

**OPEN SPACE ADVISORY COMMITTEE  
AND  
PARKS AND RECREATION COMMISSION  
STAFF REPORT**

**MEETING DATE:** December 18, 2017

**AGENDA ITEM NUMBER:** 3D

**STAFF:** Jennifer Budge, CPRP Parks and Recreation Director

**REQUEST:** Review, discussion and possible recommendation to the Board of Supervisors regarding the proposed Carson City Parklands Easement Policy and Right of Entry Agreement

**GENERAL DISCUSSION:**

Currently Carson City does not have a policy regarding the process or procedure to consider the granting of various types of easements for Carson City Parklands. For the purpose of this policy, parklands shall include both open space and parks under the direction of the Carson City Park, Recreation and Open Space Department. The purpose of the policy is intended to provide not only a process, but allow for a fair and uniform administration of non-park uses on the City's parklands. The objective and procedures for this process are outlined in the attached policy.

Due to the increasing number of requests for easements, policies and procedures are needed to ensure consistency, promote protections of the City's assets managed by the Parks Department and ensure compliance with Nevada Revised Statutes. The draft policy for consideration has the following objectives:

- Establish and define standards for non-park use of park property.
- Inform perspective users and the public of the expectations and intentions of the City with respect to non-park uses.
- To discourage unauthorized and inappropriate uses of park property.
- To enable the City to receive appropriate compensation for non-park use of property and mitigation.
- To minimize adverse impacts to parkland and facilities including natural, cultural, recreational, historical resources and wildlife.
- To ensure that all possible steps are taken to prevent any unnecessary adverse impacts to the City's land and assets.
- To ensure the ability to provide future public services.

The policy also outlines instances when mitigation (financial and in-kind) may be required in compensation of allowing an easement. An application fee is proposed of \$2,450, which is comparable with existing City planning applications of projects such as a road abandonment.

Appraisal expenses and public noticing costs will be paid for by the applicant.

The policy clarifies that exclusive easements and private party easements not benefitting the public will not be considered. The policy also authorizes specified City staff an option of a temporary right of entry agreement for temporary uses of parklands (less than 6 months). Requests for this type of temporary agreement is frequent and would enable the City to authorize uses where appropriate, while limiting impacts to the Board of Supervisors and other Commissions.

**RECOMMENDED ACTION:**

Should the Committee/Commission agree with staff's recommendation a possible motion would be:

*"I move to recommend to the Board of Supervisors approval of the proposed Carson City Parklands Easement Policy and Right of Entry Agreement."*



## **Carson City Parklands Easement Policy Effective: January 1, 2018**

### **1.0 PURPOSE:**

To develop a policy and process for Carson City Parks, Recreation, and Open Space to consider and recommend to the Board of Supervisors the potential granting of various types of easements that will allow for the fair and uniform administration of non-park use of Carson City's parklands (parks, trails, open spaces). The policy has the following objectives:

- Establish and define standards for non-park use of park property.
- To inform prospective users and the public of the expectations and intentions of the City with respect to non-park uses.
- To discourage unauthorized and inappropriate uses of park property.
- To enable the City to receive appropriate compensation for non-park use of property and mitigation.
- To minimize adverse impacts to park land and facilities including natural, cultural, recreational, historical resources and wildlife.
- To ensure that all possible steps are taken to prevent any unnecessary adverse impacts to our land and assets.
- To ensure the ability to provide future public services.

### **2.0 PERSONS AFFECTED:**

Persons and parties affected by this policy include the Carson City Parks, Recreation, and Open Space Department, Carson City Public Works Department, adjacent property owners, applicants requesting or holding easements, non-authorized users of parklands, and citizens and community interests.

### **3.0 DEFINITIONS:**

“Easement” defined: An easement is an interest in land which grants the right to use or enjoy land owned by another.

It is hereby recognized that the sale or lease of City real property is generally governed by N.R.S. 244.2795, 244.281, 244.282, and 244.283, which require two appraisals of the property and a public auction unless the transfer contemplated falls within one of the exceptions enumerated in the statutes. The exceptions to the two appraisals/public auction requirements are:

- Transfer of affordable housing, control and protection of animals, rehabilitation of rental property in residential neighborhoods, and rehabilitation of abandoned rental property.
- The sale or exchange of property with landowners abutting a road or flood control facility adjacent to the road or flood control facility.
- The sale or lease of rights-of-way or water rights to a public utility.
- The transfer or sale of land that was part of an original mining town site which was acquired directly from the federal government.
- The transfer or conveyance of land to a corporation for public benefit.
- The transfer or conveyance of land to a nonprofit organization for development of affordable housing.
- The reconveyance, sale or lease of land donated, dedicated or condemned for public purposes when it is being reconveyed to the person from whom it was received or to his heirs at law.
- Transfers for the purpose of vacating or abandoning streets or easements.
- Transfers effectuating the purpose of a cooperative or interlocal agreement that was in effect on October 1, 2004.
- Leases of real property for a term of one year or less, or leases of real property that are less than 25,000 square feet for a term of not more than 3 years, where it can be demonstrated that it is in the best interest of the City.
- Transfers of land of more than one acre which have been approved by the voters at an election.
- Transfers of land where the property to be sold or leased is worth less than \$1,000.

### **4.0 CRITERIA TO BE CONSIDERED IN EVALUATING EASEMENTS:**

In general easements will not be considered unless it is possible to minimize harm to the maximum extent practicable and/or provide full restoration to the pre-disturbance condition and function is included in the proposed project. The Carson City Parks,

Recreation, and Open Space Department fulfilling its responsibility to preserve and protect the Parks system and its natural resources will not advocate efforts to transfer park property or park facilities or any portion thereof for non-park use, or establish non-park uses, therein including water related or other utility related non-park uses unless:

1. The Department has determined that that proposed project is complementary with other planned or existing park uses at the subject site;
2. It has been determined that there is no reasonable or prudent alternative to the use of park lands for the specified purpose;
3. Such transfer or use can be shown to provide substantial long term benefit to the Parks system or for the benefit of Carson City and its residents;
4. Such use was in existence prior to the adoption of this policy and serves a clear purpose such as existing use arrangements with other City departments, government or quasi-governmental agencies including, but not limited to Carson City School District, Regional Transportation Commission, Nevada Department of Transportation, Bureau of Land Management, Nevada Department of Wildlife and the United States Forest Service, that may or may not be established by formal transfer of rights;
5. The non-park use meets a legal obligation of the City;
6. The proposed project will benefit the general public; or
7. The proposed project is essential to public safety, health and welfare.

Activities that are prohibited include:

- Any new or industrial, mining, quarrying, oil, gas, sand, gravel or other mineral development projects.
- Any other change in the general character of the topography of the land including the impacts to wetlands, streams, and other water resources.
- The creation of continued use and expansion of a public health hazard or code violation.
- Any new or additional commercial or business activity that would have negative impacts on the parkland or the neighborhood.
- Any new use or activity not in compliance with local ordinances, existing easements, assignments, restrictive covenants or deed restrictions.

## **5.0 PROCEDURES:**

**A fee of \$2,450.00 will be charged at the time the application is submitted. A preliminary title report is also required when the application is submitted.**

Acceptance of an application for review does not guarantee approval. Upon receipt of a complete application by the Carson City Real Property Manager, an initial assessment will be completed by staff from the Parks, Recreation, and Open Space and Public Works Departments within 20 business days. During this initial review, a request for an easement will be analyzed first under the provisions of state law cited above to determine whether the granting of the easement is governed by these statutes and whether the request falls within one of the statutory exceptions to the two appraisal/public auction requirement. In the event of a conflict between state law and terms of this policy, state law controls.

Following the initial assessment, Department staff may request time for additional information from or meetings with the applicant. Within business 10 days following completion of any additional meetings or discussion with the applicant, Department staff will prepare and submit to the Director of Parks, Recreation and Open Space their recommendation for further action on the proposed easement. Park policy and/or restrictive covenants on some lands may make it impossible to approve easement requests. Additionally, easements must not negatively impact the Park Master Plan. **Exclusive easements and private property easements not benefitting the public will not be considered.**

All applicants will be requested to present their proposal for public review and comment to the appropriate Board or Commission and provide notice at minimum to all adjacent property owners. An appraisal is required prior to review by the appropriate Board or Commission. **Appraisal expenses and all public noticing costs will be paid for by the applicant.**

The appropriate Board or Commission will review the project, identify potential mitigation measures if applicable, and provide recommendations to the Board of Supervisors as appropriate. Following action by the appropriate Board or Commission, agreements can then be drafted for consideration by the Board of Supervisors. The Director of Parks, Recreation, and Open Space, Real Property Manager, Carson City District Attorney and Carson City Risk Manager will review the agreements prior to consideration by the Board of Supervisors. A technical check of the legal description shall be performed by the Department of Public Works.

Permanent, long term and temporary non-park use of parklands, such as by conveyance of an easement to another public entity, individual, or corporate body or by transfer of jurisdictions, may only be authorized by action of the Board of Supervisors.

## **6.0 CONDITIONS:**

Applications for easements are reviewed on a case-by-case basis and are subject to various fees, charges, and monetary assurances to ensure that all work performed in the easement is completed to the satisfaction of the City. The City shall establish and periodically review effective procedures for granting temporary construction easements and monitoring construction activities for compliance with the terms and conditions of construction easements.

## **7.0 COMPENSATION AND MITIGATION:**

The City will require compensation for the value of the land based on an appraisal prepared by a certified appraiser or other valuation deemed appropriate by the City, unless otherwise indicated by law. The affected land area shall be determined based on the extent of the impact. **Appraisal expenses will be paid for entirely by the applicant.**

Additional mitigation may be assessed based on factors such as the sensitivity of impacted areas and the length of time park activities may be disrupted, or other factors that are relevant to the proposed project, including consideration of differential or lower costs associated with a project as the result of obtaining an easement. Mitigation may be financial or in-kind depending on the project, but all efforts should be made to conduct mitigation on the parkland impacted, or in the vicinity of the park/neighborhood impacted.

The City shall require monetary assurances (example, bonding, escrow or cash advance) of the requesting agency, corporation, and/or individual to ensure compliance with easement requirements including restoration of impacted areas. Revenues from the value of land and any financial mitigation measures will be identified for future park improvement projects at the park site in which the easement is granted, unless no opportunity for improvement exists at that site, in which case revenue may be allocated to another park project within the Park District where the easement was located.

## **8.0 TEMPORARY USE:**

Temporary use of City parklands may be granted through a Right of Entry Agreement. This is for temporary use less than six months in duration for such instances as ingress/egress, material stockpiling, educational purposes (obtaining plant specimens, environmental surveys), land surveying, material testing and other similar uses that would not require a lease agreement per Nevada Revised Statutes. The Right of Entry Agreement may be authorized by the City Manager, Parks and Recreation Director,

Public works Director, City Engineer, and City Property Manager. The Right of Entry Agreement may require fees, site restoration or other terms depending on the temporary use. The Parkland Easement Application must be used for this request; however, the application will be reviewed and approved administratively.



# CARSON CITY PARKLAND EASEMENT APPLICATION

## APPLICATION INFORMATION

Applicant Name:		Application Date:	
Applicant Representative:		Contact Number:	
Mailing Address:			
Email:		Fax:	
Company Website:			

## SITE INFORMATION

APN(s)			
Name of Park/Open Space			
Easement Type:		Proposed Start Date:	
Length of Construction:			

## DESCRIPTION OF PROPOSED ACTIVITY

## STATEMENT OF NEED AND JUSTIFICATION REQUEST

## ALTERNATIVE ALIGNMENTS CONSIDERED BY APPLICANT

## ENVIRONMENTAL IMPACTS (Natural, cultural, historical resources and wildlife)

**VISITOR USE IMPACTS**

**IMPACTS TO EXISTING UTILITIES OR STRUCTURES**

**PROPOSED RESTORATION PLAN**

**ADDITIONAL ITEMS TO BE SUPPLIED BY APPLICANT**

- 2 copies of proposed site plans/maps (Minimum size 8 ½" x 11 – maximum size 11" x 17")
- \$2,450 non-refundable application fee (checks, money orders payable to Carson City. Credit card payments accepted in person only.)
- Preliminary Title Report for all parcels

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

Please submit original application with payment attn.:

Stephanie Hicks, Real Property Manager  
Carson City Public Works  
3505 Butti Way, Carson City, NV 89701  
[shicks@carson.org](mailto:shicks@carson.org)

To obtain an electronic version of this application visit:

<http://www.carson.org/government/departments-g-z/parks-recreation-open-space>

**Please be advised that your application could take up to 20 business days for initial review.**

<u>For City Use:</u>	
Property Manager	_____
DA	_____
Parks	_____
PW	_____

APN's: \_\_\_\_\_  
Property Address: \_\_\_\_\_

## **RIGHT OF ENTRY AGREEMENT**

This RIGHT OF ENTRY AGREEMENT, entered into this \_\_\_\_\_ day of \_\_\_\_\_, is made by and between CARSON CITY, NEVADA, a consolidated municipality and political subdivision of the State of Nevada (the "Landowner"), and \_\_\_\_\_, (the "Licensee"). The term Licensee includes \_\_\_\_\_.

### **1. GENERAL.**

1.1 Property. Landowner is the owner of certain land located in Carson City, Nevada, more commonly known as \_\_\_\_\_ of which is more particularly shown on Exhibit "A", attached hereto and incorporated herein by reference (the "Property").

1.2. Entry/Improvements. Licensee desires to enter ("Entry") onto a certain portion of the Property for the purposes of \_\_\_\_\_. See Exhibit A for location.

1.3. Consideration. In consideration for Entry, Licensee shall be responsible for all costs and expenses related to \_\_\_\_\_, including compliance with all applicable erosion control, drainage, air quality and dust control measures and permitting requirements.

### **2. TERMS OF ENTRY.**

2.1. Entry and Work. Subject to compliance with the provisions of this Agreement, Licensee is hereby granted the right and license to enter the Property during the term hereof for the purposes of \_\_\_\_\_ on the Property (the "Work"). A fee in the amount of \_\_\_\_\_ shall be charged by Landowner for Entry. All Work shall be performed and made at Licensee's sole cost and expense. Licensee shall be strictly liable for all claims of, all activities of, and compliance of, all contractors, subcontractors, vendors, material men, assigns, and other third parties involved with the Entry and the Work. Landowner makes no warranty or representation that any material or condition existing on the Property will be fit for Licensee's intended use. Licensee shall not excavate fill

material from the Property. Dust control shall be maintained by Licensee to Landowner's satisfaction and Licensee shall be responsible for compliance with all applicable air emissions requirements. All access to the Property shall be subject to the Landowner's approval and designation of route. Entry and all Work shall be scheduled and coordinated prior to commencement with the Director or designee of the Parks, Recreation and Open Space Department. Licensee shall not traverse, trespass on or disturb other real property owned by Landowner, unless prior written consent from Landowner is obtained.

2.2. Non-exclusive Right. The right and license of Entry granted herein is non-exclusive. Landowner may continue to use and to enjoy the Property in any manner not inconsistent with the right of Entry granted herein.

**3. TERM.**

3.1. Commencement and Termination. This Agreement shall commence, and be binding and effective on the parties, on the last date of the execution by a party hereto. This Agreement shall terminate on the date when all Work and restoration has been satisfactorily completed and approved by Landowner. All work and restoration must be complete prior to \_\_\_\_\_. Notwithstanding, either party shall have the option of terminating this agreement upon 30 days notice to the other party. In the event the Agreement is terminated prior to completion of the work, Licensee shall restore the Property in accordance with Paragraph 6 prior to vacating the Property.

**4. COMPLIANCE WITH REQUIREMENTS.** Licensee shall comply with all applicable permits, authorizations, laws, rules and regulations of local, state and federal governmental authorities, including, without limitation, all Environmental Laws (hereinafter defined) in performing Work, and shall take every precaution to protect and safeguard the Property.

**5. LIENS.**

Licensee shall pay when due all bills and amounts due for labor, services or materials provided for or incorporated in the Property for the Work pursuant to the Entry. Licensee shall remove or cause to be removed within fifteen (15) days after recordation

thereof any claims of mechanic's or material men's liens or other charges or encumbrances against the Property that arise from or relate to the Entry and the Work.

**6. RESTORATION AND INDEMNITY.**

Licensee agrees to restore the Property to its original condition to the extent reasonably possible upon completion of the Work and termination of this Agreement. Licensee's obligation hereunder to restore the Property shall include, without limitation, the removal of any debris, equipment, structures, fixtures, supplies, materials and other items necessary and incidental to Entry and performance of the Work. To the fullest extent of NRS Chapter 41 liability limitations, each party shall indemnify, hold harmless and defend, not excluding the other's rights to participate, the other from and against all liability, claims, actions, damages, losses, and expenses, including but not limited to reasonable attorneys' fees and costs, caused by the negligence, errors, omissions, recklessness or intentional misconduct of its own officers, employees and agents. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described herein. This indemnification obligation is conditioned upon the performance of the duty of the party seeking indemnification (indemnified party), to serve the other party (indemnifying party) with written notice of actual or pending claim, within 30 calendar days of the indemnified party's notice of actual or pending claim or cause of action. The indemnifying party shall not be liable for reimbursement of any attorney's fees and costs incurred by the indemnified party due to said party exercising its right to participate in legal counsel.

**7. ENVIRONMENTAL.**

Licensee will not, nor will Licensee authorize any other person or entity, during the term of this Agreement, to manufacture, process, store, distribute, use, discharge, place, or dispose of any Hazardous Substances (hereinafter defined), in, under or on the Property or any property adjacent thereto. For purposes hereof, "Hazardous Substances" shall include: 1) those substances defined as "hazardous substances", "hazardous materials", "toxic substances", "toxic material"; or "regulated substances" under any federal, state or local law, ordinance, regulation, statute or rule; 2) any petroleum based or related products except petroleum products used in construction of

the Work performed hereunder; and 3) any other substance, material or waste regulated under any federal, state or local law, ordinance, regulation, statute or rule relating to the aforementioned, to the environment or to industrial hygiene (collectively, "Environmental Laws").

**8. NOTICES.**

All notices and demands by any party hereto to any other party, required or desired to be given hereunder shall be in writing and shall be validly given or made only if personally delivered or deposited in the United States mail, postage prepaid, return receipt requested or if made by Federal Express or other similar delivery service maintaining records of deliveries and attempted deliveries, or if made by facsimile. Service shall be conclusively deemed made upon receipt if personally delivered or, if delivered by mail or delivery service, on the first business day delivery is attempted or upon receipt, whichever is sooner.

Any notice or demand to Landowner shall be addressed to Landowner at:

**Carson City:**

Jennifer Budge, Parks and Recreation Director  
Parks, Recreation and Open Space Department  
3303 Butti Way #9  
Carson City, NV 89701

Any notice or demand to Licensee shall be addressed to Licensee at:

\_\_\_\_\_

The parties may change their addresses for the purpose of receiving notices or demands as herein provided by a written notice given in the manner aforesaid to the others, which notice of change of address shall not become effective, however, until the actual receipt thereof by the others.

9. **Miscellaneous.**

A. **Assignment.** Neither this Agreement nor any rights or obligations of Licensee hereunder may be transferred, assigned or conveyed by Licensee without the written consent of Landowner, provided that Licensee may delegate performance of obligations hereunder to contractors or others performing the Work on the Property. Said delegation shall not relieve Licensee of liability hereunder.

B. **Survival of Covenants.** Any of the representations, warranties, covenants and agreements of the parties, as well as any rights and benefits of the parties, pertaining to a period of time following the termination shall survive the termination and shall not be merged therein.

C. **Parties Bound.** This Agreement shall be binding upon and inure to the benefit of the parties of this Agreement and their respective heirs, executors, administrators, legal representatives, successors and assigns.

D. **Severability.** If any of the terms and conditions hereof shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other of the terms and conditions hereof and the terms and conditions hereof thereafter shall be construed as if such invalid, illegal, or unenforceable term or conditions had never been contained herein.

E. **Time.** Time is of the essence to the performance of any provision of this Agreement. If the date for performance of any provisions of the Agreement is a Saturday, Sunday, or banking holiday (in the State of Nevada), the date for performance shall be extended until the next day that is not a Saturday, Sunday or banking holiday.

F. **Waiver.** Either party may specifically waive any breach of the terms and conditions hereof by the other party, but no waiver specified in this Section shall

constitute a continuing waiver of similar or other breaches of the terms and conditions hereof. All remedies, rights, undertakings, obligations, and agreements contained herein shall be cumulative and not mutually exclusive.

G. Attorney's Fees. Should either party employ an attorney or attorneys to enforce any of the terms and conditions hereof, or to protect any right, title, or interest created or evidenced hereby, the non-prevailing party in any action pursued in courts of competent jurisdiction shall pay to the prevailing party all reasonable costs, damages, and expenses, including attorney's fees, expended or incurred by the prevailing party.

H. Governing Law. The terms and conditions hereof shall be governed by and construed in accordance with the laws of the State of Nevada, and venue shall be in Washoe County, Nevada.

I. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an executed original, and all of which together shall constitute one and the same instrument.

J. Entirety and Amendments. This Agreement embodies the entire Agreement between the parties and supersedes all prior Agreements and understandings if any, relating to the Property, and may be amended or supplemented only by an instrument in writing executed by the party against whom enforcement is sought. No oral statements or representations made before or after the execution of this Agreement regarding the subject matter of this Agreement are binding on a party, nor may any such oral statements or representations be relied on by a party.

K. Invalid Provisions. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable. The Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of the Agreement. The remaining provisions of the Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance from this Agreement.

L. Headings. Headings used in this Agreement are used for reference purposes only and do not constitute substantive matter to be considered in construing the terms of this Agreement.

M. Not a Partnership. The provisions of this Agreement are not intended to create, nor shall they be in any way interpreted or construed to create, a joint venture, partnership, or any other similar relationship between the parties.

N. No Recordation. Neither this Agreement nor any notice hereof shall be recorded in the office of the Washoe County Recorder.

**IN WITNESS WHEREOF**, the parties hereto or a representative or either have set their hands and subscribed their signatures as of the date and year indicated.

CITY:  
CARSON CITY, NEVADA, A  
CONSOLIDATED MUNICIPALITY

LICENSEE:  
\_\_\_\_\_

\_\_\_\_\_  
Director, Real Property Manager, or City Manager

\_\_\_\_\_  
Name, Title