



DATE: December 13, 2016

TO: Parks, Recreation, Marina and Cultural Commission

FROM: Michael Chandler, Assistant to the City Manager

SUBJECT: Bocce Contract Fees and 2017 Reopener

Recommendation:

By motion, adopt the recommendation of the Fee Subcommittee to maintain the existing fee structure as provided within the Martinez Bocce Federation's 2012 contract and consent to reopen the contract for potential amendment in 2017.

Background:

Representatives from the Martinez Bocce Federation (MBF) attended the July 11th Parks Subcommittee meeting to discuss lighting and parking impacts of the latest Waterfront Park design, and the current fee structure of their contract with the City (Attachment 1). MBF representatives also drafted a letter to the PRMCC and discussed their concerns at the September 20th PRMCC meeting (Attachment 2), a primary concern of which was the escalating cost structure of their fees to the City, which are tied to the changes in the Youth Group Athletic Field User fees. As a result, the MBF's fees are scheduled to increase from \$3/player/season in 2016 to \$5/player/season in 2017, followed by increases to \$7 and \$10/player/season in 2018 and 2019, respectively.

A concern of the MBF raised at the September 20th meeting was more information on City costs relative to supporting the bocce complex. The Commission suggested at that time to work with City staff and also meet with the Fee Subcommittee of the PRMCC. The City Manager and Assistant to the City Manager subsequently met with the Commissioner and Vice Commissioner of the MBF on October 12th and provided them with a copy of the City's cost estimates for supporting the bocce complex during the April – October timeframe during which the MBF has exclusive contractual rights to the facility (Attachment 3).

The Fee Subcommittee met on November 5th to commence dialogue with the MBF on the issue. No resolution was reached at that time and the parties agreed to convene another subcommittee meeting on the topic, which was held on December 12th. At that meeting, the parties discussed the ongoing maintenance requirements the MBF incurs to keep the courts to a high standard; the City's cost estimates for maintaining the complex; comparisons (to the extent possible) with other bocce leagues in the area; and the opportunities for the MBF to expand its equipment rentals for the courts on Saturdays when the leagues do not play. The parties also discussed the formal process for amending the MBF's contract, as explained in Section 13.0 of the contract.

This section specifies the agreement, "...may be opened for amendment by either party by providing a written request and with consent to amend by both parties."

Staff considers the letter presented to the PRMCC at the September 20th meeting to qualify as the MBF's written request. The Fee Subcommittee suggested the parties agree to maintain the existing fee structure of the contract for 2017, with fees increasing from \$3/player/season to \$5/player/season, but reopen the contract for potential amendment in 2017. The MBF representatives agreed to this compromise.

Attachments:

- 1) MBF Contract
- 2) MBF Letter to PRMCC (presented at September 20, 2016 meeting)
- 3) City Cost Estimates – Bocce Season

RESOLUTION NO. 106-12

APPROVE THE REVISED USE AGREEMENT BETWEEN THE CITY OF MARTINEZ AND THE MARTINEZ BOCCE FEDERATION

WHEREAS, the City of Martinez has an agreement with the Martinez Bocce Federation that both parties agreement to amend for use of the Bocce Complex located in Waterfront Park and managed by the City of Martinez; and

WHEREAS, the Martinez Bocce Federation has made significant contributions to the improvement of the courts and complex; and

WHEREAS, the City has an interest in continuing use and operation of the Bocce Complex by the Martinez Bocce Federation; and

WHEREAS, the Martinez Bocce Federation has operated leagues and events at the facility for several decades with growing interest and success in the sport of Bocce

NOW, THEREFORE, BE IT RESOLVED by the City Council of Martinez that said revised agreement presented on September 19 ,2012 is approved.

* * * * *

I HEREBY CERTIFY that the foregoing is a true and correct copy of a resolution duly adopted by the City Council of the City of Martinez at a Regular Meeting of said Council held on the 19th day of September, 2012, by the following vote:

AYES: Councilmembers Lara DeLaney, Janet Kennedy, Michael Menesini, Vice Mayor Mark Ross and Mayor Rob Schroder

NOES: None

ABSENT: None


RICHARD G. HERNANDEZ, CITY CLERK
CITY OF MARTINEZ

Attachment A

**CITY OF MARTINEZ AND
MARTINEZ BOCCE FEDERATION**

FACILITY USE AGREEMENT FOR BOCCE COURT COMPLEX AT WATERFRONT PARK

This Agreement of 9/19 2012, is entered into between the City of Martinez, a Municipal Corporation, hereinafter known as the "City", and the Martinez Bocce Federation, hereinafter known as "Federation".

- A. The City leases property from the East Bay Regional Park District to provide a City operated park known as Waterfront Park which is contained within the lands held in trust from the State of California by the East Bay Regional Park District known as Shoreline Regional Park.
- B. The City wishes to sublease a portion of Waterfront Park known as the Bocce Court Complex shown in Exhibit 1 to the Federation.
- C. The Federation has contributed over \$250,000 in construction, maintenance and improvements to the Bocce Court Complex.
- D. The Federation has leased this area from the City since 1985 and has made substantial improvements over the years to the facilities.
- E. The Federation which has been in existence since its inception in 1974; has provided recreation and enjoyment of the Bocce Courts for thousands of people in Martinez and the region.
- F. In February 2012, the Federation requested a revision of the use agreement executed with the City in January 1998 which had an initial term of (10) years and a renewal clause for an additional (10) years.
- G. The City agreed to work on a revised agreement to bring the document up to date and provide an improved and more comprehensive lease agreement for both parties.
- H. The City owns fifteen bocce courts in an area called the Bocce Court Complex located within Waterfront Park which exists for the purpose of promoting social interaction and physical development through recreational play.
- I. City desires to promote recreational opportunity for the health and welfare of its citizens and, therefore, City agrees to allow the Federation to utilize the Bocce Court Complex, and Federation agrees to use said complex under the following conditions and considerations:

1.0 Term: The term of this agreement is ten (10) years from the date specified above, and the Federation shall have the option of renewing this agreement for an additional ten (10) years under the same terms and conditions. To exercise the (10) year renewal, the Federation must send a letter to the City from the Federation Commissioner requesting renewal of the agreement 6 months prior to the expiration of the agreement.

2.0 Federation's Duties: Federation agrees:

2.1 To promote, organize, and conduct bocce tournaments, leagues, and bocce related social activities for any person who wishes to engage in such activities as long as such persons are willing to abide by the reasonable rules of the Federation.

2.2 To adhere to the City's policies regarding discrimination. Which include and are not limited to:

Do not discriminate against any person on the basis of race, religion, national origin, or sex in its performance of the obligations or its exercise of the privileges provided herein.

2.3 To maintain the Bocce Court Complex at the level of City standards for park areas and coordinate maintenance activities with the Public Works Department.

A. Note: The City shall provide maintenance of the Bocce Court Complex commensurate with the maintenance practices of Waterfront Park.

2.4 If Federation employs any persons in connection with the performance of this contract, such persons shall be fully insured as required by the provisions of the Labor Code of the State of California relating to Workers' Compensation Insurance, and the Federation shall hold the City free and harmless from all liability from any cause that may arise by reason of the injuries to any employee of the Federation who are injured while performing any work of labor necessary to carry out the provisions of this Contract.

2.5 The City recognizes that the Federation is unique in the area of community based recreational activities. City acknowledges contribution of over \$250,000.00 for the construction, maintenance and improvement of the Bocce Complex, all to the benefit of Shoreline Park, and has produced a significant degree of good will for the City. In acknowledgment of this contribution and the continued care of the facility including addressing vandalism, justifies a reduced fee for use of the City facility as follows:

A. The Federation agrees to pay the City an annual fee of \$3 per player- which may be adjusted over the course of the agreement for the use of the Waterfront Park Bocce Court Facility area and for the cost of services the City currently provides (restrooms, electricity, water and garbage collection) and any additional services they may provide in the future.

i. The change in fee from a stipend to a per player rate will be incremental as follows:

2013 season - \$1.50 per player
2014 season \$2.25 per player
2015 season - \$3.00 per player

After 2015, changes in rate will be adjusted with the percent change in the Youth Group Athletic Field User Fee. If there is no change in the Youth Group Athletic Field User Fee, then the rate remains the same as the previous year's per player rate.

B. If during the life of this agreement the City's financial situation should significantly improve and the Youth Group Athletic Field User Fee is decreased or eliminated for a fiscal year the MBF will be reduced the percentage the fee goes down and if the fee is suspended then the MBF's fee will also be suspended for the fiscal year(s) the Youth Group Athletic Field User Fee is suspended.

2.6 Maintain 501(C) status in "good standing" with the State and Federal government.

3.0 Scheduling and Use of Bocce Complex: The Federation will have "priority use" of the Bocce Complex as described in 3.1. The Federation will coordinate the scheduled use of the Bocce Complex for use by the public. "Priority Use" is defined as follows: The only authorized user; no use by the public of the courts shall be permitted during said days and times. This use is enforceable per the municipal code 8.24.120.

3.1 Federation activities take place/are scheduled April 1st through October 31st of each year. The Martinez Bocce Federation has reserved use of all the bocce courts during this time as follows:

Hours of league play will be:

- Sunday: 2:00pm - 9:00pm
- Monday - Friday: 5:00pm - 11:00pm
- Thursday: 9:00am - 1:00pm
- Saturday: Will be used for make-up games, tournaments, play-offs and scheduled special events, the hours and dates of use for these activities will be posted at the Bocce Court Complex. MBF will not unreasonably hold reservation for court time; all unused courts will be made available to the public for public casual or scheduled use.

- A schedule will be provided to the Recreation Division for issuance of a City Use permit that the MBF will post in a visible location at the complex; changes to such posts will be included in the monthly scheduling update by the first of the month, the City will be notified directly of any changes that occur in that month after the posted schedule for that month.

Public use must cease one (1) hour prior to the start of league play. Public play will not be allowed on the courts that are designated with an orange cone. These courts have been newly groomed for league play. This use is enforceable per the municipal code 8.24.120.

3.2 Reserved use by the public will be coordinated by the Federation who will maintain a master calendar of organized use of the courts by the Federation and the public. The Federation will submit to the City user information to gain final approval for reserved use by groups other than the Federation or individuals for reserved use of the courts. This may include the submission of a Special Event Permit to the City if the use triggers the criterion for a Special Events Permit as deemed by the City.

3.3 The Federation will disclose to the public that the public can use the courts at no cost and will be placed on the Federation calendar of use for any organized events. The Federation can also give the option of renting equipment to the public to support the use of the Bocce Complex. The Federation may charge a fee for use of the Federation owned equipment, but not for the reserved use of the courts themselves.

3.4 To schedule programs and activities with the Leisure Services Department so as to avoid conflicts with other City programs or park use. Schedules of basic activity will be presented at the City's Leisure Services Department no later than April 10th of each year.

4.0 Alterations and Improvements: Any improvements or modifications by the Federation to the Bocce Complex must be approved by the East Bay Regional Parks and City before installation of the improvement(s). The Federation must use the steps listed below for gaining approvals to make modifications to the Bocce Complex.

- A. First meet with City staff to determine project feasibility and adherence to City construction standards.
- B. Gain approval from the East Bay Regional Park District, Board of Directors.
- C. Project reviewed by the Parks, Recreation, Marina and Cultural Commission (PRMCC) for comment and recommendation to the City Council.
- D. City Council review and approval.

5.0 Insurance, Indemnification and Hold Harmless:

5.1 To indemnify, defend and save harmless City, its officers, agents and employees from and against any and all claims, demands, losses, defense costs, attorney's fees or liability of any kind or nature which City, its officer, agents and employees may sustain or incur or which may be assessed by any person, including Federation, for injury to or death of persons or damage to property, however arising, connected with actions, obligations, etc. of Federation, its agents and employees, under the terms of this contract excepting only liability arising out of the sole negligence or willful misconduct of City.

5.2 To assume all responsibility for damages to property or injuries to persons directly or indirectly caused by services or equipment provided by the Federation furnished under the contract or the condition of the Bocce Court Complex. Federation shall take out and maintain, during the life of the contract, such public liability and property damage insurance in the amount of \$2,000,000 satisfactory in form to the City and with the City added as an additional named insured, as shall protect Federation and City from claims and damages or personal injury, including accidental death, as well as claims for property damage which may arise from or out of this contract, whether by Federation, its subcontractors or anyone directly or indirectly employed by Federation.

A. Each such policy of insurance shall be endorsed to provide; "It is agreed that any insurance maintained by the City of Martinez shall apply in excess and not contribute with insurance provided by this policy." It is further agreed that the coverage afforded shall apply as if separate policies were issued to each (cross liability).

B. "All rights or subrogation are hereby waived against the City of Martinez and members of its City Council and elective or appointive officers or employees, when acting within the scope of their employment or appointment.

C. "This insurance shall not be canceled, limited or non-renewed until after thirty (30) days written notice has been given to the City of Martinez.

a) A Certificate of Insurance is to be submitted to the City of Martinez annually. The Certificate must be signed by the insurance companies named and properly notarized and be on file with City prior to any formal competition.

b) A properly executed endorsement for the additional coverage and conditions is required and must be signed by the insurance companies named.

6.0 Reporting: The Federation agrees to make an annual report and presentation to the Park, Recreation, Marina, and Cultural Commission by April 10th of each year. For the purpose of providing a comprehensive league status report, the Federation will meet with the Community Services Director or his/her designee to discuss the form and content of the report to be presented. The report shall address, but not be limited to:

- Participation summary; number of players, teams, league games and tournaments
- Number of reserved uses by the public and other user groups and number of people served
- Budget summary showing operational expenses, all revenue sources and repairs and vandalism expenses.

7.0 Authority: Federation represents that it has, by properly and duly adopted resolution, authorized the signing of this contract and authorized the person named below to sign on its behalf.

8.0 Termination: Either party may terminate this Agreement by giving the other party written notice of termination thirty (30) days in advance of the date of the desired termination.

9.0 Notices: All notices which may be proper or necessary for the parties hereto to serve on each other, in the case of the City, may be served effectually upon the City by delivering the same in writing to the Community Services Director, City Hall, 525 Henrietta Street, Martinez, CA 94553 and in the case of Federation, may be served effectually upon the Federation by the United States Postal Service to Martinez Bocce Federation, P.O. Box 642, MARTINEZ, CA 94553.

10.0 Assignments: This agreement may not be assigned by Federation without the prior written consent of City.

11.0 Attorney's Fees: In the event litigation is initiated to enforce or interpret the Agreement, the prevailing party shall be entitled to recover its attorney fees and costs, including witness and expert fees.

12.0 Entire Agreement: This agreement contains the sole and only agreement of the parties. Any prior agreements, promises, negotiations, or representations not expressly set forth in this agreement are of no force or effect.

13.0 Amendment: This agreement may be opened for amendment by either party by providing a written request and with consent to amend by both parties.. Amendments will be reviewed by the Parks, Recreation, Marina, and Cultural Commission (PRMCC) and approval or denial of amendments given by the City Council.

CITY OF MARTINEZ

By: *Philip A. Vince* 10/4/12
Philip A. Vince, City Manager

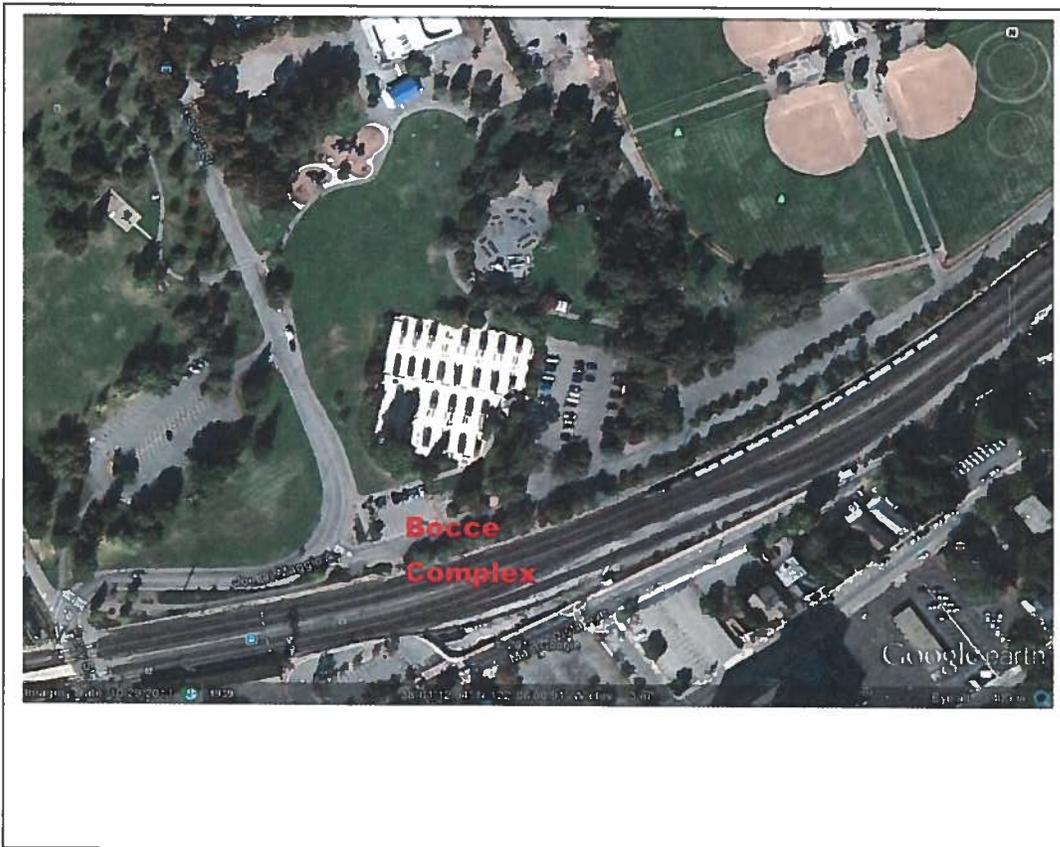
MARTINEZ BOCCE FEDERATION

By: *Bob Rinaldi* 10/4/12
Federation Commissioner

Attachment: Exhibit 1, Map of Bocce Court Complex

Exhibit 1

Waterfront Park



Attachment 2

Presentation to the Martinez PMRCC

For over 40 years the City of Martinez and the Martinez Bocce Federation (MBF) have enjoyed a mutually beneficial relationship. The MBF has a deep respect and appreciation for City staff, Council Members and Commissioners and strives for a positive dialogue at all times.

The MBF organizes and administers recreational activity for well over 2300 people of all ages from all over Contra Costa County who come to Martinez to participate in Bocce league play. The Federation takes pride in being as self-sufficient as possible and, as a result, creating a minimal impact on City staff and public funds. With a great deal of hard work, we have made that a reality year after year. In addition, the MBF has made the City of Martinez the undisputed Bocce capital of the entire country. As a result, the Federation has been the source of a great deal of positive local and national publicity over the years, the most recent article appearing just a few weeks ago on the front page of the Contra Costa Times East Bay section:

http://www.eastbaytimes.com/lafayette/ci_30286556/martinez-bocce-claims-largest-league-u-s

Each of the many articles or film spots extolls both the virtues of our community and the great game of Bocce.

Positive economic impacts are also felt by our Martinez community. Local merchants look forward to Bocce season; restaurants in particular experience increased business during Bocce season. MBF participants drive right through the heart of Martinez, to and from the courts, fostering community awareness in addition to the positive economic impact.

The MBF also acts as a fund raising conduit for community organizations like Loaves and Fishes, Special Olympics, Kiwanis, and many others. The MBF Board of Directors works hard to schedule these events and provide logistical support and equipment rental while providing almost daily maintenance to the facility. We know of no other organized local sports group that facilitates community fundraising like the MBF, which is yet another distinguishing feature that sets the MBF apart.

It is with these facts in mind we would like to start a dialogue regarding two issues of concern going into next year.

The first item is fees. The current contract between the MBF and the City states that the MBF is subject to Park and Recreation department fee increases after 2016. The MBF believes these fee increases are both inequitable and untenable for our program moving forward. Fees will be increased from the current rate of \$3 per player to \$5 per player in 2017, \$7 in 2018 and \$10 in 2019. If these fees are left in place, the burden to the MBF in 2019 would be well in excess of \$20,000. In 2016 the MBF paid \$6,300 to the City in user fees while expending well over \$40,000 in MBF funds on court maintenance fees and infrastructure maintenance alone, not to mention numerous other operational expenses. It should be noted that all Board members are unpaid volunteers. Of the five local cities with organized Bocce (Martinez, Concord, Crockett,

Attachment 2

Pittsburg, and Antioch) no other organization pays anywhere near these fees and some pay nothing. Concord league pays no city fees and they maintain the court surfaces, nothing else. Pittsburg pays \$1.00 per year.

In stark contrast, sports such as baseball and soccer have a substantial impact to City funds. The Joe DiMaggio fields alone require many thousands of dollars in valuable staff time, water, turf and infrastructure maintenance each year. Even artificial turf requires substantial funds for installation, maintenance, repair and eventual replacement. To our knowledge, groups like baseball and soccer provide little or no ongoing maintenance, and their fees cover a fraction of City expenditures, yet we pay the same fees.

While the MBF whole heartedly supports all sports groups, we see no equity in the current fee structure. As a nonprofit organization, the MBF Board has an obligation to the membership with respect to fiduciary duty. The MBF board needs to have a solid understanding of exactly how our member's funds are used, including City fees. In the process of amending the current contract, the MBF board looks forward to a better understanding of how the Federation's dollars are spent by the City so we may provide an accounting to our membership.

The second issue is the lights slated for the Joe DiMaggio fields and their anticipated impacts on Bocce parking. While the MBF supports park improvements, we request assurances that when the lights are installed, field use permits will be issued and signage placed so as to not adversely affect our members' longstanding parking needs—particularly with respect to our senior players. The MBF proudly serves well over 300 seniors that need clear and direct access to the courts.

Once again the MBF looks forward to both a positive dialogue and shared sense of urgency with respect to these issues with staff, Council and the PRMCC. The MBF Board respectfully requests a timely formal reply to our concerns from the PMRCC.

Thank you for your time and attention to these issues, we look forward to meeting with you soon.

Attachment 3

City Costs – Bocce Season

Current monthly City expense relative to Bocce during April – September 6 month season:

Contract restroom cleaning = \$570/mo

City staff garbage collection = \$960/mo

City Water Utility costs = \$1,500/mo (estimate per Bob; Waterfront Park has the meter and season costs were about \$60K)

City 2016 Total Monthly Expenses = **\$3,030/mo**

(note that the above does not include any landscaping or electrical costs, which would add to the total)

City 2016 Total Season Expenses = \$3,030/mo x 6 mos = **\$18,180**

MBF Season Fees to City of Martinez (based on current total of approximately 2,100 members):

2016: \$3/person/season = **\$6,300**

2017: \$5/person/season = **\$10,500**

2018: \$7/person/season = **\$14,700**

2019: \$10/person/season = **\$21,000**