



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** ALBERT BALAGSO

**SUBJECT:** PROPOSED REVISION TO COUNCIL POLICY 7-8  
**DATE:** 10-06-08

Approved

*Christine J. Shippy*

Date

*10-14-08*

**COUNCIL DISTRICT:** City-Wide

## **RECOMMENDATION**

Adopt a Resolution approving the revised Council Policy #7-8: "Long-Term Use of City Parklands for Private Enterprise Purposes," which would go into effect only if the Measure M on the November 2008 ballot is approved by the voters.

## **OUTCOME**

Should Ballot Measure M, to amend the City Charter and extend the duration of long-term agreements in certain city parks, be approved by City voters on November 4, 2008, the proposed revisions to Council Policy #7-8, (Attachment B) would go into effect immediately. Should the Ballot measure not be passed by the voters, the current City Policy #7-8 (Attachment A) will remain in effect.

## **BACKGROUND**

The City Charter currently restricts the maximum time that the City may enter into a lease or other agreement on an open and developed park to three years. This item was reviewed by the Parks and Recreation Commission in April 2008 and by the Mayor and City Council on August 5, 2008, when action was taken to finalize the ballot measure language. At that time, the Council directed staff to return to the Council before the November election, with proposed revisions to the existing City Policy 7-8 titled "Long-Term Use of City Parklands for Private Enterprise Purposes" for approval should the Ballot measure pass in November.

### ANALYSIS

The proposed policy revisions are presented in Attachment B. The intent of the revisions are to include language to address the proposed ballot measure change as well as several specific concerns raised by the Parks and Recreation Commission and the Mayor and City Council including:

- That Measure M is not intended to modify nor to limit other voter approvals of long term agreements in parks. (Note – The prior voter approvals did not exempt any specific parks sites. They did established different parameters on agreements, such as allowing timeframes longer than three years at specific locations.)
- Assurance that any long term agreements would enhance planned park and recreation uses and provide affordable access to the public park.
- Assurance that existing City Council Policies related to billboards, prevailing wage, and living wage would be met.
- Assurance that appropriate levels of public outreach and input would be addressed depending on the duration and impact of the agreement.

### EVALUATION AND FOLLOW-UP

The proposed policy was requested by the Council prior to the November 4 election. Should the ballot measure not pass, the existing, current City Policy 7-8 will remain in effect.

### PUBLIC OUTREACH/INTEREST

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

This item meets Criterion 2: Adoption of a revised policy that may have implications for the financial or economic vitality of the City. This memo will be posted on the City's website for the October 28, 2008 City Council Meeting. E-mail notification was sent to the Parks and Recreation Commission and the Parks and Recreation/Planning Commission Subcommittee.

A public hearing for the proposed revised policy was held during a regular Parks and Recreation Commission meeting on October 1, 2008.

### **COORDINATION**

The proposed Policy 07-08 and this memorandum have been coordinated with the City Attorney's Office and the City Manager's Office.

### **FISCAL/POLICY ALIGNMENT**

The proposed City Council Policy #07-08 will align with the provisions of Ballot Measure M scheduled to go before voters for approval on November 4, 2008. If approved, Ballot Measure M will change the City Charter to allow long-term lease agreements for a period up to twenty-five years, without voter approval, in City parks of 5 acres or larger. The current language in the City Charter limits long-term use agreements to three years in City parks of five acres or more, without voter approval. (Please see Attachments A and B: Current and Proposed City Council Policy language related to Long-Term Use Agreements for City Parklands.)

### **CEQA**

Not a project

  
ALBERT BALAGSO  
Director, Parks, Recreation and  
Neighborhood Services

Attachments: A) Current Council Policy 7-8  
B) Revised Council Policy 7-8  
C) Parks, Recreation and Neighborhood Services Public Policy Outreach Policy

For questions please contact Julie Edmonds-Mares, Assistant Director, at (408) 793-5553.

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

<b>TITLE</b> LONG-TERM USE OF CITY PARKLANDS FOR PRIVATE ENTERPRISE PURPOSES	<b>PAGE</b>  1 of 2	<b>POLICY NUMBER</b>  7-8
<b>EFFECTIVE DATE</b> February 4, 1986	<b>REVISED DATE</b>	
<b>APPROVED BY COUNCIL ACTION</b>		February 4, 1986, Item 8d

**BACKGROUND**

The increasing demand to provide Parks and Recreation services beyond the City's ability to provide public funds has created the economic necessity to manage all available resources in the most effective manner.

A major result of this situation has been a movement by the City toward:

- 1) increased fees for service: and,
- 2) looking to City parklands and buildings as resources with which to entice private operators to either fund capital improvements on undeveloped land, or to lease existing buildings and facilities for specified periods.

**PURPOSE**

To establish guidelines for City parklands use involving:

- a) commercial or non-profit recreation;\* and,

\*Commercial recreation is defined as a use whereby a private party develops and operates a recreational facility either for profit, or for non-profit purposes with an annual net revenue from park site use in excess of \$15,000.

- b) commercial or non-profit non-recreation.

**MAJOR CONSIDERATIONS**

1. The disposal or lease of City developed parkland is limited by Charter Section 1700. Such land may neither be sold nor leased for terms exceeding three years without an authorizing vote of the City electorate. Measure D (approved by the voters in 1982) allows private investment with a 20-year maximum lease for recreational purposes on five developed park sites: Almaden Lake Park; Kelley Park; Lake Cunningham Park; San José Historical Museum, and the Police Athletic League Complex. Short-term leases, limited to three years, are permitted on all other developed parks without an authorizing vote.
2. Undeveloped parkland (land which has not been dedicated, improved and opened to the public for park purposes) may be leased without an authorizing vote of the electorate. Most undeveloped parkland within the current inventory clearly was intended to be used for Parks and Recreation purposes. However, for those parcels that are determined to have no value as parks, these guidelines would not apply. Since the City Charter itself does not prevent these lands from being leased or sold, action would take place for disposal, providing other constraints such as gift or deed contingencies are satisfied. Should parcels be evaluated as having positive park potential, these guidelines would apply.
3. The utilization of non-City sources for providing either capital investment, operating funds, or both should continue to be used where it is clearly in the public's best interest.

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**POLICY**

It is the policy of the City of San José that the following guidelines shall govern the long term use of City parklands for private enterprise uses.

**GUIDELINES FOR LONG-TERM USE OF CITY PARKLANDS FOR PRIVATE ENTERPRISE PURPOSES**

	<b>Commercial or Non-Profit Recreation Use</b>	<b>Commercial or Non-Profit Non-Recreation Use</b>
<b>LOCATION:</b>	Can be located on developed or undeveloped parkland designated as a City-wide park, community or neighborhood recreation center, or at a facility especially intended for such a purpose.	Can be located only on undeveloped parkland of any category.
<b>CHARACTERISTICS:</b>	Shall enhance the planned or projected park/open space and recreation uses.	Shall not interfere with planned or potential park uses.
<b>LEASE PERIOD:</b>	Maximum of 20 years. Could require vote of people.	Time period may not interfere with schedule for park development.
<b>ENVIRONMENTAL REVIEW:</b>	Shall pass environmental review with public hearing notice given, including specific referral to the Parks and Recreation Commission.	Same as Recreation Use.
<b>PERMITS:</b>	When the proposed recreation use is consistent with park use as shown in the park master plan, a Site Development Permit procedure would be followed. When the proposed recreation use is not consistent with the park master plan, a Conditional Use Permit procedure would be followed. Determination of whether the proposed recreation use is consistent with the park master plan would be made by the Parks and Recreation Department and the Parks and Recreation Commission.	Proposed use shall be subject to the zoning code requirements and all other local, State, and Federal requirements.
<b>REVENUE:</b>	Income generated shall be used for parks and recreation purposes.	Same as Recreation Use.

TITLE: <b>DRAFT 9-22-08</b> LONG-TERM USE OF CITY PARKLANDS FOR PRIVATE ENTERPRISE PURPOSES	PAGE A1 of 7	POLICY NUMBER 7-8
EFFECTIVE DATE: November X, 2008	REVISED DATE November XX, 2008	
APPROVED BY COUNCIL ACTION	February 4, 1986, item 8d; November XX 2008, item Xx	

## 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 City property for recreational programs, recreational activities or for open space purposes,

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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 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.

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### 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, FRNS 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.
- 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

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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.
  
- 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

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potential interest by stakeholders. Public outreach meeting requirements on non-construction agreements will require the creation of a plan based on the size, complexity and potential interest by stakeholders, which will be approved by the Director of Parks, Recreation and Neighborhood Services.

2. Shall conform to applicable Council policies for Environmental Review.
3. Shall comply with the City's policies on prevailing wage and living wage, to the extent applicable.
4. Shall be reviewed by the Parks and Recreation Commission for recommendation to Mayor and City Council.

#### **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.

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

<b>Park Site</b>	<b>Ballot Measure</b>	<b>Year</b>	<b>Authorized Provision(s)</b>
Tully Road Ballfields	D	Nov. 1982	Up to 20 year agreements
Almaden Lake Park	G	Nov. 1988	Up to 55 year agreements
Colurabus 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