RESOLUTION NO. 75687

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING AMENDMENTS TO COUNCIL POLICY NO. 7-12, RELATING TO COMMUNITY CENTER REUSE

WHEREAS, the City Council of the City of San José ("City") initially adopted City Council Policy 7-12, "Free Use Of Community Center Reuse Sites In Exchange For Services That Primarily Benefit San Jose Residents" by City Council action on April 22, 2008 ("Policy"), which policy has since been amended; and

WHEREAS, the City Council of the City of San José ("City") desires to further amend the Policy to clarify the conditions under which City staff can charge for or allow the free use of Reuse facilities by for-profit, nonprofit, neighborhood associations, school districts, and other government agencies; and

WHEREAS, public comment was received and it was moved and approved that the proposed amended Policy be adopted by resolution; and

WHEREAS, this Policy supersedes the policy approved on June 15, 2010, under Resolution No. 75427 of the Council of the City of San José;

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

The revised City Council Policy 7-12, entitled "Use Of Community Center Reuse Sites In Exchange For Services That Primarily Benefit San Jose Residents," which revised policy is attached hereto as Exhibit "A" and incorporated herein by this reference as though fully set forth herein, is hereby approved and shall, as of the date and time of adoption of this Resolution, replace City Council Policy 7-12, initially approved by the City Council on April 22, 2008, and amended on June 15, 2010.

ADOPTED this 14th day of December, 2010, by the following vote:

AYES:	CHIRCO, CHU, CONSTANT, HERRERA, KALRA, LICCARDO, NGUYEN, OLIVERIO, PYLE; REED.
NOES:	CAMPOS.
ABSENT:	NONE.
DISQUALIFIED:	NONE.

Chuck Reed

CHUCK REED
Mayor

ATTEST:

Lee Price

LEE PRICE, MMC
City Clerk

75687

EXHIBIT A
City of San José, California

COUNCIL POLICY

TITLE SEE BELOW	**PAGE** 1 of 11	**POLICY NUMBER** 7-12
EFFECTIVE DATE April 22, 2008	**REVISED DATE** __/__/__	
APPROVED BY COUNCIL ACTION 4/22/08, Item 5.2(a), Resolution No. 74333; 6/15/2010, Item 5.1(a), Resolution No. 75427;		

TITLE

USE OF COMMUNITY CENTER REUSE SITES IN EXCHANGE FOR SERVICES THAT PRIMARILY BENEFIT SAN JOSE RESIDENTS

BACKGROUND

In November of 2000, the voters of San José approved a $228 million General Obligation Bond issuance known as "Measure P" to acquire property and construct improvements for parks, trails, and recreation facilities in San José. This bond measure which funds the renovation of various recreation amenities including nine community centers by 2010 will almost double the amount of community center square footage the Department of Parks, Recreation, and Neighborhood Services (PRNS) must manage with limited increases in Staff.

Consequently, the San Jose City Council approved a Community Center Reuse Plan that allows PRNS to vacate community center facilities and centralize services, programs, and Staff at the newer, larger, more efficient centers built with Measure P funds, while maintaining community service priorities in vacated facilities.

This Community Center Reuse Policy allows for-profit, nonprofit, neighborhood associations, school districts, and other government agencies or community service providers (collectively referred to as Service Providers) to use PRNS recreation facilities designated as Community Center Reuse sites in some cases at no cost in exchange for services that primarily benefit San José residents.

PURPOSE

To establish the policy of the City of San José and communicate guidelines for the use of Community Center Reuse sites by Service Providers in some cases at no charge in exchange for services that primarily benefit San José residents.

POLICY

Through this Community Center Reuse Policy, the City Council authorizes the PRNS Director to enter into property use agreements for community or neighborhood centers designated by City Council as Reuse Facilities, with Service Providers who demonstrate to the Director that they will provide a minimum of needed free, low-cost, fee-for-service, sliding scale, or cost reimbursement programs, services, and other activities that primarily benefit San José residents.

The PRNS Director, through a Community Center Reuse Property Management Team or other such designated Staff, will manage community and Service Provider outreach for Community Center Reuse sites, the selection of Service Providers, negotiation and enforcement of property use agreements, and facility operations management.

Before Staff makes a Community Center Reuse site available for use under this Community Center Reuse Policy, the City shall evaluate and approve the condition of the facility, evaluate potential use by other City departments, and shall make any initial repairs deemed appropriate prior to use, in the City's sole discretion. If the PRNS Director determines the cost of repair or operation to be prohibitive, or determines that use of the facility by other City departments is advantageous, the Director may recommend to City Council the removal of a facility from the list of Community Center Reuse sites.

Service providers shall be selected through an open and competitive process (except during the period of Temporary Suspension of Competitive Process described at the end of this Policy) with the goal to maximize the benefit to San José residents. Service Providers shall be selected on criteria evaluating the activities, programs, and services in a Community Center Reuse site that accomplish one or more of the following objectives.

- Services that support the PRNS Vision, Mission, and Core Services. The focus of the Department of Parks, Recreation, and Neighborhood Services is to provide City services, programs, and activities that include, but are not limited to, recreation, therapeutic, youth, and senior programs and services; programs, services, or activities that promote healthy lifestyles; early recreation childhood classes; after school activities; summer camps; meals for seniors; and youth intervention
- Provide quality services and activities which may include free-of-charge or at reduced rates which are defined as at or below City standard fees and charges and which may include fee-for-service (cost per unit of service), sliding scale based upon income guidelines and proof of income, or cost recovery programs (no profit or markup other than reasonable administrative costs), services, and activities or even programs at full market rates including profit or markup.
- Build relations between the public sector and the community
- Address emerging needs and improve programs to meet existing needs
- Foster and leverage support from volunteers and active communities

MAJOR CONSIDERATIONS IN EVALUATING AND SELECTING SERVICE PROVIDERS

1. Initially, the term of each property use agreement will be not more than three (3) years for facilities located on City parks unless City Council determines that the property use agreement complies with City Charter 1700.1, in which case the initial term may be up to 5 years, which may be renewed by the Director. The initial term for facilities not located on City parks shall be not more than 5 years, which may be renewed by the Director.

2. The Service Provider must demonstrate that it can provide its own operational materials.

3. The Service Provider must demonstrate that it can maintain and replace all furniture, equipment, and fixtures that it supplies.

4. Service Providers who bring non-City resources for capital investment, operating funds, or both, used to further the public's interest will be given greater consideration in the selection process.

5. The PRNS Director, or his/her designee, is authorized to (i) solicit potential Community Center Reuse Service Providers which shall be subject to an open and competitive process unless during a temporary suspension of such requirement as described at the end of this Policy; (ii) to evaluate and select responses to the solicitation process; to (iii) negotiate, execute, and extend property use agreements on the City's behalf on terms consistent with this policy; and (iv) to terminate any property use agreement on the City's behalf.

6. The Service Provider shall comply with all applicable laws, ordinances, codes, and regulations of the federal, state, and local government, including the Departments of Parks, Recreation and Neighborhood Services requirements for Background Check/ Fingerprinting for Employees/Volunteers and Tuberculosis (TB) testing.

7. The PRNS Director may request from City Council the removal of a facility from the Community Center Reuse list. The PRNS Director is authorized to require a different use of a facility if the Director determines that use of the facility by other City departments is advantageous or in response to natural, technological, and human-caused disasters. This includes, for example, immediate use of a Community Center Reuse site to shelter displaced residents affected by such disasters.

   The City Council, at any time, may add a facility or may remove a facility from the Community Center Reuse list if the Council determines such action is in the best interest of the City. Community Center Reuse site occupants shall be provided no less than a 90-day written notice to vacate the property. Such requests to add a facility to the Reuse list shall be referred to the City Manager, and it is the responsibility of the City Manager, as a first step, to obtain input, feedback, and report to the Neighborhood Services & Education Committee of the policy issues, workload impacts, cost implications, and other pertinent information associated with completing/addressing the addition of a facility to the Community Center Reuse list, before obtaining City Council approval. City Council may immediately add facilities to the Community Center Reuse list without going through the Neighborhood Services & Education Committee if Council finds that adding the facility or facilities to the Reuse list is urgently needed to respond to a budget crisis.

Without limitation of any other policy, three City Council policies apply to facility use:

Policy 7-1, Below Market Rate Rental Policy

Policy 7-8, Long-Term Use of City Parklands for Private Enterprise Purposes

Schedule of Fees for the Use of Parks and Recreational Facilities

The terms of use of Community Center Reuse sites pursuant to the Reuse Policy shall be the responsibility of the PRNS Director, shall supersede Council Policy 7-1, which directs the Public Works Department to provide oversight for review and negotiations of City-owned leases and or property use agreements; Policy 7-8, Long-Term Use of City Parklands for Private Enterprise Purposes, which establishes guidelines for City parklands use involving commercial or non-profit recreation and commercial or non-profit non-recreation; and shall also supersede any explicitly inconsistent provisions in the fees and charges established by the Schedule of Fees for the Use of Parks and Recreational Facilities.

PROPERTY CRITERIA

City Council shall designate sites as Community Center Reuse sites available to be used by qualified Service Providers if one or more of the following criteria is met:

1. The facility usage is significantly below capacity because the City does not intend to provide staffing and/or to fully program activities in the building in the immediate future, but the facility will be retained for a future public purpose.
2. It is anticipated that the date that future City programming of the facility would occur at or near full capacity is far enough into the future to justify an interim use.
3. An existing lease or sublease agreement, the source of funding used for the original acquisition, or any construction work on the facility or any financing related to the facility, does not preclude the facility or property from legally being occupied for the desired use.
4. The property or facilities are not scheduled to be surplused.

In addition, City Council may add a facility to the Reuse list if City Council finds that adding the facility or facilities to the Reuse list is urgently needed to respond to a lack of operational funding due to a significant budget crisis faced by the City.

SERVICE PROVIDER CRITERIA

The expected level of financial capability and expertise of a Service Provider increases with that Provider's proposed scope of services, activities, and the potential liability assumed by the Service

Provider. A Service Provider should be incorporated or have other formal legal status; comply with the City's insurance requirements as determined by the Risk Manager; have demonstrated experience in providing the proposed services; and adequate financial resources before the City would consider awarding rights to program an entire Community Center Reuse site.

However, the City also desires to make Reuse sites available for scheduled use by less formally organized groups for community meetings and similar activities. The Director, through the PRNS Property Management Team or such other designated Staff, shall establish a process for less formally organized groups to submit requests for time in a Community Center Reuse site, which shall be reserved on an as-available basis, and subject to reasonable terms and conditions as established by the Director. These uses can include, for example, daytime and evening meetings, monthly meetings, and community events. The Director may establish other requirements for longer term uses.

Both for-profit and nonprofit organizations are eligible to operate or provide services at Reuse sites. The fees charged by the City may vary and the City may impose either market rate facility use fees and/or payment of full or partial costs (fees and charges, utilities, maintenance, etc.) depending on whether the Service Provider charges for services provided at the Reuse site, and/or based on the square footage used by the Service Provider's programs. The Director is authorized to adopt a tiered approach to cost sharing between the City and service providers that:

I. May provide free use including City-funding of the costs for maintenance and utilities where a nonprofit or for-profit Service Provider provides all services for free to the public, and where revenue generating activities will not occur.

II. Require Service Providers to pay for use of the facility at such published rates as are established by the Director, and the Director may base such fees on whether the Service Provider charges for services provided at the Reuse site, and/or based on the square footage used by the Service Provider's programs and such other factors as Director deems appropriate. The Reuse fees and charges established by Director for a Reuse service provider who charges for services shall be equitably applied to other service providers charging similar fees for use of Reuse Facilities.

    The Director may also require the user of a Reuse Facility to pay maintenance and utility costs commensurate with the square footage used by the Service Provider's programs. Square footage costs shall be defined by City using City General Services square footage maintenance and utilities costs formula.

For-profits, nonprofits, neighborhood associations, school districts, other government agencies, and other community service providers may operate or provide services at Reuse sites if they are selected by

the Director, and have been determined as the entity offering the most beneficial level and type of services at the facility based on criteria outlined in this policy, and further provided that they meet the following qualifying criteria approved by City Council.

1. Service Providers shall provide services at the rates described in Section I above, either singly or through a written agreement with another community service provider that primarily benefit San Jose residents. "Community services" are to be defined broadly to include, but not limited to programs, services, and activities that align to the PRNS Mission, Vision, and Core Services; services identified during past Community Center

   Reuse public input sessions; and other services that may be identified by future Community Center Reuse public input sessions.

   The Service Provider Community Center Reuse solicitation materials developed may prioritize the service needs for facilities in a manner different than those set forth above, as determined by the Director, based upon factors such as special needs in the surrounding community, changing circumstances, and additional community services identified through future community input and City Staff review.

2. Proof of recognized legal status such as certificate of good standing, articles of incorporation, recorded limited partnership agreement, 501 (c) (3) nonprofit status from the Internal Revenue Service or the California State Franchise Tax Office or similar proof. A nonprofit organization may provide a letter indicating they are exempt under Internal Revenue Code 501(c)(3) or State Franchise Tax Code 23701(d), 23701(f), or 23701(w). (If the tax letter is for the national or state organization, the City needs proof that the local chapter is an affiliate.)

3. A copy of federal income tax returns if the Service Provider is required to file them.

4. If the Service Provider is not registered with any state, the Service Provider must have a constitution or by-laws that clearly state that the objectives of the organization are of a non-profit, non-commercial nature. The City may require an individual to be legally responsible before the City allows access to the Community Center Reuse site. City Staff may provide information for obtaining routine meeting or special event commercial group liability insurance coverage.

5. A Neighborhood Association must be an organized body with adopted by-laws and governed by Officers. The City may require an individual to be legally responsible before the City allows access to the Community Center Reuse site. City Staff may provide information for obtaining routine meeting or special event commercial liability insurance coverage.

6. Demonstrated capacity and financial capability to perform or deliver the desired services in a format determined by the Community Center Reuse Property Management Team.

7. To initially request use of space, the Service Provider must submit the following information in a format prescribed by the Community Center Reuse Property Management Team. The Service Provider's expected level of filing requirements would increase or decrease with the Provider's proposed scope of services and activities, and the potential liability assumed by the Service Provider.
    a. The program's objective and a time frame for implementation, if applicable.
    b. A profile of the clients served, including client residency information.
    c. An outline of the program and proposed service(s) to be offered.
    d. If a non profit, a copy of organization's IRS Form 990, Return of Organization Exempt From Income Tax to include a contact person for the use of the Community Center Reuse site, organization chart, Board of Directors or Officers, their contact information, their role in the organization, and management and key staff, including their length of service.
    e. For-profit Service Providers shall provide a copy of the required IRS tax return for the form of business structure.
    f. A current certified financial audit including sources of funding and any constraints applied to funds.
    g. Evidence of adequate public liability and property damage insurance for the Service Provider's contents and/or other insurance as determined by the City's Risk Manager.
    h. The City may review the Service Provider's past performance under any other City programs or contracts including, but not limited to: CAP Grants, CDBG, and San José BEST.
    i. The source and amount of City grants either applied for or awarded within the previous year including but not limited to CAP Grants, CDBG, and San Jose BEST.

8. The free use or any use at a cost less than the City's standard facility use fees and charges provided for in this Community Center Reuse Policy is not available for Service Providers engaged in political activities (excluding nonpartisan use for polling sites, voter registration, or voter education) or to religious organizations that would use the City's premises to promote sectarian or religious purposes shall pay standard use fees and charges.

SERVICE PROVIDER SELECTION PROCESS

The PRNS Director is authorized to administratively solicit Service Providers through an open and competitive process or during a Temporary Suspension of Competitive Process, such special procurement process permitted under Municipal Code Section 4. 12.235, to generate facility use proposals, to thereafter select Service Providers and to negotiate and execute property use agreements consistent with this Reuse Policy. The PRNS Director is also authorized to extend property use agreements and to terminate property use agreements when deemed by the Director to be appropriate, without requiring City Council approval. The Director, however, may provide administrative reports from time to time to the City Council and the City Manager concerning Service Provider use of Community Center Reuse sites.

Requests for facility use in response to the selection process will be evaluated periodically. Staff will place Service Providers who successfully meet the Community Center Reuse Policy criteria on a pre-qualified Service Provider list, and will use the list to negotiate with and assign facilities based on the type of space desired, space available, time availability, and services proposed. However, a pre-qualified Service Provider list generated without a competitive process during a Temporary Suspension of Competitive Process, shall expire upon the end of such temporary suspension.

ANNUAL REPORTING REQUIREMENTS OF SERVICE PROVIDERS

The PRNS Director, through the Community Center Reuse Property Management Team or such other designated Staff, may request annual performance measurement data and/or program, service, or activity evaluation reports in a form and on such frequency as specified in the property use agreement. The Director may use the results of such annual performance reviews to determine a Service Provider's continued occupancy.

TERMS OF OCCUPANCY

The PRNS Director will develop and modify from time to time, a property use agreement form for Community Center Reuse Service Providers in consultation with the City Attorney's Office. The property use agreement will set forth the terms and conditions of the facility use for Community Center Reuse Service Providers. Nothing in these guidelines shall be construed to limit the terms specifically set forth in any agreement.

The terms and conditions of the property use agreement shall be determined by the PRNS Director but may include the following:

1. The provision of office supplies, operational materials, and the provision, maintenance, and replacement of furniture, equipment, and fixtures provided by the Service Provider shall be the responsibility of the Service Provider.
2. The provision, maintenance, and replacement of City-owned furniture, equipment, and fixtures based upon Normal Wear and Tear shall be the responsibility of the City.
3. Community Center Reuse sites shall be left in the same condition when vacated, as when the Service Provider moved in, allowing for Normal Wear and Tear. If improvements were made to the facility, the City may choose to keep the facility improvements. Normal Wear and Tear may include, but not be limited to faded paint; the natural wearing down of carpet or drapes because of normal use or aging; worn hinges on doors or locks; holes or dings in walls from missing door stops; broken plumbing pipes, unless damaged by the Service Provider; and central drain problems not caused by the Service Provider's incorrect disposal of items.

4. If the Service Provider conducts a fee generating or fundraising event as defined by the City Fees and Charges Resolution, the Service Provider shall agree that all net proceeds from the event shall be used towards subsidizing or reducing costs of programs and services to the community from the facility, and may include acquiring equipment, supplies, and services that will enhance and/or expand services to the community.

5. Any changes in the type or level of services provided by the Service Provider may result in a re-evaluation of the property use terms.

6. The Service Provider shall provide all necessary proof of insurance coverages, which can be supplied by the provider and/or though an umbrella organization, as required by the City's Risk Manager prior to occupancy, during the term of property use agreement, and at renewal of the property use agreement.

7. The Service Provider shall not be entitled to relocation benefits as a result of its occupancy or removal from the Community Center Reuse site unless such benefits are required by law.

8. The Service Provider will be responsible for paying any possessory interest tax, which may be due because of the occupancy. Nonprofit groups may qualify for exemption from possessory interest taxes. For more information, please contact the Santa Clara County Assessor's Office.

9. The PRNS Director, through the Community Center Reuse Property Management Team or such other designated Staff, shall reserve the right to establish and require a refundable cleaning/damage deposit not to exceed $500 for the term of the property use agreement. The Director can establish the refundable cleaning deposit based upon the size of the facility, type of users and uses, past history of use, revised from time to time, and made available to the public.

10. Utilization of the Community Center Reuse site shall be for the exclusive use of the designated Service Provider(s). The Service Provider(s) shall not assign or transfer any interest in the Community Center Reuse site without the prior written consent of City.

11. The Service Provider shall provide building maintenance or to repair damage that is the result from the Service Provider's excessive use or events.

    The City may provide a minimum level of building maintenance service, subject to annual appropriation, consisting of two days of custodial service per week subject to City Council appropriation if the Service Provider provides free services or services at or below City's standard fees and charges. This includes servicing recycle stations, spot vacuuming and mopping, and restroom service. No direct custodial service will be applied to staff areas except recycle stations and restrooms. Routine repairs that are a result of normal wear and tear on the facility will also be completed.

    Service Provider fees and charges will be developed pursuant to the triggers identified under the heading "SERVICE PROVIDER CRITERIA" above.

Preventive maintenance consistent with the majority of other City facilities will also be included. Enhanced maintenance requested above the City's minimum level of service may result in additional costs to the Service Provider. The Property Management Team may inspect the Community Center Reuse site from time to time to ensure that the facility is properly maintained.

12. The Service Provider shall hold the City harmless against claims if the City needs to temporarily shutdown the Community Center Reuse site to perform major system repairs, such as replacement of air conditioning systems.

    No alterations or improvements, including capital improvements and installations of additional phone lines, T1 lines, and electrical lines shall be made to the Community Center Reuse site without the City's prior written approval. If the City provides written approval, the Service Provider shall be responsible for obtaining all City permits through the City of San José Public Works Department necessary for the construction of any alterations or improvements. Service Provider will be responsible for meeting all permit requirements at no cost to the City of San Jose.

13. The Service Provider will not be required to make any capital improvements. If capital improvements are required for the proposed use of a facility, the City, in its sole discretion, may elect to make such improvements, terminate further property use negotiations, or terminate the property use agreement.

    If the Service Provider proposes to fund the capital improvements, the City may consider such requests. The City may review and consider all capital improvement requests pursuant to the City's Capital Improvement Program process. Any obligation on the part of the City to expend funds shall be subject to appropriate City approvals and must be set forth in a written agreement and shall be subject to appropriation of funds by City Council, which shall be made in City's sole discretion.

14. Service Provider(s) shall cooperate if the City requires, prior to and during the term of the property use agreement, the submission of such additional information as may be reasonably requested by City.

TERMINATION

In addition to termination for cause, Community Center Reuse site property use agreements may be terminated by the PRNS Director or the Service Provider(s) at any time for any reason upon no less than a 90-day written notice. The PRNS Director is authorized to terminate a property use agreement sooner than 90 days in response to a declared City emergency.

TEMPORARY SUSPENSION OF COMPETITIVE SOLICITATION PROCESS

City Council declares that the requirements that City staff select service providers under this Policy through an "open and competitive process" set forth under the Heading "Policy", shall be temporarily suspended for 12 months commencing upon the date of adoption of this Policy to allow the City to respond to the City's budget crisis and to reduce the impact of the proposed closure of 21 additional community centers in the proposed 2010/2011 budget. Pursuant to San José Municipal Code, Title 4, Chapter 4.12.235 "Unique Services Purchases", City Council finds that due to the magnitude of the budget crisis faced by the City as of the date of this Policy, an unusual or unique situation exists that makes the application requirements for competitive procurement lengthy, complex and contrary to the public interest in the selection of Service Providers under this Policy. Therefore, during this 12 month period (as it may be extended as provided below), the Director may select Service Providers in Reuse Facilities through a special procurement made consistent with Chapter 4.12.235 with such competition as is practicable under the circumstances. The Director shall comply with the additional requirements of Municipal Code Section 4.12.235, which is set forth in full below.

S.J. M.C. 4.12.235 Unique services purchases.

The procurement authority may initiate procurement for unique professional or other services where the procurement authority determines that an unusual or unique situation exists that make the application of the requirements for competitive procurement of a services agreement contrary to the public interest. Any special procurement under this section shall be made with such competition as is practicable under the circumstance. A written determination of the basis for the procurement and for the selection of the particular contractor shall be included by the Procurement authority in the department files.

The Director is also authorized to extend the Temporary Suspension of Competitive Process under this Policy, for an additional 12 months if the Director finds that the City budget crisis continues to be of sufficient magnitude that an unusual or unique situation exists that makes the application of the requirements for competitive procurement lengthy, complex and contrary to the public interest in the selection of Service Providers under this Policy.

City staff shall have latitude to permit a wide range of services to the public by Service Providers, subject to final approval by the PRNS Director. The consideration and selection of Service Providers would continue to be subject to criteria evaluating the activities, programs, and services as outlined.

Any reference to a "competitive process" in this Policy shall be deemed modified by this Temporary Suspension of Competitive Solicitation Process during the period that the Temporary Suspension remains in effect.