



Memorandum

TO: PARKS AND RECREATION
COMMISSION

SUBJECT: CHARTER PARKS

FROM: Jon Cicirelli
Director PRNS

DATE: January 8, 2024

Approved

Date

RECOMMENDATION

Provide a report on the historical implementation of Section 1700 of the City Charter (Charter Parks) and site inventory of Charter Parks.

SUMMARY

On November 29, 2022 the City Council accepted Staff's report (Item 8.3), on Site Identification and Operational Considerations for Quick-Build Emergency Interim Housing¹ and directed the City Manager to "develop a citywide definition for parkland-chartered status and a process to retroactively declare all PRNS properties that meet the definition as Charter Parks." Council's direction was in response to the confusion surrounding Noble Park² in District 4 and whether Noble Park was a "Charter Park" as defined in Section 1700 of the City Charter (dedicated, improved, and opened to the public for public park purposes).³

The purpose of this memo is to:

- 1) Provide historical background on the City Charter as it relates to City parks dating back to 1896;
- 2) Encapsulate the City's historical interpretation and application of Section 1700 of the City Charter since 1965,
- 3) Memorialize the criteria for how Section 1700 has been and will continue to be applied to all City Park properties.

In summary, the City Charter addresses the use of the City parks in Sections 1700 through 1702. The City Charter has protected City public parks since 1896 with the current Section 1700

¹ November 29, 2022 City Council Agenda:

<https://sanjose.legistar.com/View.ashx?M=M&ID=999878&GUID=CDB0A6FB-AC1C-4101-BF06-DB5E8796244A>

² Noble Park, also known as the Noble Site or Penitencia Creek Park Chain

³ The City Council voted on November 29, 2022 to remove Noble Park from consideration for emergency interim housing.

approved by the voters in 1965. Any changes to the City Charter would require voter approval. Section 1700 sets forth the general rule with respect to the use of City public parks:

- The City's public park shall be "inalienable," unless otherwise authorized by a majority of the voters.
- Without a vote, however, the City may lease its parks, including buildings or other structures located in the parks, or grant permits, licenses or concessions in the parks for a term not to exceed three years.

Section 1700 defines "public parks" as City lands which are dedicated, improved, and opened to the public for public park purposes. As explained in detail below, historically, the City has considered "public parks" as "Charter Parks" when the City owns the land (fee title), or has unrestricted access through an easement in perpetuity, the land has been improved with recreational or park improvements (passive or active improvements), and opened to the public for public park purposes (allowing the public to access and use the improved City land). The application of Section 1700 of the City Charter has generally been straightforward since 1965 with the exceptions of a few instances when City lands have not been fully improved consistent with the City's long-term vision for the site but is opened to the public (such as Noble Park). In the past there has been confusion as to whether these City lands are Charter Parks. This memo will provide clarity on the interpretation and application of Section 1700. The Charter Parks inventory will be managed, updated periodically by the Parks, Recreation and Neighborhood Department and hosted on the City's website.

BACKGROUND

The full text of Section 1700 is as follows:

"Except as otherwise provided elsewhere in this Charter, the public parks of the City ***shall be inalienable*** unless otherwise authorized by the affirmative votes of the majority of the electors voting on such a proposition in each case; provided and excepting, however, that the same or any interest therein, or any concessions or privileges therein or in any building or structure situate therein, may be leased by the Council, or the Council may grant permits or licenses for the same, without any vote of any electors, if the term of each such lease or permit does not exceed three (3) years. As used herein "public parks" means any and all lands of the City which have been or are ***dedicated, improved and opened to the public for public park purposes.***"

The current City Charter was adopted by the voters at an election in April of 1965, replacing the prior City Charter, which was adopted by the voters in 1915 and became effective in 1916.

1916 Charter

The requirement that the parks be “inalienable” has appeared in the City’s Charter since the 1916 Charter. Under the general powers provision of the 1916 Charter, Section 2(a) provided that:

...the rights of the city in its streets, parks, waterfront and wharf property ***shall be inalienable***, except as otherwise provided in this charter. All leases shall be made at public auction to the highest responsible bidder at the highest monthly rent after publication of notice thereof for at least one week in some daily newspaper of general circulation, published in the City of San Jose, which notice shall state explicitly the time and conditions of the lease, provided that the council may in its discretion reject any and all bids.

Article XIV of the 1916 Charter, specific to the Parks Department, provided in Section 96 that:

The parks and reservations of the city ***shall be inalienable*** unless otherwise authorized by majority vote of the people...

Section 96 authorized leases or concessions in the parks according to the lease provisions set forth in Section 2 of the Charter, as outlined above, without a vote of the people, for a term not longer than three years. This Section also authorized a lease of a portions of Alum Rock for hotel purposes under certain conditions including approval by vote of the people.⁴

1896 Charter

The 1896 Charter, the Charter in effect prior to the 1916 Charter, did not use the term “inalienable” with respect to park property. However, the 1896 Charter specified that the parks could not be “hypothecated or mortgaged.” Additionally, the parks could not be leased or sold, except a portion of Alum Rock Park could be leased for hotel purposes as specified in the Charter without a vote of the people.

Development of the 1965 Charter’s Park provisions

There is little legislative history of the 1965 Charter’s Park Provisions that exist today. The definition of “public parks” in Section 1700 of the City Charter was approved by the voters in

⁴ The full text of Section 96 set forth in the 1916 Charter, as amended and in effect as of January 31, 1963, states: The parks and reservations of the city shall be inalienable unless otherwise authorized by majority vote of the people; provided, however, that the same or any interest therein, or any concessions or privileges therein or in the building erected by the city thereon may be leased by the city council as provided in Section 2 of this charter for a period of not more than three years without submitting the matter to the people.

A lease as provided in Section 2 of this charter may be made of such portion of Alum Rock reservation as will not interfere with the free employment of the said reservation by the public, for a period of not more than twenty years, provided that within one year that the lessee erects thereon a hotel building to cost not less than fifty thousand dollars, the plans for and location of which have been approved by the city Planning Commission, and by the people at a general or special municipal election.

1965 without any additional guidance on how to interpret and apply the definition of “public parks” (“dedicated, improved, and opened to the public for public park purposes). However, what seems to be clear dating back to 1896 is that the voters of San José have intended to protect City Parks and want to make sure that City Parks are “inalienable” – meaning cannot change to a different use without voter approval. The language in the City Charter from 1916 and then in 1965 used the word “inalienable”.

As explained in detail below, in most instances, this analysis of what is a Charter Park is very simple. For example, the City has fee title to land, designs and constructs a park, and then opens it to the public. In other instances, the City would have fee title to land, but may not have the resources to fully construct recreational or park improvements. But the City would make minimal improvements to the site to allow the public to use the land. Some may argue that this does not meet the definition of “public parks” under the City Charter, but as explained below, staff believes that in such instances the City has made the land usable and safe for public access and has allowed public access to the land, thus it meets the definition of Charter Parks. This would seem to be consistent with the will and intent of the voters and consistent with the historical interpretation and application of Section 1700.

ANALYSIS

Consistent with City Council direction on November 29, 2022, PRNS has conducted a site inventory of lands in San José that may potentially meet the definition of Charter Parks. Based on the analysis conducted to date, there are 206 of 212⁵ parks qualify as existing Charter Parks per Section 1700 of the City Charter, meaning the properties are dedicated to the City, improved, and accessible to the public. The following is an explanation of how these public park sites meet the definition of dedicated, improved, and opened to the public for public park purposes.

Parks Dedicated and Opened to the Public

The definition of public parks under the City Charter has a three-prong test. Two of the criteria, *dedicated and opened to the public for public park purposes* are straightforward, easy to determine and definitive. The City has had a consistent interpretation and application of these criteria for many years. Dedicated means the City either has ownership of the land in fee simple, or there is an easement in place in perpetuity providing the City full unrestricted access to the land for public park purposes. Opened to the public for public park purposes means that the

⁵ Of the City’s 212 parks, 206 are considered Charter Parks. The following 6 parks are not Charter Parks:

- 1) Hester Park is owned by San Jose Unified School District
- 2) Metcalf Park is owned by Santa Clara County
- 3) Shady Oaks Park is owned by Santa Clara County
- 4) Our Park is owned by PG&E and City of San Jose has an easement
- 5) Castellero Tennis Courts is not owned by City of San Jose and under Joint Use Agreement with San Jose Unified School District
- 6) Barberry Parkway/Paseo/Walkway is not owned by City of San Jose and further research on the ownership is needed

public can access the park and enjoy the space. In other words, the City has made the space useable and safe for the public to use. This also includes open space in its natural condition with minimal or no improvements that are intended to be opened to the public.

Park Improvements

Although dedicated and opened to the public are straightforward, the improved requirement can at times create questions or confusion. Penitencia Creek Park Chain Reach 2 Master Plan, adopted by City Council in 2002, also known as the Noble Park or Site , is a good example of this. This City parkland is owned by the City in fee simple. There is a City Council approved Master Plan for Penitencia Creek Park Chain & Trail system that includes extension of the Penitencia Creek Trail, irrigated turf area for informal play, picnic sites, BBQ pits, restrooms, and other park improvements. The City has not implemented the Penitencia Creek Park Chain Reach 2 Master Plan but have made improvements to the site to allow the public to access and safely use the site. For example, the City has improved the Penitencia Creek Trail to an open gravel trail, and the City has improved the parking lot to allow patrons to park, installed various park signs, provided a gate, installed benches, a water drinking fountain, trash bins, irrigation system and has provided regular maintenance. The public can use the site as passive open space similar to many other passive open spaces. City parks staff believes this meets the definition of being “improved” under the City Charter and is consistent with what the voters intended to protect as Charter Parks. Penitencia Creek Park Chain is an example of the City’s consistent historical interpretation and application of “improved” which has meant to mean any degree of improvements made to City land for the purpose of making it accessible and usable by the public for park and recreation purposes.

Staff has applied this three-prong criteria to all City parks to develop an inventory of Charter Park status. Most public parks sites meet the criteria with little explanation needed, however there are a few instances where we want to clarify how the criteria was applied in the past and provide additional background information on how the Charter Park status applies to these specific park assets, including Golf Courses, Trails and standalone Community Centers.

Golf Courses

The City owns the following golf courses: San José Municipal Golf Course, Rancho Del Pueblo Golf Course and Los Lagos Golf Course. These golf courses are under long term leases with a provider. Historically golf courses were analyzed specifically depending on the purpose of the purchase of the land. For example, the San José Municipal Golf Course was purchased for the express purpose of use as a golf course and thus caused confusion if it should be considered a Charter Park even though it is a recreational use. Conversely, if a golf course was constructed on previously designated parkland, then historically it would be considered a Charter Park, even with a golf course present, such is the case with Los Lagos Golf Course. For the purpose of consistency staff considers all three stand-alone golf courses as Charter Parks since they meet the three-prong criteria of dedicated, improved and opened to the public.

Trails

Historically trails have not been considered Chartered Parks. The majority of trails are comprised of many parcels of varying ownerships that made it difficult to categorize trail segments and major alignments. However, it makes sense to have a consistent approach and those trails segments that meet the definition as Charter Parks would be considered as such moving forward. Thus, trails that are City owned, (without encumbrances or restrictions on City recreational or park uses), are improved, and are opened to the public will be considered Charter Parks. In this instance ownership included fee simple title as well as unrestricted easements held by the City. In instances where the City owns fee title but a third party, like Valley Water, holds easements rights over City land, those City parcels would not meet the definition of Charter Park. The inventory will track trail parcels and easements that meet the criteria and those that do not.

Community Centers (Stand-Alone)

Historically Community Centers that are located inside a public park are considered Charter Parks. However, the City has several community centers that are considered stand-alone buildings and are not in a public park, meaning they may not be in a public park or surrounded by parkland with recreational use. These stand-alone buildings have not been considered Charter Parks in the past since they are not surrounded by parkland. City park staff does not believe these stand-alone buildings meet the definition of being parkland under the City Charter, and this approach is consistent with what the voters intended, which is to protect parkland. Moving forward, PRNS will continue the historical interpretation and application that stand alone community centers are not Charter Parks.

Charter Parkland Inventory

Staff is developing a draft inventory of Charter Parks that will be managed and updated administratively by the Department of Park, Recreation, and Neighborhood Services. The inventory will include the status of all 212 City parks as well as future park sites, trails, and stand-alone community centers, and other properties PRNS maintains. The inventory will include the following categories: council district, park name, address, Charter Park status and ownership information, developed or not, and open to the public. The inventory will also include other applicable restrictions that restrict the sale or a change in parkland use, such as grant restrictions, joint use agreements, or development obligations. This inventory will be a living document, maintained and updated by staff and will provide a quick reference on Charter Park status for all.

PARKS AND RECREATION COMMISSION
January 8, 2024
Subject: Charter Parks
Page 7

COORDINATION

This memorandum was coordinated with the City Manager's Budget Office and the City Attorney's Office.

/s/
Jon Cicirelli
Director
Parks, Recreation and Neighborhood Services

For questions, please contact Raymond Costantino, Deputy Director, at
Raymond.Costantino@sanjoseca.gov.

CHARTER PARKS STATUS AND INVENTORY

Parks and Recreation Commission
Special Meeting January 25, 2024

Presented by
Deputy Director, Raymond Costantino

Background Image: Heinlerville Park, Charter Parkland

City Charter Language:

The City Charter has protected City public parks since 1896 with the current Section 1700 approved by the voters in 1965. Any changes to the City Charter would require voter approval. Section 1700 sets forth the general rule with respect to the use of City public parks:

- i. The City's public park shall be "inalienable", unless otherwise authorized by a majority of the voters.
- ii. Without a vote, however, the City may lease its parks, including buildings or other structures located in the parks, and grant permits, licenses or concessions in the parks for a term not to exceed three years.

Purpose:

- i. Provide historical background on the City Charter as it relates to City parks dating back to 1896,
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- iii. Memorialize the criteria for how Section 1700 has been and will continue to be applied to all City Park properties,

Application of City Charter to Parks:

- i. **Memorialize the Criteria** for how Section 1700 has been and will continue to be applied to all City Park properties
- ii. **Criteria for Charter Parks:**
 - a. Dedicated
 - b. Improved
 - c. Open to the public
- iii. **206 City Parks are Charter Parks**



Lake Cunningham, Charter Parkland

Charter Park Examples:

212 City Parks, 206 are Charter Parks:



Backesto Park

Standard Charter Park with many amenities including basketball and handball courts.



Sycamore Terrace by Almaden Lake

Charter Park; Improved and open to the public. Amenities include a decomposed granite (D.G.) path to view habitat.



Noble Site with Penitencia Creek Trail

Charter Park; however, not as obvious based on improvements.

Not Charter Park Examples:

The six parks that are not Charter Parks:



Shady Oaks Park

Land owned by Santa Clara County



Castillero Tennis Courts

Joint Use Agreement with San Jose Unified School District, on school property



Barberry Parkway (Paseo/Walkway)

Not owned by City of San, further research on the ownership is needed

Not Charter Park Examples:



Our Park

Land owned by PG&E,
City has an easement



Hester Park

Land owned by San Jose
Unified School District



Metcalf Park

Land owned by Santa
Clara County

Specialty Parks:



Southside Community Center

Stand-alone, not charter parkland



Shirakawa Community Center

Community Center with surrounding parkland



Golf Courses

San José Municipal Golf Course, Rancho Del Pueblo Golf Course and Los Lagos Golf Course

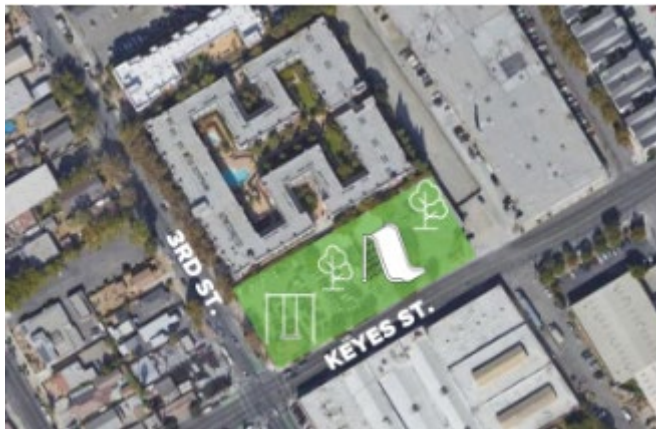


Trails

Various trails citywide

Future Charter Parks:

Undeveloped Parks that will become Future Charter Parks:



3rd and Keyes

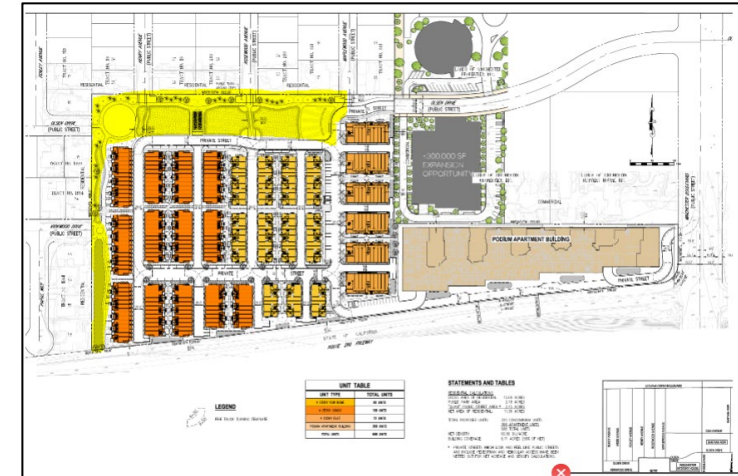
Master Plan in progress, and construction reserve established.

Tenants still on site.



460 Park Avenue

Undeveloped site for future chartered parkland. No Master Plan or reserve for development.



Winchester Orchard

Turnkey project in construction.

Questions & Comments

Background Image: Heinlenville Park, Charter Parkland