



## AGENDA

Fort Smith Parks and Recreation Commission  
Regular Meeting, June 10, 2020  
12:00pm WebEx Meeting

Meeting ID: 126 438 7265  
Password: Parks

Approval of minutes from May 13th meeting.

1. Discussion of Operation of Creekmore Park Miniature Golf Course and Concession Stand
2. Project Updates
3. Public Comments
4. Commission and Staff Comments

City of Fort Smith  
Parks and Recreation Commission Minutes of Meeting  
May 13, 2020

The Parks and Recreation Commission met at noon on Wednesday, May 13, 2020 via a Zoom Meeting.

Park Commission members present: Chris Raible, Madeline Marquette, John McIntosh, Andrew Deal, and Nancy Raney.

Park Commission members absent: Jim Rowland

Staff members present: Jeff Dingman, Doug Reinert, Jim Mackey, and Linda Woodruff

Others: Talicia Richardson

Marquette called the meeting to order at 12:03p.m. Raney made a motion to approve the minutes as written. The motion was seconded by Deal and unanimously approved.

#### Items of Business

##### **1. Information Regarding Parks Response to COVID-19**

- Prohibited use of playground equipment by placing signage at the playgrounds.
- Posted signage reminding citizens to stay 6ft apart while using walking trails.
- Removed basketball rims.
- Closed public restrooms.
- Community center rentals have been cancelled through June 15<sup>th</sup>
- The City is on a hiring freeze, which leaves the Parks Department two fulltime employees and over 10 seasonal positions short. Work duties have been shifted to help alleviate some of the increased workload. However, citizens will see parks go without being edged, weedeated, and less frequent trash collection.
- The projected opening date for the pool is June 15<sup>th</sup> in accordance with the directives set forth by the Governor, Department of Health, and CDC. Staff is currently working on an appropriate plan to ensure the safety of citizens and employees.

Raible asked for further information regarding the hiring freeze. Reinert stated this is a city-wide measure being taken. Dingman added department have been asked to submit 10% budget reductions in preparation for how sales tax will be impacted by COVID-19.

McIntosh inquired if there are any swim meets scheduled at the pool this year. Reinert stated all swim meets have been cancelled for this year. Reinert added recreation events are currently being suspended.

McIntosh asked if progress is being made on the electrical repair at the Riverfront. Reinert noted this project has continued and is nearing the final design.

## **2. Project Updates**

Riverfront Drive Sports Fields: Phase II has begun, which consists of paving the existing parking lot, laying waterlines, and extensive dirt work to prepare the site for the inclusive playground, restrooms, and other amenities.

Chaffee Crossing Trail Segment One: This project is substantially complete. Fencing and cleanup still remains to be performed.

Wilson Park Inclusive Playground: This project is almost complete. There is still a platform left to be installed. The delivery of this piece has been delayed due to COVID-19.

Riverfront Electrical Repair: The final design plans for the project will be complete within two weeks. Once these are approved by the involved entities, this project will go out for bid. Raible asked if the repair was covered by insurance. Reinert noted this project will be funded primarily from insurance proceeds and FEMA reimbursement.

## **3. Public Comments**

Talicia Richardson was present and expressed her thanks regarding the progress made at Wilson Park to make it more comparable to other city parks.

## **4. Commission and Staff Comments**

Raible noted his main concern is Parks Staff being able to perform routine landscape maintenance (mowing, weedeating, etc.). Reinert stated staff is working as fast as possible, but there will be a greater mowing turnaround for each park.

Deal asked Reinert to elaborate regarding his reference to inefficiencies. Reinert stated staff is currently and will continue to monitor and address inefficiencies and adapt staffing to become more efficient.

Marquette inquired about an adopt a park program for the summer. Reinert stated we have offered this type of program. However, this has not been an effective program due to decreased interest, but this is something we could consider reinventing.

Raible asked Parks Staff keep the Commission up to date regarding the re-opening of various amenities and progress of park maintenance to allow them adequate information to help communicate with the public.

The meeting was adjourned at 12:50p.m.

Chris Raible, Chairman  
Amber Plank, Records Coordinator



# Memorandum

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**TO:** Parks and Recreation Commission  
**FROM:** Parks Staff  
**DATE:** June 4, 2020  
**SUBJECT:** Status of Creekmore Park Miniature Golf Course and Concession Stand

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At their April 10, 2019 meeting, the Parks and Recreation Commission made a recommendation to the Board of Directors to execute a lease agreement with Jim Dixon d/b/a Kona Ice of Fort Smith for the operation of the miniature golf course and concession stand at Creekmore Park. The Board of Directors authorized for a lease agreement to be entered into with Mr. Dixon at their April 16, 2019 Regular Meeting.

To date, a lease agreement has not been executed by the City. However, Mr. Dixon was allowed to operate the concession stand at a limited capacity during the summer of 2019 in order to accommodate citizens wanting to play miniature golf. The concession stand located inside the course was not utilized. Mr. Dixon did make commission payments for July (\$846), August (\$296), and September (\$223).

Mr. Dixon failed to provide a signed agreement to Park Administration until May 22, 2020. Upon review of his submittal, it was discovered Mr. Dixon had made multiple revisions to the lease agreement as presented to the Board of Directors. The attached lease agreement identifies the changes Mr. Dixon made to the lease agreement presented to and approved by the Board. The primary changes are in regard to the hours of operation, liability, and setting of fees. Mr. Dixon is requesting the following changes be made:

- Lessee is granted sole control over the hours of operation.
- Lessee has the right to set the fee for a round of golf without approval by the City.
- Lessee be removed from any and all liability regarding the operation of the miniature golf course (liability only assumed for operation of concession stand).
- Lessee does not agree to maintain and provide records related to the operation of concession stand.

Following both internal discussion and a conversation with Mr. Dixon on 6/2/2020, Parks Staff have determined there are three separate actions that could be recommended by the Parks Commission:

1. Approve of the changes by Mr. Dixon and make a recommendation to present said changes to the City Attorney and Board of Directors for approval.

2. Advertise a Request for Proposals for the operation of the miniature golf course and concession stand at Creekmore Park. There has been one interested party contact our office.
3. Contact the Future School of Fort Smith to discuss the possibility of them operating the facility. This action would support ED-2.3 (Focusing on increasing student performance) of the Future Fort Smith Comprehensive Plan.

LEASE AGREEMENT (Changes Submitted by Jim Dixon d/b/a Kona Ice of Fort Smith)

This Lease Agreement made and entered into this \_\_\_\_\_ day of ~~April 2019~~ **May 22, 2020**, by and between the City of Fort Smith, Arkansas, hereinafter referred to as “Lessor”, and Jim Dixon d/b/a Kona Ice of Fort Smith, hereinafter referred to as “Lessee.” The Lessor and Lessee are sometimes referred to as “the Parties.”

WITNESSETH:

For and in consideration of the covenants and agreements as herein set forth, the Parties agree as follows:

1. The property to which this lease applies is located in Creekmore Park in the City of Fort Smith, Sebastian County, Arkansas, and is more particularly described as follows:

Beginning at a point in the East right-of-way line of the Missouri Pacific Railroad, being a distance of 263 feet South of the South right-of-way line of Rogers Avenue and also being the Southwest corner of a tract of land being occupied by Park land and parking lot;

Thence Southerly along the right-of-way line of the Missouri Pacific East right-of-way line a distance of 253 feet, more or less, to the point of beginning;

Thence continuing Southerly with the East right-of-way of the Missouri Pacific Railroad a distance of 125 feet, more or less, to a point in an existing ditch;

Thence Southeasterly with an existing ditch a distance of 216 feet, more or less, to a point;

Thence Northeasterly a distance of 189 feet, more or less, to a point in the center of a concrete block ditch;

Thence Northwesterly with an existing ditch a distance of 243 feet, more or less, to the point of beginning.

Lessor does hereby lease and rent unto the Lessee, and the Lessee does hereby lease and take from the Lessor, the above described premises for the sole purpose of operating a miniature golf course and concession stand open to the public.

2. The initial term of this lease shall commence on the date of execution of this Lease and extend through ~~December 31, 2019~~ **December 31, 2020**. Subject to Lessor’s approval of Lessee’s operation during the initial term or previous renewal term (which approval shall not be unreasonably withheld), and upon submission of written notice to Lessor at least fifteen (15) days prior to the last day of the previous term of this Lease, Lessee shall have the option to renew this Lease for annual renewal terms in ~~2020, 2021, 2022 and 2023,~~ **and 2024**.

3. Lessee shall pay as rental for the leased premises, during the initial term and any renewal term, the sum of one dollar (\$1.00) of every game of miniature golf that is played on the premises. The base charge for each game of miniature golf shall be ~~\$2.50 per person~~ **set by Lessee**, per round of golf. The Lessee may allow for discount packages for parties and groups; however, one dollar (\$1.00) per person, per round of golf played shall be paid to Lessor as rental. Lessee shall owe no rental from profits generated from the sale of concessions. Lessor shall make a verified report of games of golf played on the premises to the Parks and Recreation Department monthly on the 10<sup>th</sup> day of each month for the preceding month. With each report, the due rental shall be payable to the City in care of the City ~~Administrator~~ **Park and Recreation Department**, or his designated agent, at the Creekmore Community Center. If any rental payment is not made with the monthly report, Lessee shall incur and must pay a ten percent (10%) late charge for the late payment.
4. The Lessee shall have the right to establish the rates to be charged customers at the concession stand. ~~, subject, however, to prior approval by the City Administrator or his designated agent. Such approval shall not be unreasonably denied.~~
5. Commencing with the execution of this lease and continuing throughout the initial term and any renewal term hereof, the Lessee shall maintain in full force and effect general liability insurance in minimum amounts of \$100,000.00 per person, \$300,000.00 per occurrence, and \$50,000.00 property damage. The Lessee expressly assumes full responsibility for all damages and injuries which may result to any person or property by reason of the ~~operation of the said miniature golf course and~~ concession stand. Lessee agrees and covenants to indemnify and hold the City harmless from all claims and judgments of any kind, and the City's legal expenses and fees associated therewith, related to or arising from operation of the ~~miniature golf course and~~ concession stand.
6. The equipment identified on the attached Exhibit "A" is the property of the Lessor. Lessee is hereby given the right to utilize the equipment for Lease operations under this Lease. Lessee shall maintain or cause to be maintained the equipment in good working order. The identified equipment shall be inventoried at the end of the initial term and at the end of any renewal term of the Lease, and Lessee shall replace, with like kind and quality, any lost or destroyed equipment (the obligation to replace golf balls shall be to provide a minimum of 15 dozen golf balls).
7. Lessee agrees to maintain and keep in a reasonable state of repair all equipment and the leased premises used in the operation of said miniature golf course and concession stand. The Lessee shall maintain the premises in a neat and orderly condition and keep the grounds of the leased premises clean and free of litter.
8. Lessee agrees to be responsible for maintaining decorum and order upon the leased premises at all times.
9. ~~Except during the initial term as to periods of time from Memorial Day to the execution of this Lease,~~ Lessee agrees to operate the said miniature golf course and concession

stand from Memorial Day through Labor Day of each year, being open seven (7) days per week. ~~and at least eight (8) hours per day. Lessee's additional hours of operation are subject to the prior approval of the City Administrator or his designated agent, which approval shall not be unreasonably withheld.~~ Lessee reserves the right, at its sole discretion, to set its own hours during the period of Memorial Day through Labor Day of each year, and Lessee further reserves the right, at its sole discretion, to operate the golf course and concession stand outside of the above referenced period if weather permits.

10. Lessee agrees to maintain accurate books and records with reference to the operation of said miniature golf course ~~and concession stand~~, and Lessee shall, at the City's request, submit periodic financial reports to the City Administrator, or his designated agent. The City has the right to examine Lessee's books and records at all reasonable times and places.
11. Lessor, through its employees or agents, shall have the right of reasonable access to the leased premises for any purpose related to the City's ownership of the property and in order to ensure that the property is being managed in accordance with the terms of this lease agreement.
12. The Lessee shall not, without the prior written consent of the City Administrator or his designated agent, assign this lease or sublet the leased premises or any part thereof.
13. It is expressly understood and agreed by the parties that the Lessee takes the leased premises and equipment "as is". The City makes no warranties with reference to the premises or equipment. Lessee expressly acknowledges that Lessor makes no implied warranty of fitness for Lessee's purposes, or otherwise.
14. Subject to the prior written consent of the City Administrator or his designated agent, the Lessee may make alterations to structures on the leased premises and may make other improvements on the leased premises. The Lessee shall have the right of possession, including the right of operating the said miniature golf course and concession stand, to the leased premises and to any structures located thereon for the purposes consistent with this Lease providing for the operation of the said miniature golf course and concession stand. The Lessee shall be entitled to the proceeds of the operation of the said miniature golf course and concession stand, subject to the rental and other obligations of this Lease.
15. Lessee agrees that any failure to pay the rental due under this lease on time, or default by Lessee of the performance of any of the agreements contained herein to be kept and performed by Lessee, will serve as a basis of a forfeiture of Lessee's rights under this lease agreement. In the event of a default by Lessee of the performance of any covenant of this lease except timely payment of rental, the City shall make written notice of default, delivered to Lessee or sent by United States Mail to 2518 Virginia Avenue, Fort Smith, Arkansas, with a demand to the Lessee that such default be cured within thirty (30) calendar days. In the event that the default is not cured, the City shall have all remedies available at law or equity and may immediately proceed with same. Specifically, and without limitation on the City's remedies otherwise available, in the

event that the Lessee fails to cure any noticed default according to the provisions of this paragraph, the City may elect to terminate this Lease and the leased premises, together with all improvements and equipment, shall forthwith revert to the City by operation of law. Any violation of law or health/safety codes by the Lessee shall be the subject of immediate enforcement pursuant to such law or health/safety code, and enforcement shall not be subject to the notice/demand provisions of this paragraph.

16. This Agreement shall be binding upon and inure to the benefit of the respective heirs, successors and assigns of the parties hereto.

17. In the event all of the leased premises, or such part thereof as renders the leased premises unsuitable for use in the activity or business of the Lessee, become necessary or desirable for public improvements of the City, then the terms of this Lease shall cease and terminate after six (6) months notice to the Lessee.

18. Time is of the essence as to all provisions of this lease.

IN WITNESS WHEREOF, the parties have hereunto set their hands as of the date first set forth above.

City of Fort Smith

By: \_\_\_\_\_

MAYOR

ATTEST

By: \_\_\_\_\_

CITY CLERK

Jim Dixon d/b/a Kona Ice of Fort Smith

By: \_\_\_\_\_

Jim Dixon

## Exhibit "A"

### Creekmore Miniature Golf Equipment List

<u>Quantity</u>	<u>Item</u>
1	Refrigerator (Not currently in working condition due to flooding)
1	Southern Snow Machine w/Plastic Drip Pan
1	Replacement Blade Set
1	Snow Cone Machine Tool Kit
30	35" Black Putters
30	29" Red Putters
20	27" Yellow Putters
10	24" Orange Putters
1	Golf Ball Dispenser
15 Dozen	Golf Balls of Various Colors