



MEMORANDUM

TO: CITY COUNCIL

FROM: JOHN ROGERS, RECREATION SERVICES DIRECTOR

SUBJECT: CONSIDERATION OF APPROVAL OF THE ELM STREET DOG PARK AGREEMENT

DATE: SEPTEMBER 22, 2015

RECOMMENDATION:

It is recommended the City Council approve the Elm Street Dog Park Agreement ("Agreement") with the Elm Street Dog Park Association ("ESDPA") for operation of the Elm Street Park Off-Leash Dog Park ("Dog Park").

IMPACT TO FINANCIAL AND PERSONNEL RESOURCES:

Minimal public works staff time is anticipated to continue for some basic maintenance tasks that are the City's responsibility. Minimal staff time will be needed for the Recreation Services Director to oversee the Agreement and interact with the ESDPA Board on a regular basis. This item is not included in the Critical Needs Action Plan.

BACKGROUND:

In January 2008, the City Council approved an Adopt-A-Park Agreement with the Five Cities Dog Park Association (FCDPA) which established guidelines for construction of, maintenance and operation of, and improvements to the Elm Street Park Off-Leash Dog Park (Dog Park).

On October 28, 2014, an updated Adopt-A-Park Agreement between the FCDPA and the City was approved by the City Council. Under the terms of the Agreement, the FCDPA was responsible to assist the City with maintenance and operation of the Dog Park.

On January 29, 2015, the FCDPA notified the City that it was terminating the Adopt-A-Park Agreement effective immediately. At the February 10, 2015 meeting, City Council approved funding for minimal maintenance oversight of the Dog Park for six months. Staff was directed to address the issue of the long term operation of the Dog Park at the Parks & Recreation Commission level and return to Council in May with a recommendation.

At the May 26, 2015 meeting, staff presented the Council with four options to consider for the long term future of the Dog Park. City Council chose option #4, which was to

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designate an interested group to take over long term operation of the Dog Park. The Council designated the ESDPA volunteer group as the group to take over long term responsibility for the operation and maintenance of the Dog Park. Staff was directed to develop an agreement between the City and the ESDPA. Staff was also directed to continue minimal maintenance duties at the Dog Park until an agreement is in place, which will transfer maintenance responsibilities to the ESDPA.

ANALYSIS OF ISSUES:

The Dog Park was built with the understanding that the City does not have available resources for the long term operation of the Dog Park. At the May 26, 2015 meeting, the Council approved the ESDPA volunteer group to take over long term operation and maintenance of the Dog Park. At the time of Council approval, the ESDPA was not a legal non-profit organization. The ESDPA is now operating under the umbrella of San Luis Obispo Parks, Open Space & Trails (SLOPOST), which is a 501(c)(3) nonprofit organization, and which can provide insurance for the ESDPA operations and activities.

The proposed Elm Street Dog Park Agreement has been reviewed and approved by the City Attorney, SLOPOST and the ESDPA Board.

The ESDPA will take over operation and maintenance responsibilities as outlined in the Agreement, immediately after approval and signing of the Agreement.

ALTERNATIVES:

The following alternatives are provided for the Council's consideration:

- Approve the Agreement;
- Modify and approve the Agreement;
- Do not approve the Agreement; or
- Provide staff with direction

ADVANTAGES:

Approval of the Agreement will allow the dog park to remain open for the long term with minimal city involvement.

DISADVANTAGES:

No disadvantages were identified.

ENVIRONMENTAL REVIEW:

No environmental review is required for this item.

PUBLIC NOTIFICATION AND COMMENTS:

The Agenda was posted in front of City Hall on Thursday, September 17, 2015. The agenda and staff report were posted on the City's website on Friday, September 18, 2015.

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Attachments:

1. Elm Street Dog Park Agreement

ELM STREET DOG PARK AGREEMENT

This Elm Street Dog Park Agreement (“Agreement”) is made and entered into this ___ day of _____, 2015, by and between the City of Arroyo Grande, a municipal corporation of the State of California (“City”) and the Elm Street Dog Park Association (“ESDPA”), and SLOPOST, the San Luis Obispo Parks, Open Space and Trails Foundation, a non-profit 501(c)3 organization (“SLOPOST”).

WHEREAS, City is the owner of certain real property commonly known as Elm Street Park (the “Property”), which is located at 350 South Elm Street in the City of Arroyo Grande, County of San Luis Obispo, State of California; and

WHEREAS, the City currently operates and maintains an off leash dog park on the Property between the pump stations and the southern boundary of the Property, as generally depicted in Exhibit “A” attached hereto and incorporated herein by this reference (the “Dog Park”); and

WHEREAS, SLOPOST is an organization committed to encouraging parks, open space and trails in San Luis Obispo County; and

WHEREAS, ESDPA is a group of volunteers desirous of operating and maintaining the Dog Park; and

WHEREAS, the City, SLOPOST and ESDPA each recognize the need and benefit of maintaining an off leash dog park in the City of Arroyo Grande; and

WHEREAS, SLOPOST and ESDPA desire to partner together to operate and maintain the Dog Park; and

WHEREAS, SLOPOST and ESDPA understand, acknowledge and agree that the Dog Park is part of an active City park, owned by the City and operated for the benefit of the general public; and

WHEREAS, by this Agreement, the parties wish to specify the terms and conditions for the operation, use and maintenance of the Dog Park.

NOW THEREFORE, in consideration of the mutual covenants and conditions set forth herein, City, SLOPOST and ESDPA agree as follows:

1. Recitals.

The above recitals are true and correct and are incorporated herein by this reference.

2. Maintenance.

- A. ESDPA agrees, at its sole cost and expense, to keep and maintain the Dog Park, including providing for the following minimum maintenance activities:
1. Perform daily monitoring of the Dog Park and removal of dog waste, excessive leaves and trash. Trash cans will be emptied weekly by the City.
 2. Provide and ensure that bags used for picking up dog waste are available at the Dog Park.
 3. Regularly mow, water, fertilize and pest control the turf;
 4. Regularly trim and care for the trees;
 5. In the event that fencing, turf, wood chips or other materials need to be replaced, ESDPA shall pay for the cost and installation of such materials.
 6. Perform maintenance, repair and or replacement of the kiosk, bulletin boards, water fountain, benches, signage and other similar amenities at the Dog Park.
 7. Perform and document weekly maintenance inspections. Any deficiencies reported by the public should be documented. All repairs should be completed in a timely fashion. The affected portion of the Dog Park should be closed when necessary until repairs can be completed or appropriate warning signs should be set in place. All repairs should be documented. Records should be maintained in one location for at least five years.
 8. Any installation of new improvements at the Dog Park must first be approved in advance and in writing by the City's Director of Recreation Services.

3. Operation.

ESDPA will be responsible for the day-to-day operation of the Dog Park. Operation of the Dog Park will include, but not be limited to the following:

- A. Use of the Dog Park will be equally available to all members of the public whether or not they are members of the ESDPA.
- B. The Dog Park is to be used only for the purpose of an off-leash Dog park.
- C. The Dog Park will be open daily from 7:00 a.m. to dusk. ESDPA may only close the Dog Park in order to perform necessary maintenance or to hold special fundraising events with the written approval of the City's Director of Recreation Services.
- D. ESDPA may not charge a fee for the use of the Dog Park.
- E. The rules of conduct by owners and dogs, including those set forth in Section 12.20.080 of the Arroyo Grande Municipal Code, will at all times be posted in the kiosk located at the Dog Park and on signs in both the large and small dog areas.
- F. ESDPA will provide a telephone number, visible on the kiosk at the Dog Park, which Dog Park users may call if they have questions or concerns about the Dog Park.

- G. Any proposed modifications to the posted Dog Park rules that the parties determine are such that they need to be included in the Arroyo Grande Municipal Code for purposes of enforceability must initially be submitted and approved in writing by the Director of Recreation Services, prior to City Staff's submittal to the City Council as a proposed amendment to the Arroyo Grande Municipal Code.
- H. ESDPA will inform the users of the Dog Park of the Dog Park rules and will initially enforce all Dog Park rules, provided, however, that members of ESDPA shall not engage in confrontations with members of the public using the Dog Park if they do not voluntarily comply with Dog Park rules. In such case, City Staff and/or the Arroyo Grande Police Department shall be contacted if formal enforcement is required.
- I. ESDPA will establish procedures whereby Dog Park users will have an opportunity to have any unresolved questions or concerns about ESDPA's operation of the Dog Park or Dog Park related disputes between users of the Dog Park resolved by the ESDPA's Board of Directors.
- J. ESDPA will provide such other services as determined to be necessary or appropriate by the City for the safe and orderly operation of the Dog Park.
- K. All interactions between ESDPA board members and volunteers and Dog Park users will be conducted in a positive and professional manner.

4. Term.

This Agreement will commence as of the date written above and continue until the Agreement is terminated by either party upon thirty days written notice to the other party. Notwithstanding the above, should SLOPOST or ESDPA fail to abide by any of the terms and conditions of this Agreement and should SLOPOST or ESDPA continue to fail to abide by any of the terms and conditions of this Agreement for more than five days after written notice from the City, City may immediately terminate the Agreement.

5. Records/Accounting.

- A. SLOPOST is a non-profit 501(c)3 organization that has formal federal and state non-profit status, which allows SLOPOST to raise funds for the operation and maintenance of the Dog Park. SLOPOST and ESDPA agree to raise funds solely for the operation and maintenance of the Dog Park. All funds raised by SLOPOST and ESDPA will be used exclusively for the Dog Park. SLOPOST and ESDPA will maintain records of its fund raising and shall make such records available for review by City within three days of such a request.
- B. SLOPOST and ESDPA agree that they will at all times comply with all laws and regulations governing charitable fundraising including, but not limited to, Business

and Professions Code Section 17510 et seq. and Government Code Section 12580 et seq.

- C. Upon termination of this Agreement, any unexpended donations received by SLOPOST and/or ESDPA for the Dog Park will be returned by SLOPOST and/or ESDPA to the donor or forwarded to the City for use at the Dog Park within three business days of the termination.

6. California Joint Powers Insurance Authority Guidelines.

City is a member of the California Joint Powers Insurance Authority (the "JPIA"). City will provide SLOPOST and ESDPA the Guidelines of the JPIA for the operation and maintenance of the Dog Park. ESDPA will conform its operation and maintenance activities to the Guidelines and will do nothing to limit or impair coverage of the City with the JPIA.

7. No Possessory Interest.

SLOPOST and ESDPA understand and agree that they shall not have any possessory interest in the Dog Park and that any improvements made therein by ESDPA are for the sole benefit of the general public and shall become fixtures to the Dog Park and the exclusive property of City.

8. City's Rights and Obligations.

- A. City reserves the right to remove Dog Park amenities (such as benches, water fountains or landscaping), if deemed necessary to protect the public health, safety or welfare.
- B. City shall provide and pay for the necessary utilities for the Dog Park, including water, garbage and electrical services.
- C. City retains the right to close the Dog Park temporarily to perform repair or maintenance work necessary to protect the health and safety of the public.
- D. City reserves the right to modify the use of, or close the Dog Park, in its sole discretion.
- E. Whenever reasonably possible and within the sole discretion of the City and without waiving any rights it may have, the City will consult with ESDPA on issues of changes to the Dog Park operation, rules, or any physical changes to the Dog Park that may affect the use of the Dog Park, before said changes are implemented.

9. Indemnity.

SLOPOST and ESDPA agree to indemnify, defend and hold harmless City, its officials, employees and agents, from and against any and all liability, costs, or claims for personal injuries or property damage arising out of, in whole or in part, the operation, maintenance and

activities occurring at the Dog Park related to SLOPOST, ESDPA or their agents of any kind's use of the Dog Park and SLOPOST and ESDPA's performance under this Agreement.

10. Insurance.

Throughout the Term of this Agreement, SLOPOST shall, at a minimum, procure at its sole cost, and maintain, general liability insurance with limits of no less than two million dollars (\$2,000,000) per occurrence. City, the City Council and each member thereof, members of boards and commissions, every officer, agent, official, employee and volunteer, shall be named as an additional insured on all applicable insurance policies. Prior to commencement of this Agreement, SLOPOST shall provide City with a certificate of insurance evidencing the coverages described herein and City's status as an additional insured. Such insurance may be provided by SLOPOST.

11. Notice.

Addresses for the purpose of giving notice are as follows:

City: City of Arroyo Grande
Attn: City Manager
300 E. Branch Street
Arroyo Grande, CA 93420

ESDPA: Patti Cole

Arroyo Grande, CA 93420

SLOPOST: Kathy Longacre
PO Box 86
Arroyo Grande CA 93421

12. Laws to be Observed.

SLOPOST and ESDPA agree to comply with all applicable Federal, State, County and City statutes, ordinances, rules, laws or regulations that are applicable to the Dog Park or the operations of SLOPOST and ESDPA on the Property.

13. Assignment.

SLOPOST and Association may not at any time during the Term of this Agreement assign or transfer the Agreement.

14. Waiver of Breach.

No delay or omission in the exercise of any right or remedy by a nondefaulting party on any default will impair the right or remedy or be construed as a waiver. A party’s consent or approval of any act by the other party requiring the party’s consent or approval will not be deemed to waive or render unnecessary the other party’s consent to or approval of any subsequent act. Any waiver by either party of any default must be in writing and will not be a waiver of any other default concerning the same or any other provision of this Agreement.

15. Governing Law: Jurisdiction.

This Agreement will be administered and interpreted under the laws of the State of California. Jurisdiction of any litigation arising from the Agreement will be in San Luis Obispo County, California.

16. Joint and Several Liability.

All obligations of SLOPOST and ESDPA are joint and several and may not be waived or apportioned. City may recover any damages as a result of SLOPOST and ESDPA’s obligations under this Agreement from SLOPOST or ESDPA or both at City’s sole option.

IN WITNESS WHEREOF, the parties have duly executed this Agreement on the date first written above.

City of Arroyo Grande,
a municipal corporation

SLOPOST
a non-profit 501(c)3 organization

Jim Hill, Mayor

Kathy Longacre

ATTEST:

THE ELM STREET DOG PARK ASSOCIATION

Kelly Wetmore, City Clerk

Patti Cole

APPROVED AS TO CONTENT:

Dianne Thompson, City Manager

APPROVED AS TO FORM:

Heather K. Whitham, City Attorney