

Photo: River Place Trail
Dated: Saturday, February 16, 2019

Strategic Partnership Agreements

A tool to protect access
to public lands and
ensuring fairness

A Presentation by
Rich DePalma
October 27, 2020





The Issue

The City of Austin has Strategic Partnership Agreements with Limited Districts in the City of Austin but not all were created equal.

The agreements were negotiated between the City of Austin and the Limited District Board of Directors and access to public spaces was not always protected.

Example – River Place Limited District

2019 to 2020 Trail Fees

RIVER PLACE Limited District

IMPORTANT TRAIL INFO
effective March 2, 2019

\$10 FEE per day, per HIKER* & \$10 fee per animal per day
Credit card payments only

*children 12 and under with an adult are free
Limited District Residents Free with Membership ID

For more information, please visit the District website:
www.RiverPlaceLimitedDistrict.org

\$10 fee per person — ages 13 years old and up — and per pet to access the nature trail for those individuals living outside of the District's borders.

District residents, who pay District taxes, can access the site at no charge if they present a Resident Card.

Non-District residents living in River Place have the option to purchase a \$400 annual trail pass.

The trail is free to all users from 10 a.m.-2 p.m., Mon.-Fri., excluding holidays.

Photo: River Place Trail
Dated: Saturday, February 16, 2019



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RIVER PLACE

We Hope You Enjoy Our Trails

- This is not a looped trail
- No drinking water is provided on the trail
- Hike at your own risk
- Beware of fallen trees and slick paths

Please Adhere To The Following Rules:

-  Accessible On The Trail At All Times
-  Do Not Leave Any Trash
-  Keep dogs on leash at all times
-  Remove All Dog Waste From The Trail

In Case Of Emergency Or Unlawful Behavior
CALL 9-1-1

The Outcome

> On Jun 28, 2019, at 3:13 PM, [REDACTED] <[REDACTED]> wrote:
>
> Dear Dana,
>
> I am writing to you in regards the new fees being charged on weekends for Hikers and their dogs on the River Place Trail. I am a Hikers and leader in a hiking group. My group consists of seniors who are out to exercise and socialize in the various trails in the Austin area. There are so many ways that the trails benefit the group and myself.
> I have not used the River Place Trail since the fees started as I think it is prohibitive for retirees. I am concerned that this will set a precedent for other areas with trails.
> We enjoy the green spaces in Austin and want to keep them accessible to all.
>
> Sincerely,
>

Sent: Sunday, June 30, 2019 10:30 PM
To: Dana Lagarde <Dana.Lagarde@tpwd.texas.gov>
Subject: River Place Trails

Dear Ms. Lagarde,

We reside in the Hudson Bend neighborhood of Austin and, as a family, make very frequent use of the great outdoor hiking trails that are available in the Austin area, thanks to great work by your organization as well as other groups. These are generally very well maintained and available for people to use free of charge or at a very reasonable charge.

One of our favorite trails to use is the River Place trail which is located in the River Place neighborhood of Austin. It is a very nice trail that we believe was built with funding support from your organization (along with the adjoining tennis courts which we believe also benefited from your funding support).

We were really surprised and dismayed to discover recently that the River Place LD is now claiming that this trail and tennis courts, which were built with public funding assistance, are their private preserve and any outsider has to pay an exorbitant amount of \$10 per head to use it (and a very high charge for the tennis courts for non-LD residents). A friend of mine who lives in River Place tells me that apparently the LD board is doing this because they do not like having 'outsiders' come and use their trail and park on the street at the trail head, which is completely legal and permitted. This seems to be a ridiculous power grab by the LD to try and keep outsiders out of their community which is just plain wrong.

I am writing to you to request your help in ensuring that these wonderful facilities, which were built with public funding assistance, remain accessible to the general public at no charge or at least at a reasonable charge of maybe \$1 or \$2. Any assistance you can provide in this matter would be very much appreciated by hikers and outdoor enthusiasts in the entire Austin area and beyond.

Thanks

Name
Megan Rabuse
Email
[REDACTED]
Subject
Trail Pricing
Message
Hi, I realize adding the charge to hiking is likely to upkeep the trails, but \$10 a person and animal is seriously limiting the trails to people with means and the residents of the neighborhood. Can you consider lowering the fee to something more reasonable (\$5 a day, etc) or enacting a frequent usage charge? This is one of the only places in Austin with good elevation for training to hike and it's really disappointing to see such a wonderful nature space be barred to those who can't afford to live in this neighborhood.

Hi,
We live in Jester Estates and had helped the Friends of River Place gathering signatures for the petition when the trail was closed for a couple of years. So we thought that this would help qualify us to receive a residency card. We have hiked the trail many times and would like to be able to continue hiking it. However, \$10 per person per day is unaffordable. We understand that there is a cost associated with maintaining the trail and feel that possibly you might consider issuing a yearly pass if in fact we do not qualify for the residency card.

Marlene & Gerry Heiling

Name
Luis de Leon
Email
ldeleon@kvue.com
Subject
KVUE News - River Place Nature Trail
Message
Hi there, My name is Luis de Leon and I'm a reporter with KVUE news. I'm working on a story this afternoon about the trail charging 10 dollars for people who live outside the River Place Limited District? If there was someone who can talk to me on camera (pre recorded, not live) this afternoon that would be great. It would be brief! Give me a call at 512-709-2413. Thanks so much and have a great day!

River Place trail fee 'must be terminated immediately ...

Update: A representative of the Texas Parks and Wildlife Department has ...
Though members of the River Place Limited District Board of ...
Sep 16, 2019



From: Dan Reece <Dan.Reece@tpwd.texas.gov>

Sent: Monday, July 6, 2020 3:10 PM

To: Evans, Zachariah T. <[REDACTED]>; Scott Crosby <[REDACTED]>; Jennifer Mushtaler <[REDACTED]>

Cc: Colette Barron Bradsby <Colette.Barron@tpwd.texas.gov>; Justin Rhodes <Justin.Rhodes@tpwd.texas.gov>; Dana Lagarde <Dana.Lagarde@tpwd.texas.gov>

Subject: River Place Nature Trail - user fees

Good afternoon, all. I trust this email finds everyone safe and well as we all continue maneuvering through these challenging times.

I'm reaching out as it's been a few months since our last correspondence regarding the \$10 user fee charged at the River Place Nature Trail. In reviewing the [District's website](#), it seems the per-person user fee is still in place for the grant-funded portion of the trail, although the exact hours the fee is enforced are unclear. We continue to maintain that the \$10 fee is unreasonable and discriminatory, and therefore non-compliant with the Local Park grant requirements stated in the executed grant agreement.

From previous communication, I recall that the rental fee structure for both the Tennis Court and Pavilion were revised to be compliant with the grant requirements, however, these modified fees are not reflected on the [Park Rules and Regulations](#) posted on the District's website. As a reminder, TPWD Local Park grant requirements state that non-resident fees cannot be more than double what is charged for residents, and the exact fee structure and hours of enforcement should be clearly and publicly posted.

We are interested in resolving these issues within the next 30-days. If the District wishes to keep the \$10 per user fee in place, a Conversion of the portion of the grant boundary containing the Nature Trail will be required. I'm attaching our Conversion guidelines; If you have questions or would like to move forward with a Conversion, please let me know asap and our team will be happy to assist. If you do not wish to proceed with a Conversion, please provide us with a revised fee schedule by Friday, August 7, 2020.

Thanks everyone, we look forward to hearing back soon.

Sincerely,
Dan

Dan Reece, RLA
TPWD Local Park Grants Manager
TX Landscape Architect #1986
(512) 389-4656 – office

August 13, 2020 A Portion of the Communication by the District to the TPWD

Therefore, effective August 17, 2020, the District will no longer charge an access fee to any person wishing to utilize the grant-funded portions of the Trail, *i.e.*, “Little Fern Trail.” However, the District will re-evaluate and continue to enforce an access fee that the Board believes is reasonable for use of the coveted “Upper Trail,” for which the District did not receive grant funding.

As we discussed during our teleconference with the Department on August 12, 2020, this adjustment will likely lead to increased personnel demands, which in turn will force the Board to increase the access fee to the Upper Trail.

September 11, 2020 Article



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River Place Limited District ends \$10 fee on two sections of River Place trail



The River Place LD trail system consists of three trails:

- Panther Hollow Trail
- Little Fern Trail
- Canyon Trail

The trail is about 6 miles from beginning to end and back. If you haven't ventured out to this beautiful trail, be prepared for an extensive hike.

Hikers all around Austin enjoy the many elevation scales, along with the 2,763 steps one way on the 3 mile section of the trail. Before you start your adventure, be sure to look over our trail rules below to ensure the safety of all.



Still advertising \$10 fee for trail as of 10/23/2020

RIVER PLACE TRAIL FEE INFORMATION

- The Limited District requires a \$10.00 fee per hiker to hike during peak usage hours on Saturdays and Sundays, and from sunrise through 4:00 p.m. on holidays. Attendants will be located at trail heads to accept credit card payments in person - no online payments will be accepted. **Trail hours are subject to change without notice. NO CASH ACCEPTED.**
 - The trail is open to the public after sunrise and all hikers must clear the trail before sunset.
 - Children 12 and under with an adult may walk the trail for free.
 - Hikers under 16 must be accompanied by an adult.
 - All pets must be leashed on a lead 6 feet or less and pets must be under owner control at all times.
 - Hikers and pets are not allowed off-trail.

TITLE 2. - ADMINISTRATION.

CHAPTER 2-1. - CITY BOARDS.

§ 2-1-165 - PARKS AND RECREATION BOARD.



Our Charge

- (A) The Parks and Recreation Board membership should include citizens of the city who are interested in public parks and public recreation and persons who are knowledgeable in recreation matters. The director of the Parks and Recreation Department, the city manager or designee, the director of the Financial and Administrative Services Department, and the city attorney are ex officio members of the board.
- (B) The board shall advise the city council and the city manager regarding:
 - (1) the acquisition, development, improvement, equipment, programming, and maintenance of all land and facilities managed by the Parks and Recreation Department of the City of Austin;
 - (2) the purchase of additional land to be managed by the Parks and Recreation Department of the City of Austin.
- (C) The board shall outline a general plan of development for land, facilities, and programs. The board may submit the plan to the Planning Commission and the city manager for detail development, and the city manager may then submit the plan to the city council for approval as may be required by the City Code.
- (D) The board shall promote close cooperation between the City and all private citizens, institutions, and agencies interested in or conducting recreational activities, so that all recreational resources within the City may be coordinated to secure the greatest public welfare.
- (E) The board shall perform other duties as prescribed by the City Code or as directed by the city council.

Source: Ord. 20071129-011; Ord. 20130228-045; [Ord. No. 20161103-064, Pt. 1, 11-14-16.](#)

Limited Districts Can Charge Fees

SUBCHAPTER N. RECREATIONAL FACILITIES

Sec. 49.464. ACQUISITION OF AND PAYMENT FOR RECREATIONAL FACILITIES. (a) Except as provided by Section 49.4645, a district may not issue bonds supported by ad valorem taxes to pay for the development and maintenance of recreational facilities.

(b) Except as provided by Subsection (a), a district may acquire recreational facilities and obtain funds to develop and maintain them in the same manner as authorized elsewhere in this code for the acquisition, development, and maintenance of other district facilities. A district may charge fees directly to the users of recreational facilities and to water and wastewater customers of the district to pay for all or part of the cost of their development and maintenance. To enforce payment of an unpaid fee charged under this subsection, the district may:

- (1) seek legal restitution of the unpaid fee; and
- (2) refuse use of a recreational facility to the person who owes the unpaid fee.

(c) The district may not refuse use of facilities or services other than recreational facilities to enforce an unpaid fee.

(d) A district may issue bonds payable solely from revenues by resolution or order of the board without an election.

Added by Acts 2001, 77th Leg., ch. 1423, Sec. 24, eff. June 17, 2001. Amended by Acts 2003, 78th Leg., ch. 343, Sec. 5, eff. Sept. 13, 2003.

<https://statutes.capitol.texas.gov/docs/wa/htm/wa.49.htm>

Considering Fees

When are user fees legal, and when are they illegal?

There are only a handful of cases and opinions that deal with the legality/illegality of user fees. The principal legal issue is this: when does a user fee, which is routine and legal, cross over into the realm of a “tax,” which is illegal unless a city can point to a specific authority that authorizes a tax?



REVENUE MANUAL FOR TEXAS CITIES

Two general guidelines emerge from reading the opinions and cases:

- (1) **A user fee should bear some relation to the actual cost of providing a service.** For example, if a \$2 swimming pool fee raises \$50,000 a year in revenue, and the cost of personnel, maintenance, and other items relating to operating a city pool is somewhere in the \$50,000 range, such a fee is clearly legal. On the other hand, if the fee raised two or three times the revenue necessary to operate the pool, the excess revenue runs the risk of being labeled a “tax.”

General law cities have no authority to levy a “swimming pool tax.” As a result, such a fee would be in danger of being struck down by a court. General law cities possess only those taxing powers that the legislature or the constitution expressly grant them.⁵³² For home rule cities, the issue is more complicated, as it is unclear what taxing authority a home rule city can derive solely from its charter. Home rule city officials should discuss the issue with their city attorney.
- (2) **A user fee shouldn’t be attached to a bill for unrelated services.** For example, the Texas Attorney General has concluded that a general law city may not attach a monthly fee on utility bills to finance the police department.⁵³³ Nor may a city attach a mandatory fee in water bills to pay for volunteer fire fighting services.⁵³⁴

Comparison of Fees

Portion of the August 6, 2019 Response from the River Place Limited District's Counsel

Example – Trail Fees

In determining a reasonable access fee, the Board also followed the requirement provided in Chapter 675.9, Section 2(B) of the Texas Local Park Grants Program Manual, which provides, in pertinent part, “Where there is no charge for residents, but a fee is charged to nonresidents, nonresident fees cannot exceed fees charged for residents at comparable state or local public facilities.” For reference, the City of Austin’s Emma Long Park, which is the closest public park in proximity to the District, charges \$10 per day, Friday through Saturday and holidays; \$5 per day, Monday through Thursday; and \$1 to walk in or bike in.

Emma Long

\$5 a car m-th; \$10 a car F-Sun; vehicle up to 8; \$1per walk/bike

Grand Canyon National Park Individual Permit

\$20/person. Admits one individual when entering by foot, bicycle, park shuttle bus, Grand Canyon Railway and private rafting trip. Individuals 15 years old and younger are admitted free of charge.

How do we fix this issue at the City of Austin?

We codify basic requirements in a City of Austin Strategic Partnership Agreement.

We already have the language that should be included because we require it from other Limited Districts.

What does the Limited District Offer?

Some residents feel that this Limited District tax is too much, and that we should depend on the COA to maintain our parks and facilities. Many other residents, especially those who are frequent users of our facilities or programs see the value in the Limited District's management of our parks, pools, and programs. While AMLD is a form of Local Government, and is NOT a Home Owner's Association (HOA), it can be compared to an HOA. HOA's typically own the parks and greenbelts in their area, and perhaps a pool which is open three months of the year, and perhaps one or two tennis courts, and the HOA maintains these facilities with the collected HOA fees from each home owner. The Anderson Mill Limited District has about 60 acres of parks and greenbelts all mowed at least every two weeks, two pools open year round that have 110,000 to 120,000 visitors each year, eight lighted tennis courts, six miles of hike and bike trails, six playgrounds, three sand volleyball courts, two basketball courts, a fitness center, a community center, an outdoor racquetball court, a senior center, and many programs, such as: yoga classes, water aerobics, swim teams, learn to swim programs, tai chi classes, several different fitness classes, a Summer Camp for kids, an After-School program, Movies in the Parks, Movies at the Pools, and a number of different neighborhood activities. The District taxes cover the maintenance and operation of all the facilities and modest activity fees are paid by those who join in the programming. If you compare the Limited District taxes to typical HOA fees (\$300-\$500 per year) and what you get for each - Anderson Mill Limited District is a bargain.

<https://amld.org/history-of-anderson-mill-limited-district>

Tanglewood Forest Limited District

Original SPA 1997; renewed 2007 and 2017

C. Functions, Powers and Authority

1. The Limited District shall exercise only those functions, powers, and authority vested in municipal utility districts under state law and, as required by the Texas Commission on Environmental Quality, that are necessary to perform the functions undertaken by the Limited District as described below.
2. The functions, powers and authority of the Limited District are to:
 - a) own, maintain, operate, and control the parks and recreational facilities located within the boundaries of the Limited District or owned by the Limited District outside its boundaries as described in this Agreement and contained in Exhibit “B” attached hereto;
 - b) provide security for the Limited District’s parks and recreational facilities;

Same authorities and responsibilities *but*

Tanglewood Forest Limited District

Original SPA 1997; renewed 2007 and 2017

Access and Fees are Addressed

F. Use of Parks and Recreational Facilities

1. All of the Limited District's parks and recreational facilities described in Exhibit "B" shall be available for the benefit, use, and enjoyment of all the citizens of the City.
2. The Parties agree that the Limited District shall assess necessary fees and charges for the use of the recreational facilities by the residents of the Limited District.
3. City residents who do not reside in the Limited District shall be charged no more than the City summer pass rate for swimming pool use as that rate is amended from time to time. The Limited District shall set a daily rate fee for pool use at a uniform level for all City residents.

Anderson Mill Limited District

Original SPA 1998; renewed 2004 and 2017

Access and Fees are Addressed

Section 5.03 Amenities.

- a. All Amenities described in Exhibit D shall be available for the benefit, use and enjoyment of all of the residents of the Anderson Mill Limited District and all City residents.
- b. The Parties agree that if the Limited District assesses fees and charges for the use of the Amenities by the residents of the Limited District the Limited District may also assess the residents of the City not residing in the Limited District for the use of those Amenities. Residents of the City who do not reside in the Limited District may not be assessed for the use of these Amenities if the residents of the Limited District are not assessed for the use of the Amenities. However, residents of the City who do not reside in the Limited District may be charged no more than the City summer pass rate for use of the Limited District's swimming pools. The Limited District may set a daily rate fee for use of the Limited District's pools at a uniform level for all residents of the City, including residents of the Limited District.

River Place Limited District

2009 Agreement

ARTICLE VI. OPEN SPACE

Section 6.01 Balcones Canyonland Preserve Land, Parkland and Other Lands

- (a) The District is the current owner of approximately 310 acres of land (the “BCCP Land”) that is a part of the Balcones Canyonland Conservation Plan. The District will remain responsible for the ownership, operation and maintenance of the BCCP Land until the Full-Purpose Annexation Date; provided however, that the Parties expressly the District is not responsible to build any fences on or around the BCCP Land unless required of the District pursuant to its federal permit.
- (b) On the Full-Purpose Annexation Date, the District shall convey the BCCP Land to the City at which time the City shall assume responsibility for all operation and maintenance costs for the same.
- (c) The District and subsequently the Limited District shall retain full ownership of its open space, parklands, greenbelt areas and other tangible assets not conveyed to the City pursuant to the Water and Wastewater Agreement.
- (d) Subject to a determination by the City’s Parks and Recreation Department that the City’s level of service obligations will not be substantially increased, the District and the Limited District may obtain additional parkland.

Amended Agreement

Section 1.05 Section 6.01 of the SPA is amended to read as follows:

Preserve Land, Parkland and Other Lands

- (a) The District is the current owner of approximately 323 acres of land (the “Preserve Land”) that is more particularly described in Document Number TRV 2002057440 of the Travis County Deed Records and for which a February 15, 1993 Biological Opinion was issued. The District operates and maintains a nature trail (the “Nature Trail”) that is located on the Preserve Land and runs for a distance of approximately 2.5 miles.
- (b) The District will remain responsible for the ownership, operation and maintenance of the Parkland, including by way of example and not in limitation, the Preserve Land, until the Full-Purpose Annexation Date at which time the Limited District will assume these obligations.
- (c) Subject to a determination by the City’s Parks and Recreation Department that the City’s level of service obligations will not be substantially increased, the District and the Limited District may obtain additional land for its Parkland.

2009 Agreement

STRATEGIC PARTNERSHIP AGREEMENT BETWEEN THE CITY OF AUSTIN AND THE RIVER PLACE MUNICIPAL UTILITY DISTRICT

This Strategic Partnership Agreement Between the City of Austin, Texas and the River Place Municipal Utility District, Travis County, Texas (“SPA”) is entered into by the City of Austin (“City”), a municipal corporation, acting by and through its City Manager, and the River Place Municipal Utility District (“District”), acting by and through its Board of Directors, under the authority of Section 43.0751 of the Texas Local Government Code (“Local Government Code”).

Section 3.02 Capital Improvements During the Period Prior to the Full-Purpose Annexation Date.

- (a) District’s Responsibility for Continued Improvements.
 - (i) Except as provided in the Water and Wastewater Agreement, the District will be responsible for operating and maintaining all District facilities and properties during that period of time beginning on the Effective date and ending on the Full-Purpose Annexation Date. By way of example and not in limitation, the aforementioned operation and maintenance responsibilities shall include the responsibility to operate and maintain parks facilities, and for drainage, prevention of erosion, remediation of storm damage and channel dredging.
 - (ii) The District may also continue to make capital improvements during this same time period in accordance with the terms and provisions of the Consent Agreement. In this regard, the Parties agree that except as otherwise authorized by the Water and Wastewater Agreement or the City, any such improvements shall not materially affect the level of services the City will be required to provide after the Full-Purpose Annexation Date.
 - (iii) Notwithstanding the foregoing provisions, the District may construct trails or trail improvements subject to approval by the City’s Parks and Recreation Department, which shall not be withheld unless a proposed trail or trail improvement would materially impact the level-of service the City will be required to provide after the Full-Purpose Annexation Date.

River Place Limited District

No language on access or fees in this SPA.

**Texas
Local Park Grants Programs
Manual**

**Texas Parks & Wildlife Department
Recreation Grants Branch**

January 25, 2008

In accordance with Texas State Depository Law, this publication is available at the Texas State Publications
Clearinghouse and/or Texas Depository Libraries.



Texas Parks & Wildlife Department
4200 Smith School Road
Austin, TX 78744
1-800-792-1112
www.tpwd.state.tx.us/grants

Recommended Language

[Access to Amenities]

[Park and Recreation Amenity access and programming] fees charged to nonresidents cannot exceed twice that charged to residents [or the cost to maintain and operate the amenity]. Where there is no charge for residents but a fee is charged to nonresidents, nonresident fees cannot exceed fees charged for residents at comparable state or local public facilities. Reservation, membership or annual permit systems available to residents must also be available to nonresidents and the period of availability must be the same for both residents and nonresidents.

Thank you