

AN ORDINANCE 2008-11-20-1041

MODIFYING THE CITY CODE AND APPROVING THE ACQUISITION OF FUTURE INTEREST REAL PROPERTY RIGHTS FROM THE UNIVERSITY OF TEXAS SYSTEM IN ORDER TO ALLOW FOR THE SALE AND CONSUMPTION OF ALCOHOLIC BEVERAGES IN BRACKENRIDGE PARK GOLF COURSE.

* * * * *

WHEREAS, in 1899, The Water Works Corporation, owned by George Brackenridge, deeded land to the City for public park purposes; and

WHEREAS, the City used 113 acres of this land to create the Brackenridge Park Golf Course in 1917; and

WHEREAS, the deed from the Water Works Corporation contained conditions which limit the City's use of the property, including a prohibition on the sale or consumption of alcohol; and

WHEREAS, the deed further specified that in the event the City ever violated the conditions contained in the deed that ownership of the property would pass to the University of Texas System (UT) ; and

WHEREAS, in the settlement of a lawsuit in 1989, the City granted control over enforcement of the conditions in the deed to the San Antonio Conservation Society in addition to the rights reserved by UT; and

WHEREAS, in October 2008, the City transferred operation of Brackenridge Park Golf Course to the Municipal Golf Association – San Antonio (MGA-SA); and

WHEREAS, since this transition, the golf course has undergone extensive renovations to return this historic course to its original quality; and

WHEREAS, with the re-opening of Brackenridge, following these renovations, in December, MGA-SA seeks to make it a true golfing destination and enhance the golfing experience with the ability to serve alcohol; and

WHEREAS, additionally, City policy does provide precedent in allowing the sale of alcohol on municipal courses; and

WHEREAS, the Planning Commission approved this acquisition on November 12th, 2008; and

WHEREAS, five of the six municipal courses in San Antonio currently sell alcohol on the golf course properties; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

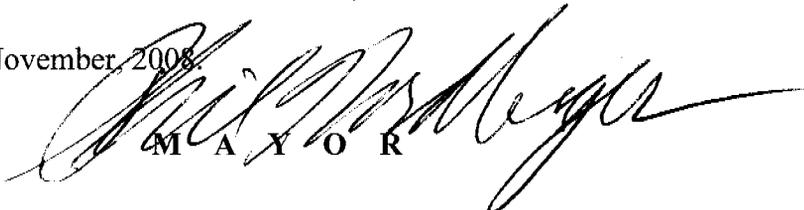
SECTION 1. The acquisition from the University of Texas System of the future interest real property rights associated with the restrictions on the sale or consumption of alcoholic beverages in Brackenridge Park in order to allow for the sale and consumption of alcoholic beverages in Brackenridge Park Golf Course is hereby approved. A copy of the draft deed transferring the future interests to the City of San Antonio is attached hereto and incorporated herein for all purposes as **Attachment I**.

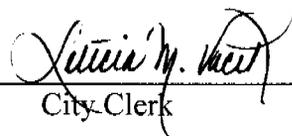
SECTION 2. The City Manager or her designee, or the Director of the Parks and Recreation Department or his designee is further authorized to execute any and all necessary documents to effectuate said acquisition, including the attached Agreement Concerning Standing with the San Antonio Conservation Society attached hereto and incorporated herein for all purposes as **Attachment II**.

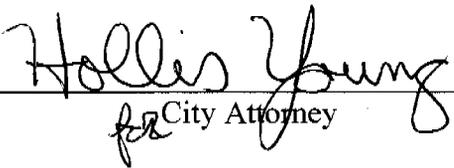
SECTION 3. The City Code of the City of San Antonio is hereby amended to add "Brackenridge Park Golf Course" to the list contained in Section 22-1(b) as a parks facility exempt from the prohibition on the sale, consumption, possession or distribution of alcoholic beverages in any city park.

SECTION 4. This ordinance shall be effective on and after November 30, 2008.

PASSED AND APPROVED this 20th day of November, 2008.


M A Y O R

ATTEST: 
City Clerk

APPROVED AS TO FORM: 
for City Attorney



Request for
**COUNCIL
ACTION**



Agenda Voting Results - 29

Name:	9, 10, 11, 12, 14, 15, 16, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30A, 30B, 30C, 30D, 30E, 30F, 30G, 30H, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47 (Revised by Councilman Rowe at 12/11/08 meeting)
Date:	11/20/2008
Time:	05:35:26 PM
Vote Type:	Motion to Approve
Description:	An Ordinance modifying the City Code and approving the acquisition of future interest real property rights from the University of Texas System in order to allow for the sale and consumption of alcoholic beverages in Brackenridge Park Golf Course. [Pat DiGiovanni, Deputy City Manager]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Phil Hardberger	Mayor		x				
Mary Alice P. Cisneros	District 1		x				
Sheila D. McNeil	District 2		x				
Jennifer V. Ramos	District 3	x					
Philip A. Cortez	District 4	x					
Lourdes Galvan	District 5		x				x
Delicia Herrera	District 6		x			x	
Justin Rodriguez	District 7	x					
Diane G. Cibrian	District 8		x				
Louis E. Rowe	District 9		x				
John G. Clamp	District 10		x				

DEED

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

Effective Date: October ____, 2008

Grantor: BOARD OF REGENTS OF THE UNIVERSITY OF TEXAS SYSTEM

Grantor's Mailing Address:

Real Estate Office
201 West 7th Street, Suite 416
Austin, Travis County, Texas 78701
Attention: Executive Director

Grantee: CITY OF SAN ANTONIO

Grantee's Mailing Address:

P.O. Box 839966
San Antonio, Bexar County, Texas, 78283

Consideration:

ONE HUNDRED FORTY-FIVE THOUSAND and No/100 DOLLARS (\$145,000.00) paid by Grantee, the receipt of which is hereby acknowledged.

Property:

Grantor's future interest that arises out of that portion of numbered condition (3) ("Condition 3") that is quoted below, which condition appears on page 2 of the deed dated November 20, 1899, from Water Works Company to Grantee, recorded in Volume 185, Page 183, of the Deed Records of Bexar County, Texas (the "1899 Deed"), in and to that property, consisting of 113 acres of land, more or less (the "Land") in San Antonio, Bexar County, Texas, more particularly described on the attached Exhibit A, which Land is a portion of that property conveyed to Grantee in the 1899 Deed.

Reservations from and Exceptions to Conveyance and Warranty:

There is reserved from this conveyance all of Grantor's interest, if any, in and to the oil, gas and other minerals in and under the Land, which is expressly reserved to Grantor. This conveyance is made and accepted subject to all easements, covenants, rights-of-way, conditions, restrictions, outstanding mineral interests, royalty interests, statutes and ordinances, if any, pertaining to the Property or the Land, whether of record or not, or visible and apparent on the Land, and all presently recorded matters that affect the

Property or the Land, and subject to the conditions contained in provisions (2) and (4) of the 1899 Deed.

Grantor, for the consideration and subject to the Reservations from and Exceptions to Conveyance and Warranty, GRANTS, SELLS and CONVEYS to Grantee the Property, together with, all and singular, the rights and appurtenances thereto in anywise belonging, to have and hold to Grantee, Grantee's successors or assigns forever, so that neither Granter nor Grantor's successors or assigns shall at any time hereafter have, claim or demand any right or title to the Property. GRANTOR CONVEYS THE PROPERTY TO GRANTEE IN ITS EXISTING "AS IS" CONDITION, WITH NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE AND WITHOUT THE IMPLIED COVENANTS OF SECTION 5.023 OF THE TEXAS PROPERTY CODE.

By its execution of this Deed, Grantor hereby releases all rights of any type or nature held by Grantor to enforce that portion of Condition 3 that states:

(3) That it shall never permit any beer or intoxicating liquor of any kind to be sold, given away or drank within or upon any part of said premises.

When the context requires, singular nouns and pronouns include the plural.

Executed on the date set forth in the acknowledgment line below, to be effective for all purposes as of the Effective Date.

BOARD OF REGENTS OF THE
UNIVERSITY OF TEXAS SYSTEM

By: _____
Florence P. Mayne
Executive Director, Real Estate
The University of Texas System

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

This instrument was acknowledged before me on the _____ day of _____, 2008, by Florence P. Mayne, Executive Director, Real Estate Office of The University of Texas System, for the Board of Regents of The University of Texas System.

Notary Public
The State of Texas

AFTER RECORDING RETURN TO:

EXHIBIT A
to
Deed
Land Description

Beginning at a point in the center of the San Antonio River, twenty five (25) feet up stream above the line where the North line of Josephine Street crosses said River;

thence in an Easterly direction and parallel with said line of Josephine Street to within 25 feet of the boundary line of the tract of land purchased by said Water Works Company from Leonardo Garza;

thence in a northerly direction, parallel with said South boundary line and 25 feet distant therefrom, around the reservation made by the said Garza, to within 25 feet of Josephine Street;

thence in an Easterly direction and parallel with said North line of Josephine Street and 25 feet distant therefrom to a point 250 feet from the West line of River Avenue;

thence in a Northerly direction and parallel with River Avenue and 250 feet distant from said West line of River Avenue to the South right-of-way line of Mulberry Ave.;

thence Westerly with the South right-of-way line of Mulberry Ave. to the river;

thence down said river to a point 25 feet below the North boundary line of a tract of land containing about 45 acres, purchased from W. A. Bennett and James T. Thornton;

thence in a Westerly direction and 25 feet from said North boundary line to within 25 feet of the Upper Labor Ditch;

thence parallel with said ditch to within 25 feet of the South boundary line of said tract;

thence parallel with said South boundary line to the center of the River;

thence down the River, with its meanders, to the place of beginning;

SAVE AND EXCEPT all of said property lying to the South of the North right-of-way line of U.S. Highway 281.

AGREEMENT CONCERNING STANDING

This Agreement is by and between the City of San Antonio ("COSA"), the San Antonio Conservation Society ("Conservation Society"), and Municipal Golf Association-SA ("MGA").

RECITALS:

Whereas, by Deed dated November 20, 1899 (the "1899 Deed"), the Water Works Company by Geo. W. Brackenridge, as Grantor, granted and conveyed land to the City of San Antonio subject to the following express conditions (collectively the "Restrictive Covenants"), to-wit:

- (1) That the City of San Antonio shall at all times in good faith permit the said Water Works Company, its successors or assigns, as the case may be, to enjoy and exercise the property rights and privileges as reserved;
- (2) That it shall not permit said premises, or any part thereof, at any time, to be used for any other purpose or purposes than a public park;
- (3) That it shall never permit any beer or intoxicating liquor of any kind to be sold, given away or drank within or upon any part of said premises (hereinafter "Alcoholic Beverage Restriction"), nor shall it ever permit said premises, or any part thereof, to be used or occupied for any illegal purposes whatsoever; and
- (4) That it shall never convey, alienate or encumber same, or any part thereof.

Whereas, the 1899 Deed further provided that if any of the Restrictive Covenants be broken at any time and upon complaint thereof being made in writing to the governing body of the City, and if the City does not promptly repair the breach, then the title to said premises shall at once pass from the City and vest in the State of Texas for the benefit of the University of Texas.

Whereas, by Agreed Judgment dated September 13, 1989 signed by Judge Peter Michael Curry and entered into in Cause Number 86-CI-20411, City of San Antonio vs. Margaret Pace Willson, in the District Court, 150th Judicial District, Bexar County, Texas, (the "Agreed Judgment") the Conservation Society was granted judicial standing on behalf of itself and as a representative of the citizens of San Antonio, to enjoin violations of, to enforce and insure compliance by the City, its successors, assigns, lessees, franchisees, and licensees, of all covenants in the 1899 Deed, the 1917 Deed and the Koehler Deed (both deeds as defined in the Agreed Judgment), and the conditions set forth in the Agreed Judgment.

Whereas, MGA entered into a License Agreement with COSA concerning management of the Brackenridge Golf Course. For purposes of this Agreement, the Brackenridge Golf Course is defined as an approximate 113.609 acres more particularly defined on Exhibit "A" and more particularly depicted on Exhibit "B", and which 113.609 acres is located south of east Mulberry, west of Avenue "B", north and east of U.S. Highway 281, south of Craig Place, and east of River Road and Avenue "A".

Whereas, MGA and COSA have reached an agreement with the University of Texas whereby the University of Texas would transfer to COSA the Alcoholic Beverage Restriction solely as it concerns the Brackenridge Golf Course.

Whereas, MGA and COSA has requested that the Conservation Society consent to the transfer of the Alcoholic Beverage Restriction solely as it concerns the Brackenridge Golf Course to COSA, and the Conservation Society has agreed to consent to the assignment provided that the parties agree that the standing of the Conservation Society under the Agreed Judgment to enforce the Restrictive Covenants other than the Alcoholic Beverage Restriction solely as it concerns the Brackenridge Golf Course not be prejudiced.

Now, therefore, in consideration of the premises and the mutual covenants contained in this Agreement, the parties agree as follows:

1. The Conservation Society consents to the transfer by the University of Texas to COSA of the Alcoholic Beverage Restriction solely as it concerns the Brackenridge Golf Course. The Conservation Society has not consented to the transfer of the Alcoholic Beverage Restriction as to any of the other land described in the 1899 Deed except as to the Brackenridge Golf Course.
2. COSA and MGA agree that the consent by the Conservation Society to such transfer of the Alcoholic Beverage Restriction does not in any manner constitute a waiver, estoppel, or otherwise prejudice the standing granted to the Conservation Society in the Agreed Judgment to enjoin violations of and to enforce and insure compliance of the Restrictive Covenants contained in the 1899 Deed and the 1917 Deed, and similar restrictive covenants contained in the Koehler Deed, and the conditions set forth in the Agreed Judgment.

Signed effective this ____ day of _____, 2008.

CITY OF SAN ANTONIO

By: _____

Its: _____

SAN ANTONIO CONSERVATION SOCIETY

By: _____

Its: _____

MUNICIPAL GOLF ASSOCIATION - SA

By: _____

Its: _____

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CITY OF SAN ANTONIO
Request for Council Action

Agenda Item # 29
Council Meeting Date: 11/20/2008
RFCA Tracking No: R-4173

DEPARTMENT: City Manager's Office

COUNCIL DISTRICT(S) IMPACTED:
Council District 1

SUBJECT:
Brackenridge Park Golf Course Deed transaction

SUMMARY:
This ordinance approves the removal of restrictions on the sale or consumption of alcohol in Brackenridge Park Golf Course by the acquisition of future interest real property rights from the University of Texas System.

BACKGROUND INFORMATION:
In 1899, The Water Works Corporation, owned by George Brackenridge, deeded land to the City for public park purposes. The City used 113 acres of this land to create the Brackenridge Park Golf Course in 1917. The deed from the Water Works Corporation contained conditions which limit the City's use of the property, including a prohibition on the sale or consumption of alcohol. The deed further specified that in the event the City ever violated the conditions contained in the deed that ownership of the property would pass to the University of Texas System (UT). In the settlement of a lawsuit in 1989, the City granted control over enforcement of the conditions in the deed to the San Antonio Conservation Society in addition to the rights reserved by UT.

In October 2008, the City transferred operation of Brackenridge Park Golf Course to the Municipal Golf Association – San Antonio (MGA-SA). Since this transition, the golf course has undergone extensive renovations to return this historic course to its original quality. With the re-opening of Brackenridge, following these renovations, in December, MGA-SA seeks to make it a true golfing destination and enhance the golfing experience with the ability to serve alcohol. Additionally, City policy does provide precedent in allowing the sale of alcohol on municipal courses. Five of the six municipal courses in San Antonio currently sell alcohol on the golf course properties.

ISSUE:

UT's right to enforce the ban on the sale or consumption of alcohol is a property right which can be transferred. This right has been appraised and the MGA-SA has agreed to pay UT the determined fair market value in exchange for the transfer of these rights to the City, effectively lifting the ban on the sale of alcohol on the golf course property.

This proposal is supported by the San Antonio Conservation Society; provided that alcohol sales and consumption are limited to the golf course and the Conservation Society's ability to enforce

the conditions in the deed remain unchanged. Additionally, this proposal was heard by the City's Planning Commission on November 12, 2008.

ALTERNATIVES:

City Council may elect to deny the acquisition of this real property right. Doing so would prohibit MGA-SA from selling alcohol at Brackenridge and would put the course at a disadvantage in its goal to become a golfing destination. Should MGA-SA move forward with their plans to allow the sale of alcohol at the course, they would be in violation of the deed and the property would revert back to UT. The City would lose its most historic and popular municipal golf course.

FISCAL IMPACT:

There is no impact to the City's General Fund. MGA-SA an independent non-profit will be paying the acquisition costs.

RECOMMENDATION:

Planning Commission considered this item on November 12, 2008 and recommended approval.

Staff recommends approval of the acquisition of this real property right. This approval will allow the City to continue to provide quality experiences at our municipal golf courses and enhance the golfing experience at Brackenridge Park Golf Course.

ATTACHMENT(S):

File Description	File Name
Draft Deed	Deed (omitting 2 acre tract) revised 20081023.doc
Voting Results	
Original Vote Slip	Original Vote Slip.pdf
Ordinance/Supplemental Documents	200811201041.pdf

APPROVED FOR COUNCIL CONSIDERATION:

Pat DiGiovanni Deputy City Manager