




## MEMORANDUM

**TO:** Mayor and City Council

**FROM:** Bert Lumbreras, Assistant City Manager 

**DATE:** August 27, 2014

**SUBJECT: Butler Pitch and Putt August 28, 2014 Council Agenda Item #155**

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Please use this memo as follow up in regards to Council Item #155 pertaining to the solicitation of the Butler Pitch and Putt Golf Course management contract. The following are some initial concerns from staff should the item be approved at the August 28<sup>th</sup> Council meeting.

There is concern with some of the specific language. Law would advise broader direction be given to the City Manager. Law would advise that direction to “explore the options for operation of the Pitch and Putt by the Kinser family” would be more appropriate than moving forward with the proposed direction to negotiate the renewal of this agreement specifically with the Kinser family.

Staff is exploring the legal feasibility of transferring parking meter funds to a contractor for improvements. In most of our agreements, the operator is responsible for maintenance and improvements of the facility. At the very least, the agreement would need to be amended to show that the City would provide, when available, funding for improvements.

The Parks and Recreation Department (PARC) strives to provide consistent, transparent administration of all contracts in adherence to City Code, directives from Council and in accordance with the recommendations from boards and commissions providing guidance to the Department.

- **Policy:** PARC policy for parks concessions (Resolution No. 980312-25 – Attachment A) requires expiring concession contracts go through an RFP process. The Law department confirmed that Council would have to waive this policy to extend the existing contract or forego the RFP process.
- **Parks and Recreation Board:** *The Austin Parks and Recreation Board (PARB) Comments on the 2010-2011 Annual Concession Report* (per Austin City Code § 8-1-73) states: “Do not automatically extend the contract of any current concession”. Further, they request updates regarding “the formulas to improve consistency and to improve the operational incentives.” (Attachment B)

Staff conducted evaluations of the two contracts with upcoming term extensions -- Butler Pitch and Putt and Barton Springs Food and Beverage. The evaluation of the Butler Pitch and Putt agreement produced three primary findings:

1. The contractor pays the second lowest percentage (~6%) of gross revenue and dollar amount in commission to the City of any Town Lake Park concession. Over the last 5 years the concession averaged \$305,254 in gross sales and paid \$17,887 in commissions annually to the Golf Enterprise Fund.
2. The clubhouse and golf course is in a deteriorated condition and requires improvements to maximize participation and programming.
3. The clubhouse and site are not in compliance with accessibility standards per the American Disabilities Act.

Based on these findings, and the department's desire to increase participation and create programming at the site, staff recommended not to extend the contract and determined a competitive solicitation for proposals was the appropriate and best way to provide the highest benefit to the public for recreational programming, amenities and infrastructure. On May 22<sup>nd</sup> PARB voted unanimously to recommend to the Director to solicit proposals for both concessions.

Previously, in keeping with the City's policy for concessions in Town Lake Park, existing contractors' requests for term extensions or waiving of the competitive solicitations have been denied. The Rowing Dock, Texas Rowing Center, Zilker Canoe and Kayak have all invested significant funds into parkland improvements without the benefit of term extensions.

If the concession were to be open up for bid, please know that the Kinser Ranch LLC is welcome to submit a proposal for the RFP and that the RFP will not change the use of the parkland from a Pitch and Putt golf operation. Further, PARD is informed that other vendors have awaited the expiration of this agreement anticipating the opportunity to submit a proposal for the contract. Waiving City's policy for an open, competitive process to solicit proposals, poses a real risk to the reputation and abilities of PARD to solicit, negotiate, and amend concession contracts within Town Lake Metropolitan Park.

Should you have any questions, please feel free to contact my office at (512) 974-6717.

cc: Marc A. Ott, City Manager  
Sara Hensley, Director, Parks and Recreation

Attachments:

Attachment A – Resolution No. 980312-25

Attachment B – PARB Comments on the 2010-2011 Annual Concession Report

## **Austin Parks and Recreation Board Comments on the 2010-2011 Annual Concession Report**

In compliance with City of Austin code, the Parks and Recreation Department (PARD) presented its 2010-2011 Annual Concession Report at the October 25, 2011 Parks and Recreation Board (PARB) meeting. According to the code, the PARB shall make recommendations to the City Council within 30 days of receipt of the report. Following are recommendations from the PARB regarding the existing concessions and the advisability of issuing requests for new concessions.

- Do not automatically extend the contract of any current concession.
- Engage the public regarding the desirability and effectiveness of the current concessions.
- Engage the public regarding the type and location of new concessions that would be desired on the Trail at Lady Bird Lake and the Zilker Park area.
- Update the commission formulas to improve consistency and to improve the operational incentives. Although they also pay a percentage of sales, most of the existing vendors pay a monthly fee that is less than it costs a citizen to rent the Zilker Clubhouse for one night. The commission formula should consider the location of the existing and new concessions to ensure maximum benefit to the citizens of Austin and park users; and economic return to the City and the Parks and Recreation Department.
- Update the March 1998 Policy for Concessions on City Parkland to reflect the City initiatives for sustainability and healthy lifestyles (such as contributing to the Zero Waste Goal and offering healthy food/beverage choices) in addition to reflecting code changes such as recent regulations for mobile food vendors.
- Develop a concessions policy for commercial concessions and vending services on and adjacent to Lake Austin, and a licensing agreement for docks constructed on public land. This would prevent recurrence of situations such as currently exists at Walsh Landing, where signage states, "Commercial Vending or Services Prohibited without a Permit or Concession Agreement from the Austin Parks and Recreation Department"--- yet public parkland and facilities are being used for commercial use without permits or agreements.

Adopted by vote of 7-0 at the 8 November 2011 Special Called Meeting of the Parks and Recreation Board.

Jane Rivera, Chair  
Hill Abell  
Carol Lee  
Jerry Perales

Jeff Francell, Vice Chair  
Linda H. Guerrero  
Lynn Osgood

**RESOLUTION** 980312-25

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:**

The City's policy for establishing concessions on parkland is revised to be as set out in Attachment "A".

**ADOPTED:** March 12, 1998

**ATTEST:**

James E. Aldridge  
James E. Aldridge  
City Clerk

**"ATTACHMENT A"**

**PARKS AND RECREATION DEPARTMENT POLICY/PROCEDURE**

Title: Policy for Concessions on City Parkland Effective Date: 3/18/93

Dept. Council Approval: March 18, 1993

Revised Date: October 21, 1997

Purpose: To establish a policy for concessions on all City parkland.

Reference:

Policy: **The Parks and Recreation Department (PARD)** has developed this policy regarding the limited private commercial use within the ~~Town Lake corridor and on~~ City's parkland system in the form of concessions, including permanent and temporary concessions. These policies are intended to maintain the aesthetic and environmental quality of the ~~Town Lake corridor~~ **City's park system** and to ensure a financial return to the City of Austin from such uses or to provide a public good to the citizens of Austin.

All proposals for concessions on Town Lake will be reviewed ~~on~~ in compliance with Ordinance No. 890126 ~~(Town Lake Comprehensive Plan) approved by Council on January 26, 1989~~ **Chapter 11-3 of the City code**. The definition of a concession as ~~defined in the Town Lake Ordinance~~ is as follows: "Concession means a **Any** privately operated business on parkland serving park users, authorized by the City in accordance with applicable ordinance requirements. Types of businesses operated as concessions may include without limitation, food and beverage stands, boat rentals, excursion boats, boating lessons, bicycle rentals, and pushcarts." **Concessions also** ~~This definition is expanded to include types of~~ businesses which provide souvenirs and other goods and services to park users and which generally pay a portion of its ~~their~~ revenue to the City or provide a public good to the citizens of Austin.

There are three categories of concessions: 1) new permanent concessions, 2) existing permanent concessions, ~~which~~ **whose contracts** have expired, and 3) unsolicited temporary concessions. The following policies will address the development of permanent concessions on parkland **and establish guidelines for temporary concessions.**

New Permanent Concession Development<sup>1</sup>

In order to comply in a timely manner ~~to~~ with the Town Lake Ordinance, Beginning ~~June 1~~ the following time line will be followed annually:

April 1 – June 30	Staff will <del>solicit</del> accept input for new concession ideas through various methods e.g., surveys of boards, commissions, advisory groups and park users; <del>advertisements</del> public notice; and <del>by soliciting</del> requests for written suggestions from the general public.
By July 31	Staff will submit a report to the Parks and Recreation Board and the Environmental Boards, describing all proposals received for new concessions ideas.
By August 31	A subcommittee made up of City staff, representatives of the Parks and Recreation Board and the Environmental Board will review concepts and make recommendations to each Board.
By September 30	The Environmental Board and the Parks and Recreation Board will recommend which of the concession concepts (if any) should go forward to a public hearing. Potential locations of all the concessions must be determined prior to the setting of the public hearing. No less than 21 days prior to the public hearing, signs will be posted at the prospective locations of the concession(s). Notices will be sent to all interested parties including the media.
By October 31	Staff will present the annual concession report <sup>2</sup> . This report will provide a synopsis of this process and will include the Environmental Board, Parks and Recreation Board and staff recommendations.
By November 30	The Parks and Recreation Board and the Environmental Board will forward to the City Council their response to the annual report.
By January 31	Staff will issue RFPs for new concessions approved by Council.

~~Input for new concessions ideas will be solicited for a 90 day period annually through various methods, e.g. survey of Boards, Commissions, Advisory Groups and park users, advertisements, and by soliciting written suggestions from the general public. Only those concession concepts proposed during this 90 day period will be considered during each annual new cycle.~~

~~The concession review process will begin with public hearings on the proposed concession ideas over a 30 day period.~~

~~A summary of the proposed concessions will be included in the Annual Concession Report submitted to the Parks and Environmental Boards in October as required by Ordinance No. 890126. The Environmental and Parks Boards will make~~

<sup>1</sup> A permanent concession is defined as a concession, which has or is eligible for a contract of a year or more and generally has a permanent structure.

<sup>2</sup> As required by Town Lake Ordinance No. 890126.

~~recommendations on the advisability of issuing Requests for Proposals (RFPs) for new for new concessions to Council based on maintaining aesthetic and environmental quality of the parkland while enhancing services or overall experience for park users.~~

~~A request for Council action will then be posted requesting Council direction on issuing RFPs for newly proposed concessions. RFPs will then be advertised for Council approved concessions.~~

RFPs for new permanent concessions will require payments based on a flat fee schedule or on a percentage basis of gross sales less sales tax. The method of payment for each concession will be determined on a case by case basis by the Parks and Recreation Director. The flat fee or percentage of sales methods will be determined based on an analysis of the location and type of concession and will be calculated by City staff. The contracts will require an annual review of the concession to determine incremental increases to the fees after the second year of the contract. Additionally, for the flat fee, concessionaires will be required to pay a percentage of their gross sales, once sales exceed the targeted annual gross sales on which the flat fee is based.

An evaluation team will review RFP responses and make recommendations to Council. (As allowed by the ~~Town Lake Ordinance~~ chapter 11-3 of the City code, the evaluation team will include staff and may include one representative from each of the following organizations: Parks and Recreation Board, Environmental Board, and Design Commission.) Recommendations ~~awarding for award of~~ contracts as a result of this process will be forwarded to the Parks and Recreation Board for review and recommendation prior to the City Council action. Following Council approval, a contract will be negotiated and ~~executed entered into~~. ~~A negative recommendation will be transmitted to Council with explanation.~~

#### Permanent Concession Policy for Existing Contracts About to Expire.

Staff will gather public input concerning items that should be addressed in a new contract, for an existing concessions 90 days prior to contract's expiring.

RFPs will be issued for new contract periods for existing concessions. ~~A staff~~ An evaluation team will review the proposals and make recommendations to the Parks and Recreation Board. The evaluation team will include staff and may include one representative from the Parks and Recreation Board, Environmental Board, and Design Commission. Requests for Council Action (RCAs) will be submitted to Council for contract award.

RFPs for existing concessions will require payments based on a flat fee schedule or on a percentage basis (as they stand now) for the term of the contract. The method of payment for concessions will be determined on a case

by case basis, by the Parks and Recreation Director. The flat fee or percentage of sales payment will be based on an analysis of the location and type of concession and on a five-year history of that particular concession. City staff will calculate this fee. For the flat fee method, the contracts will require an annual review of the concession to determine incremental increases to the flat fee after the first year of the contract. Additionally, concessionaires will be required to pay a percentage of their gross sales, once sales exceed the targeted annual gross sales on which the flat fee is based.

#### Temporary - Seasonal Concession Policy

A temporary or seasonal concession is defined as a concession which does not require a building or other type of permanent structure from which to operate and has a contract term limited to one year or less. Fees for temporary or seasonal contracts will be established by the City Council in the annual budget. Any temporary concession granted a temporary/seasonal permit two times within a 12 month period will be considered in the annual process for new permanent concessions. The Director of Parks and Recreation is authorized to negotiate and enter into temporary or seasonal concession contracts based on predetermined criteria to include impact, location, service level, revenues to the City, and any other criteria which may be in the best interest of the City and the use of its parkland.

#### Single Day - Temporary Permits

A single day temporary permit is defined as a concession set up outside of a special event taking place in a City Park. This concessionaire would have the opportunity to purchase a one-day permit for \$50.00 at the site of the event or cease and remove the operation of the concession from the area immediately.

#### Performing Artists in the Parks

Performing artists are allowed to entertain in the parks provided they register with and are approved by the Director of the City of Austin Parks and Recreation Department. Performing artists are categorized under the single day - temporary permit fee structure. The fee for performing artists will be \$10.00 a day and may be purchased in 2-week increments. When applying, the performing artist must provide specific days of operation, so this can be reflected on the permit.



Individuals may perform as artists or entertainers in any City park as long as they meet the following conditions. They:

- A. May not block sidewalks or in any way impede pedestrian or vehicular traffic circulation.
- B. May not be within 100 feet of an existing concession's main operating location.
- C. May set up at special events only with written permission of event organizer.
- D. May not use Amplified sound.
- E. Juggling of potentially hazardous materials or items such as knives or fire is prohibited.
- F. Any money exchanged must be on a "tips" or donation basis only, with the amount to be determined by the donor.
- G. Entertainers must carry the permit issued by the Parks and Recreation Department permitting allowing them to perform in the park. This permit is to be available on request by any park employee charged with patrolling or supervising park use or by any citizen.
- H. May not impede or interfere with the use of park facilities or scheduled activities.

Failure to produce the permit issued from the Parks and Recreation Department can result in immediate expulsion from the park.

Report(s) Required: This policy is to be reviewed by the Parks Board every three years from the date of original approval with changes to be approved by Council. The Director of Parks and Recreation is authorized to develop guidelines and make changes thereto for the implementation of this policy.