

**DRAFT**

**MONTGOMERY COUNTY DEPARTMENT OF PARK AND PLANNING  
POLICY AND GUIDELINES ON DONATIONS  
AND PUBLIC/PRIVATE PARTNERSHIPS**

*Prepared for the Montgomery County Planning Board*

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## PURPOSE

The purpose of this policy is to define the circumstances under which it is appropriate for the Montgomery County Department of Park and Planning to receive certain donations and enter into public private partnerships. It is also intended to provide guidelines regarding the development and evaluation of partnerships.

## BACKGROUND

The Montgomery County Department of Park and Planning of the Maryland-National Capital Park and Planning Commission ("Commission") administers some 400 parks and manages nearly 32,000 acres of land in Montgomery County for the benefit and enjoyment of county residents and the protection and preservation of the environment. Facilities and services provided on park land have historically come through the capital and operating budgets of the Commission. However, competition for public tax dollars has led the Commission to look beyond traditional funding sources to carry out its mission.

The Commission recognizes that from time to time individuals or organization want to provide support to the park system through the donation of funds, land or other capital items. The Commission also recognizes that public private partnerships for the development of park land and/or the provision of much needed recreational services have and continue to enable it to bring on line facilities and programs that otherwise may not have been provided. Private partners can also bring to the table development or program proposals that are reflective of new and growing trends in the parks and recreation field far in advance of the public park systems pace, thus enabling the Commission to stay closer to the forefront of emerging needs and interests of its park patrons.

At the same time, public park land is held in trust for the benefit and enjoyment of all Montgomery County citizens now and in the future and should not be exploited for the private interests or benefit of any individual, group or organization. This public trust is a critical value and guiding principle of the Commission, and public private partnerships must be developed and managed in a manner that is consistent with this principle.

This policy is intended to provide a framework by which the Commission can receive and acknowledge the generosity of individuals and organizations desiring to give to the park system (donations) as well as to stimulate and enter into strategic joint ventures (public private partnerships) that will enhance its mission. This policy is also intended to achieve these results while also strictly adhering to the principles of preservation and use of parkland in the best interests of the public, now and in the future.

## DONATIONS

Donations may come to the Commission in a variety of ways and are governed by Commission practice 3-14. Donations of up to \$50,000 may be accepted at the discretion of the Director of Park and Planning. Donations exceeding \$50,000 must be approved by the Planning Board. In addition, all major contributions which result in the development of a capital project on publicly owned land require the notification and approval of the County Council. A list of all donations received by the Commission will be published on an annual basis.

Donations will be either unrestricted or restricted.

### *Unrestricted Donations*

Unrestricted donations offered to the Commission may come in the form of land, real or personal property, services or funds. They may be offered immediately or at a planned time in the future, typically established by agreement, will, or trust. These donation offers are made without stipulation or regard to the subsequent disposition of the asset after its transfer to the Commission.

### *Restricted Donations*

Restricted donations also may take the same form as unrestricted (i.e. land, facilities etc.), and may also be offered at a present or future time. Restricted donations, however, come with a contingency or requirement of the donor, usually related to the nature of the donation itself. These designations or stipulations may include: nature of the use of the property or facility, limitations or parameters related to user groups, affiliated fee structures, specific use of funds, matching requirements, naming rights or other forms of recognition, etc.

## PUBLIC PRIVATE PARTNERSHIPS

For the intents and purposes of this policy, a public private partnership is defined as the "voluntary and strategic joining of the Commission with an individual, group and/or organization(s), non-profit or profit, to achieve a common purpose by the sharing of resources, risks, responsibilities and rewards."

It is the intention of the Commission to actively seek out public private partnership agreements that will:

- 1) allow park services to be continued or enhanced, while maintaining or reducing public tax support, or
- 2) advance or enhance recreation/park facility development through the investment of private resources.



Both solicited and unsolicited proposals will be considered by the Commission to advance this goal.

Every two years, in a timeframe proximate to the approval of the CIP, the Commission will identify priority areas of its mission and work program which are suitable for and likely to attract donations or partnerships. These will be designated as the Commission's "*priorities for donations and partnerships*". Prior to establishing these, the Commission will hold a public forum or otherwise seek citizen input regarding these priorities.

After establishing the priorities, the Commission may solicit partnerships through "requests for proposals" (RFP's) or "requests for expressions of interest" (REOI's) in some specific priority areas. These will include timeframes for response. However, the Commission will be open to unsolicited proposals as well that may come forth at any time.

### *Types of partnerships*

Public private partnerships may take on a wide variety of forms, and the Commission is open to the creative ideas of any proposer who can advance its public mission while reducing its public tax commitment. Examples of existing or potential types of partnerships considered appropriate by the Commission include:

**Adopt-a Field:** Where a private partner agrees to maintain specified ballfields, according to an established standard, for the consideration of exclusive use for certain times and/or days of the week. (Currently regulated by the related Adopt-a Field policy.)

**Operations and Maintenance:** Where the Commission establishes an agreement with a private partner to operate and maintain a facility owned by the Commission.

**Design-Build- Donate:** Where the land is provided by the Commission or donated by a partner, with the design and construction of the facility fully or partially funded by the private partner. It may be operated by the Commission, the partner or a third party.

**Lease- Design-Build-Operate:** Where a private partner fully or partially funds the design and construction of a facility and subsequently operates and maintains it. The Commission leases the land for this purpose. Facility ownership may be retained up to 40 years or ownership could be transferred to the Commission at no cost.

Under the terms of any partnership agreement, facilities developed on MNCPPC land must have ownership transferred to the Commission at the end of 40 years, if not transferred before that time.

## THE STEPS FOR RECEIVING AND PROCESSING PUBLIC PRIVATE PARTNERSHIPS AND RESTRICTED DONATIONS

### *A. PLANNING*

Every two years the Planning Board will establish a "priority" list for potential project and/or service areas which are the most appropriate and desirable for either donations or public private partnerships. Prior to establishing these priorities, public input will be sought to solicit the views of user groups and other interested citizens regarding their needs and interests. This will include discussions with the Parks Foundation and the Recreation Advisory Boards. In addition, the Planning Board will take into consideration the projects that are approved in the six year Capital Improvements Program (CIP) and the ability of these projects to meet the recreation and park needs identified by the Parks and Recreation Open Space (PROS) plan. Major gaps between needs in the PROS plan and the ability of the adopted CIP to meet these needs, as well as trends and desires articulated by citizens, should be the focus of interest for public private partnerships. Preservation and Legacy Open Space, as well as historic preservation, also will be considerations for actively seeking donations and public private partnerships.

The Planning Board will consider the financial and workload impact of proposed projects on Commission resources. It is important that potential requirements for additional staff time and on-going costs that must be sustained in the operating budget be identified. Based on all of these considerations, the Planning Board may decide to actively seek out one or more public private partnerships and direct the issuance of specific RFP's or REOI's.

While the Planning Board may decide to move forward at any time with initiation of a public private partnership, its desired course of action is to focus and consider such ventures only every other year, at a time soon after the CIP is approved by the County Council. Unique and unexpected opportunities which could potentially result in significant public benefit may be considered an important and valid reason for the exception to this planned approach.

### *B. REQUESTS FOR EXPRESSION OF INTEREST/REQUEST FOR PROPOSALS*

As a general principle, partnerships with the Commission will be established through a competitive process. This provides an equal opportunity for all interested parties to respond and allows the Commission the opportunity to compare and select the proposals which best serve the public interest.

When there is opportunity for considerable variation in the respective roles and responsibilities of the partners, and/or when the Commission believes that an open appeal to the private sector may result in creative and entrepreneurial responses, an REOI will be issued. An REOI is a form of broad solicitation intended to determine the level of interest that may exist. It will request the submission of a *concept plan or partnership proposal*, but without the depth of detail, analysis and cost required to respond to a formal RFP.

The REOI will provide for sufficient information in the concept plan to allow the Planning Board to make a judgment whether or not to move forward with the project. This information may include: description of the project or service, the benefits to the public, proposed financing or cost sharing, anticipated roles and responsibilities of the Commission and the private partner(s), estimated impacts on Commission capital or operating budgets, anticipated traffic or other community impacts, identification of potential risks and how the risks would be shared, means/mechanism for community/citizen input, etc.

If the decision is made to move forward, typically a more detailed RFP will be issued for competitive responses. However, some REOI's may be issued with a provision to allow the Commission to move forward directly into negotiations and make a selection through the negotiation process.

When the specific roles, responsibilities and intended results of a proposed partnership are very clear, and/or the timeframe for moving forward is limited, an RFP will be issued (without first issuing an REOI). This will provide specific details about what is being requested of the private partner, the terms that will be required in a written, joint agreement, and the criteria by which the partner will be selected. RFP's will require respondents to spend the time and resources necessary to present a compelling case that the proposal is viable and desirable. This typically will mean the presentation of financial projections, financing commitments, market analyses, traffic studies, as well as select other variables required for the concept plan in an REOI.

### ***C. UNSOLICITED PROPOSALS***

While the Commission will establish a specific, planned timeframe within which to consider public private partnerships every two years, it recognizes that opportunities may present themselves from time to time that, in the best interests of the public, should be considered out of sequence. This situation may apply to both public private partnerships and restricted donations of significant benefit to the public.

When the Commission first becomes aware of an intention to offer a restricted donation or to enter into an unsolicited public private partnership, the proposer will be directed to the *public private partnership team*. This team maintains a clear knowledge and understanding of what the Commission needs to make a judgment on a proposal. There are three guiding principles that the team will use to determine the Commission's initial response the proposal:

- 1) Is the opportunity unique or rare and/or would it be lost if not responded to within a specific, limited timeframe;
- 2) Is the proposal consistent with the core mission;
- 3) Is the likely result a significant net public benefit, in relation to the potential public costs.



If the proposal is not within the core mission or likely to produce a significant public benefit, the offer should be declined. If timing is not an issue, consideration should be given to deferring the proposal until the next planning cycle and priority list.

If it is a rare opportunity that is within the core mission and likely to result in a significant public benefit, the team should respond by encouraging and working with the proposer to develop the information typically required in an REOI (concept paper or partnership proposal) The Commission recognizes the importance of being responsive to such proposers in a timely fashion. At the same time, the Commission also realizes that a decision on whether to accept or proceed with such an offer, and/or how to proceed, needs to be based on sufficient and reliable data and information. If a proposer is not forthcoming with requested information within reasonable timeframes subsequently established by the Commission, the proposal may be delayed until the next planning cycle or otherwise suspended or denied.

There may be occasions when acceptance of unsolicited proposals could result in one or more communities receiving an imbalance of public benefits. In such cases, those making the proposal(s) may be asked to consider doing the project in another location, consider duplicating a similar project in another community, or contributing to a fund to be managed by the Parks Foundation for the purpose of providing projects that will assist in working toward a higher level of balance or equity among communities.

#### *D. EVALUATION AND DECISION*

The Commission staff will make a recommendation to the Planning Board regarding all solicited and unsolicited proposals and offers of donations in excess of \$50,000.

For unsolicited proposals and responses to REOI's, the Planning Board has four options: 1) approve the proposal and decide to move forward by either issuing an RFP or moving directly into negotiations 2) approve the proposal with conditions (which could include acceptance at a later date, when Commission resources are better able to manage the project) 3) defer the proposal until the next planning cycle and re-establishment of priorities, or 4) reject the proposal. The Planning Board should seek public input prior to selecting the course of action.

Evaluation guidelines will be used by the Commission staff in establishing their recommendation and the Planning Board in making their final decision regarding public private partnerships and restricted donations. These guidelines may include:

*Project/service need:* Is the project or service in a priority area established by the Planning Board? Does the project address a need identified by master plans or the PROS plan and not able to be met by existing resources? Does it respond to a service reduction made because of budget limitations?

*Project benefits/impact:* Does the project result in improved levels of service? Will significant numbers of people be served? Would the facility or service otherwise not be provided?

*Project cost/ability to sustain:* How will the project be funded? What portion of the development costs be borne by the private partner? Will the Commission be required to provide operating/maintenance costs, and can they be sustained through the budget process? Will there be a private endowment, friends group or other provisions for on-going maintenance/operating support?

*Risks:* What level of the risk will the Commission assume in relation to the partners risk? What is the impact to the Commission if the project fails? *Relationship to plans:* Is the project consistent with master, sector and/or park plans? Is it consistent with the "one third active /two thirds conservation" policy for regional parks? Does it advance the goals of the PROS plan?

*Uniqueness:* Is this an opportunity that if not acted on now may never be available again, or at least not for a long period of time?

*Project advancement:* Would the timeline for a planned project be advanced without overburdening demands on operating/maintenance budgets?

*Leveraging capacity:* Does the project allow for a limited investment of public dollars that will result in the more significant investment of private, state and/or federal resources?

*Access:* Does the project result in access to services by underserved populations? Would access by the general public be restricted?

*Equity:* Will the project result in an imbalance of amenities for one particular community or part of the county? Is there a provision to address equity issues? *Market:* Has a market analysis or other means determined that the project/service is needed and has a high likelihood to meet projected participation levels and revenue forecasts?

*Fee structures:* Would projected fees allow for reasonable public access? Are there provisions for access by those who cannot afford the fees?

*Corporate capability/Experience/Past performance:* What is the capacity/ability of the proposer to deliver the product; is there a track record of positive performance?

*Financial Viability:* Does the proposer have the financial capability and a sound financial plan to deliver the product?

*Minority involvement:* Has there been consideration and planning for solicitation of minority contractors?

The Commission may use this entire list or may identify specific guidelines from this list to evaluate proposals, depending on the nature of the project or service. The Commission may also weigh certain guidelines as more important than others, and may add new guidelines to this list. Answers to the questions posed in the guidelines should result in the potential for a strong public benefit with limited or reasonable public cost.

A staff recommendation will be made to the Planning Board regarding an REOI, RFP or an unsolicited proposal within 60 days of receipt of all requested information. The Planning Board is committed to making a decision within 45 days of receipt of the staff recommendation.



## E. NEGOTIATION AND CONTRACT

The Commission will enter into written agreements with all private partners and those from whom restricted donations are accepted. All RFP's and certain REOI's will contain specific terms required to reach an agreement. Each will be tailored to the procurement being issued.

Unsolicited proposals will be initially discussed and negotiated on behalf of the Commission by the *public private partnership team*. After an agreement is reached, it will be brought before the Planning Board with a staff recommendation. If during negotiations certain issues could not be resolved, these will also be noted for Planning Board information and consideration. The Planning Board will approve the final terms of all agreements.

Restricted donations or public private partnerships that result in the development of a project will most frequently require two general agreements. These are:

- 1) A development agreement that governs the construction phase. This includes a specific description of the improvements to be built; the review and approval process for construction drawings (both by Commission staff and appropriate permitting agencies); a requirement that the partner obtain a park construction permit; insurance and bonding requirements; and warranty provisions. If the improvements are to be donated to the Commission, the development agreement will provide for the Commission's acceptance of the improvements and appropriate liability release clauses; and
- 2) A lease agreement, if the partner intends to maintain ownership of the improvements, which govern the long-term use of the property. This agreement will dictate the terms of the lease; rental provisions (if any); operation and management provisions (e.g. hours of operation, permitted uses, fees to be charged, payment of utilities); indemnification, liability and insurance clauses; signage and naming rights provisions (if any); other miscellaneous provisions that may apply to a particular use, such as Commission oversight of fees, user groups, assignment, default and/or audit rights.

As a general rule, major public private partnership agreements will be subject to public review and comment before final Planning Board action. In accordance with Maryland law, any lease that extends beyond 20 years must also be approved by the Montgomery County Council. Typically this process includes public hearings and/or work sessions before a Council committee and the full Council. Also in accordance with Maryland law, all improvements constructed on Commission property revert to Commission's ownership at the end of any lease, at no cost to the Commission.

Major projects constructed on public land, even with private funding, also require notification and approval of the County Council. This process can run concurrently with the lease negotiation and review process.

Commission property cannot be mortgaged. For private partners who seek private capital or funding sources, the only interest that can be mortgaged is the leasehold interest itself.

#### ***F. EVALUATION***

Effective partnerships are based on trust, communication and commitment. It is the desire of the Commission to periodically evaluate the effectiveness of its major public private partnerships by evaluating some or all of them. The purpose of the evaluations will be to: 1) commit to continuous excellence and improvement by learning from success and failures; 2) provide a means by which all partners may present concerns about any issues related to the contract, communications or commitment; and 3) provide an independent perspective about how the partnership might be further strengthened (if needed).

Each contract establishing a public private partnership will specify respective roles and responsibilities of the partners and detail certain expectations and deliverables. These may include such things as: acquisition of financing (public or private), securing of permits, method of plan review, construction of a facility, standards for maintenance, projected revenue, etc. Timeframes for reaching certain development milestones may be an important consideration and targeted in the contract. Since public benefit and cost savings are such critical forces underpinning the desire to enter into public private partnerships (from the standpoint of the Commission,) the Commission may also wish to establish measures by which these factors can also be evaluated.

An evaluation team will be appointed by the Director of Park and Planning. It will consist of not more than 7 people, including representative(s) of the Commission and the private partner. There must be at least three volunteer members of this team who are not associated with either partner and represent an independent point of view.

The evaluation team will be responsible for studying and reporting back to the Planning Board the level to which the partners have produced their deliverables, met their timeframes and achieved their agreed upon objectives. The team will also make any recommendations that it determines necessary and desirable to strengthen the partnership. The evaluation will be completed within eighteen months after the contract is signed.

#### **THE ROLE OF THE PUBLIC PRIVATE PARTNERSHIP TEAM**

The Commission has established one senior management position which will have primary responsibility for all public private partnership and donation activities. This person will serve as leader to a designated team of staff made up of representatives from: Office of the General Counsel, Enterprise Division, Park Development and Finance. Finance will have two representatives, as needed. One will specialize in procurement matters while the other will provide for financial analysis, particularly matters related to risk, the potential consequences of failure, due diligence and pro formas. The Executive Director of the Parks Foundation will also serve as a member of the team to provide a key linkage between the Commission and the Parks Foundation related to public private

partnerships. This team will focus and develop specialized expertise in the expedited facilitation and management of public private partnerships and major donations.

This senior manager designated as team leader will report directly to the Director of Park and Planning and be charged with a variety of responsibilities. These include (but are not limited to): serving as the primary contact and focal point within the Commission for all matters related to restricted donations and public private partnerships; working with the team to facilitate partnerships through required processes and within timeframes determined to be reasonable and acceptable to the partner(s) during the negotiation stage; guiding the team in developing and managing RFP's and REOI's; actively seeking respondents; developing recommendations for the Commission regarding priorities for consideration every two years; assisting with contract negotiations; serving as the Commission staff liaison to the Parks Foundation and maintaining consistent communication with partners.

The designation of this team and team leader demonstrates the commitment of the Commission to invite and engage in public private partnerships as a means to further its mission.

#### **THE ROLE OF THE MONTGOMERY PARKS FOUNDATION**

The Montgomery Parks Foundation was founded and incorporated to "preserve, promote and advance the acquisition, protection, use and development of parkland... in order to more adequately serve and provide facilities for the citizens and residents of Montgomery County and thereby lessen the burdens of government". The Commission envisions and invites a strong and proactive role of the Montgomery Parks Foundation with respect to donations and public private partnerships. Providing assistance in these areas is part of the core mission of the Parks Foundation.

The specific projects to be targeted and services to be rendered will be established on an annual basis through dialogue between the Parks Foundation and the Planning Board. The Planning Board has agreed to provide an annual service fee to the Parks Foundation for this work, the level of which will be established through this dialogue and the annual operating budget.

The projects will relate to the list of "*priorities for donations and partnerships*" established every other year by the Planning Board. Recommendations regarding the projects and the specific services to be provided by the Foundation will be made by the *public private partnership team*. The Executive Director of the Parks Foundation will serve as a member of that team and assist in formulating these recommendations. Although the specific work program related to targeted public private partnerships and donations will be established annually, the tasks will typically fall within one or more of the following categories:

### *Identification and Outreach to Funding Sources.*

Identifying individual and corporate contributors and partners, and matching donors with priority needs is a role that is best suited to, and can most ably be carried out, by the Parks Foundation. In addition, seeking and obtaining grants, endowments, gifts, and special program funding from federal, state, county and foundation entities, is a key part of the core mission of the Parks Foundation, as it serves to support the Commission's goals, priorities and work program. The range of solicitation should be broad, from modest donations to major gifts and endowments, with a special emphasis on identifying individuals who have a personal interest and means to enhance one or more segments of the park system.

### *Managing Some Projects*

The Commission envisions the *public private partnership team* (rather than the Parks Foundation) playing the primary role of managing major restricted donations and public/private partnerships. However, the Parks Foundation plays an important role of reaching out and interacting with a wide variety of community groups on behalf of park interests. In this way the Parks Foundation may act as a gateway to initially bring forth donation and partnership proposals from individual, corporate or community organizations. When such proposals are limited in their size and scope, the Commission team may request that the Parks Foundation manage all aspects of the donation. This could include direct procurement, liaison with appropriate Commission staff, assistance with permitting and other actions needed to fulfill the request. The public Private partnership team will recommend specific roles and responsibilities of the Parks Foundation for specific public private partnership projects.

### *Receiving and Dispensing Funds*

Just as the Parks Foundation receives and dispenses funds on behalf of various "Friends" of the Parks organizations, this role will often be appropriate and desirable for public private partnerships as well. The Parks Foundation may assist the Commission by relieving it of this cost and work task, while, at the same time, expediting the flow of funds and the project. Whenever it is in the best interest of the project, the Commission and the Parks Foundation, all or some portion of private funding for public private partnerships should be received and dispensed by the Foundation. This must be approved by the Commission.

### *Appreciation/Recognition*

The Commission believes it is important to provide appreciation and recognition to community, corporate and individual benefactors. This is true to those who have provided valuable services as well as monetary gifts. The Parks Foundation can play an important role in assisting with appreciation/recognition efforts, which may vary depending on the interests and desires of the donor.

### *Achieving Equity*

One potential consequence of donations is that certain communities may become the benefactors of an imbalanced amount of services or facilities. The Commission may request that the Foundation play a key role in establishing and managing an "equity" fund. A percentage of some donations or a portion of the revenue/proceeds from certain public/private partnerships would be put into this fund to provide facilities or services in communities or areas of the county that otherwise may not benefit from these opportunities. When equity is an issue, the Commission may require a donation to such a fund prior to approval of a restricted offer or partnership proposal.