



CITY OF LONG BEACH

DEPARTMENT OF PARKS, RECREATION & MARINE



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November 16, 2017

MEMBERS OF THE PARKS AND RECREATION COMMISSION

City of Long Beach
California

RECOMMENDATION:

Authorize the Director of Parks, Recreation and Marine to create and implement a new policy for the regulation and administration of commercial recreational activities in City parks. (Citywide)

DISCUSSION

The Department of Parks, Recreation and Marine (Department), with the assistance of the City Attorney's Office (City Attorney), has been conducting a review of the Department's various leases, licenses and permits, including agreements related to the practice of permitting the use of parks or other recreational areas within the City of Long Beach (City) for commercial recreation. Commercial recreation, for purposes of the proposed policy, is the use of City parks or recreational areas for the provision of paid instruction and/or classes. Examples of commercial recreation include boot camps, dog training classes, outdoor yoga classes, personal training, and stroller strides classes.

There are currently two methods the Department uses to handle commercial recreation under its purview. The first of these is the issuance of Personal Service Agreements to individuals or companies that allow them to become Contract Class instructors, and have their classes listed in the Department's Recreation Connection Class and Program Guide (Rec Connect) for which they split their revenue with the City. The second is the issuance of Fitness Provider or Use Permits, wherein standalone permits are issued to companies/individuals allowing them to use specified areas within City parks in exchange for paying permit fees to the Department. For both methods, approval rests with the Parks and Recreation Commission (PR Commission) which has exclusive authority over all leisure activities in public parks and recreational facilities, controlled or operated by the City (except those Parks and recreational facilities within the Tidelands Coastal or Contiguous areas, which are under the purview of the City Council).

Method #1: Contract Class Program

The Contract Class Program (CC Program) has been in place for at least 30 years and includes paid instruction for wide ranging classes from physical fitness related activities to how to use EBAY, and

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special interest classes such as an introduction to photography. In the CC Program, the instructor signs a contract with the Department as an independent contractor. The participant fees the instructor will charge to the public are approved via the contract and the class is usually conducted in a City-owned building or park. The Department advertises the classes both online and through the printed Rec Connect. In exchange for advertising, acquiring insurance or approved waivers from the instructor and participants, providing the facility in which the class is conducted and handling the registration and fee collection, the Department retains either \$6 or \$8 from each participant (based on the length of the class) as an administrative fee, and keeps 35% of the fees paid as the City's share of the commercial revenue. The remainder of the fees are paid to the instructor.

Method #2: Use or Fitness Provider Permits

Since 2004, the Department has issued various Use or Fitness Provider Permits for the operation of exercise concessions, allowing an instructor to conduct fee-based classes in City parks outside of the CC Program. The costs for these permits have varied from requiring various percentages of receipts as rent payments to the Department, or \$300 or \$350 flat fees to cover administrative expenses.

The Department currently issues Permits to instructors who are charged a flat rate of \$350 per year. Instructors who operate under this type of Permit are required to have a City of Long Beach Business License, provide insurance as determined by the City's Risk Manager and pay an annual administrative fee of \$350 to cover staff costs associated with approving and preparing documents. Unlike the CC Program, the fees charged to participants under these Permits are set by the instructors and not set or approved by the City Council or the PR Commission. The Department does not share in the revenue generated by class participants nor does the Department maintain any liability waivers signed by the participants. However, the Fitness Provider and Use Permits do require the provider to obtain Participant Waivers that are attached as exhibits to the corresponding Permit.

Zoning Code Compliance

For this review, reference was made to Municipal Code Section 21.35.010 through 21.35.120 – Park District (Attachment 1) and Table 35-1, Uses in Parks Districts (Attachment 2). Based upon a review of the Permit Program by the City Attorney's Office, the Use and Fitness Provider Permits are "commercial recreation uses" as defined in Long Beach Municipal Code section 21.15.565 (i.e., any recreational use and/or activity for which a fee is charged by a private, for profit person, partnership or corporation where that entity has the discretion to set the fee independently of the City's Recreation Commission or Council). Therefore, they require a conditional use permit (CUP) from the Planning Commission.

Unfortunately, to date, none of the current Permits have the benefit of a CUP. Further, it is believed that none of the current Permit holders can meet the necessary CUP findings in Long Beach Municipal Code section 21.52.610 (Attachment 3). Primary among the necessary findings would be item (c): "For Commercial recreational uses, the use provides a needed public recreation service which would not otherwise be available to the public"; and (d) "for commercial recreation uses, the use cannot reasonably be located to provide comparable public recreation on private land appropriately zoned for such use". Item (c) would likely not be a finding since the CC Program does

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provide a needed public recreation service which is available to the public, and (d) would not likely be a finding as there are commercial fitness activities available to the public on private land. Furthermore, filing a CUP application currently includes a processing fee of \$5,240, and the normal timeline for City staff to research the application and prepare an agenda item for consideration by the Planning Commission is a minimum of three months.

Considering these challenging thresholds, prohibitive costs and longer timeframes in obtaining a CUP, the City Attorney suggests changing the structure of these commercial recreational activities to be consistent with CC Program that provides park and recreation programming activities. The Department is hereby requesting authorization for the Director of Parks, Recreation and Marine to create and implement a new policy that is consistent with that suggestion.

Proposed New Policy

Under the proposed new policy, all current Use and Fitness Provider Permits shall not be extended or approved to continue unless one of the following occurs: (1) New Permits are issued which are consistent with the CC Program (with fees set by the City or PR Commission), or (2) instructors obtain a CUP. To accomplish this, the Department recommends the following process for existing and future Use and Fitness Provider Permits:

- All existing Use and Fitness Provider Permits be extended through June 30, 2018, or be terminated as of that date, to allow a 6-month transition period for all current operators.
- All activities that would fall under the definition of commercial recreational activities will be directed to the CC Program going forward.

If these recommendations are adopted, the Department would return to the PR Commission in December with appropriate actions for the Fitness Provider Permits under its purview, and take the same processes and recommendations to the City Council for those Fitness Provider Permits that are conducted in the Tidelands Coastal or Contiguous areas.

There is currently one Fitness Provider Permit issued to an instructor that has expired and been operating under a month-to-month understanding during this review, two instructors whose agreements will expire before June 30, 2018 and four Permits with expiration dates beyond the June 30, 2018 date.

There is one existing Fitness Provider Permit operator that does not charge a fee to participants but does seek donations from them. By not setting or charging a fee, this activity would not be contrary to the above provision of Long Beach Municipal Code section 21.15.565 of an entity providing a recreational use or activity within a Park District and having the discretion to set a fee independently of the City's Recreation Commission or City Council. Provided this Fitness Provider provides insurance indemnifying the City, pays the annual administrative fee of \$350 to the Department and is based strictly on voluntary and unsolicited donations, the City Attorney has opined that this activity could be grandfathered under the listed conditions and be allowed to continue in its current form without violating the zoning provisions of the Municipal Code. To continue operating, this operator would therefore need to clearly identify that participation is free, but could place one donation receptacle at the site without making any announcements or requests that donations be made. As activities like this would be impractical to monitor, to both ensure these guidelines are followed and

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that proper liability waivers are received, it is recommended that no other donation-based fitness activities be approved in the future.

Based on the foregoing, it is recommended that the PR Commission direct the Department – and recommend to the City Council for those permits in the Tidelands Coastal or Contiguous areas – to ensure that all existing Use and Fitness Provider Permits be extended through June 30, 2018 with their current provisions, notify instructors with Use and Fitness Provider Permits with expirations after June 30, 2018 that the Permit will expire on June 30, 2018 and direct all existing and future commercial recreational activities to the CC Program. It is also recommended that the PR Commission recommend that the City Council extend the one donation-based Fitness Provider Permit with the listed provisions related to donations.

FISCAL IMPACT

For any current Use or Fitness Provider Permit holder that opts to discontinue operations the Department would lose the \$350 annual administrative fee. For any current Use or Fitness Provider Permitholder that transfers their operation to the CC Program, it is assumed that more than the current \$350 administrative fee would be realized by the Department and would accrue into the General Fund.

SUGGESTED ACTION:

Approve the recommendation

Respectfully Submitted,



STEPHEN P. SCOTT
DEPUTY DIRECTOR



GLADYS KAISER
MANAGER
COMMUNITY RECREATION SERVICES

APPROVED:



MARIE KNIGHT
DIRECTOR

MK:SS:GK:rl/vhd

Att: 1 – Municipal Code Sections 21.35.010 through 21.35.120
2 – Municipal Code Table 35-1
3 – Municipal Code Section 21.52.610