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**MEMORANDUM**

To: Jeffery A. Eder, Town Manager of the Town of Brownsburg  
From: Frost Brown Todd LLC  
Date: May 7, 2020  
Re: Authority to Dissolve the Board of Parks and Recreation and Related Issues

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**Authority of the Town Council to Dissolve the Board of Parks and Recreation**

Because the Town of Brownsburg (the “Town”) is the political subdivision that established the Board of Parks and Recreation (the “Board”), and there is no authority limiting the Town’s authority to dissolve the Board, the Town reserves the exclusive power to dissolve the Board.

IC 36-10-3-3, a copy of which is attached hereto and incorporated herein by reference as Exhibit A, sets forth the standard requirements to create a department of parks and recreation. The fiscal body of a unit (here, the Town Council) may adopt an ordinance creating a department of parks and recreation and repealing in the ordinance or resolution prior ordinances or resolutions creating separate park and recreation authorities. The department consists of a park and recreation board, a superintendent, and other personnel that the board determines. After a board has been created, all books, papers, documents, and other property of former park and recreation authorities are transferred to and become the property of the board. The Board and the Department of Parks and Recreation were established by the Town pursuant to Ord. 2, 1959<sup>1</sup>, as amended by Ord. 2006-12. A copy of Ord. 2006-12 is attached hereto and incorporated herein by reference as Exhibit B.

The Board is in charge of the Department of Parks and Recreation, and generally speaking has all powers, duties, privileges, and exercises all functions contemplated by IC 36-10-3 *et seq.* and supported by the Town Council’s Ordinance. The powers of the Board are set forth in IC 36-10-3-11, and the Board may:

- (1) enter into contracts and leases for facilities and services;
- (2) contract with persons for joint use of facilities for the operation of park and recreation programs and related services;
- (3) contract with another board, a unit, or a school corporation for the use of park and recreation facilities or services, and a township or school corporation may contract with the board for the use of park and recreation facilities or services;

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<sup>1</sup> We have not been able to locate a copy of Ordinance 2, 1959.

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- (4) acquire and dispose of real and personal property, either within or outside Indiana;
- (5) exercise the power of eminent domain under statutes available to municipalities;
- (6) sell, lease, or enter into a royalty contract for the natural or mineral resources of land that it owns, the money received to be deposited in a nonreverting capital fund of the board;
- (7) engage in self-supporting activities as prescribed by IC 36-10-3-22;
- (8) contract for special and temporary services and for professional assistance;
- (9) delegate authority to perform ministerial acts in all cases except where final action of the board is necessary;
- (10) prepare, publish, and distribute reports and other materials relating to activities authorized by IC 36-10-3;
- (11) sue and be sued collectively by its legal name, as the Brownsburg Park and Recreation Board, with service of process being had upon the president of the board, but costs may not be taxed against the board or its members in any action;
- (12) invoke any legal, equitable, or special remedy for the enforcement of IC 36-10-3, a park or recreation ordinance, or the board's own action taken under either; and
- (13) release and transfer, by resolution, a part of the area over which it has jurisdiction for park and recreational purposes to park authorities of another unit for park and recreational purposes upon petition of the park or recreation board of the acquiring unit.

The Board may also lease any buildings or grounds belonging to the unit and located within a park to a person for a period not to exceed fifty (50) years. The lease may authorize the lessee to provide upon the premises educational, research, veterinary, or other proper facilities for the exhibition of wild or domestic animals in wildlife parks, dining facilities, swimming facilities, golf courses, skating facilities, dancing facilities, amusement rides generally found in amusement parks, or other recreational facilities. A lease may be made for more than one (1) year only to the highest and best bidder, after notice that the lease will be made has been given by publication in accordance with IC 5-3-1. Notwithstanding the foregoing, the Board may lease buildings or grounds belonging to the unit for a period of more than one (1) year without soliciting the highest and best bidder or providing notice under IC 5-3-1 if: (1) the buildings or grounds are leased to an Indiana nonprofit corporation; (2) the buildings or grounds are operated as a public golf course; and (3) the golf course remains subject to rules and regulations promulgated by the board.

In addition, IC 36-10-3-10 sets for the duties of the Board, which include:

- (1) exercise general supervision of and make rules for the department;
- (2) establish rules governing the use of the park and recreation facilities by the public;
- (3) provide police protection for its property and activities, either by requesting assistance from state, municipal, or county police authorities, or by having specified

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- employees deputized as police officers; the deputized employees, however, are not eligible for police pension benefits or other emoluments of police officers;
- (4) appoint the necessary administrative officers of the department and fix their duties;
  - (5) establish standards and qualifications for the appointment of all personnel and approve their appointments without regard to politics;
  - (6) make recommendations and an annual report to the executive and fiscal body of the unit concerning the operation of the board and the status of park and recreation programs in the district;
  - (7) prepare and submit an annual budget in the same manner as other executive departments of the unit; and
  - (8) appoint a member of the board to serve on another kind of board or commission, whenever a statute allows a park or recreation board to do this.

Indiana's Home Rule Statute set forth in IC 36-1-3-8, a copy of which is attached hereto and incorporated herein as Exhibit C, provides that a unit does not have the power to dissolve a political subdivision except as expressly granted by statute, or if IC 36-1-8-17.7 applies to the political subdivision, in accordance with the procedure set forth in IC 36-1-8-17.7. IC 36-1-8-17.7, a copy of which is attached hereto and incorporated herein by reference as Exhibit D, provides the process for a political subdivision to be dissolved by the political subdivision that established it.

The Town is not prohibited from dissolving the Board. Because parks are special taxing districts, they are political subdivisions and therefore the Town Council may dissolve the Board because the Town was the political subdivision that created it. Case law supports the Town's ability to dissolve the Park Board. In *Town of Cedar Lake v. Alessia*, 985 N.E.2d 55 (Ind. Ct. App. 2013), the Town Council of Cedar Lake terminated each of the Cedar Lake Park Board Members' positions on the Park Board and voted in new members. The terminated Park Board Members subsequently filed a complaint against the Town and members of the Town Council alleging they had been improperly removed. The new members resigned, and the Park Board Members were reinstated. The Town Council then adopted an ordinance, amending the previous ordinance that established the Park Board, which provided that the park and recreation functions and services were to be provided by the Town going forward and dissolved the Park Board and Parks Department. The Park Board Members brought a new complaint, alleging that the ordinance was "*ultra vires*, improper, and not authorized by statute."

The trial court agreed with the Park Board Members, stating that the ordinance "was improper[ ] and beyond the scope of [the Town Council's] authority under the Indiana Code"; and that the Town should be "enjoined from interfering in the workings of the Parks & Recreation Board," and that the Park Board be "re-instated and the parties returned to the status quo." The Indiana Court of Appeals, in relevant part, reversed the trial court ruling and held that the Town of Cedar Lake did not need express statutory authority to abolish its Parks Department and Parks

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Board; in abolishing the Parks Department, the Town of Cedar Lake did not impose duties on another political subdivision in violation of the Home Rule Act; and the park and recreation laws did not preempt Town's authority to abolish the Parks Department.

Indiana's Home Rule Statute still controls and has not been preempted by any other statute regarding the dissolution of park boards and parks departments. After *Town of Cedar Lake*, the proposition of that case was reaffirmed by the General Assembly's amendment of the Home Rule Statute to expressly grant political subdivisions the authority to dissolve political subdivisions they establish. Accordingly, the Town of Brownsburg, via the Town Council, retains the exclusive authority to dissolve the Board.

**Authority of the Town Council Over the Park District**

The Town has not formally established a Park District. Because the Park District is a special taxing district, it is a political subdivision. The Park District was not established by the Town, but was instead established by the Indiana General Assembly via IC 36-10-3-19, which states that "[t]he territory within the boundaries of the unit comprises a special taxing district for the purpose of levying special benefit taxes for park and recreational purposes as provided in this chapter." The Town Council may nonetheless revoke the Park Board's authority over the Park District.

**Next Steps and Considerations**

As the Town evaluates the possibility of dissolving the Board, careful attention should be paid to the statutory and legal process to accommodate such dissolution. To assist in that regard, we have provided a preliminary statutorily required process and timeline to dissolve the Board in Exhibit E attached hereto and incorporated herein by reference. Furthermore, the Town will need to consider amendments that may be required to the Town's Code Ordinances. A preliminary list of Town Code of Ordinance provisions that may need to be amended is attached hereto and incorporated herein by reference as Exhibit F. In addition, the Town issued \$4,495,000 of Park District Bonds, Series 2019 on December 20, 2019. The Board was required to take certain actions relative to the bond issuance, so the Town will need to be mindful of any implications that dissolution of the Board may have on the outstanding park bond debt. In that regard, a careful review of all approvals, tax documents, issuance documents, and future financing implications will be required.

The authorizing dissolution documents should be drafted carefully to ensure compliance with statutory and legal requirements. As a preliminary matter relating to the dissolution documents referenced in Exhibit E and the Town Code provisions in Exhibit F, we would suggest considering language that repeals the provisions of the Town Code that had established the Park Board and other related provisions, and replace those provisions with new provisions. The new

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provisions should state that the “Town Council shall have full authority and responsibility to establish, aid, maintain and operate all public and park-owned park, playground, recreational facilities, programs and properties,” and that the Town Council “shall have and exercise all powers necessary to establish, aid, maintain and operate public parks, playgrounds, recreational facilities, programs and properties, including the authority to hire and fix the compensation of a Park Director and such other personnel as the Town Council deems appropriate.” The Town could also considering including language in the Town Code provisions to allow the Town Council to establish advisory committees “interested in the Town public parks, playgrounds, recreational facilities, programs and properties”; to allow the Town Council to “establish comprehensive rules and regulations for the governance of park land, property, activities and employees”; and to hire a Park Director, whose qualifications, powers, and duties are to be further defined.

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**EXHIBIT A**

**IC 36-10-3-3**

West's Annotated Indiana Code  
Title 36. Local Government (Refs & Annos)  
Article 10. Recreation, Culture, and Community Facilities  
Chapter 3. General Park and Recreation Law

IC 36-10-3-3

36-10-3-3 Department of parks and recreation; creation; transfer of property  
to park and recreation board; amendment of establishing ordinance

Effective: July 1, 2019

Currentness

Sec. 3. (a) Except as provided in subsection (c) and section 3.1 of this chapter, the fiscal body of a unit may adopt an ordinance creating a department of parks and recreation and repealing in the ordinance or resolution prior ordinances or resolutions creating separate park and recreation authorities. The department consists of a park and recreation board, a superintendent, and other personnel that the board determines.

(b) After a board has been created, all books, papers, documents, and other property of former park and recreation authorities shall be transferred to and become the property of the board.

(c) This subsection applies to all counties. A county fiscal body may amend the ordinance that creates the department described in this section. If the county fiscal body amends the ordinance as to the composition of the county board, the ordinance must provide that the members of the county board are appointed in accordance with section 4.2 of this chapter. After December 31, 2019, the county fiscal body may not adopt a new ordinance to create a department described in this section, as set forth in section 3.1(d) of this chapter.

**Credits**

As added by Acts 1981, P.L.309, SEC.110. Amended by P.L.354-1985, SEC.2; P.L.11-1987, SEC.34; P.L.157-1991, SEC.3; P.L.75-2019, SEC.1, eff. July 1, 2019.

I.C. 36-10-3-3, IN ST 36-10-3-3

The statutes and Constitution are current with all legislation of the 2020 Second Regular Session of the 121st General Assembly effective through June 30, 2020.

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**EXHIBIT B**

**ORDINANCE 2006-12**



Ordinance No. 2006-12

Dated: MAY 25, 2006

**TOWN OF BROWNSBURG, INDIANA**  
**AN ORDINANCE AMENDING THE PARKS AND RECREATION**  
**ORDINANCES**  
**OF**  
**THE TOWN OF BROWNSBURG, HENDRICKS COUNTY, INDIANA**

An Ordinance Amending Title III, Section 31.45 of the Code of Ordinances of the Town of Brownsburg, Indiana, regarding the Department of Parks and Recreation of the Town of Brownsburg.

BE IT ORDAINED by the Municipal Town of Brownsburg, Indiana, that:

WHEREAS, the Town of Brownsburg, Indiana, has previously established by Ordinance 2, 1959, an ordinance establishing the Board of Parks and Recreation for the Town which is codified as Section 31.35 of the Town of Brownsburg Code of Ordinances; and,

WHEREAS, the Town Council has determined that said provision does not adequately provided for the establishment of a Park and Recreation Board under current state law; and

WHEREAS, the Town of Brownsburg, has heretofore established a Park and Recreation Board which should be reestablished under the current state law.

NOW THEREFORE, by the powers vested in the Town Council of the Town of Brownsburg, Indiana and by the authority vested in said Council by the terms and provisions of Indiana Code I.C. 36-10-3 et. seq., Be it Ordained that the Title III, Section 31.45 et. seq. of the Town of Brownsburg Code of Ordinances is hereby amended as follows:

Section 31.45 is amended to read as follows:

Section 31.45 Under the provisions of I.C. 36-10-3 as amended from time to time, there is hereby established a Department of Parks and Recreation composed of a Board of Parks and Recreation, and other personnel as the Board shall determine, in which department is vested the custody, control, operation, management, and maintenance of all public parks, playgrounds, and other public park and recreational facilities in the Town of whatever nature or kind.

Section 31.46 (A) is amended to read as follows:

Section 31.46 Board Established: Composition and Meetings.

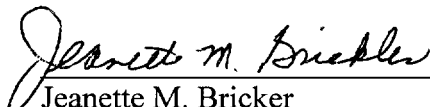
(A) There is created and established a Board of Parks and Recreation, to be known and designated as the Town Park and Recreation Board, which Board shall be in charge of the Department of Parks and Recreation created in Section 31.45, and which Board shall have all powers, duties, privileges, and shall exercise all functions and have all powers contemplated and provided for in Indiana Code 36-10-3 et.seq. as amended from time to time. The Board of Parks and Recreation shall have the general power to perform all actions necessary to acquire and develop sites and facilities, to conduct such programs that are generally understood to be park and recreation functions, including the powers and duties listed in I.C 36-10-3 et. seq.

THIS ORDINANCE IS HEREBY ISSUED, PASSED AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF BROWNSBURG, HENDRICKS COUNTY, INDIANA, this 25<sup>TH</sup> day of MAY, 2006, and shall be in full force and effect from and after its passage and approval according to the laws of the State of Indiana.

TOWN COUNCIL OF THE TOWN OF BROWNSBURG, INDIANA

  
MIKE GREEN, VICE PRESIDENT

ATTEST:

  
\_\_\_\_\_  
Jeanette M. Bricker  
Clerk-Treasurer

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**EXHIBIT C**

**IC 36-1-3-8**

West's Annotated Indiana Code  
Title 36. Local Government (Refs & Annos)  
Article 1. General Provisions  
Chapter 3. Home Rule

IC 36-1-3-8

36-1-3-8 Powers specifically withheld

Effective: July 1, 2019

Currentness

Sec. 8. (a) Subject to subsection (b), a unit does not have the following:

- (1) The power to condition or limit its civil liability, except as expressly granted by statute.
- (2) The power to prescribe the law governing civil actions between private persons.
- (3) The power to impose duties on another political subdivision, except as expressly granted by statute.
- (4) The power to impose a tax, except as expressly granted by statute.
- (5) The power to impose a license fee greater than that reasonably related to the administrative cost of exercising a regulatory power.
- (6) The power to impose a service charge or user fee greater than that reasonably related to reasonable and just rates and charges for services.
- (7) The power to regulate conduct that is regulated by a state agency, except as expressly granted by statute.
- (8) The power to prescribe a penalty for conduct constituting a crime or infraction under statute.
- (9) The power to prescribe a penalty of imprisonment for an ordinance violation.
- (10) The power to prescribe a penalty of a fine as follows:
  - (A) More than ten thousand dollars (\$10,000) for the violation of an ordinance or a regulation concerning air emissions adopted by a county that has received approval to establish an air permit program under IC 13-17-12-6.

(B) For a violation of any other ordinance:

(i) more than two thousand five hundred dollars (\$2,500) for a first violation of the ordinance; and

(ii) except as provided in subsection (c), more than seven thousand five hundred dollars (\$7,500) for a second or subsequent violation of the ordinance.

(11) The power to invest money, except as expressly granted by statute.

(12) The power to order or conduct an election, except as expressly granted by statute.

(13) The power to adopt or enforce an ordinance described in section 8.5 of this chapter.

(14) The power to take any action prohibited by section 8.6 of this chapter.

(15) The power to dissolve a political subdivision, except:

(A) as expressly granted by statute; or

(B) if IC 36-1-8-17.7 applies to the political subdivision, in accordance with the procedure set forth in IC 36-1-8-17.7.

(16) After June 30, 2019, the power to enact an ordinance requiring a solid waste hauler or a person who operates a vehicle in which recyclable material is transported for recycling to collect fees authorized by IC 13-21 and remit the fees to:

(A) a unit; or

(B) the board of a solid waste management district established under IC 13-21.

(b) A township does not have the following, except as expressly granted by statute:

(1) The power to require a license or impose a license fee.

(2) The power to impose a service charge or user fee.

(3) The power to prescribe a penalty.

(c) Subsection (a)(10)(B)(ii) does not apply to the violation of an ordinance that regulates traffic or parking.

**Credits**

As added by Acts 1980, P.L.211, SEC.1. Amended by Acts 1981, P.L.17, SEC.3; P.L.123-1987, SEC.2; P.L.3-1987, SEC.540; P.L.3-1990, SEC.122; P.L.251-1993, SEC.4; P.L.164-1995, SEC.14; P.L.1-1996, SEC.84; P.L.200-2005, SEC.4; P.L.13-2013, SEC.148, eff. April 1, 2013; P.L.150-2016, SEC.1, eff. March 23, 2016; P.L.189-2016, SEC.5, eff. July 1, 2016; P.L.19-2019, SEC.3, eff. July 1, 2019.

I.C. 36-1-3-8, IN ST 36-1-3-8

The statutes and Constitution are current with all legislation of the 2020 Second Regular Session of the 121st General Assembly effective through June 30, 2020.

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**EXHIBIT D**

**IC 36-1-8-17.7**

West's Annotated Indiana Code  
Title 36. Local Government (Refs & Annos)  
Article 1. General Provisions  
Chapter 8. Miscellaneous Fiscal and Administrative Provisions

IC 36-1-8-17.7

36-1-8-17.7 Political subdivisions; dissolution

Effective: July 1, 2019

Currentness

Sec. 17.7. (a) This section applies to a political subdivision:

(1) that was established by another political subdivision; and

(2) for which, except as set forth in IC 13-21-3-1(d) and IC 13-21-15, there is no process or procedure expressly specified by law regarding the dissolution of the political subdivision.

(b) A political subdivision described in subsection (a) may be dissolved according to the following:

(1) The political subdivision described in subsection (a) may be dissolved as provided in this section only by the political subdivision that established the political subdivision described in subsection (a).

(2) The legislative body of the political subdivision that established the political subdivision described in subsection (a) must adopt a preliminary resolution stating the intent of the legislative body to dissolve the political subdivision described in subsection (a). For a county described in IC 36-1-2-5(1) and IC 36-1-2-9(1), the adoption under IC 13-21-3-1(d)(1)(A) by the county executive of an ordinance in favor of the dissolution of a solid waste management district satisfies this requirement.

(3) The legislative body that established the political subdivision described in subsection (a) must hold a separate public meeting regarding the proposed dissolution of the political subdivision described in subsection (a). Notice of the meeting shall be given in accordance with IC 5-3-1. The legislative body must hold the public meeting:

(A) except as provided in clause (B), at least ninety (90) days after adopting the preliminary resolution under subdivision (2); or

(B) at least one hundred eighty (180) days after adopting the preliminary resolution under subdivision (2), in the case of the proposed dissolution of a political subdivision described in subsection (a) that has been in existence for at least ten (10) years.



(4) At least ten (10) days before the public meeting under subdivision (3), the legislative body that established the political subdivision described in subsection (a) must make available to the public a plan regarding the proposed dissolution. If the legislative body maintains an Internet web site or an Internet web site is maintained on behalf of the legislative body, a copy of the plan must be posted on the Internet web site at least ten (10) days before the public meeting under subdivision (3).

(5) The plan regarding the proposed dissolution must specify the following:

(A) The effective date of the dissolution.

(B) A description of the assets and obligations of the political subdivision described in subsection (a) and a proposal regarding the distribution of those assets and the satisfaction of those obligations.

(C) A description of the services currently provided by the political subdivision described in subsection (a) and (if applicable) an explanation of how those services will be provided after the dissolution of the political subdivision described in subsection (a).

(6) At the public meeting under subdivision (3), the legislative body shall allow the public an opportunity to testify and comment upon the proposed dissolution.

(7) At the public meeting under subdivision (3), the legislative body may adopt an ordinance (in the case of the legislative body of a county or municipality) or a resolution (in the case of the legislative body of any other political subdivision) dissolving the political subdivision described in subsection (a) as provided in the plan described in subdivision (5).

#### **Credits**

As added by P.L.189-2016, SEC.6, eff. July 1, 2016. Amended by P.L.10-2019, SEC.133, eff. July 1, 2019.

I.C. 36-1-8-17.7, IN ST 36-1-8-17.7

The statutes and Constitution are current with all legislation of the 2020 Second Regular Session of the 121st General Assembly effective through June 30, 2020.

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**EXHIBIT E**

**STATUTORILY REQUIRED PROCESS AND TIMELINE  
TO DISSOLVE THE PARK BOARD**

<u>Date</u>	<u>Action</u>	<u>Status</u>
	Town Council adopts preliminary resolution stating the intent of the Town Council to dissolve the Park Board. <sup>2</sup>	
	Notice of public meeting/public hearing published in accordance with IC 5-3-1 <sup>3</sup>  <i>*Must be at least 10 days before the public meeting/public hearing</i>	
	Town Council makes available to the public and posts on the Town website a plan regarding the proposed dissolution <sup>4</sup>  <i>*Must be available at least 10 days before the public meeting/public hearing</i>	
	Town Council holds public meeting/public hearing regarding proposed dissolution at which the public must be allowed to testify and comment on proposed dissolution. <sup>5</sup>  <i>*Must be at least 180 days after adoption of preliminary resolution because the Park Board was established more than 10 years ago</i>	
	Town Council adopts Resolution dissolving the Park Board at the public meeting <sup>6</sup>	

<sup>2</sup> IC 36-1-8-17.7(b)(2)

<sup>3</sup> IC 36-1-8-17.7(b)(3)

<sup>4</sup> IC 36-1-8-17.7(b)(4). The plan must specify (1) the effective date of the dissolution, (2) A description of the assets and obligations of the Department/Park Board and a proposal regarding the distribution of those assets and the satisfaction of those obligations, and (3) a description of the services currently provided by the Department/Park Board and an explanation of how those services will be provided after the dissolution.

<sup>5</sup> IC 36-1-8-17.7(b)(3)(B)

<sup>6</sup> IC 36-1-8-17.7(b)(7)

**EXHIBIT F**

The following sections of the Brownsburg Code of Ordinances refer to the authority of the Park Board and/or Department and may need to be amended in the event the Park Board is dissolved:

- 31.01 – Town Departments
- 31.45 – Establishment
- 31.46 – Board Established; Composition and Meetings
- 31.47 – Powers and Duties of Board
- 31.48 – Exemption of School Facilities
- 31.49 – Employees
- 31.50 – Advisory Council
- 34.014 – Continuation of Other Funds
- 34.016 – Park and Recreation Capital Improvement Fund
- 34.025 – Cash Change Fund for Park Board
- 34.026 – Petty Cash Fund for Park Board
- 34.075 – Brownsburg Park and Recreation Non-Reverting Operating Fund
- 36.05 – Food and Beverage Receipts Fund
- 40.10 – Park and Recreation Facility Rental Rates
- 40.11 – Community Center Facility Fee Schedule
- 40.14 – Advertising in Park Department’s Publications
- 94.02 – Administration of Programs
- 94.04 – Advisory Council
- 94.16 – Hours of Operation
- 94.17 – Facility Rental Rules and Guidelines
- 94.30 – Adoption of Master Plan
- 96.41 – Arborists License and Bond