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TO: Matthew Quinones, Director of Operations
FROM: Douglas Dalena, Corporation Counsel
Michael Toma, Assistant Corporation Counsel
DATE: January 10, 2023
RE: Authority over the Surface of Athletic Fields

You have asked the question whether the Board of Representatives or the Parks and Recreation Commission have authority to dictate, through either policy or ordinance, the type of surface (natural grass or artificial turf) to be used by the City on its athletic fields.

Board of Representatives

The general statutory grant of police powers is sufficient to authorize the BOR to adopt a restriction or prohibition on the use of artificial turf, or on the use of natural grass. See C.G.S. Section 7-148(c)(6) (municipality has the power to construct, maintain, and repair parks, playgrounds and playfields, among other things) when read together with 7-148(c)(10) (municipality has the power to make all lawful ordinances in furtherance of the previously enumerated powers).

In Modern Cigarette, Inc. v. Orange, 256 Conn. 105 (2001), the Connecticut Supreme Court held that a municipality is authorized by C.G.S. Section 7-148 to protect the health, safety and welfare of its citizens, and when a statute authorizes a municipality to regulate a certain activity, a prohibition of said activity through an ordinance will be valid "if it is rationally related to the protection of the community's public health, safety and general welfare." Id., at 127.

The court further noted:

"Every intendment is to be made in favor of the validity of [an] ordinance and it is the duty of the court to sustain the ordinance unless its invalidity is established beyond a reasonable doubt.... [T]he court presumes validity and sustains the legislation unless it clearly violates constitutional principles.... If there is a reasonable ground for upholding it, courts assume that the legislative body intended to place it upon that ground and was not motivated by some improper purpose.... This is especially true where the apparent intent of the enactment is to serve some phase of the public welfare." Id., at 118.

The regulation of the surface of athletic fields is similar in nature to the regulation of the materials used in road maintenance and repair. In 2018, the BOR passed an ordinance (see Chapter 171 of the City Code) prohibiting the City's use of by-products of the fracking process in the maintenance or repair of its streets. At the time, the Law Department advised the BOR that it possessed authority to adopt the ordinance. We perceive the regulation of the surface of athletic fields as conceptually equivalent to the regulation of the materials used in road maintenance and repair.

Finally, although your question did not touch upon the budget process, it should be noted that the BOR can exercise some measure of control over public works projects by deciding which projects to fund. The City's administration cannot spend money that has not been appropriated by the BOF and BOR.

Parks and Recreation Commission

The authority of the Parks and Recreation Commission is set forth in the following Charter section:

Sec. C6-120-2. - Powers and Duties of the Parks and Recreation Commission.

The Parks and Recreation Commission shall have the following powers and duties:

- (1) Subject to the approval of the Mayor and except as may be otherwise determined by the Board of Representatives by ordinance, to establish policies and procedures for providing public park facilities and public recreation programs for the effective, balanced utilization of such areas, facilities and equipment for active and passive recreation;
- (2) To develop such plans as it deems necessary and useful for the preservation and expansion of natural resources and passive recreation areas in the City;
- (3) To make all rules and regulations for the use and conduct of all parks and all public recreation areas.

Based on paragraph (1) of this Charter section, the Commission may establish policies for "providing public park facilities." A reasonable interpretation of this language, keeping in mind the existence of other Charter language entrusting actual construction of facilities to the Office of Operations, is that the Commission's authority extends to big-picture policies which address what types of park facilities should be provided around town, where in town they should be located, the size of the facilities, and the like, but not to policies on details such as field surface type.

Based on paragraph (2) of this Charter section, the Commission may develop plans "for the preservation and expansion of natural resources" in the City. Natural resources are generally thought to be materials from the Earth that are needed to support life, including water bodies and watercourses, forests, fossil fuels, and metals

within rock. In my view, this provision authorizes the Commission to locate facilities within a park to minimize disturbance to a stream, as an example. The decision as to what type of surface should be used on an athletic field would not, in my view, either preserve or expand a "natural resource."

Paragraph (3) of the Charter section does not grant the Commission any authority to regulate the type of surface of athletic fields.

Therefore, the Parks and Recreation Commission does not have authority to dictate the type of surface (natural grass or artificial turf) to be used by the City on its athletic fields.

Feel free to contact me if you wish to discuss this memorandum.