



REPORT

THE CITY OF SAN DIEGO TO THE PARK AND RECREATION BOARD

DATE ISSUED: September 21, 2017

REPORT NO: 201

ATTENTION: Park and Recreation Board

SUBJECT: Anticipated Changes to Recreation Council Operations

SUMMARY

THIS IS AN INFORMATIONAL ITEM ONLY. NO ACTION IS REQUIRED ON THE PART OF THE BOARD.

BACKGROUND

Recreation councils were originally established in an advisory role in the 1950s. Their role as a financial partner expanded after passage of Proposition 13 when they started managing contracts, generating revenue and paying for recreation classes. Council Policy 700-42 formalized the City's relationship and provided indemnification to Recreation councils under certain situations, starting in 1981. Recreation councils serve an important advisory function for capital improvement projects, a function that the City needs to continue as more parks are built. They are an invaluable conduit of public input, and help the City ensure that the Park and Recreation Department operates in a manner consistent with the needs and priorities of the community.

As an essential partner to the Park and Recreation Department, recreation councils and their volunteer members help to identify programs and events that meet the needs of their community. They have hired independent contractors and offer recreational classes when City staff lack the expertise to teach a particular specialized class. Recreation councils also co-sponsor free and low-cost community events. They have helped to fund enhanced maintenance such as field renovations, turf fertilization, and gym floor resurfacing.

The City has issued special use permits to the recreation councils to administer recreational programming. Council Policy 700-42 (Attachment 2) gives recreation councils certain administrative responsibilities including collection and expenditure of funds paid by the public.

There are two sources of City funds currently collected by recreation councils that create conflict with City Charter and Municipal Code. First, the Park and Recreation Department Fee

Schedule¹ established surcharges payable to recreation councils whenever Park and Recreation Department facilities and fields are rented by the public. Second, recreation councils conduct and charge for specialized classes offered at recreation centers through independent contracts with instructors. In these instances the recreation council and instructor split the total collected fees based on an agreed-upon percentage as dictated in the contract between the recreation council and the instructor. The Fee Schedule dictates that the room, gymnasium and/or field used for these classes is provided by the City without charge to either the instructor or the recreation council.

Last year, the recreation councils generated a combined \$642,498 in surcharge revenue collected from permits issued by the City. Pending City Council approval, future surcharge funds would now be deposited into special revenue funds. Recreation councils generated a combined \$3,259,942 revenue from classes, which included funds paid to the contract instructors. Future funds collected for classes will be deposited into the special revenue funds, and special interest instructors will be paid their percentage from these funds.

On September 8, 2017, the City Attorney released a memorandum (Attachment 1) that considered whether funds collected by the City's recreation councils are subject to San Diego Charter and San Diego Municipal Code requirements governing the use of City funds. The City Attorney opined that that all funds collected by recreation councils are City funds, and therefore subject to Charter and Municipal Code requirements governing the use of City funds. Among other things, the Charter governs methods by which City funds are received and expended.

As the memorandum identifies a need for changes in established protocols, the Department has been working to establish a system that will facilitate the continued delivery of the enhanced recreation services currently offered by the recreation councils.

DISCUSSION

In analyzing operational options to comply with the memorandum, the Department identified an approach that would address the concerns raised by the September 8, 2017, City Attorney memorandum by:

- Allocating all revenues derived from room rentals, field rentals, and contract service classes into a City fund
- Segregating funds by recreation center, which ensures funds previously intended for a specific recreation council remain in the same community

¹ The current fee schedule became effective on September 8, 2015. For a copy, refer to the City's web page at <https://www.sandiego.gov/sites/default/files/legacy/park-and-recreation/pdf/fy2016fsfinal.pdf>.

- Placing City internal controls on all expenditures to ensure compliance with City regulations associated with competitive bidding, public works contracting, and related protocols
- Improving and aligning the relationship between the City's accounting system and the Department's on-line registration software
- Developing a centralized resource that would create consistency of recreation programming across the Department
- Removing responsibility for accounting and bookkeeping from recreation council volunteers and transferring that responsibility to City employees, which will allow recreation council members to focus on their advisory role to the Department

In the upcoming months, the Department will bring forward to the City Council recommended changes to the recreation councils as a result of the City Attorney memorandum. Some areas of focus include:

- Transitioning management of contracts with special interest instructors to the City
- Transitioning financial activities and responsibilities to the City

Recreation councils with current 501(c)(3) status have the option to continue to partner with the City to conduct special events and fundraising activities within their areas; however, they will need to operate as independent bodies.

While this is a major change in Departmental operations, the Department thanks all recreation council volunteers and appreciates their past, current, and future support of providing recreational opportunities to the residents of San Diego. It is hoped that these changes will ultimately improve and enhance the overall delivery of needed recreation services to communities in the years to come.

Respectfully submitted,



Herman D. Parker
Director
Park and Recreation Department



Prepared by: Manuel Gonzalez
District Manager
Community Parks II Division

HP/mg

Attachments: 1. Memorandum from the City Attorney dated September 8, 2017
2. Council Policy 700-42

cc: Mayor Kevin Faulconer
Councilmember Barbara Bry, Council District 1
Councilmember Lorie Zapf, Council District 2

Councilmember Chris Ward, Council District 3
Council President Myrtle Cole, Council District 4
Council President Pro Tem Mark Kersey, Council District 5
Councilmember Chris Cate, Council District 6
Councilmember Scott Sherman, Council District 7
Councilmember David Alvarez, Council District 8
Councilmember Georgette Gómez, Council District 9

**Office of
The City Attorney
City of San Diego**

**MEMORANDUM
MS 59**

(619) 533-5800

DATE: September 8, 2017
TO: Herman Parker, Director, Park and Recreation Department
FROM: City Attorney
SUBJECT: Funds Collected by Recreation Councils

INTRODUCTION

Recreation councils are “volunteer organizations that operate public recreation programs under a special use permit for the City.” 1985 City Att’y MOL 474 (85-93; Dec 9, 1985). Recreation councils generally advise the City on park development, provide recreational programming at City park facilities, and collect and expend funds raised through surcharges and programs offered in City parks and through fundraising activities.¹

The Park and Recreation Department (Department), which is responsible for the organization of recreation councils under Council Policy 700-42, has asked this Office whether the funds collected by recreation councils are “City funds” subject to applicable provisions in the San Diego Charter and San Diego Municipal Code. This memo memorializes our previous advice. We believe that these funds are City funds for the reasons outlined below.

QUESTION PRESENTED

Are the funds collected by the City’s recreation councils subject to Charter and Municipal Code requirements governing the use of City funds?

SHORT ANSWER

Yes. All funds collected by recreation councils are City funds, and therefore subject to Charter and Municipal Code requirements governing the use of City funds.

¹ We have attached a 1979 Memorandum of Law, which contains a more detailed overview of the City’s recreation councils. 1979 Op. City Att’y 392 (Aug. 2, 1979).

ANALYSIS

I. THE CITY DELEGATED AUTHORITY TO THE RECREATION COUNCILS TO ADMINISTER COMMUNITY RECREATION PROGRAMS AND COLLECT ASSOCIATED FUNDS

The City authorizes recreation councils to administer recreational programming within certain geographic areas by issuing Special Use Permits (Permit). Council Policy 700-42; Permit §§ 1.1, 1.3 (Permit attached). The Permit establishes the recreation councils' authority to administer recreational programs and identifies the park facilities and recreation centers where the recreation council may operate. Permit § 1.1. In addition, the Permit authorizes the recreation councils to generate and administer funds until the Permit's expiration. Permit §§ 1.3, 4.1, 4.2.

To determine whether recreation councils' funds are City funds, we first consider the sources of the funds. Recreation councils generate funds in the following ways: (A) surcharges in the Department's Fee Schedule (Fee Schedule); (B) participation fees for classes at City recreation centers; and (C) fundraising activities. We discuss each in more detail below.

A. Surcharges in the Fee Schedule

The City Council adopted the Fee Schedule to establish fees for the public's use of park facilities and for participation in certain recreational programs offered by the City.² San Diego Resolution R-309755 (May 28, 2015). The Fee Schedule also establishes surcharges payable to recreation councils when a park facility is rented for "camps, clinics, tournaments, fundraising, promotional and commercial activities." *Id.* For example, a resident adult basketball league using an outdoor City court for a tournament pays the City \$12.25 per hour per court and pays the recreation council an additional \$11.00 per hour per court. *Id.* When a group rents a room within a City recreation center, the user pays the City a per hour rental fee according to the Fee Schedule and pays the recreation council an additional \$15.00 per hour per room. *Id.*

B. Participation Fees

Recreation councils may conduct and charge for specialized classes at recreation centers, subject to the Department Director's approval.³ Permit §§ 1.5, 3.4, 4.1, 4.2. Recreation councils may retain a portion of the total proceeds collected from specialized classes for park-related purposes, including "promoting and conducting community recreation programs, purchasing equipment, and providing assistance where necessary with the [recreation council's] accountability and record keeping functions." Permit § 4.2. For example, a recreation council contracts with a karate instructor to teach a nine-week course at the recreation center for a \$100 charge to each participant. Participants pay \$100 to the recreation council, either in person at the recreation

² The City collects a surcharge to recover its costs of service pursuant to Council Policy 100-05. A recreation council may use funds to cover costs or as described in its Permit.

³ According to Department staff, recreation councils restrict fees to the amount needed to recover the cost of the program.

center or through the City's online registration software. The recreation council and instructor split the total collected fees based on an agreed-upon percentage. The room at the recreation center is provided for the course without charge to either the instructor or recreation council. Resolution R-309755 (Exhibit A: Fee Schedule).

C. Fundraising

Most recreation councils are nonprofit corporations and some engage in fundraising to benefit the parks within their assigned areas. Recreation councils may conduct special events and fundraising activities within their areas, subject to the Department Director's approval. Permit §§ 1.3, 1.5.

II. FUNDS RECEIVED BY RECREATION COUNCILS ARE CITY FUNDS BECAUSE THE RECREATION COUNCILS OPERATE RECREATIONAL PROGRAMS AND COLLECT AND EXPEND FUNDS ON THE CITY'S BEHALF

Charter section 55 establishes the City's authority and control over the operation of City parks and park facilities.⁴ The Mayor and Department Director have authority to charge the public for recreational programs and for the use of park facilities.⁵ San Diego Charter § 55; San Diego Municipal Code § 22.1502 (delegating authority "to establish fees for the use of park and recreation facilities and services" subject to the Mayor's approval and "to fix rental charges" subject to City Council approval).

Council Policy 700-42 controls recreation councils' collection and expenditure of funds paid by the public and gives recreation councils certain administrative responsibilities at the City's recreation centers. In 1981, City Council adopted Council Policy 700-42 formally recognizing recreation councils and authorizing them to promote and administer recreation programs in the community. San Diego Resolution R-254869 (Aug. 24, 1981); 1995 City Att'y MOL 558 (95-64; Sept. 12, 1995). In 1986, City Council amended the Council Policy to recognize the role played by recreation councils including "contracting for and conducting recreation programs when the City cannot afford to provide them." City Mgr. Report No. 86-457 (Oct. 3, 1986). Through this amendment, City Council directed the City to "work cooperatively with recreation councils in their fiscal administration, planning, promoting, and development of community recreation programs." Council Policy 700-42; San Diego Resolution R-266849 (Oct. 27, 1986).

The amended Council Policy "expand[ed] and formalize[d] the City's role with recreation councils with regard to *fiscal administration*." City Mgr. Report No. 86-457 (Oct. 3, 1986) (emphasis added); Resolution R-266849. Administration is defined as "[t]he management or

⁴ Charter section 55 vests the City Manager with "control and management of parks, parkways, plazas . . . playgrounds, recreation centers, recreation camps and recreation activities held on any City playgrounds, parks, beaches and piers, which may be owned, controlled or operated by the City."

⁵ The California Constitution requires voter approval of taxes and limits the City's authority to impose fees. Cal. Const. art. XI, § 5 and art. XIII C; see 2011 City Att'y MOL 46 (2011-3; Mar. 4, 2011) (discussing the impact of Proposition 26 on City fees and charges).

performance of the executive duties of a government, institution, or business.” *Black’s Law Dictionary* 44 (7th ed. 2002). This amendment “added the word “administering” to the advisory activities of the [recreation] Councils . . . [and] gave the [recreation] Councils considerably more power, and removed them from the status of purely advisory boards.” 1995 City Att’y MOL 558 (95-64; Sept. 12, 1995).

By adopting and amending Council Policy 700-42 and issuing individual Permits, the City delegated authority to administer recreational programming within certain geographic areas to individual recreation councils. Resolution R-254869 (Aug. 24, 1981); see *Los Angeles County v. Nesvig*, 231 Cal. App. 2d 603, 616 (1965); City Att’y MOL 2015-7 (Apr. 23, 2015) (discussing delegating land use and permitting authority to a nonprofit public benefit corporation). Recreation councils may only receive funds under the terms and conditions of the Permit. Permit § 4.2; see also, Standard Operating Procedures and Responsibilities for Recreation Councils, Policy 1.1 (July 2015) (“No [recreation] Council shall be entitled to a relationship with and benefit from the City absent an effective Permit.”). The Permit establishes the recreation councils’ authority to operate in their assigned parks, including conducting meetings, holding special events, and contracting with instructors to provide specialized classes to the public. Permit §§ 1.3, 1.5. The Permit allows recreation councils to collect funds from the public and to expend funds for park-related purposes. Permit §§ 4.1, 4.2. The Permit also contains significant limitations on the use and expenditure of funds and requires recreation councils to report budgeting and financial information to the City on an annual basis. Permit §§ 7.1-7.5. If, for example, a recreation council purchases equipment or supplies for a park facility, the property must be kept at the park facility and belongs to the City. Permit § 4.4. Upon expiration or termination of the Permit, the recreation councils must remit all funds to the City. Permit § 9.6(a).

While the City may legally delegate authority to the recreation councils to administer funds, this does not mean that the City has relinquished its obligation to administer the funds or its right to claim the funds.⁶ See *Nesvig*, 231 Cal. App. 2d at 616; *Epstein v. Hollywood Entertainment Dist. II Business Improvement District*, 87 Cal. App. 4th 862, 873 (2011) (When a public entity delegates administrative functions to a private organization, that organization “must comply with the same laws and regulations as the public entity that is delegating its authority.”). An unpublished opinion by the Fourth District Court of Appeal upheld the City’s right to funds collected by a recreation council. *City of San Diego v. Pacific Beach Recreation Council, Inc.*, No. D041232, 2003 WL 22963093 (Cal. Ct. App. Dec. 17, 2003). In that case, the City sued the Pacific Beach Recreation Council (PBRC) when PBRC refused to remit its funds to the City after its Permit expired. *Id.* The court determined that upon expiration of its Permit, PBRC “lacked any contractual authority to spend those funds and was legally obligated to remit the

⁶ For example, the expenditure of City funds are subject to state and local conflict of interest laws. See Cal. Gov’t Code § 1090; Cal. Gov’t Code § 87100. When contracting for goods and services paid for with City funds, recreation councils are required to comply with the provisions of the Charter and Municipal Code governing competitive procurement (San Diego Charter § 94; SDMC § 22.3203), the City’s Equal Employment Opportunity Program (SDMC §§ 22.2701-22.2708); and the Equal Benefits Ordinance (SDMC §§ 22.4301-22.4308).

Herman Parker, Director
Park and Recreation Department
September 8, 2017
Page 5

moneys to City.” *Id.* at 4. The court reasoned that “[a]lthough the funds collected by PBRC were deposited into [PBRC] bank accounts, *the Permit imposed stringent contractual limitations on PBRC’s power to use the moneys.*”⁷ *Id.* at 3 (emphasis added). Additionally, the court held that “. . . the Permit unambiguously required that *all* funds in PBRC’s bank account be used only for recreation-related activities and services regardless how those funds might be allocated under PBRC’s internal operating documents.” *Id.* at 4. While unpublished cases are of limited precedential value, the reasoning in this case would likely be persuasive to a court if the issue were to be litigated again.

CONCLUSION

The City formalized its creation of recreation councils by adopting Council Policy 700-42. Over time, the City delegated the administration of programming in City parks to recreation councils, including the collection of funds from program participants and City park patrons. Through this delegation of authority, the recreation councils collect funds on behalf of the City and hold funds until the Permit terminates or expires, at which point, the money reverts to the City. Based on the source of funds collected by recreation councils and the City’s delegation of recreational activities in City parks contained in Council Policy 700-42, the Fee Schedule, and the Permit, we conclude that recreation council funds are City funds, subject to Charter and Municipal Code provisions applicable to City funds.

MARA W. ELLIOTT, CITY ATTORNEY

By /s/ Heather M. Ferbert
Heather M. Ferbert
Deputy City Attorney

HMF:nja
MS-2017-20
Doc. No.: 1446179
Attachments

cc: Honorable Mayor and City Councilmembers
David Graham, Deputy Chief Operating Officer
Andrea Tevlin, Independent Budget Analyst

⁷ The court further found the Permit phrase “all funds” had a clear meaning and applied to not only funds collected by PBRC through its administration of recreational programming, but also to funds collected through PBRC’s fundraising efforts. *Id.* at 4.

CITY OF SAN DIEGO, CALIFORNIA
COUNCIL POLICY

CURRENT

SUBJECT: RECREATION COUNCILS
POLICY NO.: 700-42
EFFECTIVE DATE: February 7, 2005

BACKGROUND:

Public recreation is a function of government closely related to the citizenry. In order to achieve participation of the people in the planning of Park and Recreation activities, the Park and Recreation Department has assumed responsibility for the organization of recreation councils.

PURPOSE:

The purpose of recreation councils shall be to promote the recreation programs in the community through planning, administering, publicizing, coordination, and interpretation. The actions of recreation councils in achieving their purpose shall be in accordance with the policies of the San Diego Park and Recreation Department and the Park and Recreation Board.

MEMBERSHIP:

Membership in a recreation council shall be open to anyone meeting the requirements of its by-laws as approved by the City Manager or his designee. Recreation councils will not discriminate or permit discrimination against any person or class of persons on the basis of race, color, national origin, religion, sex or age, or physical disability.

POLICY:

1. City will work cooperatively with recreation councils in the fiscal administration, planning, promoting, and development of community recreation programs.
2. City will issue "Special Use Permits" to recreation councils for periods of up to three (3) years.
3. City, in consideration of the volunteer services rendered by recreation councils; does hereby agree to provide legal defense to and indemnify such members from liability for acts of such members performed while engaged in assisting the Park and Recreation Department community recreation programs when such acts are done under the direction, control or supervision of Park and Recreation personnel.
The City shall further provide a legal defense to, and indemnify such members from liability for acts of such members performed in connection with recreation councils acting as a body within the policy guidelines of the City of San Diego.
The City shall not, however, defend or indemnify any member of recreation councils for any act or acts with regard to damages or liability resulting from same, alleged to have occurred as a result of any criminal act of any such members.

CITY OF SAN DIEGO, CALIFORNIA
COUNCIL POLICY

CURRENT

CROSS REFERENCE:

City Charter Sec. 43
Municipal Code Sec. 26.30
Municipal Code Sec. 26.31

HISTORY:

Adopted by Resolution R-254869 08/24/1981
Amended by Resolution R-266849 10/27/1986
Amended by Resolution R-300111 02/07/2005