

# **Williamson County Parks & Recreation Department**

## **Policy Concerning Commercial Activities Conducted**

### **In Williamson County Parks**

#### 1. Purpose; Findings; Application of Policy.

- a. The purpose of this Policy Concerning Commercial Use of Parks is to set forth the policies of Williamson County and the Williamson County Parks & Recreation Department (the “Department”) with respect to making its park facilities available to third parties for commercial activities not sponsored or conducted by Williamson County. For purposes of this Policy, a commercial activity shall be defined as any activity undertaken as part of a commercial enterprise regardless of whether: (i) compensation is collected in connection with that activity; or (ii) whether the commercial enterprise is for-profit or not-for-profit (a “Commercial Activity”). The decision as to whether an activity qualifies as a “Commercial Activity” for purposes of this Policy shall be made in the sole discretion of the Williamson County Parks Director (the “Parks Director”). The Parks Director’s determination may be appealed to the Williamson County Commissioners Court (the “Court”). An example of a Commercial Activity would be a personal trainer who leads a fitness class on park property because they have no facilities of their own to conduct business.
- b. Unless expressly modified or waived by the Court for good cause, all of the terms and provisions of this Policy shall apply to all Commercial Activities undertaken in Williamson County’s parks.
- c. The Court finds that Williamson County’s parklands exist and function for serving the park and recreational needs of the public, and should be made available for Commercial Activities conducted by others only upon satisfaction of the terms and conditions set forth in this Policy.

#### 2. Legal Construction of Policy; Amendments.

- a. Neither this Policy, its adoption by the Court, any amendment or supplement hereto, nor any statements made during meetings or consultations shall be construed as an agreement by Williamson County to allow Commercial Activities to be conducted within Williamson County’s parklands.
- b. This Policy may be amended and supplemented from time to time by Williamson County whether or not requests for use of Williamson County’s parklands for Commercial Activities are pending and regardless of any agreement entered into by Williamson County relating to such activity.

### 3. Legal Authority.

This Policy is being adopted pursuant to The Texas Administrative Code, Local Government Code, Title 10, Subchapter B, Chapter 316 County Use Fees, Chapter 320 Park Board and Park Bonds, Counties with populations of 5000 or more, which authorizes Williamson County to acquire and operate park facilities, to regulate privileges on lands owned by Williamson County, to set and collect fees, and to enter into contracts for service on behalf of Williamson County.

### 4. Management of Commercial Activity.

The Parks Director and/or his/her authorized agents are hereby authorized to take any and all necessary and reasonable actions required to manage all Commercial Activity conducted within Williamson County's parkland. By way of example, Williamson County, acting by and through the Parks Director and/or the Department's authorized agent(s), may require that any person or entity engaging in an unauthorized Commercial Activity, together with all guests and invitees, terminate the activity and leave Williamson County's parklands immediately. Any person or persons that refuse to leave the parklands upon request shall be considered trespassers and shall be subject to legal action, forcible removal by peace officers, and/or criminal prosecution.

### 5. Application for Authorization; Agreement for Usage of Williamson County Parks.

- a. Each proposed Commercial Activity within Williamson County will be considered and acted upon on its own merits, and Williamson County's authorization for any Commercial Activity will be evidenced only in the form of a written contract.
- b. Any person or entity seeking to engage in a Commercial Activity within Williamson County's parklands must request prior authorization from the Department. In connection with making such application, the person shall submit the following information to the Department along with a signed Agreement for Usage of Williamson County Parks:
  - (i) A description of the proposed Commercial Activity;
  - (ii) The proposed date(s), times and location of the proposed Commercial Activity;
  - (iii) The anticipated number of persons expected to participate in the Commercial Activity;
  - (iv) Any other information requested by the Department; and
  - (v) Any person participating in a Commercial Activity may be required to provide proof of general liability insurance. If such insurance is required, the contracting party shall furnish the Parks Director a Certificate of Insurance

from an approved insurance carrier for the following coverage:

Comprehensive general liability including liability insurance for bodily injury, death, or property damages in the following amounts:

COVERAGE	PER PERSON	PER OCCURRENCE
Comprehensive General Liability	\$500,000	\$500,000
Aggregate policy limits	\$1,000,000	

The Parks Director has the authority to increase this limitation when conditions warrant such action. Any such insurance shall name Williamson County as an additional insured.

- c. From and after the date of adoption of this Policy, no Commercial Activity shall be undertaken without the prior authorization of Williamson County, which shall be set forth in the form of a written contract. Said contract shall be executed by Williamson County, acting by and through the Department, and the person or entity seeking to engage in the Commercial Activity. The contract shall set forth the terms and conditions pursuant to which Williamson County authorizes a specific Commercial Activity to be undertaken in Williamson County's park land. Any violation of the terms and conditions of such contract or of this Policy shall be cause for immediate termination of the contract.

## 6. Approval

- a. The approval of any request for authorization to conduct a Commercial Activity within Williamson County's parkland shall be made in Williamson County's sole and absolute discretion based upon consideration of all relevant facts and circumstances, including the impact of the proposed activity on Williamson County's parks; impacts on the park's natural or cultural resources; impact on traffic and parking; conflicts with Williamson County's park and recreational programming; conflicts with other park users; impact on availability of the park to the public; whether the activity may interfere with the operation and maintenance of Williamson County parklands; impact of the activity on surrounding property owners; and any other considerations which Williamson County and/or its Park's Director deems applicable. For purposes of this Policy, such approval or denial shall be made by the Parks Director. The Parks Director's decision may be appealed to the Court.
- b. For stated reasons, Williamson County reserves the sole and absolute right to deny any request for authorization to conduct a Commercial Activity on Williamson County's parkland, or to modify or terminate any prior authorization, with or

without cause.

## 7. Indemnity.

IN CONSIDERATION OF WILLIAMSON COUNTY'S AGREEMENT TO ALLOW A PARTICULAR USER THE ABILITY TO USE ANY OF WILLIAMSON COUNTY'S PARKLANDS FOR A COMMERCIAL ACTIVITY, SUCH USER, BY ITS USE OF WILLIAMSON COUNTY PARKLAND FOR A COMMERCIAL ACTIVITY AND BY ITS EXECUTION OF THE ABOVE REFERENCED CONTRACT, AGREES TO **INDEMNIFY, DEFEND AND HOLD HARMLESS** WILLIAMSON COUNTY, ITS OFFICIALS, AGENTS, EMPLOYEES, OFFICERS, AND REPRESENTATIVES FROM EVERY PENALTY, CAUSE OF ACTION, CLAIM, LOSS, COST, DAMAGE, REASONABLE ATTORNEY'S FEES, LIEN AND/OR EXPENSE ARISING OUT OF OR RESULTING FROM THE USER'S USE OF WILLIAMSON COUNTY'S PARKLANDS FOR A COMMERCIAL ACTIVITY. WILLIAMSON COUNTY SHALL NOT BE LIABLE FOR DAMAGES TO SUCH USER OR ANY OTHER PERSON ARISING FROM ANY ACT OF ANY THIRD PARTY. THE USER, BY ITS USE OF WILLIAMSON COUNTY PARKLAND FOR A COMMERCIAL ACTIVITY AND BY ITS EXECUTION OF THE ABOVE REFERENCED CONTRACT, FURTHER AGREES TO **INDEMNIFY, DEFEND AND SAVE HARMLESS** WILLIAMSON COUNTY FROM AND AGAINST ALL CLAIMS OF WHATEVER NATURE ARISING FROM ANY NEGLIGENT ACT, OMISSION OR NEGLIGENCE OF THE USER OR THE USER'S AGENTS, SERVANTS, PARTICIPANTS OR EMPLOYEES, OR ARISING FROM ANY ACCIDENT, INJURY, OR DAMAGE WHATSOEVER CAUSED TO ANY PERSON OR TO THE PROPERTY OF ANY PERSON OCCURRING DURING THE USER'S USE OF WILLIAMSON COUNTY PARKLAND FOR A COMMERCIAL ACTIVITY, OR ARISING FROM ANY ACCIDENT, INJURY, OR DAMAGE OCCURRING ON WILLIAMSON COUNTY'S PREMISES.

## 8. Compensation.

- a. In recognition of the fact that the Williamson County residents and customers pay for the costs of development, improvements, operation and maintenance of Williamson County parklands, any person or entity generally shall be required to provide payment to the Department for the privilege to conduct a Commercial Activity on Williamson County's parklands.
- b. The terms and amount of compensation shall be set forth in the contract to be entered into authorizing the Commercial Activity. For Commercial Activities that include a charge to persons who participate in the Commercial Activity or otherwise provide payment to the person or entity that conducts the Commercial Activity, Williamson County will generally require payment in an amount equal to or greater than ten percent (10%) of the gross revenues collected by the person or entity that conducts the Commercial Activity, or a lump sum amount determined by Williamson County and/or its Park Director based on the size, nature, duration, and impact of the activity on Williamson County's parklands. The Commercial Activity is also subject to audit by Williamson County Officials as deemed appropriate and necessary.
- c. For Commercial Activities that do not include the collection of any payment by persons that participate in the Commercial Activity, the contract may include a lump sum payment that must be made as a condition of approval. In the alternative, Williamson County may waive payment based upon the nature of the proposed activity, including whether it promotes Williamson County's governmental purposes and functions.

- d. Should a user's Commercial Activity generate a revenue to Williamson County of more than \$2,500.00, Williamson County shall have the right to conduct a procurement process (i.e. a public offering) for any interested users that wish to provide the particular Commercial Activity that is generating such revenue.
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