



San José Parks and Recreation Commission
via email, sent 1/18/24

re: Agenda item II.A: "Charter Parks"

Dear Commissioners,

We in the District 6 Neighborhood Leaders Group (D6NLG), a decades-old association of involved community representatives of the numerous District 6 neighborhoods and associations, are dedicated to preserving and enhancing the quality of life in a sustainable and equitable San José. The District 6 Neighborhood Leaders Group has a long history of supporting Parks and Recreation citywide and regionally. In addition to neighborhood leadership, some members have served on the City and County Park Commissions, on the Boards and Advisory Boards of the Open Space Authority, the Parks Foundation Board, the Water District, and on various advocacy groups such as Save Our Trails, Park Advocates, and Green Foothills. Several of us have served on City task forces and working groups, and have had leadership roles in various election campaigns for park and open-space bonds, parcel taxes, and charter funds.

We view city parks as a key component for our quality of life and for a happy and healthy citizenry. We thus were concerned when we heard in 2022 of a proposal to take a portion of an existing city park and give it over to be used for "Emergency Interim Housing"¹. While that particular issue has been satisfactorily resolved, housing and other interests as well (e.g., water quality, flood control) desire to use park lands for non-park purposes. These all raise the questions: "***what exactly is a 'City Park'?***" and "***how are City Parks protected under the City Charter?***" Council directed Staff to review the issue and make recommendations to resolve this lack of clarity. At the January 25th meeting of the San José Parks and Recreation Commission (PRC), commissioners will review Staff's report and discuss what determines which properties qualify a park as "chartered" park land. While the draft report addresses a number of our concerns, it doesn't answer them all, and it raises a few others.

Background

During the 1960s, some planned park sites were sold or traded in land swaps, creating community consternation and ill will that persisted for decades. Following the lead of Palo Alto, San José adopted in 1965 a charter, including a provision that states "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." Further, the charter states "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."

¹ <http://calsj.org/D6/D6NLG-NoblePonds,Aug2022.pdf>



The conflict in 2022 over a proposal to use the minimally developed city-owned land on Noble Avenue adjacent to Valley Water's detention ponds highlighted the lack of specificity in the charter. The land had minimally developed trails, water, and a few planted trees. Some city officials felt this did not qualify as a park. Neighborhood leaders, park advocates and the park department argued that a natural environment can be an acceptable category of city parkland. Ultimately, the land was designated as chartered parkland, but the conflict highlighted the confusion created by the minimal charter language. Staff was directed by Council to explore the issue and make recommendations, which are now being presented in the report by Director Jon Cicirelli dated January 8, 2024.

We appreciate the Staff report: it acknowledges and reflects the citizens' longstanding intent to protect City Parks, and it clarifies a number of our concerns, including:

- **Required level of development.** We are pleased to see the report explicitly recognizes that Chartered Parks "includes open space in its natural condition with minimal or no improvements that are intended to be opened to the public."
- **Golf courses.** We appreciate the logic behind clarifying that they are Charter Parks: they are green unbuilt areas for public recreation. They may not be for everyone, but then again, neither are tot-lots nor skateboard parks. A question: does being classified as a Chartered Park interfere with the long-term leases now in place for their operation?
- **Trails.** Many off-street trails are in existing parks or else along streams on water district land, but it's good to see that stand-alone trails such as Three Creeks Trail and Five Wounds Trail are Chartered Parks. Clarification: does this include the entire parcel (e.g., the full 60-ft wide former rail right-of-way) or just the 12 ft width of the pavement?
- **Community Centers.** We support the distinction as to whether the center is built on a park or stand-alone, but what about cases such as Gardner Center at Biebrach Park, where it is contiguous? Also, does being a "Chartered Park" Community Center confer any benefits, such as requiring a public outreach and vote prior to conversion to, for example, a Homeless Navigation Center?

Concerns and Questions

The City's 212 Parks: The report says that 206 of the city's 212 parks qualify as Charter Parks, with a footnote explaining why the remaining six are not Charter Parks: we understand why those six are not counted as Charter Parks. We would like to see the list of the other 206 parks to make sure that what we might consider a City Park is indeed on the list. For example:

- We assume that older city parks (those built prior to the 1965 Charter) are counted as Charter Parks, having been so defined by earlier versions of the city charter, but it would be reassuring to see them on the official list.
- The PAL Stadium Athletic fields operated by the Police Athletic League for youth leagues (in District 5): is it a park?



- What about Arcadia Softball Complex near Eastridge Mall (D8); and
- the various pocket parks and plazas (e.g., Senter at Serenade in D2, the plaza in Palm Haven (D6), and 800 block N. Second in D3)?
- Also, are the various Community Gardens themselves considered parks, or are they protected only if the underlying lands were originally part of a park? These are all over the city: some within historic boundaries of parks (e.g. Wallenberg, D6), others are adjacent to parks (Nuestra Tierra at La Ragione Tot Lot, D7).

Is the entirety of a park protected, or is there a danger that an undeveloped portion of a park might be traded, swapped, sold, or otherwise used? For example, what about the eastern portion of Kelley Park, or the remote eastern portion of Alum Rock Park? (The upper hills along Alum Rock Falls Road and near Cherry Reservoir have never been open to the public. Is that portion a park?)

We wonder ***how much land the City can sell*** to other departments or agencies before it triggers an election? We note that the City has carried out land swaps, and sold park land to other departments and public agencies. We wonder whether the staff's recommendation would limit or prevent this disposal of parkland. We appreciate that sometimes some flexibility is beneficial, such as a proposed swap of an undeveloped City parcel for a Water District parcel along the Los Gatos Creek that would improve a trail alignment; at other times it is not, as when Parks was told it has to provide portions of land from Agnews East for water wells, which will complicate any future park development plans.

We note that the Charter says "'public parks' means any and all lands of the City which ***have been*** or are dedicated, improved and opened to the public ..." – the words "have been" should help address our concerns about the status of a park that is temporarily closed for reconstruction.

What about undeveloped park land? The city doesn't go out and buy fully developed parks, it buys the land and then designs and constructs the park. Is that land then subject to acquisition for other purposes until what time as it is developed up to Chartered Park status? How could the city ever build a new park if the land can't be protected from confiscation until the park is completed? [Specific examples of land purchased with park money with no master plan and not open to public: Tillman (D6), Agnews (D4), North Coyote (D4), Singer (D10), 460 Park Ave. (D6), Del Monte Park Phase III on Home Avenue (D6).] As District 6 residents, we are especially concerned about our three properties acquired with park trust funds that sit unplanned and undeveloped: is this land protected from a sale without the vote of the people, or could Council decide to sell or give it to the Housing Department on any given Tuesday? If the land was purchased with outside funds (e.g., from the Open Space Authority), do they have liens or easements that would restrict the resale of the land?



And we are confused by chart 9 in the PRC presentation regarding “Future Charter Parks”: are we to be assured that these lands *will* be parks, or are they still in danger of being repurposed for other uses? It might seem that even a fully constructed turnkey park is not fully protected as a “Charter Park” until it has been formally dedicated. What about land with a master plan but not yet built or opened? [e.g., Keyes (D3), Mercado (D4), Bruzzone (D4), North San Pedro (D3), Bassett (D3), Winchester Ranch (D1).]

Also, are there passages in the Municipal Code that may also help preserve parkland? Specifically, §4.54.100 (J): “As used herein, ‘developed park acre’ means 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. Acreage in this category includes, without limitation, fully developed and minimally developed land.” Could PRNS, for example, set up a tent and some chairs for a ground-breaking ceremony to have the parcel protected by having been “officially” “minimally developed”?

Leased land: What happens to parkland that has been leased to others? When the leases expire, do they revert back to being Chartered Parks? Specific examples: the former Raging Waters (in D8), and the Empire Gardens Elementary School (built on land in D3 leased from Watson Park for \$1/year).

Conservancy: What happens if a park is managed by a Conservancy: will the Conservancy be able to sign long-term leases without voter approval? For example, would a Conservancy be able by itself to lease out part of Plaza de Cesar Chavez for an “iconic” art installation or a restaurant, or would it still require voter approval?

“Coyote Meadows”: What is the status of the 50+ acres of city-owned land (and former dump) north of Kelley Park, between I-280 and Story Road in D7? (We note that the east side of Kelley Park along Roberts Road is also a former dump.) A master plan for the site was adopted by the City and County in the 1960s and was part of an application for state park status and money. Recently, the Coyote Creek Trail has been built across the site and opened to the public, and the Five Wounds Trail is planned to also cross the site. The land was acquired with a combination of funds including state open space money. The City has cooperated with recent conceptual park planning efforts by a non-profit. The site has high value riparian habitat and sweeping vistas. Is this a park? And if not, why not?

Land Reversion. Some park lands were authorized by the voters for other uses, such as Silver Creek Fire Station (D8) came from the Silver Creek Linear Park, and Ramblewood Elementary School (D7) was part of Ramblewood Park. Will they revert to parkland if their agencies abandon those uses?



What are the next steps? Do these clarifications take effect when Council “accepts” the report, or does Council have to adopt an ordinance? We are especially concerned that property purchased by park trust funds and under construction are not considered Chartered Parks and are still subject to diversion. Will there be public outreach to alert neighborhoods (e.g., 3rd-and-Keyes) to the fact that their not-yet-developed parks are not protected?

We appreciate Staff’s efforts to clarify the somewhat ambiguous language in the Charter, and we recognize that we are asking about a number of “corner cases” or “gray areas”. We look forward to an interesting discussion at the Parks and Recreation Commission meeting!

In support of parks,

~Lawrence Ames, Chair, D6NLG.

cc: PRNS Director Jon Cicirelli,
Deputy Directors Raymond Constatino and Sara Sellers