

Statement on Sun Chase Park:

On August 22, the Board of Directors (the “Board”) of Williamson-Travis Counties Municipal Utility District No. 1 voted 4-1 to remove the play structure which was installed at Sun Chase Park in June 2023. The Board joins the community in its disappointment at the way the project ended. An explanation is owed when \$50,000 of taxpayer money is wasted in this manner.

The “treehouse” playscape was approved by a unanimous vote of the Board on October 19, 2022 when the Parks Committee presented it for approval. However, the full Board was unaware that the vendor who had been selected was not a commercial playground manufacturer and did not have any certification for the safety standards that public entities must follow. In fact, emails from a previous Board member reveal that the manufacturer had advised the Parks Committee that he did not carry insurance or have knowledge about the standards for public parks, offering to rescind his proposal and let the Board choose another vendor.

Those emails also revealed that the District’s engineering firm, Gray Engineering, had a phone conversation with the manufacturer at the request of the Parks Committee on October 18 or 19 (the same day as the Board meeting) and apparently advised the manufacturer that if he widened the opening to one of the proposed “tunnels” then the structure would be “TAS” compliant and the project could proceed. The Texas Accessibility Standards, known as TAS, are accessibility standards promulgated by the Texas Department of Licensing and Regulations (“TDLR”) that publicly funded playgrounds must follow. They are important to be sure, but they are not the only standards for public parks. In any case, the project was not even TAS compliant, as revealed by the subsequent safety inspections and conversations with TDLR in July 2023.

None of this information was conveyed to the full Board prior to the vote. The project was presented as “cool looking” and the Board was assured that the District engineer had given it his stamp of approval. That meeting can be [viewed online](#) with the discussion and vote beginning at timestamp 01:19:00 and lasting about 7 minutes.

The Texas Health and Safety Code states:

Sec. 756.061. COMPLIANCE WITH SAFETY STANDARDS. (a) Notwithstanding any other rule or statute, and except as provided by Subsection (b), on or after September 1, 2009, public funds may not be used:

(1) to purchase playground equipment that:

(A) does not comply with each applicable provision of ASTM Standard F1487-07ae1, "Consumer Safety Performance Specification for Playground Equipment for Public Use" published by ASTM International; or

(B) has a horizontal bare metal platform or a bare metal step or slide, unless the bare metal is shielded from direct sun by a covering provided with the equipment or by a shaded area in the location where the equipment is installed;

(2) to purchase surfacing for the area under and around playground equipment if the surfacing will not comply, on completion of installation of the surfacing, with each applicable provision of ASTM Standard F2223-04e1, "Standard Guide for ASTM Standards on Playground Surfacing" published by ASTM International; or

(3) to pay for installation of playground equipment or surfacing if the installation will not comply, on completion of the installation, with each applicable provision of the specifications described by Subdivision (1) or (2), as applicable.

At the end of June 2023, lacking documentation that the playground complied with Texas Health & Safety Section 756.061, the Board closed the Sun Chase playground as a precautionary measure and approved a safety inspection by a Certified Playground Safety Inspector from Safe 2 Play. The inspection report by owner Craig Faitel gave the structure a failing grade and recommended its removal. Mr. Faitel wrote in an email to a Board member, *"there are so many hazards with this structure, I'm glad you closed it to the public. This structure and wood equipment is not for public use, so many non-compliant standards would never pass the CPSI (for private or residential use only). Review the report and let me know if you have any questions. I also attached one of two standards - Consumer Product Safety Commission Handbook for playgrounds. This is one of two standards used for the CPSI. Recommend removing this structure ASAP. Purchase a[n] IPEMA [International Playground Equipment Manufacturer's Association] certified structure for commercial use. Many of the manufacturers have nature themed equipment. If you're installing wood climbers, a "large" concrete footing is required and should be installed 9" below grade, so that a user will not fall on it. There are standards that must be followed or the city/community can be held liable."*

Out of an abundance of caution, on July 19, 2023, the Board ordered a second safety inspection from ParkPro Tek. Their inspection also noted a variety of Priority 1 and 2 (permanent disability, loss of life or body part, or serious injury) hazards. Their recommendation states, *"As requested, ParkPro Tek inspected and assessed Sunchase Park. During our initial inspection we had hoped to find a route that would allow the playground to stay on site. After we assessed the playground and completed our inspection we came to the conclusion that the entire playground goes against the current ASTM and CPSC standards. Any alterations or changes to try to address the plethora of issues would only further the non-compliant nature of the playground. The cost to address the issues would far exceed what it would take to remove and replace the unit. This does not take into account the liability that would be associated with altering a playground such as this which does not seem to meet any of the ASTM standards set forth to protect children at play. It is in our professional judgment that this playground remain closed until it can be removed."*

A common question asked was, why didn't the Board ask the manufacturer of the structure to simply come back and "fix" it? The answer is multilayered. First, the manufacturer was not ASTM or IPEMA certified and had no knowledge of the standards that public playgrounds must meet, nor was he willing to become certified in these matters. Second, the previous Parks Committee had not entered into a contract with the manufacturer, (the transaction was simply completed by paying for the proposal based on a sketch) so there had been no contractual requirement that the structure would follow any standards at all. Third, both Certified Playground Safety Inspectors who inspected the structure had rejected the idea of simply

“fixing” it as the hazards were too inherent and difficult to remedy (for example, a fall height of 13 feet). Rod Beber, owner of ParkPro Tek, stated in the public meeting on August 22, 2023 that such attempts are rarely successful. Fourth, while the manufacturer did offer to come back and make some repairs, he would have required the District to indemnify him against liability for the structure and would have charged an unknown amount to perform these repairs.

In the end the Board decided that the liability of the structure remaining in the public park was too great, and the hazards posed to our District’s smallest residents too serious. A lawsuit for a child death or serious injury on noncompliant playground equipment could bankrupt the District, and the idea of a child being permanently disabled or killed on one of our playgrounds is unthinkable.

The structure was removed on September 8 by the manufacturer at no cost to the District. Additionally, the manufacturer will attempt to resell the structure and if successful, will refund the proceeds of the sale to the District.

On September 13, the Board approved a Request for Proposals for a new playscape in Sun Chase Park. Only IPEMA-certified vendors will be considered, and the project will be supervised by a Certified Playground Safety Inspector. Sun Chase Park is one of the jewels of the District, and we are looking forward to installing a safe and fun playground that complies with the law and will entertain families for many years to come.

In the course of inspecting Sun Chase Park, the Board also took the extra precaution of ordering inspections on all playground equipment in the District. ParkPro Tek conducted the inspections in August and found many Priority 1 and 2 hazards, largely due to a lack of preventative maintenance; worn swings and lack of adequate safety surfacing. The Board acted swiftly at the August 22 meeting to approve the proposals to remedy all Priority 1 and 2 hazards. Nothing is more important than the safety of the children who come to play in our parks.

The Board has also taken the following actions to help prevent another grave misunderstanding such as this.

1. We have approved a contract for quarterly parks maintenance and inspections by ParkPro Tek. This will ensure that our parks are safe and that maintenance items can be identified and remedied before they become more serious and expensive to fix.
2. On August 22, the Board approved a Resolution Adopting Playground Policy Guidelines which states:

WHEREAS, Section 756.061 of the Texas Health and Safety Code establishes guidelines and safety standards for publicly funded playgrounds; and

WHEREAS, Williamson-Travis Counties Municipal Utility District No. 1 (the “District”) owns, operates, and maintains publicly funded playgrounds within the District; and

WHEREAS, The Board of Directors (the “Board”) of the District desires to adopt new Playground Policy Guidelines to ensure public safety; Now, therefore:

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF WILLIAMSON-
TRAVIS COUNTIES MUNICIPAL UTILITY DISTRICT NO. 1 THAT:

Section 1: All publicly funded playgrounds within the District must be constructed and maintained in accordance with Section 756.061 of the Texas Health and Safety Code.

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Section 2. All publicly funded playground equipment must be purchased from an International Play Equipment Manufacturers Association certified vendor.

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Section 3. All publicly funded playgrounds within the District must pass a safety inspection conducted by a Certified Playground Safety Inspector prior to being open to the public.

All the safety inspections and recommendations are posted on the wtcmud1.org website.