

RESOLUTION NO. 2010-043

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CHULA VISTA AUTHORIZING THE CITY MANAGER TO ALLOW THE USE OF CITY-OWNED VACANT LANDS TO CREATE COMMUNITY GARDENS AND TO TAKE ANY AND ALL ACTIONS REQUIRED TO IMPLEMENT THE CREATION OF COMMUNITY GARDENS, ADOPTING THE "COMMUNITY GARDENS POLICY" AS COUNCIL POLICY TO PROVIDE GUIDANCE IN THE ESTABLISHMENT AND OPERATION OF COMMUNITY GARDENS ON CITY-OWNED VACANT LANDS, AND DIRECTING CITY STAFF TO CONSIDER ADDITIONAL LOCATIONS FOR THE ESTABLISHMENT OF COMMUNITY GARDENS AND TO MAKE RECOMMENDATIONS OF SUCH LOCATIONS TO CITY COUNCIL AS THE CURRENT PROGRAM PROGRESSES

WHEREAS, a coalition of community representatives, public health advocates, and elected officials have expressed interest in establishing community gardens in the City of Chula Vista; and

WHEREAS, community gardens are a benefit to the citizens of the City of Chula Vista because they provide the citizens of Chula Vista with access to fresh annual fruits, vegetables, and flowers, help citizens engage in healthful low-intensity exercise, and develop a sense of neighborhood cohesion; and

WHEREAS, the City of Chula Vista has city-owned vacant lands (not including parks) that may be used to establish community gardens and the City of Chula Vista may permit the use of such lands for that purpose to community groups via a limited revocable license; and

WHEREAS, the City's Westside Revitalization Subcommittee directed staff to prepare a policy to facilitate the establishment of community gardens in the City; and

WHEREAS, a "Community Gardens Policy" attached as Exhibit A, has been drafted in collaboration with and responding to the comments of community stakeholders; and

WHEREAS, it is intended that the establishment and operation of community gardens on city-owned vacant land be of no cost to the City of Chula Vista; and

WHEREAS, the "Community Gardens Policy" states that the primary responsibility for establishing and maintaining the community gardens will be borne by an approved Community Group, that will organize the community, prepare a garden site plan, allocate plots on a first come, first serve basis, maintain the garden site, and require that costs for maintaining the garden be shared among the gardeners; and

WHEREAS, the “Community Gardens Policy” states that the recognized Community Group may be supported, when possible, by City staff, who will assist in site selection and garden design, drafting of a community garden User Agreement, and in overseeing the cost sharing of maintaining the community garden; and

WHEREAS, the “Community Gardens Policy” protects the City’s rights by requiring that the approved Community Group sign a User Agreement, which extends a limited revocable license to use city-owned vacant lands as a community garden, and which requires that individual garden users sign a “hold harmless” agreement to participate in the community garden; and

WHEREAS, the “Community Gardens Policy” states that garden participation will be open to all members of the public on a first-come, first-serve basis, and will provide a general public benefit.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Chula Vista as follows:

(1) That the City Manager is authorized to allow the use of city-owned vacant lands, not including parks, to create community gardens and to take any and all actions required to implement the creation of community gardens on city-owned vacant lands, not including parks.

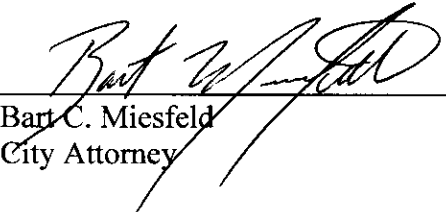
(2) That the “Community Gardens Policy,” attached as Exhibit A, is hereby adopted as Council policy to provide guidance in the establishment and operation of community gardens on city-owned vacant lands and the City Manager is authorized to develop and require additional terms and/or conditions not provided for in the aforementioned “Community Gardens Policy” to ensure the effective establishment and operation of community gardens in the City of Chula Vista.

(3) That City staff should, as community gardens are established on city-owned vacant lands under this resolution, consider the suitability and desirability of allowing the establishment of community gardens at other locations and to make recommendations to City Council on the suitability and desirability of allowing the establishment of community gardens at other locations.

Presented by

Approved as to form by

  
\_\_\_\_\_  
Gary Halbert, P.E., AICP  
Deputy City Manager/Director of  
Development Services

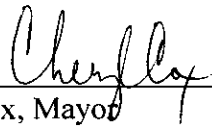
  
\_\_\_\_\_  
Bart C. Miesfeld  
City Attorney

PASSED, APPROVED, and ADOPTED by the City Council of the City of Chula Vista, California, this 23rd day of February 2010 by the following vote:

AYES: Councilmembers: Bensoussan, Castaneda, Ramirez, Thompson and Cox

NAYS: Councilmembers: None

ABSENT: Councilmembers: None

  
\_\_\_\_\_  
Cheryl Cox, Mayor

ATTEST:

  
\_\_\_\_\_  
Donna R. Norris, CMC, City Clerk

STATE OF CALIFORNIA     )  
COUNTY OF SAN DIEGO    )  
CITY OF CHULA VISTA     )

I, Donna R. Norris, City Clerk of Chula Vista, California, do hereby certify that the foregoing Resolution No. 2010-043 was duly passed, approved, and adopted by the City Council at a regular meeting of the Chula Vista City Council held on the 23rd day of February 2010.

Executed this 23rd day of February 2010.

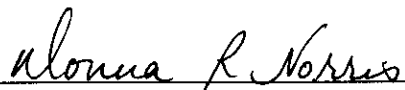
  
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Donna R. Norris, CMC, City Clerk

EXHIBIT A

COUNCIL POLICY CITY OF CHULA VISTA			
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COMMUNITY GARDENS POLICY			1 OF 7
ADOPTED BY: (Resolution No.)		DATED:	
AMENDED BY: Resolution No. (date of resolution)			
<p><b><u>BACKGROUND</u></b></p> <p>The City of Chula Vista recognizes community gardens as a valuable recreation activity that can provide community members access to fresh, nutritious produce, and low-intensity physical activity. Community gardens can also foster environmental awareness, positive social interaction, and community education, all while bringing added food security to the community through the development of local food sources. The City has the ability to foster the creation of community gardens by permitting the establishment of such gardens on its vacant lands.</p> <p><b><u>PURPOSE</u></b></p> <p>This policy provides to the City Manager or his designee the authority and guidance to implement and approve the use of city-owned vacant land, not including parks, to establish community gardens. This policy further details the procedure and requirements for the establishment of community gardens on city-owned vacant land.</p> <p><b><u>POLICY</u></b></p> <p><b><u>I. COMMUNITY GARDEN AND COMMUNITY PARTICIPATION</u></b></p> <p>The City may allow the placement and use of community gardens on city-owned vacant land, not including city-owned parks, as approved by the City Manager or designee. The City Manager or designee has sole and unfettered discretion as to whether or not to allow the creation of a community garden on city-owned vacant lands. For the purposes of this policy, when approval is required by the "City," it means approval by the City Manager or his designee, unless otherwise indicated.</p> <p>A community garden, if permitted by the City, must be organized and operated by a "Community Group," which may include local civic associations, non-profit agencies, gardening clubs, homeowners associations, or even a group formed for the purpose of establishing a garden. The Community Group must have and be able to demonstrate, to the satisfaction of the City, the capacity to effectively administer and operate the proposed community garden. The Community Group must have the support of the community where the garden is proposed as detailed further below. Each Community Group may only operate one community garden unless otherwise approved by the City.</p> <p>Community gardens are to be utilized by the recognized Community Group to produce annual fruits, vegetables, and flowers for use of group members, the City of Chula Vista, other non-profit agencies or groups or any other public agency approved by the City. Individual gardeners may sell their produce off-site, but it is not intended that the use of a community garden be for business and/or for-</p>			

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<p>profit endeavors. A community garden should promote environmental education, healthy diets, and encourage the involvement of all citizens who do not have a privately owned (residential) plot for gardening activities.</p> <p>Community gardens are a public resource, and as such, garden membership and participation must be equally open and accessible to all in compliance with the Americans with Disabilities Act (ADA). The garden site plan prepared by the Community Group shall consider, but not be limited to, ADA compliance in terms of ingress/egress to and from and within the garden site, the need for raised planter beds, access to water supplies, and communication needs. The Community Group shall also identify a person as a point of contact for ADA coordination and compliance. The Community Group shall be responsible for and bear any and all costs to ensure ADA compliance. The City, in its discretion, may assist the Community Group with the group's ADA obligations.</p> <p>In addition to any obligation under this policy, Community Groups and individual gardeners must abide by all federal laws, state laws, and/or City of Chula Vista Charter requirements, ordinances, resolutions, and/or policies.</p> <p><b><u>II. THE PROCESS FOR COMMUNITY GARDEN PLANNING</u></b></p> <p>The following steps are required to request the establishment a community garden:</p> <ol style="list-style-type: none"> <li>1. The Community Group must complete a written proposal to establish a community garden. The written proposal must contain the following information:                         <ol style="list-style-type: none"> <li>a. A description of the community group, including a point of contact;</li> <li>b. A description of the community group's ability to effectively administer and operate a community garden;</li> <li>c. A proposed survey site to place the community garden;</li> <li>d. The signatures of 30 households within the proposed survey site obtained after a community consultation process indicating that the proposed community garden is supported by the community (the amount of signatures required under this section may be reduced by the City, so long as there are sufficient signatures, in the opinion of the City, that reflect community support); and</li> <li>e. Any other information requested by the City.</li> </ol> </li> </ol> <p>If more than one community group submits an application to establish a garden in the same area, garden approval will be awarded on a first-come, first-served basis to the group whose complete application is received first. The City, in its discretion and when possible, will assist the Community</p>			

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<p>Group that did not prevail to locate alternate sites.</p> <p>2. The proposal will be submitted to the City's Public Works Department, which will act as the lead in garden establishment and supervision for the City.</p> <p>3. The City will endeavor to accept or reject the proposal within 30 days of submittal. The City has sole and unfettered discretion as to whether or not to accept or reject the creation of a community garden on city-owned vacant lands. If the proposal is accepted, the City will prepare a list of potential sites as close as possible to the requested area. The City will develop this list according to a range of criteria, including, but not limited to, long-term plans for the area, absence of toxic contamination, and/or any other criteria established by the City.</p> <p>4. The City and Community Group will meet to decide on a location for the garden, choosing from the sites selected in step 3.</p> <p>5. The Community Group will develop an initial community garden site plan that will include, but not be limited to, the layout and size of the plots, location of water sources and drainage, detailed plans for ADA compliance, and indicate any proposed structures or fences. Thereafter, the City will assist the Community Group to develop a final community garden site plan. The City must approve all community garden site plans. The site plan shall be subject to the following limitations:</p> <ul style="list-style-type: none"> <li>a. No structures or barriers to general public access can be erected, excepting fences as detailed below, raised/ accessible planting beds, shared composting facility as per IV.3.e below, plant supports, and trellises, public art, rain barrels and benches. Structures must be mobile, or will require specification in the user agreement that such structures will be disassembled and removed by the community group managing the site at the termination of the user agreement.</li> <li>b. Fences shall not exceed 3 feet in height and should be constructed of wood, chain link, or ornamental metal. No fence shall be installed without review and approval by the City.</li> <li>c. ADA accessibility should be clearly shown on Garden Site Plan.</li> <li>d. Any other limitations imposed by the City.</li> </ul> <p>6. After a site is selected and site plans have been completed, the City will conduct a CEQA review for the site to ensure that environmental impacts of the gardens are addressed. The Community Group is responsible for any and all costs of CEQA compliance; specifically the City may require reimbursement of its expenditures in this regard. The City, in its discretion, may assist the Community Group to meet its CEQA obligations under this policy.</p>			

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<p>7. The Community Group must agree to administer and operate the gardens according to a User Agreement, which will extend a limited and revocable license for use of the city-owned vacant land community group.</p> <p>8. A development deposit may be required to at the time of the agreement in order to reimburse the City for its staff costs associated with Section III.</p> <p><b><u>III. COMMUNITY GARDEN ESTABLISHMENT AND MAINTENANCE GUIDELINES</u></b></p> <p>All community gardens will be developed and maintained at no cost to the City of Chula Vista, have a minimal amount of impact on City of Chula Vista staff time and resources, and will be operated by volunteers from the community. The City, in its discretion, may assist the Community Group on a case-by-case basis.</p> <p>The Community Group will be responsible for all garden activities including, but not limited to:</p> <ol style="list-style-type: none"> <li>1. Site Preparation:             <ol style="list-style-type: none"> <li>a. Removing grass</li> <li>b. Turning the soil</li> <li>c. Adding compost</li> <li>d. Adjusting irrigation systems.</li> </ol> </li> <li>2. Establishment and Operation:             <ol style="list-style-type: none"> <li>a. Installation and maintenance of all community garden facilities;</li> <li>b. Repair to broken or damaged facilities maintaining compliance with the plan/agreement;</li> <li>c. Maintain garden's cleanliness, pest control, and tend to weeds, particularly from January to March, when weeds are prevalent;</li> <li>c. Compliance with the ADA;</li> <li>d. Paying utility costs such as water or electrical bills;</li> <li>e. Collecting allotment charges from plot users;</li> <li>f. Keeping record of all revenues and expenses incurred by the community garden to be forwarded to City of Chula Vista Finance Department; and</li> <li>g. Any other responsibility required or assigned by the City.</li> </ol> </li> </ol>			

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<b><u>IV. COMMUNITY GARDEN USER AGREEMENT</u></b>			
<p>If a Community Group is allowed by the City to create a community garden on city-owned vacant land, the Community Group and individual gardeners must agree to adhere to a User Agreement ("User Agreement"). The User Agreement is a limited and revocable license and does not create for the Community Group, individual gardener/participant, or any person or entity any form of property right or interest to the city-owned vacant land, including, but not limited to, an easement, ownership interest, tenancy, adverse possession, or lease. Failure to abide by the terms of the User Agreement may result in termination of the User Agreement and community garden use. The City of Chula Vista's Public Works Department will provide oversight to assure compliance with the User Agreement. The City Manager or designee and the City Attorney or designee must approve the User Agreement. The City or the City Attorney, in their unfettered discretion, may require and include any and all terms it deems appropriate in a User Agreement. The User Agreement must include, at a minimum, the following terms:</p>			
<p><b>1. GENERAL TERMS:</b></p>			
<p>a. The term of the agreement will be for a period of no more than five years. However, the City, in its sole discretion, may increase or decrease the period of the term. If a change in the term is made, the City will provide written notice.</p>			
<p>b. Acknowledgement and agreement that the User Agreement is a limited and revocable license and does not create for the Community Group, individual gardener/participant, or any person or entity any form of property right or interest to the city-owned vacant land, including, but not limited to, an easement, ownership interest, tenancy, adverse possession, or lease.</p>			
<p>c. The City may require insurance and indemnification from the Community Group. If so, the requirement shall be under terms required by City Risk Management and/or the City Attorney's Office.</p>			
<p>d. The requirement that all participants sign liability waivers under terms specified by the City Attorney's office.</p>			
<p>e. Terms specifying the right of the City to terminate the User Agreement at any time and for any reason. The City may, when possible, give thirty (30) days written notice of its decision to end the User Agreement. The written notice need not provide a reason for the terminating the User Agreement. It shall simply provide the date by which community garden activities must cease and the garden site must be returned to its preexisting condition.</p>			



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<p>f. Terms stating that the City will not be liable or responsible for damages or claims of any type by or from any person or entity, including and not limited to, damages or claims resulting from participation in the community garden or terminating User Agreement.</p> <p>2. COMMUNITY GROUP AND PARTICIPANT TERMS:</p> <p>a. The Community Group shall provide that allotments of space must be made from a waiting list on a first come, first serve basis.</p> <p>b. Membership in the recognized Community Group, and the opportunity to be allotted a plot, must be open to any resident of the community.</p> <p>c. The Community Group may share costs to operate the community garden among its participants. To this end, the Community Group may require participants to pay a portion of the cost to establish and operate the community garden, hereinafter "Allotment Charges." Allotment Charges may cover the yearly watering, maintenance, and site improvement costs, unless otherwise determined by City of Chula Vista. Allotment Charges charged to gardeners shall not exceed the amount necessary to cover the normal operating costs of the garden. Records of Allotment Charges to gardeners and expenses will be kept and forwarded to City of Chula Vista to ensure correct use of monies. Allotment Charges must be approved by the City, at a time frame determined by the City. The City may require that the Allotment Charges charged to gardeners be reduced or eliminated. The community garden shall be a non-profit endeavor.</p> <p>d. In addition to any obligation under this policy, Community Groups and individual gardeners must agree to abide by all federal laws, state laws, and local ordinances, resolutions, or polices.</p> <p>3. GARDEN SITE TERMS:</p> <p>a. A description of the pre-existing conditions of the approved garden site, the requirement that at the end of the User Agreement that the garden site be returned to its original condition, and the requirement for payment of damages if the site is not returned to its original condition</p> <p>b. Hours of operation will be from 8:00 a.m. until sunset. The City, in its discretion, may increase or reduce the hours of operation.</p> <p>c. Language stating that members will only be able to sell the produce of their community garden plots off-site.</p>			

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<p>d. Only organic cultivation is to be allowed on community garden sites. No pesticides or chemical fertilizers are to be used.</p> <p>e. Each garden will be required to have a shared composting area, which will avoid a build up of waste and to enhance soil fertility in future seasons.</p> <p>f. The recognized Community Group and individual gardeners must adhere to maintenance standards set forth by City of Chula Vista.</p> <p><b><u>V. ADDITIONAL ITEMS</u></b></p> <p>As progress is made on the creation of community gardens on city-owned vacant lands, the City may explore expanding Community Gardens to other locations.</p> <p>The City Manager, in his or her discretion, may develop and require additional terms and/or conditions not provided for in this policy to ensure the effective implementation of this policy for the City of Chula Vista.</p>			