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File No. 00-191
(Journal, March 16, 2000)

(Item 17) From the Director of the Department of Parks, Recreation and Culture, requesting approval of a policy regarding the use of park land in cooperation with other governmental units, by recommending adoption of the following:

A RESOLUTION

WHEREAS, the Director of Parks, Recreation and Culture has reported an ever-increasing interest by other governmental units in utilizing park land for specific purposes and the Director has indicated that it would be advantageous for the County and the other governmental units to have specific guidelines to use when these requests are made; and

WHEREAS, the Director of Parks, Recreation and Culture has analyzed the situation and has suggested that the level of impact on park land, the fiscal effect and the term of the use are critical factors in the review of any request for such use; and

WHEREAS, the Director of Parks, Recreation and Culture has formulated such a recommended policy which would complement other policies and procedures already in place and has requested approval of said policy; and

WHEREAS, on May 9, 2000, the Committee on Parks, Energy and Environment has reviewed this policy and voted 7-0 to recommend that the said policy be approved; now, therefore

BE IT RESOLVED, that the County Board of Supervisors does hereby approve the following General Policy on Use of Park Land in Cooperation With Other Governmental Units and the Director of the Department of Parks, Recreation and Culture is hereby authorized and directed to implement said policy:

COUNTY OF MILWAUKEE
MILWAUKEE COUNTY PARK LAND

General Policy on Use of Park Land in Cooperation
With Other Governmental Units

This Policy establishes guidelines for use of Park Land ("Use") in cooperation with other governmental units for extended terms. This Policy shall be used by the Parks Department for direction, guidance and authority in the formulation of agreements regarding Use with other governmental units.

Intention:

This Policy is intended to protect and preserve Park Land and to provide a means to assist other governmental units in the discharge of their responsibilities. It is also intended to establish financial responsibility based on the mission of the unit of government and recognize the value of the provided Use.

Definitions:

Other Governmental Units: Other units of government authorized by applicable Federal, State or Local Law. This includes, but is not limited to the Federal Government and its Agencies, the State Government and its Agencies, Municipal Governments and their Agencies, School Districts, Sewerage Districts, Vocational and Technical Districts, Special Taxing Units, Special Taxing Districts, Authorities and any and all other Entities authorized by Federal, State or Local Law, Judicial Regulation or Order or Constitutional Authority.

Park Land Use ("Use"): Use of Park Land which requires an agreement, contract, lease, easement or other legal instrument which binds either Party to specific terms, conditions, obligations or liabilities, or which grants special privileges, rights, preferential treatment, exclusive use, or the expectation of some consideration.

Park Land: Land owned or under the control of Milwaukee County which is under the jurisdiction of the Milwaukee County Parks Department.

Intrusive Uses: These are Uses where green space, wooded areas, environmentally sensitive areas, activity areas, structures and/or infrastructure are lost, diminished or changed in a significant way.

Non-Intrusive Uses: These are changes which do not impact green space, wooded areas, environmentally sensitive areas, activity areas, structures and/or infrastructure in a permanent manner (that is, anything effected will be restored to original or better condition within two years or less).

Continued and Compatible Uses: These are uses where the County and another unit of government wish to continue, enhance or initiate a specific use or activity which is a normal Park activity but there is mutual agreement that it is in the interest of both units of government to cooperate to enhance services to the public.

Dedicated Uses: A use that displaces all or most other uses that would normally be available at a site in favor of the specific use, or where the other governmental unit takes essentially full control of the site and the use is restricted either in terms of activities and environment, or in terms of who may use the site or how the site may be used.

Applicability:

The intention of this Policy is to apply to long term and permanent uses. A long term use shall be a use of five years or more, or any shorter term use which may be extended by the other governmental unit at its sole discretion for a cumulative period of more than five years. It shall also apply to short term and temporary uses at the sole discretion of Milwaukee County acting through its Director of Parks, Recreation and Culture. This Policy shall be effective upon adoption by Milwaukee County but will not apply to existing agreements unless those agreements are renegotiated (in which case it shall apply). This Policy shall apply in addition to other adopted Policies regarding Use and may further limit those policies, but will not reduce any limits or guidelines established in those Policies. This Policy does not apply to cooperation between the various internal Departments, Divisions, Agencies and Units of Milwaukee County Government, but does apply if outside units of government are involved. The Parks Department is advised to review this Policy and utilize applicable portions if the sale of surplus land is involved or if land is being considered for transfer to another governmental unit.

All Park Land is included under this policy.

Long term agreements on Use may only be approved (and construction commenced if applicable) when the following conditions are met:

1. Dedicated Uses and Intrusive Uses require a demonstration of Public benefit which may be improved services to the Public and/or good and sufficient economic impact on the community. The governmental unit requesting the use must provide clear and convincing evidence which includes a clear statement of the benefit(s), statistics to support the position, a clear analysis of factors involved in arriving at the decision to request to use Park Land and sufficient reasons that no other approach is feasible and/or desirable, including the fiscal effect to the governmental unit of using other approaches. At least one other viable alternative must be provided, including the fiscal effect to the governmental unit of the alternative. The Director of Parks, Recreation and Culture may REQUIRE that additional alternatives be evaluated and may identify the specific alternatives to be evaluated.
2. Dedicated Uses and Intrusive Uses shall not increase County costs for maintenance, repair, upkeep, and/or major maintenance. Any standards of maintenance, repair, upkeep, and/or major maintenance shall be set by the County and the County may at its sole discretion change those standards from time to time with or without notice to the other governmental unit. In any situation where the other governmental unit must set standards of maintenance, repair, upkeep, and/or major maintenance, that governmental unit shall provide the maintenance, repair, upkeep, and/or major maintenance at its cost. If the other governmental unit desires the County to provide these services to the other governmental unit's specifications, the County's full cost plus ten percent for administration shall be charged to the other governmental unit. In addition, even if the other governmental unit does not establish specific standards as provided above, if the Director of Parks, Recreation and Culture has reason to believe that the County will incur additional costs as a result of the Use, recovery of that cost by the County shall be included in the agreement.
3. Multiple governmental units that benefit from an agreement may be REQUIRED by the Director of Parks, Recreation and Culture to become a Party to the development of and part of the agreement, even if only a single governmental unit is requesting

the agreement. If so required by the Director of Parks, Recreation and Culture, those governmental units shall be included as Parties to the recommended agreement submitted to the County Executive and County Board. If the other governmental units affected refuse to become a Party to the agreement when so required by the Director of Parks, Recreation and Culture, no further work shall be done on the agreement by the County and no agreement shall be submitted to the County Executive and County Board for review until such time as the required cooperation is obtained by the Director of Parks, Recreation and Culture.

4. The Director of Parks, Recreation and Culture is granted broad powers to negotiate agreements subject to the review and approval of the County Executive and County Board for Non-Intrusive Uses and Compatible and Continuing Uses of Park Land as herein defined and include such provisions of this Policy as are necessary to insure a successful agreement.
5. It is the position of Milwaukee County that County Policy shall prevail where another unit of government desires to utilize Park Land.
6. Any construction of improvements should conform to then current County standards of Disadvantaged Business Enterprise (DBE) and Women Business Enterprise (WBE) as formulated by the County Board and administered by the Disadvantaged Business Division (DBD). In addition, the entity(s) in the agreement shall have an Affirmative Action Program in place. These provisions may only be waived by specific provision in the agreement that is approved by the County Executive and the County Board. It is anticipated that the provisions may be waived when the other governmental unit has similar but not identical (to Milwaukee County) provisions in place and the other governmental unit's (similar) provisions will apply.
7. The Use can only be utilized for the specific purpose(s) as stated in each original agreement. As an example, if an agreement is for construction of a passive flood control facility of a specific dimension, any change to that dimension or making the facility active in nature would require approval in advance by the County. In addition, any other use whatsoever must be approved in advance by the County. However, the agreement, lease or easement governing any Use may anticipate such usage or change and include terms to cover such additional usage or change.

8. Additional usage of Park Land as indicated in item 7 above must be approved in advance and additional rental fees, easement fees, royalty fees and/or other considerations as appropriate may be required for such usage. If language specifying specific compensation for additional usage is not included in the executed agreement, then additional usage will require either amendment or a separate agreement for the additional usage. The County is under no obligation to approve any further usage of any Park Land beyond that expressly permitted under the agreement(s) in force.
9. There is a clear benefit to the County, either through compensation or other consideration; or through service to the residents of the County, or a combination of the preceding.
10. There must be a suitable site available. The Use should not disrupt any endangered ecosystem or area where irreplaceable trees or other vegetation exists. If any ecosystem is disrupted, the County has the option of requiring that an ecologically similar system designed to the County's specifications be reestablished at a site of the County's choosing. The County may at times also require land be acquired for the reestablishment of the ecosystem or set such other conditions as may be appropriate.
11. The use of a site for the specified purpose may not negatively impact or displace any activity within the Park area without the other governmental unit(s) providing startup costs for an offsetting equivalent activity acceptable to the County which serves essentially the same population.
12. In addition to consideration of ecosystems and activities, protection must also be afforded to Park aesthetics. The Use must blend into Park surroundings to the greatest extent possible. To that end the Parks Department must review and approve all site, construction and landscaping plans associated with the use prior to any construction. In addition, the County reserves the right to do any needed landscaping or site restoration and charge the cost to the other governmental unit(s) except as otherwise provided by mutual agreement. The County reserves the right on major projects to require the other governmental unit(s) to fund a County employee to be assigned oversight of the project while it is under development. Such provision, if required, will be specified in detail in the agreement.
13. The County will not provide funding for repair, restoration or

- modifications needed to accommodate Intrusive Uses and Dedicated Uses requested by another governmental unit.
14. All site restoration shall be accomplished by the other governmental unit(s) according to a plan approved by and subject to the review of the Director of Parks, Recreation and Culture. It is the position of Milwaukee County that major damage to structures, including but not limited to buildings, roads, playgrounds and bridges shall be restored not to preexisting condition, but rather to new condition by the governmental unit(s) at their sole cost according to specifications provided by Milwaukee County. If the structure was scheduled to be repaired or replaced in the near future, the County may elect to share in the cost at its sole discretion. A bond in the appropriate amount (which will be determined in the sole discretion of the Director of Parks, Recreation and Culture) shall be posted by the governmental unit(s) to insure compliance with this section.
 15. The County's out of pocket costs of consultants, feasibility studies, research, testing, site evaluations (including evaluation of ecosystems, surveys, appraisals and other directly related activities), monitoring construction (including site preparation, restoration, and other required services such as filing permits, easements, etc.) must be reimbursed by the other governmental unit(s). Any other arrangement must be specified in the agreement.
 16. Provision must be made for site restoration and structure removal, if applicable, by the other governmental unit(s) under the following conditions: (1) if the Use is abandoned; (2) if the agreement is not renewed or extended at term; or (3) if the governmental unit is found to be in default of any terms of the agreement. The agreement may provide that the County may, at the County's option, take title to any constructed structures upon termination of the agreement, if applicable.
 17. Appropriate insurance and indemnity as determined by the County's Risk Manager and set forth in the agreement must be maintained throughout the agreement.
 18. Uses may not pose a health hazard and must conform to any and all Federal, State and Local laws, regulations and zoning.
 19. Environmental Considerations. Whenever any other governmental unit uses County Park Land under this Policy, such governmental unit shall be fully responsible for any

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environmental remediation necessary to achieve the use. However, such governmental unit may pursue any third responsible Party, excluding Milwaukee County, to recover such costs.

20. Suitability of land for a specific use. All agreements shall include a provision that the County does not represent the suitability of the Park Land for a particular use and will not be responsible for any costs to make the Park Land suitable for the use. The County will not be responsible for achieving compliance with any Federal, State or Local law or zoning, or obtaining any required permit. However, the County may specifically include negotiated provisions that address these items when it is in the interest of the County.
21. The Director of Parks, Recreation and Culture may negotiate specific provisions of this Policy when it is in the best interest of the County and it achieves specific County objectives. Such negotiated provisions being subject to the review of the County Executive and the County Board when the agreement is submitted for review and approval.
22. The County may require compensation for the loss of use of Park Land. The County may use replacement cost as a basis for determining value. The County may also use other generally accepted methodologies to determine the value as may be in the best interest of the County.

; and

BE IT FURTHER RESOLVED, that this Policy shall become effective upon adoption.

Fiscal Note:

There is no direct fiscal effect related to adoption of this resolution since it only establishes a policy and any agreements arising out of this policy will require review and approval by the County Executive and County Board. This fiscal note was prepared by Department of Parks, Recreation and Culture staff.

The foregoing report correctly states the action taken by the said committee at a meeting held May 9, 2000.

SHEILA A. ALDRICH
Chairperson