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REPORT TO THE HONORABLE
MAYOR AND CITY COUNCIL

NEW AND USED CAR SALES AT QUALCOMM STADIUM

INTRODUCTION

During non-agenda public comment at the City Council hearing of November 15, 2005, Mr. Mike Baker and Mr. Ed Witt, on behalf of the Mission Valley Auto Circle Dealers,¹ submitted a letter [Letter] to the City Council and made certain statements regarding the extension of a contract [Contract] between the City of San Diego and San Diego Auto Connection. Specifically, Mr. Baker alleged that: (1) the Contract is contrary to applicable land use regulations for Qualcomm Stadium; (2) San Diego Auto Connection breached the Contract and City Council Policy 700-21 by failing to compensate the City for sales events at Qualcomm Stadium; and (3) San Diego Auto Connection breached the Contract by conducting RV sales events at Qualcomm Stadium. A copy of the Letter is attached to this Report as Exhibit 1. This Report is in response to the statements made during public comment by Mr. Baker, and in the Letter.

DISCUSSION

The Contract was approved by the City Council on December 8, 2003, pursuant to City Council Resolution R-298692, and granted San Diego Auto Connection the exclusive right to conduct two new and five used car sales events in the Qualcomm Stadium parking lot, and the right to conduct additional events on an availability basis. As consideration for this exclusive right, San Diego Auto Connection pays the City a flat fee of \$391,000 each year during the term of the Contract. The City also receives sales tax revenue from the cars sold in the parking lot.

The term of the Contract is a three-year period from January 1, 2004 through December 31, 2006, with a two-year option. The granting of the two-year option is at the sole discretion of the City, subject to the availability of Qualcomm Stadium and other terms and conditions to be negotiated.

¹ The Mission Valley Auto Circle Dealers include the following automobile dealerships: Mossy Ford, Pearson Ford, Cush Auto Group, the Sunroad Automotive Group, Marvin K. Brown Cadillac, Buick, Saab, GMC & Hummer, John Hine Dodge/Pontiac/Mazda, Midway Jeep/Chrysler/GEM, Witt Lincoln Mercury-Mission Valley, Bob Baker Ford, and Courtesy Chevrolet.

By letter dated April 14, 2005, San Diego Auto Connection made a formal request to the City Manager to exercise the two-year option provided for in the Contract. Mr. Steve Hodson, president of San Diego Auto Connection, indicated that the request was being made earlier than anticipated in the Contract in order for his company to have a firm business plan and begin discussions with vendors for future car sales events at Qualcomm Stadium. The City Manager referred the request to the Qualcomm Stadium Advisory Board [Board] for consideration and a recommendation.²

The Board meets once a month. After receiving the written request from San Diego Auto Connection in April, the Board held five meetings and one Administrative Committee meeting at which it discussed the request of San Diego Auto Connection to extend the Contract. At its meeting in September 2005, the Board ultimately voted to recommend to the City Manager that the Contract should be extended.

Representatives of the Mission Valley Auto Circle Dealers were in attendance at four of the Board meetings and the Administrative Committee and provided input to the Board and the committee regarding the extension of the Contract. At several of these meetings, representatives of the Mission Valley Auto Circle Dealers made similar statements to those made at the City Council hearing of November 15, 2005, regarding the Contract being contrary to applicable land use regulations for Qualcomm Stadium. The Board was advised that the City Attorney's office has rendered several opinions³ on the subject of why the City is not subject to its own land use regulations, and that the legal analyses and conclusions were still sound. Copies of the opinions are attached to this Report as Exhibit 2. A representative example of one of the opinions was distributed to the Board and provided to representatives of the Mission Valley Auto Circle Dealers.

To summarize the opinions and current case law, it is well established that "the state and its agencies are not bound by general words limiting the rights and interests of its citizens unless such public authorities be included within the limitation expressly or by limitation." *C.J. Kubach C. v. McGuire*, 199 Cal. 215, 217 (1926); *accord, O.B. Balthasar v. Pac. Elec. Ry.*, 187 Cal. 302 (1921); *Sunny Slope Water Co. v. City of Pasadena*, 1 Cal. 2d 87, 98 (1934); *City of Pasadena v. Chamberlin*, 1 Cal. App. 2d 125, 132 (1934); *People v. Centr-O-Mart*, 34 Cal. 2d 702, 703-704 (1950); and *Great Western Shows, Inc. v. County of Los Angeles*, 27 Cal. 4th 853 (2002). This principle, that a public authority is not subject to its own laws unless it has made itself so, derives from the concept of sovereignty.

² The Board is an advisory board established by ordinance pursuant to San Diego City Charter section 43(a). The purpose and intent of the Board is "to serve as an advisory body to the Mayor, City Council and City Manager on matters relating to the operations of Qualcomm Stadium." San Diego Municipal Code § 26.1301. Some of the duties and functions of the Board include conducting public meetings to provide a forum on Qualcomm Stadium operations and receive public input on Stadium issues; and serving as a liaison between the public and Qualcomm Stadium tenants, contractors, and the City. *Id.* at § 26.1303.

³ See Report to City Council, May 25, 1988; Report to City Council, August 25, 1988; and other memoranda attached as exhibits to the Reports.

In this instance, the Mission Valley Planned District Ordinance [District Ordinance] (San Diego Municipal Code sections 103.2101-103.2112) and the Mission Valley Community Plan [Community Plan] do not permit automobile and truck sales within the MV-CV commercial zone in which Qualcomm Stadium is located. The District Ordinance and Community Plan, however, do not express any intention that the City is within the class of persons subject to the land use restrictions contained therein. Without such an express intention, the land use restrictions are not applicable to the City and the Qualcomm Stadium parking lot may be used for the sale of cars and trucks.

The Mission Valley Auto Circle Dealers disregard this long line of case authority and purport to argue in the Letter that “[w]hile the City may enjoy a limited immunity from its zoning regulations when engaged in traditional governmental functions (e.g., constructing City Hall), no such immunity exists when the City acts in a proprietary capacity.” For authority, they rely on the decision of *Board of Trustees v. City of Los Angeles*, 49 Cal. App. 3d 45, 50-51 (1975). That case, however, is inapposite and factually distinguishable from the circumstances concerning Qualcomm Stadium.

In *Board of Trustees*, the California State University system was planning to conduct a circus on California State University, Northridge property. Neither the university nor the circus operator obtained a permit from the city to conduct the circus. The university argued that, as a state agency, it was exempt from local regulations. *Id.* at 48. The City of Los Angeles argued that the university was subject to the city’s permitting requirement. The appellate court upheld the City’s permitting requirement, reasoning that the city ordinance was adopted to address the specific health and safety issue of keeping the animals used in the circus in “clean and sanitary” conditions such that they would not be subjected to “needless suffering, cruelty or abuse.” *Id.* at 51. The court recognized that the “[c]ases which have denied the ability of a municipality to regulate the conduct of private persons on the ground that such regulation impinged upon the sovereignty of the state dealt with the situations in which the state was clearly acting in its governmental capacity.” *Id.* at 49-50. In short, the case concerns whether the state is subject to a municipality’s land use regulations. The court concluded that yes, in limited circumstances when the state is acting in a proprietary capacity, it is subject to such regulations.

As evidenced by the facts discussed above, the *Board of Trustees* case has nothing to do with the issue at hand, i.e. whether a municipality is obligated to impose its own land use regulations against itself when the municipality has not expressed an intention that it is within the class of persons subject to the regulations. The case law that has addressed this issue affirmatively has concluded no, the municipality is not subject to the regulations.

With regard to the Mission Valley Auto Circle Dealers’ claim that San Diego Auto Connection has breached the Contract and City Council Policy 700-21,⁴ they have misinterpreted the terms and conditions of the Contract. The Contract provides that San Diego Auto Connection shall pay the City a flat fee of \$391,000 each year during the term of the agreement. In exchange

⁴ City Council Policy 700-21 provides that in accordance with the bond indenture for the outstanding Qualcomm Stadium bonds, the Stadium shall not be used for free.

for this consideration, Mission Valley Auto Connection has the right to conduct a minimum of two new car sales events and five used car sales events each year, and the right to conduct additional events on an availability basis. Contract, § II. As set forth in the Contract, the flat fee of \$391,000 is for the right to conduct all events in the parking lot, not just the seven new and used car sales events which are guaranteed.

Finally, the Mission Valley Auto Circle Dealers have claimed that San Diego Auto Connection has breached the Contract by conducting an RV sale in the Qualcomm Stadium parking lot. The Qualcomm Stadium staff has confirmed that San Diego Auto Connection has not conducted any RV sales in the parking lot. All RV sales that have occurred in the parking lot have been conducted by La Mesa RV in accordance with the rights granted pursuant to the agreement approved by the City Council on December 8, 2003, a copy of which is on file in the office of the City Clerk as Document No. RR-298690. Based on the foregoing, there has been no breach of the Contract by San Diego Auto Connection.

CONCLUSION

The City is not “bound by general words limiting the rights and interests of its citizen’s unless [the City is] included within the limitation expressly or by limitation.” *C.J. Kubach C.*, 199 Cal. 215, 217 (1926). The District Ordinance and the Community Plan do not express any intention that the City is within the class of persons subject to land use restrictions contained therein. Consequently, although the Qualcomm Stadium property is not zoned for the sale of cars and trucks, such commercial activity is not prohibited. The City has contracted with San Diego Auto Connection for the sale of new and used cars in the Qualcomm Stadium parking lot. San Diego Auto Connection has not breached the Contract with the City; it has paid to the City the flat fee of \$391,000 each year during the term of the Contract for the right to conduct new and used car sales and it has not conducted any RV sales in the Qualcomm Stadium parking lot.

Respectfully submitted,

MICHAEL J. AGUIRRE
City Attorney

KJS:pev
Attachments
RC-2006-1