

City of Houston, Texas, Ordinance No. 2018-366

AN ORDINANCE AMENDING CHAPTER 32 OF THE CODE OF ORDINANCES, HOUSTON, TEXAS, BY ADDING A NEW ARTICLE RELATING TO MEMORIAL PARK, AND AMENDING PORTIONS OF CHAPTER 26, RELATING TO THE SAME; CONTAINING FINDINGS AND OTHER PROVISIONS RELATING TO THE FOREGOING SUBJECT; PROVIDING FOR SEVERABILITY; AND DECLARING AN EMERGENCY.

* * * * *

WHEREAS, the City of Houston (the “City”) owns Memorial Park (the “Park”), a public park consisting of approximately 1,464 acres generally located between Interstate Highway 10, Interstate Highway 610, Buffalo Bayou, and Crestwood Drive, and having an address of 6501 Memorial Drive; and

WHEREAS, Memorial Park Conservancy, Inc., a Texas nonprofit corporation (“MPC”), was established for charitable and educational purposes and is dedicated to the restoration and enhancement of the Park by preserving the integrity of the Park, enriching the Park’s heritage as a unique landmark, and transforming it into one of the nation’s premier parks through capital improvement, visitor services, programming and enhanced maintenance and operational support; and

WHEREAS, by Motion No. 2015-215, passed and adopted on April 1, 2015, City Council approved the 2015 Memorial Park Master Plan for the restoration, enhancement and redevelopment of the Park in a manner appropriate to meet the demands of the more than four million annual Park visitors (the “Master Plan”); and

WHEREAS, in order to cause the development, implementation and completion of the Master Plan, the City, together with MPC and the Uptown Development Authority (“UDA”), previously entered into the Memorial Park Development, Construction, Operations, Maintenance and Concession Agreement approved by Ordinance No. 2015-1305, passed and adopted on December 16, 2015; and

WHEREAS, MPC has obtained the offer of a private gift of \$70 million that will be provided to MPC over a ten-year time period to fund capital projects identified in the Master Plan, contingent upon the fulfillment of certain capital funding and maintenance funding commitments on the part of MPC, UDA and the City; and

WHEREAS, the City, MPC, and UDA now seek to enter into an Amended and Restated Development, Construction, Operations, Maintenance and Concession Agreement Relating to Memorial Park (“Amended and Restated Agreement”) to memorialize their capital funding and maintenance funding commitments and other rights and obligations with respect to the Park; and

WHEREAS, the Amended and Restated Agreement will provide that UDA and MPC will develop and construct improvements in the Park in accordance with the Master Plan and that MPC will operate and maintain certain designated areas in the Park; and

WHEREAS, pursuant to the Amended and Restated Agreement, MPC is committing to raise a total of \$55 million for capital improvements in the Park, and UDA is committing to provide \$50 million for capital improvements in the Park; and

WHEREAS, in addition to the foregoing capital funding commitments, MPC, the City, and UDA will collectively provide funding to support and carry out the operation and maintenance of the Park, ensuring the long-term protection of the capital investments in the Park; and

WHEREAS, the City of Houston is a municipal corporation organized under the Constitution and the general and special laws of the State of Texas and exercises powers granted by the City's Charter and the provisions of Article XI, Section 5 of the Texas Constitution; and

WHEREAS, in the exercise of its lawful authority, the City may enact police power ordinances to promote and protect the health, safety, and welfare of the public; and

WHEREAS, the City has previously enacted Chapter 26 of the Code of Ordinances, which regulates parking in the City; and

WHEREAS, the City has previously enacted Chapter 32 of the Code of Ordinances, which regulates parks and recreation activities in the City; and

WHEREAS, the City Council finds that the adoption of an amendment to Chapters 26 and 32 of the Code of Ordinances is necessary to enable MPC to operate and maintain designated areas in the Park in the manner contemplated in the Amended and Restated Agreement; **NOW, THEREFORE**,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HOUSTON, TEXAS:

Section 1. That the findings contained in the preamble of this Ordinance are determined to be true and correct and are hereby adopted as part of this Ordinance.

Section 2. That Section 32-7(b) of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

“(b) Unless otherwise expressly provided by ordinance, one hundred percent of the revenues received by the city and derived from all city-owned golf facilities, whether operated by the city or private entities, including all related concession fees, shall be deposited into the Parks Golf Special Fund to be used

exclusively for the maintenance, operation and improvements of any or all of such golf facilities.”

Section 3. That Chapter 32 of the Code of Ordinances, Houston, Texas, is hereby amended by adding a new Article XIV that reads as follows:

“ARTICLE XIV. MEMORIAL PARK

Sec. 32-311. Definitions.

The following words, terms and phrases, when used in this article, shall have the meaning assigned to them in this section.

Memorial Park means a public park consisting of approximately 1,464 acres owned by the city and generally located at 6501 Memorial Drive.

Memorial Park Agreement means that certain Amended and Restated Development, Construction, Operations, Maintenance and Concession Agreement approved by City of Houston, Texas, Ordinance No. 2018-366, May, 2, 2018,¹ that authorizes MPC to operate and manage the MPC Areas, as may be amended from time to time.

MPC Areas means the areas of the Memorial Park that are operated and managed by MPC pursuant to the Memorial Park Agreement.

Sec. 32-312. Memorial Park Agreement.

In accordance with and subject to the terms and conditions of the Memorial Park Agreement:

- (1) MPC shall have the authority of the director under section 32-61 of the Code to issue park use permits in the MPC Areas.
- (2) Notwithstanding section 32-7(a) of this Code, park revenues, as defined in section 32-7(a) of this Code, derived in the MPC Areas shall be allocated to MPC for the sole benefit of Memorial Park.

¹ City Secretary shall insert the Ordinance number and date of approval of the Ordinance approving the Amended and Restated Development, Construction, Operations, Maintenance and Concession Agreement relating to Memorial Park.

- (3) Notwithstanding section 32-7(b) of this Code, a portion of the revenues received by the city and deposited into the Parks Golf Special Fund may be allocated to MPC for the sole benefit of Memorial Park in such amounts as may be required under the Memorial Park Agreement.
- (4) MPC shall have the authority of the director under section 32-8 of the Code to grant written consent for concessions in the MPC Areas.
- (5) Notwithstanding section 32-69 of the Code, MPC shall have the authority to establish park user fees, as defined in section 32-69 of this Code, in the MPC Areas. The fees established under this provision shall be included in the city fee schedule.
- (6) MPC shall have the authority to establish parking meter fees for parking meters placed in the MPC Areas, subject to the parking meter fee schedule established pursuant to section 26-160 of this Code.
- (7) All fees and/or revenues generated from the parking meter fees for parking meters described by item (6) of this section shall be first expended to defray costs associated with debt service of those meters, and all remaining funds shall be allocated to MPC for the sole benefit of Memorial Park.
- (8) MPC shall have the right to have the fee described in section 26-182 of this Code waived upon submission of an application for a permit under division 2 of article III of chapter 26 of this Code.
- (9) MPC shall have the authority of the director under article IX of this chapter with respect to mobile food units and food trucks in the MPC Areas.
- (10) Solely with respect to the MPC Areas, MPC shall have the authority to designate (i) areas where a permit shall be required to conduct a special event, (ii) restricted use areas where certain types of special events shall not be permitted, and (iii) the allowable frequency of special events.
- (11) Solely with respect to the MPC Areas, MPC shall have the concurrent authority with the director of the mayor's office of special events to deny a permit pursuant to section 25-7 of the Code.

- (12) MPC and the director of the mayor's office of special events shall establish requirements for insurance, indemnification, and any other matters agreed to in the Memorial Park Agreement relating to special uses, special events and other activities in Memorial Park.
- (13) MPC and director of the mayor's office of special events shall be required to coordinate the scheduling, security, traffic management and locations of special uses, special events and other activities in Memorial Park.
- (14) The provisions of this article XIV shall terminate upon termination or expiration of the Memorial Park Agreement.”

Section 4. That Section 26-160 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

“Sec. 26-160. Parking meter fees.

Except as provided by section 32-312(6) of this Code, the parking official is hereby authorized to establish parking meter fees for any parking meter that has been placed upon any street or other property owned or controlled by the city. The following fees are hereby established for public parking at any parking meter that is governed by this section:

- (1) *Short-term parking (not to exceed 4 hours):* A fee to be established by the parking official between a minimum of \$0.31 for each ten minutes and a maximum of \$1.89 for each ten minutes, which includes any applicable sales tax. Short-term parking fees shall apply to a meter during a time period for which the meter has been designated for short-term parking use upon determination that the public's needs during that time period may be best served by ensuring that the space is not used for lengthy periods of time by one vehicle.
- (2) *Long-term parking (over 4 hours):* A fee shall be established by the parking official between a minimum of \$0.31 for each hour and a maximum of \$1.89 for each hour, which includes any applicable sales tax. Long-term parking fees shall apply at meters during those periods in which they have not been designated for short-term parking use.

The fees adopted under this provision shall be included in the city fee schedule.

In establishing the foregoing fees, the parking official shall consider the cost of providing the service, the prevailing private market parking rates in the immediate vicinity of the meter, and the needs of patrons of nearby businesses and other premises to have access to the use of metered parking, as well as relevant traffic mobility and engineering issues, as applicable. Without limiting the parking official's options, a parking space may be designated for short-term parking during some times and days and long-term parking during other times and days.”

Section 5. That Section 26-163 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

“Sec. 26-163. Disposition of fees.

Except as provided by section 32-312(7) of this Code, all fees and/or revenues generated from the use of parking meters under this division and all fees and revenues generated under division 2 of this article shall be first expended to defray all costs associated with debt service and operation and maintenance of parking meters placed in service on or after April 1, 2006, and any remaining funds shall be deposited into the parking special revenue fund.”

Section 6. That Section 26-182 of the Code of Ordinances, Houston, Texas, is hereby amended to read as follows:

“Sec. 26-182. Application for permit; fee.

(a) *Application.* Persons who desire to obtain a permit shall make application to the parking official no later than five business days before the first day of the proposed access restriction, setting forth the following:

- (1) The applicant's name, telephone number, fax number, email address, business street address and mailing address;
- (2) The name and 24-hour telephone number of a person or persons whom the parking official may contact if needed to resolve any issue that may arise with respect to the permit;
- (3) The purpose for which the permit is requested;
- (4) The duration for which the permit is requested; and
- (5) The location and identification number of the metered parking spaces to be restricted.

(b) *Fee.* The fee for the permit shall be the total of the fee stated in the city fee schedule for each metered space per day requested under the permit application. If the parking official determines that the permit should be granted, then the applicant shall, prior to receiving the permit and in addition to the permit fee, pay for the city's lost revenues, which shall be an amount equal to the total cost of parking at the affected metered space or spaces for the duration of the permit, based upon the fee applicable to the metered space or spaces. No portion of the fee shall be refundable unless the parking official revokes the permit as provided herein.

(c) *Waiver of fee.* The parking official shall waive the permit fee for:

- (1) Applications made by the city or upon written request of the city engineer for a city contractor working on a public works construction project; provided that a waiver shall only be afforded as reasonably required for purposes of access to the metered parking space or spaces for the prosecution of the city's work; and
- (2) Applications made by the Memorial Park Conservancy pursuant to section 32-312(8) of this Code.

(d) *State or federal law.* To the extent that the imposition of any fee, requirement or other provision set forth in this division would be inconsistent with a controlling state or federal law, then this division shall be construed and applied in a manner that conforms with the applicable state or federal law.

Section 7. That the City Attorney is hereby authorized to direct the publisher of the Code of Ordinances, Houston, Texas, (the "Code") to make such nonsubstantive changes to the Code as are necessary to conform to the provisions adopted in this Ordinance, and also to make such changes to the provisions adopted in this Ordinance to conform them to the provisions and conventions of the published Code.

Section 8. That, if any provision, section, subsection, sentence, clause, or phrase of this Ordinance, or the application of same to any person or set of circumstances, is for any reason held to be unconstitutional, void or invalid, the validity of the remaining portions of this Ordinance or their application to other persons or sets of circumstances

shall not be affected thereby, it being the intent of the City Council in adopting this Ordinance that no portion hereof or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality, voidness or invalidity of any other portion hereof, and all provisions of this Ordinance are declared to be severable for that purpose.

Section 9. That there exists a public emergency requiring that this Ordinance be passed finally on the date of its introduction as requested in writing by the Mayor; therefore, this Ordinance shall be passed finally on such date and shall take effect immediately upon its passage and approval by the Mayor.

PASSED AND APPROVED this 2nd day of May, 2018.

Sybrester Turner

Mayor of the City of Houston

Prepared by Legal Dept. _____
JWG:jmb 4/30/2018 Assistant City Attorney
Requested by Stephen Wright, Director, Parks & Recreation
L.D. File No. _____