



MEMORANDUM

Community Services Department

DATE: February 24, 2014

TO: Council Procedures Committee

FROM: Rochelle Kiner, Senior Administrative Analyst
J.P. de la Montaigne, Community Services Director

SUBJECT: Limited Commercial Use of the City's Parks and Plazas

RECOMMENDATION

Review proposed new Council Policy, Commercial Use of City Parks, and proposed updates to Council Policy H-4, Use of Civic Center Plaza, and forward a recommendation to City Council for approval.

BACKGROUND

At the April 30, 2013 City Council Study Session on the Center for Performing Arts—Operating Models Comparison and Analysis, Council directed staff to look for opportunities to increase utilization of the Plaza, including updating Council Policy H-4, Use of Civic Center Plaza, to allow for commercial use. Council was also supportive of waiving or reducing the application fee and providing a building attendant to nonprofit users to support events on the Plaza.

Staff has also been working with the Parks and Recreation Commission (Commission) on the development of a proposed Council Policy for the commercial use of the City's parks and trails. Commissioners had expressed concern that they had noticed groups utilizing parks for several types of commercial use. The Commission recommended approval to Council of the proposed Council Policy, Commercial Use of Parks, on December 11, 2013 (Attachment 1).

ANALYSIS

A summary of the proposed new Council Policy and proposed changes to Council Policy H-4 are listed below.

Commercial Use of City Parks

A draft of the proposed Commercial Use of City Parks Policy is included as Attachment 2. Since the time of approval by the Commission, the proposed policy has been modified slightly for consistency with Chapter 38 of the City Code. The purpose of the policy is to permit limited commercial use in City parks and trails and to formalize a process and set guidelines for commercial use that protects the rights of the public and provides reasonable access for professional recreational service providers. Permitted commercial uses are activities for private gain or profit and include, but are not limited to, activities such as personal fitness training, boot camps, stroller fitness classes, tai chi, martial arts, etc. By requiring a permit, staff is able to ensure that the provider has insurance, is a licensed business within Mountain View, and understands the rules regarding the appropriate use of the City's parks and trails. Staff would also have contact information should a problem or complaint arise. Staff proposes limiting permits for activities within a park to no more than 50 participants, depending on location, and permits for a trail limited to no more than 20 participants.

Permit fees would be at a Level 3 cost recovery based on the Recreation Cost Recovery Policy due to its individual benefit. Level 3 has the highest level of cost recovery with a range of 80 percent to 122 percent. Staff recommends fees be set at a modest rate as compared to other cities to encourage compliance. The success of this policy is reliant on instructors applying for permits to ensure appropriate class size, locations, and to review the instructors' business license and required insurance. Should Council approve this use, the Commission has requested staff return after a year and provide an update regarding the policy and fees. Staff may then recommend adjustments to fees based on demand, market conditions, and associated staff time needed to implement the program (Attachment 3 – Master Fee Schedule – CSD).

Currently, Chapter 38 of the City Code does not allow commercial use in the City's parks. If the Council Procedures Committee recommends adoption by Council, staff will update the City Code to allow this use.

Use of City Plazas

Staff recommends commercial use of the City's plazas be limited to those events that provide a benefit to the residents or businesses within the community (Attachment 4). Plaza use is limited to the following users and shall be awarded on a first-come, first-served basis. However, if more than one application is pending for a particular plaza at the same event date and time, the plaza shall be awarded on the following priority basis:

1. Mountain View-based nonprofit and/or community group whose service area includes Mountain View.
2. Nonprofit and/or community group, not located within Mountain View, which provides services to the residents and/or businesses in Mountain View.
3. Mountain View-based commercial use.
4. Non-Mountain View-based commercial use that benefits the residents and/or businesses in Mountain View.

The current Council policy only allows use of the City Hall Plaza and staff would like to expand the policy to include use at other City plazas, such as Centennial Plaza and/or Charleston Plaza.

Council had also directed staff to evaluate possible reductions to fees to increase utilization. Staff proposes the City Manager or his/her designee have the flexibility to modify fees for first-time events to reduce administrative support costs as long as those costs do not include overtime or nonbudgeted costs. Currently, the application fee for plaza use is \$135 and waived for free speech, assembly, and religious expression. To encourage greater utilization of the plazas, staff recommends modifying the application fees as follows (Attachment 3):

1. Mountain View-based nonprofits (501(c)(3)) – \$0.
2. Mountain View-serving nonprofit and/or community group – \$50.
3. Commercial use – \$270.

Proposed updates to the Use of the City's Plazas Policy has not been reviewed by the Commission. Similarly to commercial use in the City's parks, commercial use of the City's plazas is not allowed as per Chapter 38 of the City Code. If the Council

Procedures Committee recommends adoption by Council, staff will need to update the City Code to allow this use.

ALTERNATIVES

The Council Procedures Committee may wish to consider alternatives to staff's recommendations:

1. Not allow commercial use in the City's plazas.
2. Not allow commercial use in the City's parks and trails.
3. Keep plaza use application fees at the current fee (\$135).
4. Waive noncommercial application fees for first-time users of the City's plazas.

NEXT STEPS

The recommended new City Council Policy for the commercial use of the City's parks and the updates to City Council Policy H-4 are scheduled to be presented to Council on March 18, 2014. Staff will include updates to Chapter 38 of the City Code to allow commercial use of the City's parks and plazas.

Proposed updates to Council Policies K-14, Special Events, and H-5, Use of the City's Facilities (including the Council Chambers), along with additional information on Council compensation, will be brought back to the Council Procedures Committee at the next meeting.

RK-JPdIM/7/CSD

240-02-24-14M-E

- Attachments:
1. [Parks and Recreation Commission Staff Report, Commercial Use of City Parks Policy, December 11, 2013](#)
 2. Council Policy – Commercial Use of City Parks (new)
 3. Master Fee Schedule – Community Services Department
 4. Council Policy H-4, Use of City Plazas (Red-Lined)

cc: CM, CA, FASD, AFASD, PFA

CITY COUNCIL POLICY

SUBJECT: COMMERCIAL USE OF CITY PARKS

NO.: ____

PURPOSE:

To establish a permitting process for the commercial use of City of Mountain View parks for personal training, boot camps, dog training, and other outdoor professional services compatible with recreational uses.

Due to the limited number of parks available for the community, the City has established criteria for permitting commercial uses in order to allow multiple recreational uses of existing parks.

A permit policy and associated fee have been developed for commercial use of City parks for scheduled activities in Mountain View parks. This program includes provisions that protect the public's use and provides health and fitness consultants, tai chi leaders, martial arts instructors, dog trainers, and other professional service providers reasonable access to Mountain View parks.

Permits will only be issued for activities that will not disrupt the general public's use and enjoyment of the park.

POLICY:

The City's Community Services Department may permit commercial use of parks based on the following process and consistent with Chapter 38 of the Mountain View City Code.

"Parks" shall mean a park, playground, open space, creek corridor, environmental preservation area, wildlife area, and/or trail under control of, owned by, or used by the City and devoted to active or passive recreation and/or environmental preservation as defined in the City Code Section 38.1.

Commercial use of City of Mountain View parks is not a special event within Council Policy K-14 if the use complies with City Code Chapter 38 and this policy.

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1. Commercial Use Permit Application and Fees

a. Application

A complete Commercial Use Permit application must be submitted by, including but not limited to, the instructor, teacher, activity leader, or employing organization thereof to the City's Community Services Department to be eligible for a permit. Commercial Use Permit applications, along with a City of Mountain View business license and proof of insurance, as required by the City, must be submitted for each permit. Applications must provide requested dates, times, and locations of use. Permit applications must be submitted at least 14 days prior to the requested start date. Permits may be issued for a period not to exceed six months. All applicants must be over 18 years of age.

b. Payment of Fees

All fees are due at time of application submittal. Fees shall be set and approved by Council resolution. Permits will not be approved prior to payment being received and processed.

2. Permit Review and Issuance

a. Permit Review

Upon submission, permit applications will be reviewed for completeness and proposed activity compliance with the following regulations and restrictions:

Approved Commercial Use. Outdoor professional services, including, but not limited to, fitness groups, dog trainers, yoga instructors, tai chi leaders, martial arts instructors, and other outdoor professional services providing a community benefit and approved by the Community Services Department.

Maximum Length of Permit. Permits may be approved for a duration of up to six months.

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Participant Size Limits. Under no circumstances shall a permit be approved for any activity involving more than 50 participants within a park or for more than 20 participants on any trail. Based on the number of participants, the Community Services Department will evaluate each location requested for appropriate space allocation and may decline permit applications or offer alternate locations. Depending on the requested location, groups may be limited in size to less than the above-mentioned maximum.

Excluded Areas. Any location specifically dedicated to a use or reserved for a preexisting use that would reasonably conflict with the proposed commercial use is excluded. For example, holding fitness classes in an area dedicated as a children's play area or in a permitted field used by youth sports organizations would be prohibited. See Council Policy H-7 for the City's Athletic Field Use Policy.

b. Grounds for Issuance or Denial and Appeal Process

- Permits shall be issued by the Community Services Director consistent with Mountain View City Code Section 38.3 provided that the location is not an excluded area, the number of participants are appropriate for the requested location, activity is an allowed commercial use under this policy and the City Code, and applicant has not had a permit revoked within the last six months.
- Applications may be denied, in writing, within 14 business days of application submission if these requirements are not met, unless the time for granting or denying of the permit has been waived by the applicant in writing.
- If an applicant is denied, an applicant may appeal the decision pursuant to Mountain View City Code Section 38.3.

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3. Commercial Use Regulations

All permittees shall comply with the following:

- Permittee shall clean the park location at the end of every session of use under this permit.
- Permittee shall not sell equipment or other items in the park.
- Permittee is required to have the permit with them when conducting business on City property.
- Permittee shall be responsible for permittee's employees, agents, customers, and/or clients use of the park pursuant to the permit issued and shall advise same of the applicable City Code, policy, and permit requirements.
- The City has the right to inspect the permit at any time. Any City employee or City contractor may request the permittee to present the permit as proof thereof.
- Permittee shall not use the park location if the area has been closed by the City due to inclement weather or other reason. If it rains on the date of reservation or the park is deemed too wet for use, the group may reschedule for another day. To request another date due to rain, permittee must contact the Community Services Department prior to scheduled use. Additional permit date(s) shall be approved if space at the requested location is available and the location is appropriate for the group size.
- Many of Mountain View's athletic fields are located on school property and in residential neighborhoods. Activities must be conducted in a manner respectful of the schools and neighbors by keeping noise levels to an appropriate volume, following speed limits on residential streets, and parking in appropriate or designated parking areas.
- A preexisting use prevails. Permittee shall not interrupt existing use of an area by the general public and the public must always have access to park entrances. Blocking of public access is prohibited. If a permitted commercial

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use has already begun and is in process, the general public may not interrupt an ongoing permitted use.

- Permittee may not bring equipment to parks that could damage the park, trail, or pose a hazard to the general public. These items include, but are not limited to, the following:
 - Tractor tires, kettle bells, and other heavy equipment which may impact or damage the park or trail.
 - Martial art weapons or targets of any kind (fighting sticks, boards, bricks, etc.).
 - Public address systems, megaphones, or amplified music systems.
 - Cables or railroad ties.
- Permittee shall not attach equipment to trees, handrails, or other fixed items.

5. Revocation

a. Revocation. Violations of this policy, the issued permit, or Mountain View City Code Chapter 38 may result in the revocation of the permit, consistent with Mountain View City Code Section 38.3. Three or more violations by any permit holder shall result in permanent removal from the program. If a permit is revoked, permittee shall not be issued a new permit pursuant to this policy for a period of at least six months.

b. Appeal of Revocation. If a permit is revoked, a permittee may file a written appeal consistent with Mountain View City Code Section 38.3.

Effective Date: _____, Resolution No. _____

RK/CV/7/CNLPOL
XX-231CP

FEE SCHEDULE – COMMUNITY SERVICES DEPARTMENT

State Code § (if any)	MVCC §§/ Council Policy	Title of Fee	Current Fee	Proposed Fee	Fee Basis	Effective Date
		<u>Commercial Use Permit</u>				
N/A	38.3/CP__	Parks: 1-20 people	None	\$10	Hour	05/01/2014
N/A	38.3/CP__	21-40 people	None	\$20	Hour	05/01/2014
N/A	38.3/CP__	41-50 people (max)	None	\$25	Hour	05/01/2014
N/A	38.3/CP__	Trails: 1-20 people (max)	None	\$10	Hour	05/01/2014
		<u>Plaza Use Permit</u>				
N/A	38.104/ CP H-4	Application Fee: 501(c)(3) MV-Based Nonprofit ¹	\$135	\$0	Fixed	05/01/2014
N/A	38.104/ CP H-4	MV-Serving Nonprofit/ Community Group	\$135	\$50	Fixed	05/01/2014
N/A	38.104/CP H-4	Commercial Use	None	\$270	Fixed	05/01/2014

CP = Council Policy

¹ Meets the criteria set forth in Council Policy H-4, Item 2b.

CITY COUNCIL POLICY

SUBJECT: USE OF ~~CIVIC CENTER~~CITY PLAZAS

NO.: H-4

PURPOSE:

To establish policies governing use of the ~~Civic Center~~City's Pplazas.

Definitions:

The following definitions, consistent with the definitions set forth in Mountain View City Code Chapter 38, shall apply.

"Commercial use" or "commercial activities" shall mean activities for private gain or profit. Private gain shall mean a use for the principal purposes of making a profit not pledged to be used for public or charitable purposes. Commercial use excludes fundraising.

"Community groups" shall mean a group or organization whose service area includes Mountain View and that operates for a public or charitable purpose. Community group does not include businesses that operate for private gain.

"Plaza" shall mean the City Hall Plaza, Centennial Plaza, and Charleston Plaza.

POLICIES:

1. The City supports use of the ~~Civic Center~~City's Pplazas for activities which benefit the community.
2. The City will facilitate use of the Pplaza as follows:

Events:

- a. ~~Organizations wishing~~In order to use any of the City plazas, an application must be submitted~~an application~~ to the Community Services Director or his/her designee at least sixty (60) days, but not more than one year, before the date of use. Free speech/assembly/religious expression special events should file an application as soon as practicable before the date, but at least five days prior to the use, unless, upon a showing of good cause, such as a situation in which the use or purpose for the use arose after the application deadline.

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- b. There is a nonrefundable use permit application and administration fee ~~of \$50 set by Council resolution~~, except that said fees shall be waived for free speech/assembly/religious expression and nonprofits uses located in Mountain View whose service area includes Mountain View and provides an Internal Revenue Service (IRS) "Letter of Determination" and all necessary financial documentation, as determined by the Community Services Director or his/her designee, to verify compliance with the following requirements:
- (1) The local nonprofit organization's service area is within Mountain View City limits or includes more than fifty percent (50%) of Mountain View residents as indicated in the organization's articles of incorporation and bylaws;
 - (2) The board of the local nonprofit organization is comprised of at least one Mountain View resident; and
 - (3) The local nonprofit organization has obtained a Mountain View business license.
- c. Applications will be considered by the Community Services Director or his/her designee and shall be approved or denied based on the following standards:
- Is the application complete and timely filed?
 - Would the use provide cultural, social, recreational, or educational benefits/activities for Mountain View residents or local businesses?
 - What benefits and impacts will the event create for businesses and residents in Mountain View?
 - Will the use conflict with other activities planned for the area on the same day? (Priority will be given to events that have annually been held on a particular date(s).)

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- Will the use benefit charitable causes that provide services to Mountain View residents?
 - Will the use generate interest in the City of Mountain View and cause visitors from out of town to come to Mountain View?
 - Will the use cause traffic or parking problems?
 - Is the activity free to the public (i.e., no admission charge)?
- d. Purely commercial, for-profit use of the City Plazas is ~~not~~ allowed if it benefits the residents and/or businesses within the community and is approved by the Community Services Director.
- e. Events whose primary purpose is the exercise of free speech, assembly, or religious expression are expressly permitted.
- f. ~~Other than events covered in Section e, Plaza use shall be awarded only to nonprofit or civic organizations which provide service to residents of Mountain View. An event producer may be retained by the nonprofit to organize and coordinate the use of the Plaza; however, the nonprofit organization will be considered the Plaza applicant and will be responsible for all costs, permits, etc. Plaza use is limited to the following users and shall be awarded on a "first-come, first-served" basis. However, if more than one application is pending for a particular plaza at the same event date and time, the plaza shall be awarded on the following priority basis:~~
- (1) Nonprofit and/or community group whose service area includes Mountain View and is located in Mountain View.
 - (2) Nonprofit and/or community group whose service area includes Mountain View and is not located in Mountain View.
 - (3) Commercial use by businesses located in Mountain View.
 - (4) Commercial use by businesses not located in Mountain View that benefits the residents and/or businesses in Mountain View.

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- g. An event producer may be retained by a nonprofit, community group, or commercial business to coordinate the use of the plaza; however, the nonprofit, community group, or commercial business will be considered the plaza applicant and responsible for all costs, permits, etc.
- h. Organization-Users will be charged fees for services based on actual cost, as set by Council resolution. Cost recovery fees for services shall be waived for free speech/assembly/religious expression uses if the sponsoring ~~organization-user~~ certifies that the cost recovery fees would impose a financial hardship on the ~~organization-user~~ or would interfere with its ability to use the Plaza. Upon approval of the City Manager or his/her designee, the City may modify the cost of administrative support (excluding overtime or nonbudgeted costs) for first-time events.
- hi. If the use of the City Hall Plaza is in conjunction with an event held at the Mountain View Center for the Performing Arts and/or City Hall, policies relating to use of those facilities will also apply.
- ij. Users must provide a certificate of general liability insurance naming the City as additional insured, as required by and acceptable to the City's Risk Manager, four weeks prior to the use.
- jk. Users are required to pay one-half of all applicable estimated City cost recovery fees for City services to be provided, in amounts as established by Council resolution, four weeks prior to the use.
- kl. Within 90 days of the conclusion of the event, the ~~organization-user~~ must submit a post-event financial statement showing the amount of revenue collected, expenses, and net profit/loss to the ~~organization-user~~ using the financial form provided by the City (Exhibit 1). The City auditor may require additional information and/or an audited financial statement as he/she may determine necessary to verify the accuracy and reliability of the information. Failure to fully comply with the requirements of this section shall be grounds for denial of future applications.

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Holiday Displays:

- lm. Multi-day, end-of-calendar-year, holiday-season displays are permitted for up to a 30-day period, within the time period from November 15 of each year and January 15 of the following year.
- mn. Only recognized nonreligious multi-day holiday displays are allowed. Requests for displays will be reviewed by the City Manager or his/her designee to confirm that they are decorative and commemorative in nature and do not endorse or promote any religious expression.
- no. Up to five (5) displays will be allowed simultaneously in designated spaces in the ~~P~~plaza. Attachment 1 shows the general locations of these spaces. These are spaces designated that are not likely to interfere with permitted events or public assemblage in the ~~P~~plaza.
- op. Applications for holiday displays must be received at least sixty (60) days, but not more than one (1) year, before the first day of the display. If more than five (5) applications are received for the same time period, the five (5) displays to be permitted will be chosen by lottery. Those that are not chosen may be given priority in the following year should they wish to apply.
- pq. Events relating to any of the displays will be permitted according to the existing provisions in this policy.
- qr. For every display, insurance coverage must be provided to the City and the City named as an additional insured.
- rs. Displays must be entirely self-contained, no larger than 10' x 10' x 10' high, and, if requiring power, must be powered by battery or solar power. Noise, dust, fumes, chemicals, vehicles, extension cords, or other nuisances are not to be used in conjunction with the displays.
- st. There is a nonrefundable use permit application and administrative fee ~~of \$50.~~ set by Council resolution.

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3. Consumption, sale, or service of alcohol other than beer and wine requires Council approval.

Revised: _____, Resolution No. _____

Revised: January 13, 2009, Resolution No. 17376

Revised: November 27, 2007, Resolution No. 17258

Revised: November 23, 1993, Resolution No. 15639

Revised: February 11, 1992

Effective Date: January 22, 1991

CNLPOL

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