

## Legal Q&A

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### **Q How does a city acquire land for a park?**

**A** A city may acquire land and buildings to be used for public parks, playgrounds, or historical museums by gift, devise, purchase, or eminent domain proceeding. Loc. Gov't Code § 331.001(b)(1). A city may exercise eminent domain for the acquisition of a historic site, building, or structure only on a showing that it is necessary to prevent the destruction or deterioration of the site, building, or structure. *Id.* § 331.003.

City subdivision ordinances sometimes mandate that a developer dedicate land for parks a condition of plat approval. A city can also dedicate city-owned land by resolution or ordinance to be used for park purposes. A city may also receive a donation of land for park purposes. A city should accept donated land by resolution or ordinance.

### **Q What authority does a city have over its parkland?**

**A** Parks are under the control and management of the city that acquired the park. *Id.* § 331.005(a). A city may sell or lease concessions or privileges for the establishment of amusements, stores, gasoline stations, and other concerns consistent with the operation of a public park. *Id.* § 331.006(a). The proceeds of those sales or leases may be used for the improvement and operation of the park or for the support, maintenance, and upkeep of other municipal parks. *Id.* § 331.006(b).

A city also has control and management of a historic or prehistoric site or historical museum. *Id.* § 331.005(b). Like with a city park, the city may sell or lease concessions or privileges for the establishment of amusements, stores, gasoline stations, and other concerns consistent with the operation of a public park and the preservation of noteworthy features of a historic or prehistoric site or historical museum. *Id.* § 331.006(a). The proceeds of those sales or leases may be used only for the improvement and operation of the museum or site. *Id.* § 331.006(b).

The city council may turn over parkland to the Parks and Wildlife Department by agreement to be operated as a public park. *Id.* § 331.005(a). If the city agrees with the Parks and Wildlife Department to turn over parkland, the expenses of the improvement and operation of the park shall be paid by the city according to the agreement with the department. *Id.*

### **Q How does a city official determine whether land is being used for park purposes?**

**A** City officials should err on the side of caution and treat an area that citizens think of as a park as such. Some cases have interpreted whether or not the use of land gifted to the city meets the requirement that the land is used for “public park purposes.” For example, in *King v. City of Dallas*, a deed gifted property to the city of Dallas specifically for “public park purposes” and specifically as a “park.” *King v. City of Dallas*, 374 S.W.2d 707, 710 (Tex. Civ. App.—Dallas

1964, writ ref'd n.r.e.). The court concluded that the widening of paved streets, a bridge, a retaining wall, and sidewalks constituted “public park purposes.” *Id.* In another case, the construction of a library was a recreational facility and, thus, met the deed restrictions on the land to be used only as a community park. *City of McKinney v. Eldorado Land Co., LP*, 05-15-00067-CV, 2016 WL 2349371, at \*10 (Tex. App.—Dallas May 3, 2016, pet. denied).

Taking a conservative approach to what is “parkland” is especially important for the purposes of sale of a park, which is governed by Local Government Code § 253.001(b). Local Government Code § 253.001(b) states that “[l]and owned, held, or claimed as a public . . . park may not be sold unless the issue of the sale is submitted to the qualified voters.” No reported cases or attorney general opinions have interpreted when land is being used as a park for purposes of a sale. In analyzing whether land was a park for the purposes of sale, attorney general opinion [LO-97-057](#) states that “[w]e are not aware of any case law addressing whether land must be formally dedicated as a park in order to fall within” Local Government Code § 253.001(b). Therefore, if citizens view land as parkland, a city should treat that land as parkland for purposes of selling it.

### **Q If land is being used as a park, how does a city sell it?**

**A** The sale of a municipal park is governed by several statutes:

- Parks and Wildlife Code § 26.001(a)(1) requires a city council to determine that the sale of the park is the best use of the land. The city must (1) give notice to the department with supervisory authority over the land and the public at large, (2) publish notice of a hearing in official newspaper once a week for three consecutive weeks beginning at least 30 days before the hearing, and (3) hold a public hearing on the matter. Parks & Wild. Code §§ 26.001(a)(1), 26.002(a)-(c).
- Local Government Code § 253.001(b) generally requires a city to submit a question of sale of the park to voters at an election held for that purpose.
- Government Code § 1508.006(a)(2) also prohibits the sale or lease of a park without an election.

After the notice and hearing and election have been held, assuming the voters approve the sale, the city may sell the park under either the notice and bid requirements of Local Government Code Chapter 272 or the public auction requirement of Local Government Code § 253.008. A city may be able to avoid the notice and bid requirement if the parkland meets one of the limited exceptions in Local Government Code § 272.001(b). A city should consult with its city attorney on the best method to sell a park.

If any step in the process fails, the city may not sell the park.

### **Q What must a city do with the proceeds of the sale of its park?**

**A** State law provides that “[t]he proceeds of the sale may be used only to acquire and improve property for the purposes for which the sold property was used.” Loc. Gov’t Code § 253.001(d).

Any city selling a park should consult with its city attorney on how to handle the proceeds of the sale.

**Q Can a city accept donations for its parks?**

**A** Yes. A city may accept a gift of land, money, or personal property to use in support of public recreation facilities and programs. *Id.* § 332.006.

Additionally, a city may accept by gift or devise land and buildings to be used for public parks, playgrounds, or historical museums. *Id.* § 331.001(b). A city may also accept donations of land of other historical significance. *See id.*

**Q Must city parkland be located inside city limits?**

**A** No, but it must be located in the same county in which the city is located. *Id.* § 331.001(c).

**Q Must parks be open to the public?**

**A** Yes. Local Government Code § 331.007 requires that a park, a playground, a historical museum and its contents, or a historic or prehistoric site be open for the use of the public. *Id.* § 331.007. A city council may prescribe rules that govern the use of its parks, playgrounds, museums, or historical sites. *Id.*

**Q Can a city charge for use of its parks for special events?**

**A** Yes, but the city should have an ordinance and/or rules governing special events. *Id.* Without such an ordinance, groups will be able to use the park without charge since they are open to the public. *Id.*: *see also Anthony v. State*, 209 S.W.3d 296, 306 (Tex. App.—Texarkana 2006, no pet.) (unwritten policy delegating complete discretion to the police officers to ban persons from public parks at the officers’ discretion held unconstitutionally vague and in violation of procedural due process).

Additionally, cities drafting rules and ordinances governing parks should make sure they do not violate the First Amendment. Parks have long been considered “quintessential public forums.” *Perry Educ. Ass’n v. Perry Local Educators’ Ass’n*, 460 U.S. 37, 46 (1983). Speech may not be suppressed in public forums unless it is necessary to achieve a compelling governmental interest. *See Cornelius v. NAACP Legal Defense & Ed. Fund, Inc.*, 473 U.S. 788, 800 (1985). When permitted, regulations restricting speech may only consist of reasonable time, place and manner regulations. *Perry Ed. Ass’n*, 460 U.S. at 45. The regulations must: (1) be content neutral; (2) be narrowly drawn to achieve the compelling governmental interest; and (3) leave open ample alternative channels for expression. *Cornelius*, 473 U.S. at 800; *see also Carey v. Brown*, 447 U.S. 455, 463 (1980). Restrictions on viewpoint are also prohibited. *See Carey*, 447 U.S. at 463.

A city should discuss the issue with its city attorney in drafting its special events ordinance and/or rules governing its parks to ensure the ordinance or rules don’t discriminate.

**Q Can a city charge different prices for residents and nonresidents for use of park facilities?**

**A** Yes. Many cities charge different rates for use of park facilities to residents and nonresidents. For example, some cities charge more for nonresidents to use a city-owned pool or rent facilities in the park. A city considering doing so should consult with its city attorney in drafting an ordinance.