated language from recommended rescinded Policy 1-8) The City Manager shall write guidelines for establishing the net benefit to the City of a Donation or Sponsorship, including, without limitation, the administrative costs of obtaining the donation, maintenance, repair and clean-up costs reasonably likely to be associated with the donated item, compliance with any restriction on the donation, and any additional potential liability that the City may assume by accepting the donation.

3. (Revised in Section 6 "Department Process/Guidelines" section "e" and incorporated language from recommended rescinded Policy 1-8) If a Contribution of personal property or of a service does not result in the City receiving the indemnification, insurance, bonding or warranties that it would normally receive through procurement of the personal property or service, the absence of those factors, and the potential costs and liabilities associated therewith shall also be considered in evaluating the net benefit of the proposed Donation to the City.

4. (Revised in Section 7 "Disclaimers" #3) Any contribution that, if accepted, would obligate the City to enter into a service or procurement agreement would not be considered a donation and would be subject to the City procurement process.

5. (Moved to Section 6 "Department Process/Guidelines" #5) Any Department considering acceptance of a donation or sponsorship ~~contribution~~ shall consult with other Departments prior to acceptance of the proposed donation or sponsorship. ~~that will be affected by acceptance of the proposed Donation. 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.~~

~~6. Restricted Donations and Restriction on other contributions shall be evaluated to determine any cost or administrative burden the restrictions impose upon the City, throughout the anticipated useful life of the Donation or contribution.~~

~~AUTHORITY TO ACCEPT CONTRIBUTIONS~~

~~All contributions will be held or deposited within the current gift trust fund policies. (Moved to section 6 "Department Process/Guidelines" #8) Unaccepted donations will be returned to the donor.~~

~~(Moved to section 6 "Department Process/Guidelines" #9) All Donations, including unrestricted cash donations, made directly to the City (with the exception of grants) shall be recorded on the City's "Donation Acceptance Form."~~

~~It will be the responsibility of the respective Department Head to ensure that proper City officials are informed of Contributions, that Contributions are properly acknowledged, that timely reports are made, and that proper recognition is afforded the contributor. (Moved to section 7 "Disclaimers" #8) City employees, whose primary responsibility is the procurement of services, supplies, materials and equipment or public works, should not engage in solicitation of Contributions donations or sponsorships.~~

~~(Moved to Section 7 "Disclaimers" #7) City staff shall maintain the highest standard of ethics in fundraising activities. No employee shall personally benefit from any fundraising activity on City time, and no employee shall engage in any solicitation where the employee, his or her spouse, has a conflict of interest, or the appearance of a conflict of interest would arise from the employee's involvement in the solicitation.~~

~~(Revised in section 6 "Department Process/Guidelines" #1b Individual Department's may offer **SOLICITATION OF CONTRIBUTIONS**~~

~~1. Contributions shall not be solicited under the guise, pretense, or presumption of receiving official City endorsement of entity, product, or service based on the City Manager's approved Sponsorship Program and Sponsorship Agreement. the donating party, product, or activities.~~

~~1. (Moved to section 7 "Disclaimers" #2) City employees may only solicit Contributions donation or sponsorships pursuant to the individual Department's Donation, Sponsorship, and/or an approved Fundraising work plan programs approved by the City Manager ~~D. irector of that department~~, and only if the purpose of the donation is directly related to providing a good or service to the public. City employees working in an enforcement or regulatory City position (i.e. Police and Fire, Code Enforcement, and Environmental Services) shall not solicit Contributions 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.~~

~~(Revised in Section 6 "Department Process") 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:

(Revised in Section 6 "Department Process/Guidelines" #1d) a range of **DONOR RECOGNITION**

~~Contributions should be acknowledged in a timely manner after formal acceptance of the donation has taken place.~~

~~Before engaging in solicitation of Contributions, each Department shall develop, in consultation with the City Attorney's Office, guidelines specifying the type of contributor recognition to be granted for different types of Contributions and for different contribution amount, that shall include the size and identification of location(s) of any signage in recognition of the Donation or Sponsorship and any restrictions on the ~~and the~~ permitted text of the recognition signage.~~

~~The City Manager shall review and approve any Departmental guidelines regarding donor solicitation and donor recognition and shall seek to instill consistency among the departmental donation guidelines.~~

~~The City department receiving the benefit of the contribution must review and approve any presentation of public recognition for that contribution. Recognition should be consistent with the Municipal Code and other laws and regulations, and with the City's current policies and Donation Guidelines. (Moved to Section 7 "Disclaimers" #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 Department Administration shall consult with the City Attorney's Office to determine whether the donation guidelines may contain such prohibitions.~~

(Moved to Section 7 "Disclaimers" #10) No donated materials nor any sponsorship or donor recognition may ~~Contributions and contributor recognition may not be comprised of~~ include obscene or pornographic material.

(Section 6 "Department Process/Other Donations or Contributions" #1) The following provisions shall also apply:

Real Property Contributions (Section also incorporates language from Policy 1-8)
Restricted Contributions of real property may be made to the City for specified purposes. The City will review the conditions of the restrictive donations of real property Contributions and determine if the benefits to be derived warrant the acceptance of the Contributions. All contributions of title to real estate, no matter how small, require City Council approval after proper investigation and due diligence is conducted by staff.

(Section 6 "Department Process/Other Donations or Contributions" #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 José 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. 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.

• Interior Naming Opportunities

Re-written as 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"

~~the City Council reserves the right, as part of a capital campaign, to make appropriate business arrangements in exchange for naming options of City facilities." Naming opportunities for interior rooms or spaces may be an essential strategy for capital campaign fund raising. At the onset or during a capital campaign, 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 will work with their constituencies to develop a list of the significant interior naming opportunities and corresponding giving levels. Interior naming opportunities may also be offered at existing facilities. The respective Department Head will submit the list to the City Manager, for approval.~~

Selection of the Appropriate Donor or Sponsor (Deleted as details shall be in the Department's Fundraising plan)

~~(Moved to section 6 "Department Process/Guidelines/If a Department makes a sponsor or donor recognition opportunity available to outside persons or entities pursuant to these guidelines, the City department shall select the donor or sponsor providing the highest net benefit from the Contribution to the City, along with consideration of the quality of product or service to be received by the City.~~

- ~~• The selection shall be impartial, and compatible with other City Donation or Sponsorship relationships.~~
- ~~• All donation or sponsorship opportunities to be offered and solicitations sought by City Departments shall be reviewed by the City Manager's office or designee in advance of the offering to ensure consistency with these guidelines, and to ensure that the granting of a donation or sponsorship opportunity does not result in preferential treatment of the sponsor, and to avoid a conflict with existing contracts.~~
- ~~• No action shall be taken which gives the appearance that persons or entities that do not sponsor City programs, events, venues or activities are treated less favorably than those who do, or are at a competitive disadvantage in conducting their business with the City.~~

Sponsorship and Donation Agreements:

After the selection of a donor or sponsor by the City Council, City Manager or Department Head, as appropriate, ~~is complete,~~ the terms of the Sponsorship, including any expectation of a significant return or recognition, respective obligations of the sponsor or donor and the City shall be set forth in a written Sponsorship Agreement approved as to form by the City Attorney.

~~with the exception that unrestricted cash donations do not require a formal written agreement.~~

~~Each sponsorship agreement and donor agreement shall not exceed a term of one year unless approved by City Council. City Manager may include Annual renewals of a Sponsorship Agreement, at the City's option, provided that each renewal is within the City Manager's contracting authority level. are permissible provided the entire term of an agreement with all renewals does not exceed five (5) years except as provided below. 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 three-year-term limitation of Section 1700 of the City Charter.~~

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 or sponsorships and the revenue, products, donations and services received shall be recorded and maintained for at least the expected life of the donation item or service, or for a specific time frame that has been established in the Donation Agreement or Sponsorship Agreement.
2. ~~The City's internal determination of the net benefit to the City is solely for the City benefit in evaluating whether to accept or reject a donation, and may not be used by or relied upon by outside parties. The City shall document and maintain records of the anticipated net benefit from the Contribution.~~
3. Donations or Sponsorships paid for with a monetary contribution, shall not be paid to staff in cash unless only be paid for by check payable to the City of San José. Acceptance of cash will only be allowed if 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 donations shall be used as specified in the Donation or Sponsorship Agreement or if not indicated, within the sponsored department with the exception of cross departmental or "citywide" sponsorships or other citywide contributions, or as directed by the City Manager. All funds, products, services, etc. resulting from a "citywide" donation or sponsorship contribution not specified for a

specific program and over \$250,000 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 ~~appropriate means of Council approval.~~

6. All funds generated by Donations or Sponsorships ~~Contributions~~, must be appropriated by City Council prior to being spent by City departments.

7. Departments shall report any donations or sponsorships received through reports to City Manager. ~~include any donations or sponsorships received by the Department in their bi-monthly report to City Manager. On an annual basis, the City Manager shall prepare a report for City Council identifying (i) donation and sponsorship solicitation guidelines approved by the City Manager in the prior year, (ii) all donation agreements and sponsorship agreements signed by the City Manager in the prior year.~~

TITLE CITY FEES FOR COMMUNITY PROJECTS FOR WHICH DONATIONS HAVE BEEN RECEIVED

POLICY NUMBER

1-8

BACKGROUND

Periodically the City is the recipient of donation proposals including buildings or other structures, with related costs of moving or constructing a building on City property. In the case of the Parks and Recreation Department, which receives a majority of the donated and proposed for donated projects, associated architectural, engineering, and inspection costs are funded from Construction and Conveyance Tax funds. Two major problems with this system are: 1) these costs are not usually budgeted at the beginning of the fiscal year; and 2) the Construction and Conveyance Tax budget allocations do not include any provision for a contingency reserve.

PURPOSE

It is the purpose of this policy to provide a system to budget for the estimated costs associated with known donated projects which the City plans to accept during the upcoming year, while maintaining a reserve in the event that actual costs are higher than budgeted costs and/or new donation proposals are received during the year.

POLICY

(Rewritten in revised Policy 1-17 Section 6 "Department Process/Other Donations or Contributions/1. Real Property Contributions")

a. Restricted Donations of real property may be made 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.

a.—i. It is the policy of the City of San José that the following criteria be considered when determining City fees for community projects for which donations have been received for any building and structures donated to the City, the community projects which are proposed for donation to the Parks and Recreation Department:

A. The Parks and Recreation Department and other affected City shall departments will perform a also conduct a cost/net benefit analysis on the proposed project. It is the policy of the City of San José that the following apply to Donations of buildings or structures:

1. This analysis will consider the intrinsic value of a proposed donation, its importance to our parks and recreation system, the associated capital and operating costs, potential liability and insurance implications, and the ability of the donor and/or the City to fund these costs.

B. The donor should mpay the cost for moving and/or construction of a donated structure and that:

a. The City will may pay the insurance and/or bonding required or assume the liability risk under its current self-insurance provisions where appropriate.

a.— b. Costs for

D. The City will pay project-related architectural, engineering and inspection costs incurred including staff time, should preferably be paid by the Donor but may be subject to mutual contribution by City and Donor if set forth in the Donation Agreement. 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. by City staff. This policy should be flexible and each donated community project will continue to be evaluated individually to ensure that projects of great benefit to the City are not eliminated from consideration solely on the basis of the above criteria. For community projects which are donated to and approved by City Council, affecting City parks, and accepted by the Director of the Parks and Recreation and Neighborhood Services Department:

4. If the approved Donation is For a project which is anticipated during an upcoming fiscal year, and if the City Manager or Designee agrees that payment of the project-related funding for the estimated architectural, engineering and inspection costs is to the City's benefit, these which are 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.

1.

2. The cost allocation method stated here for PRNS projects should also be utilized by other City departments in the event that a donated of real property community project proposal is presented to them. It is hoped that this method of allocating costs will encourage future donations of community projects to the City.

C. Beginning in fiscal year 1984-85, the Department should establish a miscellaneous reserve under the Construction and Conveyance City-wide/Special Parks Facilities portion of the Capital Budget for unanticipated projects. The amount of the miscellaneous reserve will be determined by the Director of Parks and Recreation. If this reserve fund becomes depleted during the fiscal year and the department wishes to accept a donated project, funds will have to be reallocated from a Parks and Recreation project(s) which is/are contained in the annual Capital Budget or other funding will have to be identified. Reserve funds may be utilized for other budgetary purposes during the last few months of the fiscal year if no donated projects are foreseen.

CITY OF SAN JOSE, CALIFORNIA
CITY COUNCIL POLICY 7-5
NAMING OF CITY-OWNED LAND AND FACILITIES

BACKGROUND (moved background after Purpose and Policy statement)

~~On past occasions~~ Various individuals, civic groups, and homeowner associations have requested that City-owned 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. Such requests usually occur after the death of an individual and are intended for the commemoration of some contribution or service which was made to the community.

PURPOSE (moved to front of document)

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 OF A PERMANENT CITY FACILITY~~The City encourages nNaming which reflects the City's ethic and cultural diversity;
2. (moved to point 3 in new Policy)~~The City encourages t~~The recognition of individuals who have made a significant contribution to the community, state, nation or the world.
3. The City encourages the recognition of individuals for their service to the community, state, nation, or the world.
3. ~~It may not be appropriate to name a permanent facility; however, the naming of activities, e.g., athletic events or cultural presentations, or plaques included in City sponsored "walls of fame" may be appropriate alternatives.~~

4. ~~4. (moved to point 2 in the new Policy)~~The City encourages the recognition of distinct geographic, environmental or Developmental features, or names of historical significance in naming City lands and facilities ~~and parks.~~
5. ~~5. Significant~~The City encourages donations of funding support from private donors, and/or involvement by civic organizations or groups, to provide for the construction and/or on-going maintenance and operations of City lands parks and facilities in exchange for naming options.
6. ~~(moved to point 4 in the new Policy)~~The City encourages ~~n~~Naming of new facilities as early in the planning process as possible.

Implementation Guidelines

GENERAL PROVISIONS

1. For 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 ~~commission~~ proper body to develop a recommendation to the City Council.
 - i) ~~It is City policy not to change e~~
 - ii) ~~Existing place-names are deemed to have historic recognition. City policy is not to change existing names except when no other appropriate City facility is available.~~
 - i) Existing place-names are deemed to have historic recognition. City policy is not to change existing names except when no other appropriate City facility is available.
 - ii) The common practice is to give City-owned lands a name of historical or geographical significance. 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 in the form of donations or sponsorships.
2. The City Council reserves the right, as part of a capital campaign, and in accordance to City Council Policy 1-17, a Department's approved Fundraising and Sponsorship Guidelines, offer to make appropriate business arrangements in exchange for naming rights options of City owned land or facilities in exchange for financial contributions to the City in the form of donations or Sponsorships. Naming of interior rooms of City facilities and Amenities (as defined below) may be approved by City Manager without City Council approval based upon guidelines established in Council Policy 1-17, and is not covered by this policy.

Naming of City lands such as parks and naming of buildings or other City facilities that are more substantial than an Amenity, requires the approval of the City Council in conformance with this policy. Any capital campaign materials and all Fundraising and Sponsorship Guidelines shall indicate that no naming rights are granted and the

City shall not be obligated to name land, parks and any facility that is not a Minor 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.

- i) 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.
- ii) 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"

3. The naming of interior rooms of City-owned facilities, smaller areas within a park, and other "Amenities" on City-owned land will not be subject by this Policy and shall be subject to the City Manager's approval established in Council Policy 1-17.

- i) An Amenity is an improvement located on identifiable City property such as a park, plaza or trail which does not include a building approved for occupancy. An Amenity may include any of the following City property: minor plazas located on a larger property, gazebos, archways, paths, athletic facilities and playing fields, aquatic facilities, picnic areas, tot lots, play structures, hard courts, and trail segments.
- ii) 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 of the Department's internal Sponsorship Guidelines as referenced in City Policy 1-17 (Revenue Generating Policy Fundraising, Sponsorship and Contribution Guidelines).¹

4. The Department staff will ensure that implementation of this policy does not conflict with existing Municipal Code provisions or existing City policy.

- i) 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, 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 City encourages donation of memorial benches or other furniture or fixtures with the understanding that such items have a useful life, and that the City assumes no responsibility for replacement or upkeep. Plaques commemorating individual donations such as trees, horticultural, or plant materials are discouraged.~~

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.

- A. Any person may recommend a name by submitting a written request to the Office of the City Clerk.
 - i) The proposal detailed request will provide the minimum of information contained on the form provided by the City Clerk.
- B. 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. 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.
- C. Any person may speak on the proposed name and may suggest one or more new names for the City property.
- D. 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.
- E. The Clerk will notify the petitioner of the date for Council consideration and/or the subsequent action by City Council.

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 corresponding giving levels. Interior naming opportunities 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.