



**DATE:** April 1, 2014

**CATEGORY:** New Business

**DEPT.:** Community Services

**TITLE:** **Amend City Council Policy H-4, Use of Civic Center Plaza; Adopt City Council Policy – Commercial Use of City Parks; Amend Master Fee Schedule; and Amend City Code Chapter 38**

### **RECOMMENDATION**

1. Adopt a Resolution Amending City Council Policy H-4, Use of Civic Center Plaza; Adopting City Council Policy – Commercial Use of City Parks; and Amending the City of Mountain View Master Fee Schedule – Community Services, to be read in title only, further reading waived.
2. Introduce an Ordinance Amending Chapter 38 of the Mountain View City Code Relating to Regulating the Use of City Parks and Other City Facilities, to be read in title only, further reading waived, and set second reading for May 13, 2014 (Attachment 1 to the Council report).

### **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 City Hall Plaza, including updating City Council Policy H-4, Use of Civic Center Plaza, to allow limited 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.

In addition, staff worked with the Parks and Recreation Commission (Commission) on the development of a policy to allow limited commercial use of the City's parks and trails. The Commission had expressed concern over several "boot camps" and/or group training sessions occurring in the parks that are currently unregulated. On December 11, 2013, the Commission recommended approval of the proposed City Council Policy – Commercial Use of City Parks, with the provision that the policy and proposed fee structure be reviewed in one year (Attachment 2).

On February 24, 2014, staff proposed amendments to City Council Policy H-4, Use of Civic Center Plaza, and a new proposed policy, Commercial Use of City Parks, to the Council Procedures Committee (CPC) (Attachment 3). The CPC unanimously recommended approval of both policies with the provision that staff return to the CPC in one year with a report on the commercial use of parks addressing whether the permit fees need to be adjusted based on the program's demand, market conditions, and associated staff time. The CPC requested staff review the lease agreement with the Bean Scene to determine if their lease encompasses use of the entire City Hall Plaza. The CPC also requested staff look into the use of the parking spaces at Cuesta Park by YMCA staff.

### ANALYSIS

The proposed amendments to City Council Policy H-4, Use of Civic Center Plaza, and the new City Council Policy – Commercial Use of City Parks, are summarized in this section of the Council report. Staff proposes updates to City Code Chapter 38 – Regulating the Use of City Parks and Other Facilities, to allow limited commercial use of parks and plazas, as well as updates and clarifications to the City Code, to make it easier to navigate. Other proposed revisions are discussed in further detail below.

#### City Council Policy H-4, Use of Civic Center Plaza

Staff recommends commercial use of the City's plazas be limited to those events providing a benefit to the residents or businesses within the community (Exhibit A to 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 plaza event at the same date and time, the plaza shall be awarded on the following priority basis:

1. Nonprofit organization and/or community group located in Mountain View.
2. Nonprofit organization and/or community group not located within Mountain View.
3. Users engaging in free speech/assembly/religious expression.
4. Commercial use by businesses located in Mountain View.
5. Commercial use by businesses not located in Mountain View that benefits the residents and/or businesses of Mountain View.

Nonprofit organizations' and community groups' service area must include Mountain View. Staff included the definition of "nonprofit" as 501(c) organizations that have a letter of determination from the Internal Revenue Service (IRS). Having a 501(c) designation by the IRS provides an objective way for staff to easily evaluate whether a nonprofit entity serves a public or charitable purpose or provides a community benefit. Allowing all c-type organizations broadly defines "nonprofit" and allows additional user groups that would not be included if a 501(c)(3) designation was required, such as civic leagues and social and recreational clubs. Staff also included a definition for free speech/assembly/and religious expression for better clarity.

The current City Council Policy only allows use of the City Hall Plaza and staff recommends expanding the Policy to include use at other City plazas, such as Centennial Plaza and/or Charleston Plaza.

Council had 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. This fee reduction does not apply to commercial uses. 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 (Exhibit C to Attachment 4):

1. Mountain View-based nonprofits 501(c) serving Mountain View – \$0
2. Other nonprofits and/or community groups serving Mountain View – \$50
3. Commercial uses located in or benefiting Mountain View – \$270

Proposed updates to City Council Policy H-4, Use of Civic Center Plaza, were reviewed and recommended for approval by the CPC on February 24, 2014. Since the CPC's review, staff has added the definition of "free speech/assembly/religious expression" and "nonprofit organization" for clarity and consistency of terms between the various policies regulating the use of City property. Staff updated the Policy to state that modification to fees for first-time events does not include commercial use. Staff also clarified that users engaging in free speech/assembly/religious expression do not need to provide a postevent financial statement, and cost recovery fees for services would be postevent unless it poses a financial hardship.

### New City Council Policy – Commercial Use of City Parks

Staff proposes Council adopt a new City Council policy to allow limited commercial use of the City's parks (Exhibit B to Attachment 4). The purpose of the policy is to permit limited commercial use of the City's parks and trails and to formalize a process and set guidelines for commercial use that is compatible with recreational uses, 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. Contact information must be provided to staff 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. Permits may be approved for a period of up to six months.

Staff proposes a tiered rate structure for commercial permits based on the number of participants. Staff recommends fees set at a modest rate as compared to other cities to encourage compliance. The success of this proposed policy is dependent on instructors applying for permits to ensure appropriate class size, locations, and to review the instructor's business license and required insurance. Should Council approve this use, the Commission and CPC have requested staff return after one 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 manage the program (Exhibit C to Attachment 4).

The Commission and CPC have recommended approval of the proposed new Council policy. Since the Commission's and CPC's review, staff has further updated the policy to include the definition of "commercial use" and "commercial activity" for better clarity and consistency of terms between the various policies regulating the use of City property. Staff clarified athletic fields are included within the definition of "parks" and modified the revocation section such that if a permit is revoked, no portion of the permit fee would be refunded.

### City Code Chapter 38

The primary change to City Code Chapter 38 is to allow limited commercial use of the City's plazas and parks (Attachment 1). Commercial use of the City's plazas is recommended to be limited to those events that benefit the residents and/or businesses

in the community. Allowing limited commercial use in the parks and formalizing a policy provides the framework for staff to better educate professional service providers on the rules regarding appropriate use and regulate groups based on location and size to protect public access. Other changes to Chapter 38 include defining terms, removing detailed guidelines or procedures that could be moved to Council policies, providing the authority for the City Manager to assign a designee for certain functions, deleting the reference to specific dates for barbecue season allowing for greater flexibility to adjust the dates based on demand, modifying the appeal period and applying the appeal provisions to revocation of a permit or reservation, and to reference fees as set by Council resolution instead of inclusion in the City Code.

### CPC Follow-Up Questions

At the CPC meeting on February 24, 2014, the CPC inquired about the Bean Scene's use of the plaza for its café operations. The Bean Scene leases space in the Center for the Performing Arts and has the right to place tables, umbrellas, and chairs in designated areas of the plaza at City Hall during business hours as part of its café. Under the lease, the Bean Scene is required to remove any furniture from the plaza during special City events or third-party events authorized by the City. During these events, the City has full access to the entire plaza. The City's lease agreement with the Bean Scene does not limit the City's right to allow users to provide food/alcohol on the City Hall Plaza, subject to compliance with the Department of Alcoholic Beverage Control.

The CPC also requested staff look into the use of Cuesta Park's parking spaces by the YMCA. Staff contacted the YMCA and they have sent a memo to their employees directing staff not to park at Cuesta Park. Staff will continue to work with the YMCA and monitor parking to ensure compliance.

### FISCAL IMPACT

Staff anticipates minimal revenue increases for the use of the City's plazas. The exact financial impact of allowing limited commercial use of the plazas is unknown. Staff estimates an additional \$5,000 to \$8,000 increase in revenues from commercial use of parks permits in Fiscal Year 2014-15 based on current estimated use. After a year, staff will provide an update to the Commission and CPC on commercial use fees and recommend whether or not to adjust fees based on program demand, market conditions, and related staff time.

## **ALTERNATIVES**

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

1. Do not allow commercial use in the City's plazas.
2. Do not allow commercial use in the City's parks and trails.
3. Further limit the maximum number of people allowed for a Commercial Use Permit on the City's parks and/or trails.
4. Revise City Council Policy H-4, Use of Civic Center Plaza, as directed by Council.
5. Revise proposed City Council Policy – Commercial Use of City Parks, as directed by Council.
6. Revise proposed changes to Chapter 38.
7. Provide other direction to staff.

## **NEXT STEPS**

If adopted, amendments to City Council Policy H-4, Use of Civic Center Plaza; adoption of City Council Policy – Commercial Use of City Parks; and amendments to the City of Mountain View Master Fee Schedule become effective July 1, 2014. If the Ordinance Amending Chapter 38 Relating to Regulating the Use of City Parks and Other City Facilities is introduced, a second reading would be scheduled for April 22, 2014. If adopted, amendments to City Code Chapter 38 would become effective July 1, 2014.

## **PUBLIC NOTICING**

Agenda posting. Notification was also sent to the Parks and Recreation Commission and community members who have expressed an interest in commercial use of City parks.

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240-04-01-14CR-E

- Attachments:
1. City Code Chapter 38, Regulating the Use of City Parks and Other City Facilities (red-lined)
  2. [Parks and Recreation Commission Staff Report, Commercial Use of City Parks Policy, December 11, 2013](#)
  3. [Council Procedures Committee Memo, Limited Commercial Use of the City's Parks and Plazas, February 24, 2014](#)
  4. City of Mountain View Resolution
    - Exhibit A: City Council Policy H-4, Use of Civic Center Plaza (red-lined)
    - Exhibit B: City Council Policy – Commercial Use of City Parks
    - Exhibit C: Master Fee Schedule – Community Services