



**Policy Type:** Board

**Category:** Land Use

**Policy Name:** Lease Preparation and Monitoring Policy for County Parks - Board Policy 7.6

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## **7.6 LEASE PREPARATION AND MONITORING POLICY FOR COUNTY PARKS (Adopted 9-23-97; Amended 12-9-08; Amended 7-30-12; Amended 5-14-13)**

Lease operations play an important role in providing a wide diversity of regional recreational opportunities within the Santa Clara County parks system. The Santa Clara County Parks and Recreation Department (Parks) administers leases and licenses of varying complexity and length of term with not-for-profit and for-profit individuals and organizations serving a Park Purpose. This policy will not apply to leases with governmental entities or to leases that must comply with or the Park Abandonment Act or other Government Code provisions applicable to County Parks relating to Park property used for other than Park Purposes. Parks is committed to initiating, all lease operations that 1) contribute to regional recreation opportunities and are consistent with Parks' mission to "provide, protect and preserve regional parklands for the enjoyment, education & inspiration of this and future generations", 2) conform to relevant policies or planning studies, 3) enhance public use, enjoyment and safety, and 4) generate sufficient revenue from the private sector so that public subsidy is not required. Parks' goal is to meet the needs and desires of park visitors, while ensuring that both Parks and tenants receive fair and equitable return on.



### **7.6.1 Administration and Monitoring Procedures**

- (A) Standard Lease/License Form - Definitions. All leases and licenses will be prepared by Parks Administration using a standard form approved by County Counsel. The form will provide for insurance, security deposits and bonds appropriate to the County's risk. Any modifications to lease and license language will be reviewed and approved by County Counsel.

Leases for a term certain will be used in those instances that involve major financial obligations on behalf of the tenant, particularly with regard to construction of significant capital improvements such as buildings, major repair to structures, major utility improvements, and the like.

Licenses will be used in situations in which public access and environmental concerns require Parks to reserve its right of non-exclusive use and immediate revocation if necessary, in the interest of public safety and resource protection.

- (B) Review of Concept/Proposal. Proposed activities for lease operations may be generated by Parks, through public forum(s) (i.e. master plan input, Parks and Recreation Commission meeting input), or through unsolicited proposals. Before entering into any new lease, Parks will carefully evaluate the proposed activity or land use using the following criteria:

- (1) Consistency with Parks' mission and regional recreation focus.



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- (2) Consistency with the Board approved Commercial Development on Park-lands policy, Parkland Range Management policy, Park Residence policy and any other relevant policies.
  - (3) Consistency with relevant Parks master plans and the Countywide Trails Master Plan.
  - (4) Preliminary assessment of potential environmental impacts and regulatory requirements.
  - (5) Evaluation of public benefit and demand.
  - (6) Analysis of alternatives to proposal. Evaluate whether proposed activity is more appropriate to another park or if modifications should be considered to better meet the needs of the public, department and tenant.
  - (7) Preliminary marketing and financial analysis.
  - (8) Preliminary risk analysis and analysis of liability concerns.
  - (9) Evaluation of neighborhood impacts. If appropriate, a public workshop may be held to identify issues, concerns and needs of adjacent neighbors.
  - (10) Proposed lessee's financial ability to perform public service activities for the entire period of lease operations including restoration of property, if appropriate.
- (C) Leasing or Licensing to For-Profit Individuals and Organizations. An important component of the Board's evaluation and approval of a proposed lease is potential revenue as it relates to public benefit and



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demand. In order to provide affordable services to the public and to ensure that lease rental rates are determined in a fair and credible manner, Parks Administration will either competitively solicit lease proposals or, if a no-bid lease is proposed Parks will perform a fair market value analysis. The fair market value analysis may also include a comparison review of similar facilities and services provided by other public or private entities in the Bay Area, including but not limited to, comparison of revenue sources, costs of facility operation and maintenance, and rent. In certain situations, where adequate market information is not available from the Bay Area market, a statewide comparison review may be provided. At Parks discretion a professional consultant may be used to perform the informal fair market value analysis and estimate of lost revenue when expertise or staff resources are not available in house.

All below fair market real property, franchise and concession contracts involving County real property shall be subject to and comply with the provisions of Board Policy Section 5.9.5.6. Proposed leases with a not-for-profit entity will not require competitive solicitation. Parks will consider a balance between public benefit and demand for services to be provided, and revenue potential given costs of conducting operations and providing and maintaining the facility. Lease controls will be in place for any no-bid, not-for-profit lease to ensure that revenues earned beyond costs of operation and facility maintenance and improvement are paid as rent to the County.

- (D) Lease Term. The term of any no-bid lease agreement, including any extension, will be limited to a total of 30 years.
- (E) Competitive Bid Lease Preparation Process. Parks will use the following process for competitively bid lease preparation:



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- (1) Prepare a request for proposal (RFP) and seek Board approval to advertise.
  - (2) Fulfill notice, advertising and selection requirements in accordance with Government Code Section 25525.
- (F) Existing Tenant. Upon expiration of lease term, existing non-profit tenants, who have demonstrated an ability to provide consistently high quality facilities and services to the public, based in part upon the evaluations performed as part of the onsite monitoring process (see Section J), will be given a first opportunity to continue under a separate renewal or renegotiated lease. Following advertising, existing for-profit tenants will be given the opportunity to compete with other qualified candidates in any subsequent lease negotiations, but will not be given first rights to renewal or renegotiation unless specified otherwise in the lease, and provided the lessee is not in default of any provision of the lease.
- (G) Pending Lease Proposals. Parks Administration will maintain an ongoing file of those activities and/or improvements which are desirable for future implementation, but for which conditions are not yet favorable for pursuit of a lease arrangement.
- (H) Subsidization. The County will not provide any monetary subsidy of Park's lease operations, except under specific authorization by the Board of Supervisors to continue valued services provided to the community. Unless specifically authorized, all lease operations must operate under full cost recovery mode.
- (I) Lease Records. Parks Administration will keep an active written inventory and status report on existing leases and will update the report regularly to reflect any necessary revisions. Parks



Administration will examine lease records on a regular basis to monitor such items as:

- (1) Term of lease and expiration date.
  - (2) Base rental and percentage of gross receipts, amounts and due dates.
  - (3) Insurance requirements.
  - (4) Bonding and security deposit requirements.
  - (5) Financial statement or audit findings.
  - (6) Tenant performance history.
  - (7) Lease obligations (i.e. capital improvements, provision of services).
- (J) On-site Lease Monitoring. Parks Administration will conduct regular site visits, at a minimum of once annually to each lease operation to ensure compliance with lease terms and conditions and to ensure that facilities and services are provided to the public in a safe, pleasurable and equitable manner. On-site monitoring by Parks is also required to monitor tenant repairs and improvements. Parks will use a checklist format for conducting on-site monitoring. Monitoring will be conducted by a representative of Parks in conjunction with the tenant's representative. Any items noted in the checklist to be deficient or in need of follow-up action will be documented in writing by Parks and tenant will be given a reasonable length of time to respond and/or remedy. Parks will continue to monitor any deficiencies or follow-up items until satisfactory completion by the



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tenant or notice of default proceedings as provided by the lease agreement.

### Related Policies

None.

### Related Forms and Information

None.

### History

Date	Changes Made
2/10/2014	Policy Uploaded. (Kyle Larson)
5/14/2013	Policy Amended. <a href="#">View legislative file.</a>
7/30/2012	Policy Amended.
12/9/2008	Policy Amended. <a href="#">View legislative file.</a>
9/23/1997	Policy Adopted. <a href="#">View legislative file.</a>