



City of Sunnyvale

Agenda Item-No Attachments (PDF)

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REPORT TO COUNCIL

SUBJECT

Acknowledge the Department of Public Works' Amendments to the Operational Standards for Acceptance of Land for Park Purposes

BACKGROUND

On September 30, 2014, the City Council held a study session to discuss the Department of Public Works' current Parkland Dedication Standards (Attachment 1). As part of that discussion staff explained the purpose of the standards, provided a summary of the requirements, identified some of the key issues, and outlined possible next steps and options (Attachment 2). The current parkland dedication standards describe the requirements for a property to be "clean" and "clear". In general, it was concluded that the current standards are fine in respect to the "clear" requirements but the "clean" requirements are conservative and somewhat restrictive, and that they could be updated and refined to better meet park use requirements.

Staff is recommending Alternative 3 that the City Council acknowledge the amendments that will be implemented by the Department of Public Works relative to Standards for Acceptance of Land for Park Purposes, as presented in Attachment 3.

The Parks and Recreation Commission considered this item on April 22, 2015 and recommends that Council Approve Alternative 3 (Attachment 5).

EXISTING POLICY

General Plan, Chapter 3, Land use and Transportation - Open Space

Policy LT-8.14 - In applying the park dedication requirements for new development, place a priority on acquiring land over in-lieu payment, particularly when the development is in areas identified as underserved and/or when the land is of sufficient size or can be combined with other land dedication to form larger mini parks or neighborhood parks.

ENVIRONMENTAL REVIEW

The endorsement of the standards does not require environmental clearance because it is not a project within the meaning of CEQA. Any future park dedication will be required to complete environmental review prior to acceptance by the City.

DISCUSSION

The existing parkland acquisition standards provide that property must be "clean" and "clear" in order for the City to accept it for park use. They further provide that if there are any contaminants on a property, they must be below any applicable federal and State agency screening limits for non-restricted residential use. The proposed new standards, presented as Attachment 3, eliminate this hard and fast requirement, and are intended to allow the City greater flexibility in assessing the

appropriateness of individual properties for park use. The new standards provide process direction and establish the environmental requirements to determine if a property is acceptable, by further explaining the terms “uncontaminated” and “clear of encumbrances”.

Although staff made some formatting changes, added minor modifications, and provided additional clarifications to the “clear of encumbrances” requirement, no significant concerns were identified and the key concepts were maintained. As such, staff is focusing this report’s discussion on the “uncontaminated” requirements. The discussion focuses on the proposed changes related to environmental measurement requirements to better assess a property’s suitability for park use. The new standards are included as Attachment 3, and the following discussion provides a summary of the key modifications.

Definition of Significant Risk

As part of the proposed standards, an uncontaminated site is defined as a site where no user or occupant of the park will be exposed to any concentration of chemicals in soil, water, or air where such exposure would be expected to result in a lifetime incremental cancer risk greater than one-chance-in-one-million, or a threat of non-cancer health effects greater than a Hazard Index of 1 (“Significant Risk”). This is the standard used by various State and federal agencies to determine screening thresholds for contaminated substances. If there are hazardous materials or constituents of concern on the property, the amount or concentrations shall be below current environmental Screening Levels (SLs) published by the State of California or federal agencies. Although the previous standard *applied* the same definition, the new standards publish and include the specific definition to provide clearer direction to staff and developers.

Changes in Screening Levels Requirements

The current standards defined that no site would be accepted if it did not meet residential SLs. As part of this update, staff reviewed possible changes and is making the following modifications:

- For soil contamination, the SLs will be maintained at the residential level. This is appropriate for the following reasons:
 - 1) Soil remediation tends to be straightforward and cost effective. It normally just requires replacing the contaminated soil with clean soil, and it is the approach that was used on Seven Seas Park and other locations.
 - 2) At a park there is an expectation that the public will come in contact with soil as part of typical park activities. As such, it is important to maintain the most conservative SL, which is residential.
- For soil vapor contamination, the SL will be changed to the industrial/commercial requirement. This industrial/commercial SL is not as conservative as the residential SL, but still provides a conservative starting point for the City as they are based on indoor exposure over a typical workday.
- For groundwater contamination, the concentrations must meet the drinking water standard or the use of groundwater must be prohibited.

Human Health Risk Evaluation

If remediation to reduce contaminant concentrations to the SLs is not feasible as determined by the Director of Public Works, then a human health risk evaluation can be completed. The current standards do not allow for this step - If a site could not be remediated to residential SLs, the site was

not acceptable. The proposed standards are appropriate for a number of reasons:

- Published SLs are not intended to be the final determinant on whether a site is not acceptable, as they are calculated using conservative assumptions that are not site specific. Published SLs allow the reviewer to determine that, if a site is below the SLs, additional environmental analysis will likely not be required.
 - As an example, the San Francisco Bay Regional Water Quality Control Board Users Guide: Derivation and Application of Environmental Screening Levels states that “the ESLs are intended to be conservative for use at the vast majority of sites” and “that the presence of chemical at concentrations above the ESLs does not necessarily indicate that a significant risk exists at the site. It does generally indicate that additional evaluation of environmental concerns is warranted.”
- If the new standard SLs are not met, then a human health risk evaluation can be completed that will take into account the actual site conditions and the proposed park uses.
- Using specific site conditions provides more detailed findings for a site. As an example, as part of the vapor assumptions, SLs assume sandy soil but a site could have different soil type such as clay. The published SL does not reflect this soil type, but the human health risk evaluation would.

Properties with Restrictions/Superfund Sites

As the City looks for various ways to expand its park inventory, the issue of whether the City should consider acquiring or accepting contaminated property that is the subject of regulatory oversight, such as Superfund sites, has been raised. There are a number of challenges and risks associated with acquiring this type of property; nevertheless there may be instances where such property could provide a safe and important park amenity for the community. A detailed memorandum discussing these risks and challenges, and possible way to mitigate them, is included as Attachment 4.

Generally, in considering whether to accept dedication of a Superfund site or portion thereof, the City should evaluate the status of the cleanup at the site, the nature of the contamination, the condition of the title, and the financial viability of the party dedicating the site or any other parties responsible for cleanup of the site. The City should obtain and maintain bona fide prospective purchaser status, and allocate its liability to the party dedicating the site and/or another responsible party through an agreement that includes indemnity, defense and defined cleanup obligations. The City should also consider obtaining environmental insurance to cover certain liabilities, and whether it could obtain assurances from the United States EPA or other State agency responsible for oversight of the cleanup.

Because of the risks and challenges associated with acquisition of contaminated sites under regulatory oversight, the proposed standards provide that, as a general rule, the case file must be closed by the agency with "no restriction" on the site in order for the City to consider accepting the property. Case closure with mandatory covenants or deed restrictions, or with the need for ongoing monitoring, or remediation, would not be acceptable. Any exception to this standard must be directed and approved by City Council rather than staff.

Board and Commission Review

The Parks and Recreation Commission considered this item on April 22, 2015 (RTC 15-0308). Commissioners voted 3-1 to recommend Alternative 3: Recommend that Council acknowledge the Department of Public Works Operational Standards for Acceptance of Land for Park Purposes, as presented in Attachment 3.

The Parks and Recreation Commission supported that the modification to the Standards aligns with park uses and allows for more possible sites as future parks. The only concern was regarding the lack of City staff expertise related to the review of the required technical reports as part of the Standards. Staff discussed the use of expert consultants hired by the City to provide technical support.

FISCAL IMPACT

There is no fiscal impact associated with endorsement of the proposed standards.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk and on the City's website.

ALTERNATIVES

The City Council may:

1. Recommend that Council acknowledge the current Operational Standards for Acceptance of Land for Park Purposes, as presented in Attachment 1, and direct the City Manager to maintain the current administrative practice.
2. Direct the City Manager to develop a City Council Policy for the Department of Public Works' that establishes the Operational Standards for Acceptance of Land for Park Purposes and removes this administrative action from the City Manager.
3. Recommend that Council acknowledge the Department of Public Works Operational Standards for Acceptance of Land for Park Purposes, as presented in Attachment 3.

BOARD/COMMISSION AND STAFF RECOMMENDATION

Alternative 3: Acknowledge the Department of Public Works Operational Standards for Acceptance of Land for Park Purposes, as presented in Attachment 3 to the report.

The Parks and Recreation Commission voted 3-1 to recommend Alternative 3.

Prepared by: Manuel Pineda, Director of Public Works

Reviewed by: Lisa Rosenblum, Director of Library and Community Services

Reviewed by: Robert A. Walker, Assistant City Manager

Approved by: Deanna J. Santana, City Manager

ATTACHMENTS

1. Current Parkland Dedication Standards
2. September 30, 2014 Study Session Presentation
3. Department of Public Works Standards for Acceptance of Land for Park Purposes
4. Analysis of Issues Associated with Dedication of a Superfund Site for Park-Land
5. Excerpt of the April 22, 2015 draft meeting minutes of the Parks and Recreation Commission