

RESOLUTION NO. 74646

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSÉ APPROVING THE REVISED COUNCIL POLICY 7-8, LONG-TERM USE OF CITY PARKLANDS FOR PRIVATE ENTERPRISE PURPOSES, WHICH SHALL GO INTO EFFECT ONLY IF MEASURE M ON THE NOVEMBER 2008 BALLOT IS APPROVED BY VOTERS

WHEREAS, currently the City of San José (“City”) Charter Section 1700 prohibits the City Council (“Council”) from granting permits, licenses, leases, concessions or other interests in a City park for more than three years, without voter approval; and

WHEREAS, on November 4, 2008, the voters of San José shall consider Measure M, which proposes adding a new Section (1700.1) to the City Charter entitled “Council Authority to Enter into Long-Term Agreements,” which will revise the current Council Policy 7-8 to reflect Council’s authority to enter agreements with non-City entities or individuals to use certain City parks for a term up to 25 years, without voter approval; and

WHEREAS, the City desires to amend the Long-Term Use of City Parklands for Private Enterprise Purposes Policy to include Council’s authority to enter agreements for park use with non-City entities and individuals for a term of up to 25 years, upon approval of Measure M by voters;

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSÉ THAT:

The modified Council Policy entitled “Long-Term Use of City Parklands for Private Enterprise Purposes,” which is attached hereto as Exhibit A and incorporated by reference as if fully set forth herein, is hereby approved and shall replace the current

Council Policy only if Measure M on the November 2008 ballot is approved by the voters.

ADOPTED this 28th day of October, 2008, by the following vote:

AYES: CHIRCO, CHU, CONSTANT, CORTESE, LICCARDO,
NGUYEN, OLIVERIO, PYLE, WILLIAMS; REED.

NOES: NONE.

ABSENT: CAMPOS.

DISQUALIFIED: NONE.

CHUCK REED
Mayor

ATTEST:

LEE PRICE, MMC
City Clerk

Exhibit A
RES NO 74646

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| EFFECTIVE DATE: November 28, 2008 | REVISED DATE November 28, 2008 | |
| APPROVED BY COUNCIL ACTION | February 4, 1986, item 8d; November 28, 2008, item 5.2. | |

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 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 authorize 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. 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 an agreement allowing use of

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City property for recreational programs, recreational activities 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).

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.

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 November 4, 2008. Further, this policy does not limit City Council authority received by other voter approvals of agreements in excess of 3 years on Public Parks and inventoried in an 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

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measures, 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.

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.

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- 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 Municipal Code provisions, or existing City Policies 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 SJ Municipal Code), Billboards on City Owned Land (Policy Number 6-4), the City 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), and the Revenue Generating Policy, Sponsorship and Contribution Guidelines (Policy Number 1-17).
- 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.

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- 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 an 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.

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.

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.

PROPOSED NEW SAN JOSE CHARTER SECTION 1700.1

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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Should this chart be included in this policy?

Long-Term Agreements Authorized By The Voters Through Prior 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 |