

memo

Recreation Division

To: Parks and Recreation Commission
From: Ryan Daly and Emily Moon (consultant)
Date: October 20, 2021
Re: Follow up to PRC's 10/7/21 meeting (facility allocation and use policy)

During your October 7th regular meeting, we reviewed the draft "MICEC Facility Allocation and Use" policy. Commission members engaged in a good, initial discussion – asking questions, gaining clarity, and requesting one change to mimic amended verbiage in the Differential Pricing policy (i.e., striking "and sometimes maintenance" in the definition of cost recovery). As the discussion wrapped up for the evening, it seemed that we had adequate time to consider most of the key policy questions posed except for the following:

- *Should the MICEC be used for commercial purposes or to conduct fundraising?*
- *If the MICEC is used by other organizations to generate profit, should the MICEC receive a share (above and beyond the rental fee)? Note, this is not addressed in the policy but would be addressed in renters' contracts.*

Commission members did not seem to be opposed to the MICEC being rented for the purpose of conducting a fundraiser (which is an allowable use currently). Further discussion is needed at the next commission meeting to determine if commercial sales should be allowed, and if the City should impose a revenue share requirement for those rentals. The draft policy allows for fundraisers but does not allow for commercial sales other than "charging an entrance fee for a professional services or educational seminar." That language is more restrictive than the current policy and practices. Staff phrased this element of the policy proposal simply as a starting point for the discussion and would be comfortable with whatever direction the Commission wishes to take, although Staff's recommendation would be to allow at least some commercial sales.

Past practice has been for the department director or division manager to review rental requests and approve or deny them. Very infrequently, the division has entertained inquiries or requests to reserve the MICEC for the purpose of conducting sales. While this is not a persistent issue, it would be better if the division had an established policy to guide the approval process. Case law suggests that the City (in its capacity as proprietary owner of the facility) would be in a good position to deny a rental, without incurring First Amendment liability, if it has a clear policy in place either disallowing all commercial sales or articulating some criteria for the types of commercial activities that would be allowed (e.g., activities in keeping with the Recreation Division's mission, purpose and customer expectations).

As follow up to the October 7th meeting, you asked us to provide additional research of municipal policies limiting commercial sales (and how those cities define commercial sales). You also asked us to provide a list of local cities that allow commercial sales and, furthermore, those that require a share of the revenue from those sales.

- From reviewing other cities' practices (in our area and nationwide), it appears that cities with standalone rental facilities or that have dedicated rental spaces within combination community centers/events/conference facilities routinely allow commercial sales. Many of those cities, however, have policies that say something along the lines of "nothing can be sold unless a business license is held and the department has pre-approved that activity as part of the rental." Some cities overtly advertise the ability to conduct activities such as tradeshow, seminars, and craft fairs, while others simply do not forbid these activities in their reservation rules. Here is an example of how one community spells out what is allowable: "Be sure to tell the staff person processing your reservation if your event will be charging entry fees, selling products, allow alcohol service, sales, and/or consumption, or using amplified sound, since additional fees and/or permits may be required for your event." (Source: City of Corvallis, OR website)
- Most cities prohibit sales in parks (unless approved by the department director, which is usually granted as part of a special event) but apply different rules in their facilities, even when those facilities are within a park.
- Revenue sharing requirements are still rare and more often to be found in larger cities.

Seattle

"On-site Sales: All on-site sales are subject to a 10% fee. This includes any admission fees paid on-site, and sales of food, beverages, alcohol, items and services made on Parks property. Fees are due within 10 days of rental."

General Terms and Conditions state that sales are not allowed without advanced written approval, which shall be included in the rental agreement, if approved.

Kirkland

Department-level rules state "Solicitations and advertising are not allowed," but it appears that these activities are permitted in certain facilities. Here are a few examples:

Heritage Hall: Sales, solicitation and advertising are not allowed. Charging admission is allowed prior to the day of the event (not at the door) and must be disclosed in the application. A "suggested donation" can be collected at the door but cannot be used to deny access.

Peter Kirk Community Center: Use for commercial purposes or activities that involve fundraising, advertising, promoting, or selling of merchandise or services may be restricted at the discretion of the Director or designee. Additional insurance requirements and fees may apply. In addition, business meetings, seminars or events that are advertised as being "open to the public" will need further review and may have additional requirements and fees.

North Kirkland Community Center: "Solicitations and advertising are not allowed." Venue's appropriate use is described as birthday parties, family gatherings and meetings.

No revenue share is mentioned.

Issaquah

Allows commercial sales in some facilities; there is no revenue share.

Bellevue

The City's parks' ordinance prohibits solicitations and sales in parks unless approved by city manager/department director. Individual facilities' reservation forms ask if an entrance fee will be

collected or if concession sales are going to be offered. Rental forms also suggest the City's venues are open to "workshops" and other activities that may involve generating private revenue.

No revenue share is mentioned.

Redmond

The City allows commercial sales/use without a revenue share. The commercial sales policy is under review now.

Sammamish

City facilities may not be used for commercial purposes unless through a concession contract or a special use agreement with department director approval.

No revenue share is mentioned.

Tukwila

The City allows commercial sales/use without a revenue share.

Next Meeting

When the commission next meets to discuss the draft policy, staff will present three options regarding commercial sales at the MICEC:

1. Allow sales to occur, provided the renter discloses intent, gets pre-approval from the Department Director or designee (to ensure no inconsistencies with Division purpose, mission and customer expectations), and upholds City regulations (including securing a business license and insurance).
2. Do not allow any sales.
3. Do not allow for commercial sales other than "charging an entrance fee for a professional services or educational seminar." (Draft policy proposal)

During the October 7th meeting, Commission members touched on a few considerations or criteria that could be utilized to weigh the pros and cons when this element of the policy is deliberated. Those include:

- How will allowing/disallowing commercial sales affect revenue or the potential for revenue?
 - Given that very few rentals (or rental requests) in the past have included commercial sales, Staff does not believe that disallowing commercial sales will have a significant effect on revenue. However, it is reasonable to conclude that excluding any possible rentals has an opportunity cost.
- How can the City guard against permitting sales activity that may not be in keeping with the Division's mission, purpose and customer expectations?
 - Staff believes that rental applications and agreements can clearly articulate that sales activity must be compliant with the municipal and other relevant codes, and consistent with the Recreation Division's mission, purpose and customer expectations, as interpreted and administered by and per the discretion of the Department Director. Furthermore, unwanted sales activity is often curtailed by rental requirements such as needing to provide proof of insurance and a Mercer Island business license, or by the rental fee.

- If all commercial sales are forbidden, would ancillary and unadvertised sales be allowed (such as a scouts group being allowed to sell t-shirts to attendees following a meeting, when the meeting was the primary reason for the facility rental)?
 - This can be further discussed with the Commission, but Staff believes this ancillary activity can be allowed and appropriately managed.

Staff looks forward to discussing the MICEC Facility Allocation and Use policy with you in an upcoming meeting. Staff is happy to answer questions you have prior to the meeting but please remember that you should not consult with your fellow commission members on this policy outside of the open public meeting. We hope to have an endorsed policy by the end of the year so that 2022's facility allocation and uses can be guided by the policy.