

MEETING DATE: December 1, 2008

AGENDA ITEM: Consideration of Implementation of Supervision at the Culver City Skate Park, Approval of Budget Amendment(s) for Staffing Costs Related to Supervision and/or Additions to the Skate Park Facility, and Adoption of a Resolution Establishing User Fees at the Culver City Skate Park.

ATTACHMENTS

	<u>Page</u>
1. California Health and Safety Code Section 115800	1 - 2
2. California Government Code Section 831.7	3 - 4
3. Synoptic Comments from the Parks, Recreation and Community Services Commission Meeting of November 6, 2008	5
4. Participant Liability Waiver from the City of Santa Monica	6 - 8
5. Options for Skate Park Supervision, Proposed User Fees and Projected Expenditures and Revenues	9 -10
6. Proposed Fee Resolution, including Proposed Fee Schedule	11 - 12
7. Expenditures for Additions to the Skate Park Area	13

CALIFORNIA HEALTH AND SAFETY CODE

SECTION 115800

115800. (a) No operator of a **skateboard park** shall permit any person to ride a **skateboard** therein, unless that person is wearing a helmet, elbow pads, and knee pads.

(b) With respect to any facility, owned or operated by a local public agency, that is designed and maintained for the purpose of recreational **skateboard** use, and that is not supervised on a regular basis, the requirements of subdivision (a) may be satisfied by compliance with the following:

(1) Adoption by the local public agency of an ordinance requiring any person riding a **skateboard** at the facility to wear a helmet, elbow pads, and knee pads.

(2) The posting of signs at the facility affording reasonable notice that any person riding a **skateboard** in the facility must wear a helmet, elbow pads, and knee pads, and that any person failing to do so will be subject to citation under the ordinance required by paragraph (1).

(c) "Local public agency" for purposes of this section includes, but is not limited to, a city, county, or city and county.

(d) (1) Skateboarding at any facility or **park** owned or operated by a public entity as a public **skateboard park**, as provided in paragraph (3), shall be deemed a hazardous recreational activity within the meaning of Section 831.7 of the Government Code if all of the following conditions are met:

(A) The person skateboarding is 12 years of age or older.

(B) The skateboarding activity that caused the injury was stunt, trick, or luge skateboarding.

(C) The **skateboard park** is on public property that complies with subdivision (a) or (b).

(2) In addition to the provisions of subdivision (c) of Section 831.7 of the Government Code, nothing in this section is intended to limit the liability of a public entity with respect to any other duty imposed pursuant to existing law, including the duty to protect against dangerous conditions of public property pursuant to Chapter 2 (commencing with Section 830) of Part 2 of Division 3.6 of Title 1 of the Government Code. However, nothing in this section is intended to abrogate or limit any other legal rights, defenses, or immunities that may otherwise be available at law.

(3) For public **skateboard** parks that were constructed on or before January 1, 1998, this subdivision shall apply to hazardous recreational activity injuries incurred on or after January 1, 1998, and before January 1, 2001. For public **skateboard** parks that are constructed after January 1, 1998, this subdivision shall apply to hazardous recreational activity injuries incurred on or after January 1, 1998, and before January 1, 2012. For purposes of this subdivision, any **skateboard** facility that is a movable facility shall be deemed constructed on the first date it is initially made available for use at any location by the local public agency.

(continued)

(4) The appropriate local public agency shall maintain a record of all known or reported injuries incurred by a skateboarder in a public **skateboard park** or facility. The local public agency shall also maintain a record of all claims, paid and not paid, including any lawsuits and their results, arising from those incidents that were filed against the public agency. Beginning in 1999, copies of these records shall be filed annually, no later than January 30 each year, with the Judicial Council, which shall submit a report to the Legislature on or before March 31, 2011, on the incidences of injuries incurred, claims asserted, and the results of any lawsuit filed, by persons injured while skateboarding in public **skateboard parks** or facilities.

(5) This subdivision shall not apply on or after January 1, 2001, to public **skateboard parks** that were constructed on or before January 1, 1998, but shall continue to apply to public **skateboard parks** that are constructed after January 1, 1998.

(e) This section shall remain in effect until January 1, 2012, and as of that date is repealed, unless a later enacted statute, enacted before January 1, 2012, deletes or extends that date.

115800. (a) No operator of a **skateboard park** shall permit any person to ride a **skateboard** therein, unless that person is wearing a helmet, elbow pads, and knee pads.

(b) With respect to any facility, owned or operated by a local public agency, that is designed and maintained for the purpose of recreational **skateboard** use, and that is not supervised on a regular basis, the requirements of subdivision (a) may be satisfied by compliance with the following:

(1) Adoption by the local public agency of an ordinance requiring any person riding a **skateboard** at the facility to wear a helmet, elbow pads, and knee pads.

(2) The posting of signs at the facility affording reasonable notice that any person riding a **skateboard** in the facility must wear a helmet, elbow pads, and knee pads, and that any person failing to do so will be subject to citation under the ordinance required by paragraph (1).

(c) "Local public agency" for purposes of this section includes, but is not limited to, a city, county, or city and county.

(d) This section shall become operative on January 1, 2012.

CALIFORNIA GOVERNMENT CODE

SECTION 831.7

831.7 (a) Neither a public entity nor a public employee is liable to any person who participates in a **hazardous recreational activity**, including any person who assists the participant, or to any spectator who knew or reasonably should have known that the **hazardous recreational activity** created a substantial risk of injury to himself or herself and was voluntarily in the place of risk, or having the ability to do so failed to leave, for any damage or injury to property or persons arising out of that **hazardous recreational activity**.

(b) As used in this section, "**hazardous recreational activity**" means a **recreational activity** conducted on property of a public entity which creates a substantial (as distinguished from a minor, trivial, or insignificant) risk of injury to a participant or a spectator. "**Hazardous recreational activity**" also means: (1) Water contact activities, except diving, in places where or at a time when lifeguards are not provided and reasonable warning thereof has been given or the injured party should reasonably have known that there was no lifeguard provided at the time. (2) Any form of diving into water from other than a diving board or diving platform, or at any place or from any structure where diving is prohibited and reasonable warning thereof has been given. (3) Animal riding, including equestrian competition, archery, bicycle racing or jumping, mountain bicycling, boating,, cross-country and downhill skiing, hang gliding, kayaking, motorized vehicle racing, off-road motorcycling or four-wheel driving of any kind, orienteering, pistol and rifle shooting, rock climbing, rocketeering, rodeo, spelunking, sky diving, sport parachuting, paragliding, body contact sports (i.e., sports in which it is reasonably foreseeable that there will be rough bodily contact with one or more participants), surfing, trampolining, tree climbing, tree rope swimming, waterskiing, white water rafting, and windsurfing. For the purposes of this subdivision, "mountain bicycling" does not include riding a bicycle on paved pathways, roadways, or sidewalks.

(c) Notwithstanding the provisions of subdivision (a), this section does not limit liability which would otherwise exist for any of the following:

(1) Failure of the public entity or employee to guard or warn of a known dangerous condition or of another **hazardous recreational activity** known to the public entity or employee that is not reasonably assumed by the participant as inherently a part of the **hazardous recreational activity** out of which the damage or injury arose.

(2) Damage or injury suffered in any case where permission to participate in the **hazardous recreational activity** was granted for a specific fee. For the purpose of this paragraph, a "specific fee" does not include a fee or consideration charged for a general purpose such as a general park admission charge, a vehicle entry or parking fee, or an administrative or group use application or permit fee, as distinguished from a specific fee charged for participation in the specific **hazardous recreational activity** out of which the damage or injury arose.

(3) Injury suffered to the extent proximately caused by the negligent failure of the public entity or public employee to properly construct or maintain in good repair any structure, **recreation** equipment or machinery, or substantial work of improvement utilized in the **hazardous recreational activity** out of which the damage or injury arose.

(continued)

(4) Damage or injury suffered in any case where the public entity or employee recklessly or with gross negligence promoted the participation in or observance of a **hazardous recreational activity**. For purposes of this paragraph, promotional literature or a public announcement or advertisement which merely describes the available facilities and services on the property does not in itself constitute a reckless or grossly negligent promotion.

(5) An act of gross negligence by a public entity or a public employee which is the proximate cause of the injury. Nothing in this subdivision creates a duty of care or basis of liability for personal injury or for damage to personal property.

(d) Nothing in this section shall limit the liability of an independent concessionaire, or any person or organization other than the public entity, whether or not the person or organization has a contractual relationship with the public entity to use the public property, for injuries or damages suffered in any case as a result of the operation of a **hazardous recreational activity** on public property by the concessionaire, person, or organization.

**Synoptic Comments from the Parks, Recreation and Community Services
Commission Meeting of November 6, 2008**

BACKGROUND

Following discussions with the City Council and Parks, Recreation and Community Services Commission Skateboard Park Subcommittees (Vice Mayor Silbiger, Councilmember Armenta, Commission Chair Shapiro, Commissioner Hudson), the Commission chose to review the current practice of operating the Skate Park as an unsupervised facility and asked staff to research, prepare and present information about options for staffing the Skate Park.

At the November 6, 2008 meeting, the Commission took action to make a recommendation to the City Council regarding the operations of the Skate Park. The Commission expressed concern for the safety of Skate Park participants as an essential element of the discussion to modify current operations.

RECOMMENDATION OF THE COMMISSION

Moved by Commissioner Cooper; Seconded by Vice Chair Vicki Daly Redholtz and Passed Unanimously

That the Parks, Recreation and Community Services Commission:

Recommends to the City Council that the Culver City Skate Park operate as a supervised facility with established operating hours during which City-staff is on-site to monitor participant entry/exit and rule compliance; and further recommend the Skate Park hours of operation as outlined in Option B and the user fees proposed in this report.

COMMISSIONER COMMENTS

In addition to the recommendation noted above, the Commission requested that the following comments be included in the materials provided to the City Council when considering this item.

That the Commission recommends (by consensus) the following priorities:

- That the Skate Park Fencing Project (i.e., replacing the fencing) be expedited by moving it up as a high priority in the Public Works CIP Work Plan; and,
- That the Ordinances, Rules and Regulations of the Skate Park be enforced on a regular basis by the proper and appropriate entities.

Additional comments expressed and included at the request of Commissioners (though not specifically gaining a consensus):

- Vice Chair Vicki Daly Redholtz, Commissioner Cooper: (1) The City should attempt to find sponsorship to cover some of the costs of the Park operations and additions; (2) The \$240 fee for the adult annual pass seems too high.

**WAIVER, RELEASE OF LIABILITY AND INDEMNIFICATION AGREEMENT**

Last Name _____ First Name _____

THIS AGREEMENT APPLIES TO THE COVE, SANTA MONICA SKATEPARK.

THIS AGREEMENT CONSTITUTES AN EXPRESS CONTRACTUAL ASSUMPTION OF ALL RISKS, AND BOTH A WAIVER AND RELEASE FROM ALL LIABILITY FOR ANY NEGLIGENCE OR DANGEROUS CONDITION OF PUBLIC PROPERTY AND INDEMNITY FOR ALL THIRD PARTY CLAIMS (HEREINAFTER "AGREEMENT").

I know that skateboarding, in-line skating, skating and bicycle riding are inherently dangerous sports and recreational activities in which I choose to voluntarily participate at my own risk. I am aware that the usual risks, hazards and dangers of personal injury, death and disability or property damage and loss (collectively "damages"), necessarily increase when I or others use ramps, curbs, steps, railings, half pipes, inclines or declines, bowls or any other structure or device. I know that the risks, hazards and dangers include, but are not limited to, uncontrollable boards and bicycles, falling, jumping, landing, performing tricks, as well as colliding with other users, staff, bystanders or spectators. I also understand that these risks, hazards and dangers are further increased when other persons, whether or not of the same level of experience or skill, are present at the same time and using the same facilities. (All of the above-defined activities are collectively referred to throughout this Agreement as "the Hazardous Recreational Activities.")

By this Agreement, it is my intention to forever relieve CITY OF SANTA MONICA, its officers, employees, and agents, volunteers, sponsors, vendors, contractors, exhibitors (hereinafter "CITY") of any duty to me and I do assume the entire risk of any personal injury, damage, loss, harm, death, claim, medical expense and any other type of expense that might occur during or as a result of my use of, or presence at The Cove, Santa Monica Skatepark (hereinafter "The Cove"). By this Agreement, I also intend to forever release, discharge and absolve CITY from any and all liability for any active or passive negligence whatsoever by CITY and to waive and relinquish any claim or cause of action against CITY for any personal injury, damage, loss, harm, death, medical expense and any other type of expense caused by any negligence of CITY and promise not to sue or exercise any legal right to seek damages from CITY. By this Agreement, I also intend to forever release, discharge, waive and relinquish and absolve CITY from any and all claims or causes of action against CITY for any personal injury, damage, loss, harm, death, medical expense and any other type of expense caused by the condition and/or maintenance of The Cove premises or any of its structures or devices, including but not limited to ramps, curbs, steps, railings, half pipes, inclines, declines, or bowls and promise not to sue or exercise any legal right to seek damages from CITY.

Initials: _____

In consideration of utilizing The Cove, I agree as follows:

1. As to my participation in any activity, including, but not limited to, the Hazardous Recreational Activities and as to any and all liability for any injury or damages which I may suffer or incur due to any cause whatsoever, while on The Cove premises, I hereby agree:
 - a. To forever waive any and all claims for any injury and/or damages that I may have against CITY or any other person, company or entity in any way associated with it;
 - b. To forever release CITY from any and all liability for any injury and/or damages that I may suffer or incur, or that my next of kin may suffer as a result of my participation in any activity, including but not limited to the Hazardous Recreational Activities;
 - c. To forever hold harmless and indemnify CITY from any and all liability for any injury and/or damages to any third party resulting from my participation in any activity, including but not limited to the Hazardous Recreational Activities.
2. This waiver and release of liability and indemnification agreement shall be effective and binding upon my heirs, next of kin, family, relatives, guardians, conservators, executors, administrators, trustees and assigns in the event of my injury, disability or death.
3. I have read, understand and agree to be bound by the SANTA MONICA SKATE PARK RULES FOR USE while using The Cove. I understand the rules and that violation of the rules may result in loss of park privileges, removal from the park and/or citation.

I acknowledge and understand that The Cove is a drop-in recreation facility. CITY does not supervise skate park use or users and assumes no responsibility for them.

I acknowledge and understand that this agreement affords CITY broader rights and protections than provided by statute, including but not limited to California Health and Safety Code Section 115800, and California Government Code Sections 835 and 831.7.

I hereby consent to the photographing, recording or reproduction in any other manner (including the use of videotapes and audiotapes) of my or my child's likeness, voice and/or skate park activities and further authorize CITY to make unlimited use of such reproductions, including but not limited to, broadcasting to the public of the reproductions over radio and television stations. I understand that I will not receive any monetary compensation, now or in the future, for participating. I hereby release and hold harmless CITY from any claims that may result from the use of such reproductions.

I agree that this Agreement is intended to be as broad and inclusive as is permitted by laws of the State of California and that if any portion of the Agreement is held invalid, it is agreed that the balance shall continue in full legal force and effect.

Initials: _____ 7

I certify that I have no medical condition that would cause participation in any activities at The Cove to increase the risk of hazard to my health. In addition, I authorize CITY to provide or cause to be provided such medical treatment that may be necessary or appropriate if I am injured while at The Cove.

I HAVE READ AND VOLUNTARILY SIGN AND INITIAL THIS 3 PAGE AGREEMENT, and further agree that no oral representations, statements, or inducements apart from this Agreement have been made by CITY with regard to the subject matter of this Agreement.

If I am younger than 18 years old, my parent (legal guardian) and I hereby certify that I am younger than 18 years old. I (We) have completely read and understand this Agreement and its terms. Prior to signing this Agreement, I (We) have had the opportunity to consult an attorney about the affect of this agreement. I (We) are aware that, by signing this Agreement, I (We) assume all risks and waive and release all rights that I (We) and my heirs, next of kin, family, relatives, guardians, executors, administrators, trustees and assigns may have against CITY.

THIS AGREEMENT MUST BE SIGNED IN PRESENCE OF CITY STAFF.

Participant's signature _____

Date _____

Parent (legal guardian) signature _____

Date _____

Parent (legal guardian) driver's license # _____

Phone _____

Verified By _____ (City Staff Only)

ACKNOWLEDGEMENT

(Note: If City staff cannot witness the parent or guardian's signature, the form must be notarized)

State of California

County of _____

On _____ (date) before me _____ (name)

Personally appeared _____ (name), personally known to me -- OR -- proved to me on the basis of satisfactory evidence, to be the persons(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

SIGNATURE OF NOTARY

Skate Park Supervision and User Fees

ATTACHMENT 5

The figures in Tables 1-3 incorporate the following assumptions:

- *Expenditures for Operations* assumes a minimum of two (2) part-time staff persons supervise the facility at any given time and includes fully burdened personnel costs, departmental supplies, uniform allowances, and communications expenditures.
- *Revenue from Admission* assumes adoption of the User Fees proposed in Table 2. (Exception: The figures presented in Table 3 do not reflect exact user fees but rather an expected cost recovery rate based on the contractors' past experience.)
- Assumes the Skate Park closes at dusk; staff would adjust the hours of operation to best ensure the safety of participants. Further, staff would adjust the hours of operation as needed based on user feedback
- Assumes relatively consistent revenue, given the discounted price of purchasing quarterly and annual passes. (Table 2: User Fees is the baseline for Option B. Option A represents a 10% decrease in revenue given more limited hours of operation. Option C represents a 15% increase in revenues given more liberal hours of operation.)
- Assumes securing *Revenue from Supplemental Activities* requires additional expenditures for staffing, supplies, etc. Projected revenue is a net figure and thus represents the anticipated revenue once these additional expenses are paid. Total of \$5,782 reflects net revenue from lessons of \$1,872 (70/30 contractor agreement); net revenue from special events of \$2,000; and net revenue from sponsorships of \$2,000.

CITY-STAFFED SUPERVISION

Table 1: Proposed Hours of Operation, Projected Expenditures and Revenue

Options for Skate Park Hours of Operation	Expenditures for Operations	Revenue from Admission	Subtotal: General Fund Impact	Revenue from Supplemental Activities	Net General Fund Impact, All Revenue Activities
A Summer: 10 AM - Dusk daily (avg. of 10hrs/day) Fall, Winter, Spring: 3 PM - Dusk weekdays (4hrs) 10 AM - Dusk weekends (9hrs)	\$ 70,229.00	\$ 35,820.00	\$ 34,409.00	\$ 5,872.00	\$ 28,537.00
B Summer: 10 AM -Dusk daily (10 hrs) Fall, Winter, Spring: 12 PM - 3 PM MWF Adult Only (3hrs) 3 PM - Dusk weekdays (4hrs) 10 AM - Dusk weekends (9hrs)	\$ 79,329.00	\$ 39,800.00	\$ 39,529.00	\$ 5,872.00	\$ 33,657.00
C Spring & Summer: 10 AM - Dusk daily (10hrs) Fall & Winter: 10 AM - Dusk weekdays (9hrs) 10 AM - Dusk weekends (9hrs)	\$ 96,444.00	\$ 45,770.00	\$ 50,674.00	\$ 5,872.00	\$ 44,802.00

(CITY-STAFFED SUPERVISION contd.)

Table 2: Proposed Skate Park User Fees and Projected Revenue

Fee Type	Proposed User Fee	Annual Sales	Annual Revenue
Annual Registration Fee: Adults 18+	\$ 15.00	450	\$ 6,750.00
Annual Registration Fee: Youth	\$ 10.00	850	\$ 8,500.00
Daily Skate Pass: Adults 18+	\$ 4.00	400	\$ 1,600.00
Daily Skate Pass: Youth	\$ 2.00	800	\$ 1,600.00
Quarterly Skate Pass: Adults 18+	\$ 80.00	100	\$ 8,000.00
Quarterly Skate Pass: Youth	\$ 30.00	200	\$ 6,000.00
Annual Skate Pass: Adults 18+	\$ 240.00	25	\$ 6,000.00
Annual Skate Pass: Youth	\$ 90.00	15	\$ 1,350.00
Projected Annual Admissions Revenue			\$ 39,800.00

CONTRACT-STAFFED SUPERVISION

Table 3: Proposed Hours of Operation, Projected Expenditures and Revenue

Skate Park Hours of Operation	Operations Expenditures	Revenue: All Revenue Activities	Net General Fund Impact
D Summer: 12 PM - Dusk daily (avg. of 9hrs/day)			
Fall, Winter, Spring: 3 PM - Dusk weekdays (6 hrs/day)			
9 AM - Dusk weekends (12 hrs/day)	\$ 200,400.00	\$ 99,000.00	\$ 101,400.00

ATTACHMENT 6

RESOLUTION NO. 2008-__

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CULVER CITY, CALIFORNIA, AMENDING THAT PORTION OF EXHIBIT F-1 OF RESOLUTION NO. 2008-R048, WHICH ESTABLISHED THE 2008-2009 RECREATION USER FEES, TO ADD THE ESTABLISHED SKATEBOARD PARK FEES.

The City Council of the City of Culver City, California, DOES HEREBY
RESOLVE as follows:

1. Pages 27 through 30 of Exhibit F-1 of Resolution No. 2008-R048, which established Recreation User Fees, are hereby amended to add the following Skateboard Park fees:

Service Name SKATE PARK	2008-09 Fee
Annual Registration Fee: Adults 18+	\$ 15.00
Annual Registration Fee: Youth	\$ 10.00
Daily Skate Pass: Adults 18+	\$ 4.00
Daily Skate Pass: Youth	\$ 2.00
Quarterly Skate Pass: Adults 18+, unlimited admissions	\$ 80.00
Quarterly Skate Pass: Youth, unlimited admissions	\$ 30.00
Annual Skate Pass: Adults 18+, unlimited admissions	\$ 240.00
Annual Skate Pass: Youth, unlimited admissions	\$ 90.00

///

///

///

///

///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

2. The fees established herein shall be effective on March 1, 2009.

APPROVED AND ADOPTED this ____ day of _____, 2008.

D. SCOTT MALSIN, Mayor

ATTEST:

APPROVED AS TO FORM:

Martin Cole, City Clerk



Carol Schwab, City Attorney

Additions to the Skate Park Area

ATTACHMENT 7

Proposed Projects and Projected Expenditures

Staff Accommodations	Estimated Cost
Outdoor, on-site staff area (including: emergency communications equipment, shade tent, chairs, table)	\$ 4,400.00
Secure Facility for Staff, Restroom, Drinking Fountain and Equipment: <i>Modular Built</i> (including: electrical, telephone & DSL, water and sewer, computer, etc)	\$ 166,950.00
Secure Facility for Staff, Restroom, Drinking Fountain and Equipment: <i>Custom Built</i> (including: electrical, telephone & DSL, water and sewer, computer, etc)	\$ 245,886.00