

# *City of San José, California*

## **COUNCIL POLICY**

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<b>EFFECTIVE DATE</b> April 22, 2008	<b>REVISED DATE</b>	
<b>APPROVED BY COUNCIL ACTION</b>		4/22/2008, 5.2 (a), Resolution No. 74333

### **TITLE**

FREE USE OF COMMUNITY CENTER REUSE SITES IN EXCHANGE FOR SERVICES THAT PRIMARILY BENEFIT SAN JOSE RESIDENTS

### **BACKGROUND**

In November of 2000, the voters of San José approved a \$228 million General Obligation Bond issuance known as “Measure P” to acquire property and construct improvements for parks, trails, and recreation facilities in San José. This bond measure which funds the renovation of various recreation amenities including nine community centers by 2010 will almost double the amount of community center square footage the Department of Parks, Recreation, and Neighborhood Services (PRNS) must manage with limited increases in Staff.

Consequently, the San Jose City Council approved a Community Center Reuse Plan that allows PRNS to vacate older, less-used community center facilities and centralize services, programs, and Staff at the newer, larger, more efficient centers built with Measure P funds, while maintaining community service priorities in vacated facilities.

This Community Center Reuse Policy allows Santa Clara County-based nonprofit, neighborhood associations, school districts, and other government agencies or community service providers (collectively referred to as Service Providers) to use PRNS recreation facilities designated as Community Center Reuse sites at no cost in exchange for services that primarily benefit San José residents.

### **PURPOSE**

To establish the policy of the City of San José and communicate guidelines for the use of Community Center Reuse sites by Santa Clara County-based Service Providers at no charge in exchange for services that primarily benefit San José residents.

### **POLICY**

Through this Community Center Reuse Policy, the City Council authorizes the PRNS Director to enter into property use agreements for Reuse Facilities with Service Providers who demonstrate to the Director that they will provide a minimum of needed free, low-cost, fee-for-service, sliding scale, or cost reimbursement programs, services, and activities that primarily benefit San José residents.

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In exchange for providing a minimum level of these services, the property use agreement shall not require the Service Provider to pay facility use fees (such as hourly room fees), and shall also provide that the City shall pay for the cost of routine building maintenance, major systems repair, and normal utility use for the facility.

The PRNS Director, through a Community Center Reuse Property Management Team or other such designated Staff, will manage community and Service Provider outreach for Community Center Reuse sites, the selection of Service Providers, enforcement of property use agreements, and facility operations management.

Before Staff makes a Community Center Reuse site available for use under this Community Center Reuse Policy, the City shall evaluate and approve the condition of the facility and shall make any initial repairs deemed appropriate prior to use, in the City's sole discretion. If the PRNS Director determines the cost of repair or operation to be prohibitive, the Director may recommend to City Council the removal of a facility from the list of Community Center Reuse sites.

Service providers shall be selected through an open and competitive process with the goal to maximize the benefit to San José residents. Service Providers shall be selected on criteria evaluating the activities, programs, and services in a Community Center Reuse site that accomplish one or more of the following objectives and priorities:

- Services that support the PRNS Vision, Mission, and Core Services. The focus of the Department of Parks, Recreation, and Neighborhood Services is to provide City services, programs, and activities that include, but are not limited to, recreation, therapeutic, youth, and senior programs and services; programs, services, or activities that promote healthy lifestyles; early recreation childhood classes; after school activities; summer camps; meals for seniors; and youth intervention
- Provide quality low-cost, fee-for-service, sliding scale, or cost reimbursement programs, services, and activities that are complementary or in addition to services provided by City Staff.
- Build relations between the public sector and the community
- Address emerging needs and improve programs to meet existing needs
- Foster and leverage support from volunteers and active communities

Subject to the availability of facility space, the City Council hereby intends to support Service Providers without payment of facility use fees in exchange for community services that primarily benefit San José residents, in the following order of service priority:

- First Priority  
Service Provider uses that directly support the Vision, Mission, and Core Services of Parks, Recreation, and Neighborhood Services or are complementary or in addition to services provided by City Staff.

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▪ Second Priority

Service Provider uses that support the delivery of children and youth programs, health and human services, arts and cultural activities, and other areas.

See **Attachment I(a)** for a detailed description of community service uses.

MAJOR CONSIDERATIONS IN EVALUATING AND SELECTING SERVICE PROVIDERS

1. Initially, the term of each property use agreement will be not more than three (3) years, renewable thereafter for Reuse facilities located on Parkland, subject to the approval of the PRNS Director which may be withheld in the Director's discretion. Since a number of Community Center Reuse sites are located on public parks, this three-year period is consistent with Article XVII, Section 1700 of the City Charter, which allows leases, permits, or licenses without a vote of the electorate for any building or structure situated on a park if the term of each such lease or permit does not exceed three (3) years. The initial term of each property use agreement will be not more than five (5) years, renewable thereafter, for Reuse facilities not located on Parkland.
2. The Service Provider must demonstrate that it can provide its own operational materials.
3. The Service Provider must demonstrate that it can maintain and replace all furniture, equipment, and fixtures that it supplies.
4. Service Providers who bring non-City resources for capital investment, operating funds, or both, used to further the public's interest will be given greater consideration.
5. The PRNS Director, or his/her designee, is authorized to (i) competitively solicit potential Community Center Reuse Service Providers; (ii) to evaluate and select responses to the competitive process; to (iii) negotiate, execute, and extend property use agreements on the City's behalf on terms consistent with this policy; and (iv) to terminate any property use agreement on the City's behalf.
6. The Service Provider shall comply with all applicable laws, ordinances, codes, and regulations of the federal, state, and local government, including the Departments of Parks, Recreation and Neighborhood Services requirements for Background Check/ Fingerprinting for Employees/Volunteers and Tuberculosis (TB) testing.
7. The PRNS Director may request from City Council the removal of a facility from the Community Center Reuse list. The PRNS Director is authorized to require a different use of a facility in response to natural, technological, and human-caused disasters. This includes, for example, immediate use of a Community Center Reuse site to shelter displaced residents affected by such disasters.
8. The City Council, at any time, may add a facility or may remove a facility from the Community Center Reuse list if the Council determines such action is in the best interest of the City. Community Center Reuse site occupants shall be provided no less than a 90-day written notice to vacate the property. Such requests to add a facility to the Reuse list shall be referred to the City Manager, and it is the responsibility of the City Manager, as a first step, to obtain input, feedback, and report to the Neighborhood Services & Education Committee of the policy issues, workload impacts, cost implications, and other pertinent

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information associated with completing/addressing the addition of a facility to the Community Center Reuse list, before obtaining City Council approval.

Without limitation of any other policy, three City Council policies apply to facility use:

- Policy 7-1, Below Market Rate Rental Policy
- Policy 7-8, Long-Term Use of City Parklands for Private Enterprise Purposes
- Schedule of Fees for the Use of Parks and Recreational Facilities

The terms of use of Community Center Reuse sites pursuant to the Reuse Policy shall be the responsibility of the PRNS Director, shall supersede Council Policy 7-1, which directs the Public Works Department to provide oversight for review and negotiations of City-owned leases and or property use agreements; Policy 7-8, Long-Term Use of City Parklands for Private Enterprise Purposes, which establishes guidelines for City parklands use involving commercial or non-profit recreation and commercial or non-profit non-recreation; and shall also supersede any explicitly inconsistent provisions in the fees and charges established by the Schedule of Fees for the Use of Parks and Recreational Facilities.

PROPERTY CRITERIA

The Community Center Reuse sites considered to be used by qualified Service Providers will meet the following criteria:

1. The City Council has designated the recreation facility a Community Center Reuse site.
2. The facility usage is significantly below capacity because the City does not intend to provide staffing and/or to fully program activities in the building in the immediate future, but the facility will be retained for a future public purpose.
3. It is anticipated that the date that future City programming of the facility would occur at or near full capacity is far enough into the future to justify an interim use.
4. An existing lease or sublease agreement, the source of funding used for the original acquisition, or any construction work on the facility or any financing related to the facility, does not preclude the facility or property from legally being occupied for the desired use.
5. The property or facilities are not scheduled to be surplus.

SERVICE PROVIDER CRITERIA

The expected level of financial capability and expertise of a Service Provider increases with that Provider's proposed scope of services, activities, and the potential liability assumed by the Service Provider. A Service Provider should be incorporated or have other formal legal status; comply with the City's insurance requirements as determined by the Risk Manager; demonstrated experience in providing the proposed services; and adequate financial resources before the City would consider awarding rights to program an entire Community Center Reuse site.

However, the City also desires to make Reuse sites available for scheduled use by less formally organized groups for community meetings and similar activities. The Director, through the PRNS

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Property Management Team or such other designated Staff, shall establish a process for less formally organized groups to submit requests for time in a Community Center Reuse site, which shall be reserved on an as-available basis, and subject to reasonable terms and conditions as established by the Director. These uses can include, for example, daytime and evening meetings, monthly meetings, and community events. The Director may establish other requirements for longer term uses.

Santa Clara County-based nonprofits, neighborhood associations, school districts, other government agencies, and other community service providers may operate or provide services at Reuse sites at no charge if they are selected by the Director after an open and competitive selection process, and have been determined as the entity offering the most beneficial level and type of services at the facility based on criteria outlined in this policy, and further provided that they meet the following qualifying criteria approved by City Council.

1. Service Providers shall provide community services, either singly or through a written agreement with another community service provider that primarily benefit San Jose residents. "Community services" are to be defined broadly to include programs, services, and activities that align to the PRNS Mission, Vision, and Core Services; those services identified in **Attachment I(a)**; services identified during past Community Center Reuse public input sessions; and other services that may be identified in the future.

The Service Provider Community Center Reuse solicitation materials developed may prioritize the service needs for facilities in a manner different than those set forth above, as determined by the Director, based upon factors such as special needs in the surrounding community, changing circumstances, and additional community services identified through future community input and City Staff review.

2. Proof of 501 (c) (3) nonprofit status from the Internal Revenue Service or the California State Franchise Tax Office. A nonprofit organization may provide a letter indicating they are exempt under Internal Revenue Code 501(c)(3) or State Franchise Tax Code 23701(d), 23701(f), or 23701(w). (If the tax letter is for the national or state organization, the City needs proof that the local chapter is an affiliate.)
3. A copy of federal income tax returns if the Service Provider is required to file them.
4. If the Service Provider is not registered with the State, the Service Provider must have a constitution or by-laws that clearly state that the objectives of the organization are of a non-profit, non-commercial nature. The City may require an individual to be legally responsible before the City allows access to the Community Center Reuse site. City Staff may provide information for obtaining routine meeting or special event commercial group liability insurance coverage.
5. A Neighborhood Association must be an organized body with adopted by-laws and governed by Officers. The City may require an individual to be legally responsible before the City allows access to the Community Center Reuse site. City Staff may provide information for obtaining routine meeting or special event commercial liability insurance coverage.
6. Demonstrated capacity and financial capability to perform or deliver the desired services in a format determined by the Community Center Reuse Property Management Team.

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7. To initially request free use of space, the Service Provider must submit the following information in a format prescribed by the Community Center Reuse Property Management Team. The Service Provider's expected level of filing requirements would increase or decrease with the Provider's proposed scope of services and activities, and the potential liability assumed by the Service Provider.
  - a. The program's objective and a time frame for implementation, if applicable.
  - b. A profile of the clients served, including client residency information.
  - c. An outline of the program and proposed service(s) to be offered.
  - d. A copy of organization's IRS Form 990, to include a contact person for the use of the Community Center Reuse site, organization chart, Board of Directors or Officers, their contact information, their role in the organization, and management and key staff, including their length of service.
  - e. A current certified financial audit including sources of funding and any constraints applied to funds.
  - f. Evidence of adequate public liability and property damage insurance for the Service Provider's contents and/or other insurance as determined by the City's Risk Manager.
  - g. The City may review the Service Provider's past performance under any other City programs or contracts including, but not limited to: CAP Grants, CDBG, and San José BEST.
8. The free use provided for in this Community Center Reuse Policy is not available for Service Providers engaged in political activities (excluding nonpartisan use for polling sites, voter registration, or voter education) or to religious organizations that would use the City's premises to promote sectarian or religious purposes.

**SERVICE PROVIDER SELECTION PROCESS**

The PRNS Director is authorized to administratively solicit Service Providers through an open and competitive process, to generate facility use proposals, to thereafter select Service Providers and to negotiate and execute property use agreements consistent with this Reuse Policy. The PRNS Director is also authorized to extend property use agreements and to terminate property use agreements when deemed by the Director to be appropriate, without requiring City Council approval. The Director, however, may provide administrative reports from time to time to the City Council and the City Manager concerning Service Provider use of Community Center Reuse sites.

The Community Center Reuse Property Management Team or such other Staff appointed by the Director will work to provide community input and participation in the evaluation of Service Provider's proposals.

Requests for facility use in response to the selection process will be evaluated periodically. Staff will place Service Providers who successfully meet the Community Center Reuse Policy criteria

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on a pre-qualified Service Provider list, and will use the list to assign facilities based on the type of space desired, space available, time availability, and services proposed.

**ANNUAL REPORTING REQUIREMENTS OF SERVICE PROVIDERS**

The PRNS Director, through the Community Center Reuse Property Management Team or such other designated Staff, may request annual performance measurement data and/or program, service, or activity evaluation reports in a form and on such frequency as specified in the property use agreement. The Director may use the results of such annual performance reviews to determine a Service Provider’s continued occupancy.

**TERMS OF OCCUPANCY**

The PRNS Director will develop and modify from time to time, a property use agreement form for Community Center Reuse Service Providers in consultation with the City Attorney’s Office. The property use agreement will set forth the terms and conditions of the facility use for Community Center Reuse Service Providers. Nothing in these guidelines shall be construed to limit the terms specifically set forth in any agreement.

The terms and conditions of the property use agreement shall be determined by the PRNS Director but may include the following:

1. The provision of office supplies, operational materials, and the provision, maintenance, and replacement of furniture, equipment, and fixtures provided by the Service Provider shall be the responsibility of the Service Provider.
2. The provision, maintenance, and replacement of City-owned furniture, equipment, and fixtures based upon Normal Wear and Tear shall be the responsibility of the City.
3. Community Center Reuse sites shall be left in the same condition when vacated, as when the Service Provider moved in, allowing for Normal Wear and Tear. If improvements were made to the facility, the City may choose to keep the facility improvements. Normal Wear and Tear may include, but not be limited to faded paint; the natural wearing down of carpet or drapes because of normal use or aging; worn hinges on doors or locks; holes or dings in walls from missing door stops; broken plumbing pipes, unless damaged by the Service Provider; and central drain problems not caused by the Service Provider’s incorrect disposal of items.
4. If the Service Provider conducts a fee generating or fundraising event as defined by the City Fees and Charges Resolution, the Service Provider shall agree that all net proceeds from the event shall be used towards subsidizing or reducing costs of programs and services to the community from the facility, and may include acquiring equipment, supplies, and services that will enhance and/or expand services to the community.
5. Any changes in the type or level of services provided by the Service Provider may result in a re-evaluation of the property use terms.

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6. The Service Provider shall provide all necessary proof of insurance coverages, which can be supplied by the provider and/or through an umbrella organization, as required by the City's Risk Manager prior to occupancy, during the term of property use agreement, and at renewal of the property use agreement.
7. The Service Provider shall not be entitled to relocation benefits as a result of its occupancy or removal from the Community Center Reuse site unless such benefits are required by law.
8. The Service Provider will be responsible for paying any possessory interest tax, which may be due because of the occupancy. Nonprofit groups may qualify for exemption from possessory interest taxes. For more information, please contact the Santa Clara County Assessor's Office.
9. The PRNS Director, through the Community Center Reuse Property Management Team or such other designated Staff, shall reserve the right to establish and require a refundable cleaning/damage deposit not to exceed \$500 for the term of the property use agreement. The Director can establish the refundable cleaning deposit based upon the size of the facility, type of users and uses, past history of use, revised from time to time, and made available to the public.
10. Utilization of the Community Center Reuse site shall be for the exclusive use of the designated Service Provider(s). The Service Provider(s) shall not assign or transfer any interest in the Community Center Reuse site without the prior written consent of City.
11. The Service Provider shall not be responsible for Community Center Reuse routine site building maintenance, major systems repair, and utilities including exterior grounds of the facility, except to provide building maintenance or to repair damage that is the result from the Service Provider's excessive use or events.

The City will provide a minimum level of building maintenance service consisting of two days of custodial service per week. This includes servicing recycle stations, spot vacuuming and mopping, and restroom service. No direct custodial service will be applied to staff areas except recycle stations and restrooms. Routine repairs that are a result of normal wear and tear on the facility will also be completed.

Preventive maintenance consistent with the majority of other City facilities will also be included. Enhanced maintenance requested above the City's minimum level of service may result in additional costs to the Service Provider. The Property Management Team may inspect the Community Center Reuse site from time to time to ensure that the facility is properly maintained.

12. The Service Provider shall hold the City harmless against claims if the City needs to temporarily shutdown the Community Center Reuse site to perform major system repairs, such as replacement of air conditioning systems.



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No alterations or improvements, including capital improvements and installations of additional phone lines, T1 lines, and electrical lines shall be made to the Community Center Reuse site without the City's prior written approval. If the City provides written approval, the Service Provider shall be responsible for obtaining all City permits through the City of San José Public Works Department necessary for the construction of any alterations or improvements. Service Provider will be responsible for meeting all permit requirements at no cost to the City of San Jose.

13. The Service Provider will not be required to make any capital improvements. If capital improvements are required for the proposed use of a facility, the City, in its sole discretion, may elect to make such improvements, terminate further property use negotiations, or terminate the property use agreement.

If the Service Provider proposes to fund the capital improvements, the City may consider such requests. The City may review and consider all capital improvement requests pursuant to the City's Capital Improvement Program process. Any obligation on the part of the City to expend funds shall be subject to appropriate City approvals and must be set forth in a written agreement and shall be subject to appropriation of funds by City Council, which shall be made in City's sole discretion.

14. Service Provider(s) shall cooperate if the City requires, prior to and during the term of the property use agreement, the submission of such additional information as may be reasonably requested by City.

**TERMINATION**

In addition to termination for cause, Community Center Reuse site property use agreements may be terminated by the PRNS Director or the Service Provider(s) at any time for any reason upon no less than a 90-day written notice. The PRNS Director is authorized to terminate a property use agreement sooner than 90 days in response to a declared City emergency.

**Attachment I(a)**

**Service Provider Guidelines**

Service Providers shall be selected on criteria evaluating the activities, programs, and services in a Community Center Reuse site that accomplish one or more of the following priorities for meeting unmet needs in the City.

- First Priority

Service Provider uses that directly support the Vision, Mission, and Core Services of Parks, Recreation, and Neighborhood Services and provide quality, low-cost, fee-for-

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service, sliding scale, or cost reimbursement programs, services, and activities to the residents of San José that are complementary or in addition to services provided by City Staff.

- Second Priority

Service Provider uses that support the delivery children and youth programs, health and human services, arts and cultural activities, and other areas. The services listed below are not in order of priority.

- I. Developing Children and Youth

- Early Childhood and Preschool (School Readiness, Language, and Social Skills)
- Physical and Emotional Well Being
- Responsibility and Citizenship
- Career Aspirations and Support
- Promoting healthy lifestyles (tobacco prevention, health and fitness, and other activities)
- Building healthy social networks and cross generational connections (celebration of diversity and opportunities for cross-cultural connections within neighborhoods)
- Building the resiliency and protective assets of youth (help youth to develop the ability to recover quickly from setbacks and enable them to avoid risks to remain healthy and productive -- i.e., in school, home, and the community.)

- II. Assisting Seniors and Disabled

- Transportation
- Care Planning (Information and Referral)
- Recreation, Nutrition, and Fitness

- III. Counseling & Support

- Violence (Domestic Abuse and Gangs)
- Substance Abuse (Alcohol and Drugs)
- Immigration (Status, Language, Education, and Access)
- Grief (Trauma and Bereavement)

- IV. Access to Healthcare for Uninsured or Lower Income Individuals/Households

- Physical (Primary Care and Health Insurance)
- Mental (Adult and Family Mental Health)

- V. Enhancing Adult Living Skills

- Basic and Intermediate English
- Employment (Obtaining, Holding, and Advancement)
- Financial Management (Budgeting, Saving for Home, Education, and Retirement)
- Effective Parenting (Preschool, School Age, Preparing for Adulthood)
- Nutrition and Fitness (Diet, Exercise, Disease Prevention, Recreation)

- VI. Neighborhood and Community Leadership and Capacity Building

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- Nonprofit Organizations (Resident Representation in Governance, Planning and Delivery of Services, Capacity for Measuring Outcomes)
  - Neighborhoods and Communities (Neighborhood Services Projects and Volunteer Opportunities)
- VII. Neighborhood Appearance
- Anti-Litter
  - Anti-Graffiti
  - Neighborhood Beautification
- VIII. Public Safety
- Community and Neighborhood Watch
  - Gang Awareness, Prevention, Intervention
- IX. Basic Human Needs for Lower Income Individuals or Households
- Shelter, both temporary and transitional
  - Affordable Housing and Housing Assistance
  - Food Meeting Basic Nutritional Needs
  - Clothing To Meet Basic Needs for Clothing
  - Dependent Care for Children, Elderly, Infirm, and Disabled
- X. Environmental Benefit
- Environmental Awareness, Outreach and Education
  - Recycling Programs and Sustainable Activities
  - Watershed/Water Quality
  - Air Quality and Urban Forest
- XI. Arts, Culture, and Sports
- Arts, Culture, Sports, Entertainment, and Community Events
  - Arts, Culture, and Sports Activities and Organizations
  - Information Technology
  - Multi-media (Text, Audio, Still Images, Animation, Video, Interactivity)
  - Facilities Support
- XII. Economic Development
- Local and Regional Economic Development Activities and Organizations
  - Chambers of Commerce
  - Workforce Training and Career Services
  - Neighborhood Business Districts