

May 5, 2000

REPORT TO THE COMMITTEE ON NATURAL
RESOURCES AND CULTURE

SAN DIEGO CHARTER SECTION 55.1
MISSION BAY LEASE RESTRICTIONS

INTRODUCTION

At the Natural Resources and Culture Committee meeting of November 3, 1999, the Committee directed the City Attorney to determine the intent of the voters when they passed San Diego Charter section 55.1 [Section 55.1] in November 1987. The Committee had before it a report from the City Manager regarding the status of acreage in Mission Bay Park [Park] available for commercial leasing purposes. Related to this report was a Memorandum of Law from this Office dated September 8, 1988, concerning the interpretation of Section 55.1 [MOL]. In that MOL, this Office opined that the Section 55.1 restrictions on leasing in the Park apply only to commercial leases.

Pursuant to the Committee's direction, we have reviewed the MOL as well as the relevant legal authorities pertaining to charter interpretation. Based on that research, we affirm the opinion set forth in the MOL. If, however, the Committee desires that both commercial and noncommercial leasing be restricted in the Park, it has several options. First, it may propose an amendment to the San Diego Charter. Second, it may propose an amendment to the San Diego Municipal Code. Third, it may propose a resolution which, by itself, or as an amendment to Council Policy 700-08, restricts noncommercial leasing in the Park.

DISCUSSION

A. The MOL Reasonably Concludes that the Section 55.1 Restrictions Apply Only to Commercial Leases.

The opinion of this Office set forth in the MOL reasonably concludes, based upon an analysis of the pertinent legal authorities, that the Section 55.1 restrictions apply only to

commercial leases. The rules of statutory construction apply to city charters. *DeYoung v. City of San Diego*, 147 Cal. App. 3d 11, 17 (1983). The interpretation of a statute is a question of law. *See Yamaha Corp. Of America v. State Bd. of Equalization*, 19 Cal. 4th 1, 7 (1998). The primary task in interpreting a statute is to determine the lawmakers' intent. *Delaney v. Superior Court*, 50 Cal. 3d 785, 798 (1990). In the case of a provision adopted by the voters, their intent governs. *Id.*

To determine the lawmakers' intent, a court will turn first to the words themselves. *Delaney*, 50 Cal. 3d at 798. Words should be given the meaning they bear in ordinary use, as reflected in a dictionary. *See id.* "If the language is clear and unambiguous, there is no need for construction, nor is it necessary to resort to indicia of the intent of the Legislature (in the case of a statute) or of the voters (in the case of a provision adopted by the voters)." *Id.* (Quoting *Lungren v. Deukmejian*, 45 Cal. 3d 727, 735 (1988).)

The meaning of a statute may not, however, be determined from a single word or sentence. *In re Melchor P.*, 10 Cal. App. 4th 788, 792 (1992). Instead, the various parts of a statutory enactment must be harmonized. *DeYoung*, 147 Cal. App. 3d at 18. The policy to be implemented should be respected, and to that end, the titles of acts, headnotes, and chapter and section headings may properly be considered in determining intent. *Bowland v. Municipal Court*, 18 Cal. 3d 479, 489 (1976).

If an ambiguity exists, a court will look to the ballot arguments, the only available "legislative history" for an amendment enacted by initiative. *The Recorder v. Commission on Judicial Performance*, 72 Cal. App. 4th 258, 271 (1999). Further, the contemporaneous interpretation of statutes by those charged with enforcing them is entitled to "great weight." *State of South Dakota v. Brown*, 20 Cal. 3d 765, 777 (1978). Courts should hesitate to depart from that construction unless it is clearly erroneous. *Id.* The opinions of a city attorney construing a city charter are entitled to the same consideration. *DeYoung*, 147 Cal. App. 3d at 18.

The above rules of statutory interpretation support the opinion in the MOL that the Section 55.1 restrictions apply only to commercial leases. The heading for Section 55.1, *Mission Bay Park-Restrictions on Commercial Development*, clearly shows that the voters intended to restrict commercial development of the Park. Further, the ballot argument emphasizes that the restrictions were intended to apply to "commercial purposes" and "commercial development."

As set forth in the MOL, the ordinary meaning of "commercial" is "from the point of view of profit." The restriction of nonprofit or other noncommercial uses was not mentioned, either implicitly or explicitly, in the ballot argument or the section heading. Additionally, both the section heading and the ballot argument demonstrate that the policy the voters intended to implement was the restriction of commercial development in the Park.

Therefore, the opinion set forth in the MOL is a reasonable contemporaneous interpretation of Section 55.1. The opinion is clearly supported by the pertinent rules of statutory construction, is a long-standing opinion of this Office, and would probably be given considerable weight by the courts if challenged.

B. The City Council May in its Discretion Restrict Noncommercial Leasing in the

Park.

Although Section 55.1 restricts only commercial leasing in the Park, the City Council, in its discretion, may further restrict leasing in the Park. For example, the Council could submit a proposition to the voters, enact an amendment to the San Diego Municipal Code, or adopt a resolution. Each of these actions could accomplish the purpose of restricting noncommercial leasing in the Park.

First, the Council could submit a proposition to the voters at a regular or special election. The proposition could amend Section 55.1 to restrict noncommercial leasing of the Park. In order to pass, the proposition would require a majority of the votes cast. If passed by the voters, the proposition would be effective either at the time indicated in the proposition, or thirty days after the election, whichever is later. The proposition could not be amended or repealed except by a majority vote.

Second, the Council could enact an ordinance restricting noncommercial leases in the Park. If passed by a majority of the Council members, the ordinance would be effective not less than thirty days after its adoption. The ordinance could not be amended or repealed except by a majority vote of the Council.

Third, the Council could adopt a resolution restricting noncommercial leases in the Park. The resolution could stand by itself, or it could take the form of an amendment to Council Policy 700-08, *Mission Bay Park Policies*. If passed by a majority of the Council members, the resolution would be effective immediately upon its adoption. The resolution could not be amended or repealed except by a majority vote of the Council. Further, if adopted as a policy amendment, the policy could not be waived except by a majority of the Council.

Thus, the Committee has several available options if it desires to restrict noncommercial leasing in the Park. The Committee may propose that the Council submit a proposition to the voters, that the Council enact an amendment to the San Diego Municipal Code, or that the Council adopt a resolution.

CONCLUSION

The opinion of this Office that the Section 55.1 restrictions apply only to commercial leases, as set forth in the MOL, was a reasonable interpretation of the voters' intent and is consistent with the legal authorities pertaining to charter interpretation. If, however, the Committee desires to restrict noncommercial leasing in the Park, it has several options. The Committee could propose that the Council place a proposition on the ballot to amend Section 55.1 to include noncommercial leases, that the Council enact an ordinance amending the San Diego Municipal Code to restrict noncommercial leases, or that the Council adopt a resolution restricting noncommercial leases.

Respectfully submitted,

/ S /

CASEY GWINN
City Attorney

LWG:cdk
RC-2000-3