

Item 33/A

8/2/16

(O-2017-18)

ORDINANCE NUMBER O- 20721 (NEW SERIES)

DATE OF FINAL PASSAGE AUG 02 2016

AN ORDINANCE SUBMITTING TO THE QUALIFIED VOTERS OF THE CITY OF SAN DIEGO, FOR THEIR APPROVAL OR REJECTION AT THE MUNICIPAL SPECIAL ELECTION, CONSOLIDATED WITH THE CALIFORNIA STATE GENERAL ELECTION TO BE HELD ON NOVEMBER 8, 2016, ONE MEASURE AMENDING THE CITY CHARTER BY AMENDING ARTICLE V, SECTION 55, RELATING TO PARK AND RECREATION.

WHEREAS, pursuant to California Constitution, article XI, section 3(b), California Elections Code (Elections Code) section 9255(a)(2), and San Diego City Charter (Charter) section 223, the Council of the City of San Diego (Council) has authority to place Charter amendments on the ballot to be considered at a Municipal Election; and

WHEREAS, by San Diego Ordinance O-20671, introduced and adopted on July 11, 2016, the Council has called a Municipal Special Election to be consolidated with the California State General Election to be held November 8, 2016, for the purpose of submitting to the qualified voters of the City one or more ballot propositions; and

WHEREAS, Charter section 55 establishes the authority and responsibility for the use, control, and management of the City's parks, cemeteries, beaches and recreational areas; and

WHEREAS, the original language of Charter section 55 was approved by City voters on April 7, 1931, and the section has been amended by the voters five times, with the last amendment voted on November 4, 1975; and

WHEREAS, Charter section 55 requires that all City-owned real property that has been formally dedicated for park, recreation or cemetery purposes by ordinance of the City Council or statute of the State Legislature shall not be used for any but park, recreation or cemetery purposes without such changed use being approved by a vote of two-thirds of the qualified City voters; and

WHEREAS, Balboa Park was dedicated as a public park by the City's Board of Trustees in 1868 and ratified by the State Legislature in 1870; and

WHEREAS, San Diego High School is a public high school located within Balboa Park since the 1880s and currently occupies the property under a lease agreement with the City that expires in 2024; the lease allows the San Diego Unified School District to use the dedicated park property for educational, cultural, recreational, and civic programs and activities; and

WHEREAS, the City Council and the San Diego Unified School District desire to allow the City and the San Diego Unified School District to negotiate a new lease to allow San Diego High School to continue to operate a public high school at its current location and use the dedicated park property for educational, cultural, recreational, and civic programs and activities; and

WHEREAS, the property currently leased to San Diego Unified School District and occupied by San Diego High School is described as follows:

PARCEL A: (Legal description for San Diego High School)

Those portions of the land designated as "City Park Reservation", in the Pueblo Lands of San Diego, in the City of San Diego, County of San Diego, State of California, according to Map thereof by James Pascoe, a copy of which was filed in the Office of the County Recorder of said County, and is known as Miscellaneous Map No. 36, which lies within Pueblo Lots 1143 and 1144 of the Pueblo Lands of San Diego, according to Map thereof by Charles H. Poole, a copy of which was filed in said County Recorder's Office and is known as Miscellaneous Map No. 35, described as follows:

Parcel A:

Beginning at a point on the Southwesterly line of the tract of land conveyed to the State of California, by deed recorded November 18, 1960, Document No. 227164, in Book 1960 of Official Records in the Office of said County Recorder, said Point also as shown on State Highway Right-of-

Way Map, x1-SD-5, LO 3535, lying radially South $27^{\circ} 12'25''$ West 222.79 feet of Engineers Station 368+30.40; thence, along the said Southwesterly right-of-way line North $66^{\circ} 43'30''$ West 52.00 feet to the center of the right-of-way of Park Boulevard as delineated on State Drawing No. x1-SD-2-SD-13 of 175 also being the True Point of Beginning; thence, Southerly along the said Southwesterly right-of-way as follows: South $66^{\circ} 43'30''$ East 52.00 feet; thence, North $75^{\circ} 21'16''$ East 51.99 feet to the beginning of a 956.00 foot radius curve concave Southwesterly; thence, Southeasterly along the arc of said curve through an angle of $24^{\circ} 23'02''$, a distance of 406.85 feet; thence, tangent to said curve South $31^{\circ} 22'59''$ East, 173.04 feet; thence, South $58^{\circ} 14'45''$ West, 62.57 feet; thence, South $10^{\circ} 23'45''$ West, 34.40 feet; thence South $67^{\circ} 39'45''$ West, 187.65 feet; thence, South $61^{\circ} 26'15''$ West, 76.85 feet; thence, South $50^{\circ} 42'15''$ West, 51.41 feet; thence, South $42^{\circ} 36'45''$ West, 110.29 feet; thence, South $0^{\circ} 46'45''$ West, 60.99 feet to Point A, being designated for the purpose of this description; thence, South $1^{\circ} 51'40''$ West, 657.98 feet to Point B, also being designated for the purpose of this description, which is 68.00 feet Northerly of the Southerly right-of-way line of Russ Boulevard; thence, Westerly along the line which is 68.00 feet Northerly of and parallel with said Southerly right-of-way line of Russ Boulevard South $89^{\circ} 59'00''$ West, 744.90 feet more or less to the intersection with the centerline of Park Boulevard having a bearing of North $4^{\circ} 25'30''$ West, as delineated on State Highway Drawing Number x1-SD-2-SD-13; thence, Northerly along said centerline North $4^{\circ} 25'30''$ West 23.45 feet to the beginning of a tangent 920.00 foot radius curve concave Easterly; thence, Northerly along the arc of said curve through an angle of $44^{\circ} 03'04''$ a distance of 707.33 feet; thence, radially to said curve North $50^{\circ} 22'26''$ West 9.00 feet; thence, North $39^{\circ} 37'34''$ East, 331.21 feet to the beginning of a tangent 1,900.00 foot radius curve concave Northwesterly; thence, Northerly along the arc of said curve through an angle of $16^{\circ} 21'04''$ a distance of 542.22 feet; thence, tangent to said curve North $23^{\circ} 16'30''$ East 56.71 feet to the point of

intersection with the said centerline of Park Boulevard and said Southerly State Highway Right-of-Way x1-SD-5, also being the True Point of Beginning.

PARCEL B: (Legal of an Easement for access road between Parcel A and Balboa Stadium)

Commencing at Point A described above; thence, North 89° 59'00" East, 36.45 feet; thence, South 0° 01'00" East, 657.63 feet to a point which is 68.00 feet Northerly of the Southerly right-of-way line of Russ Boulevard; thence, Westerly along the line which is 68.00 feet Northerly of and parallel with said Southerly right-of-way line of Russ Boulevard South 89° 59'00" West, 58.00 feet more or less to Point B as hereinbefore mentioned; thence, North 1° 51'40" East, 657.98 feet to Point A, being also the True Point of Beginning of said easement.

WHEREAS, the Council now desires to submit to the voters at the Municipal Special Election one measure amending the Charter to amend section 55 to add a new section that would allow the City Council to lease the dedicated park property where San Diego High School is currently located to the San Diego Unified School District for continued use by San Diego High School for educational, cultural, recreational, and civic programs and activities; and

WHEREAS, amendments to this Charter provision were proposed initially by the San Diego Unified School District for consideration by the City Council's Charter Review Committee; and

WHEREAS, this proposed Charter amendment was heard and reviewed directly by the City Council after four Councilmembers requested by memorandum that it be placed on an agenda, and the Council, through this Ordinance, now seeks to place the proposed amendment on the November 8, 2016 Municipal Special Election ballot; and

WHEREAS, the Council's proposal, on its own motion, of a Charter amendment is governed by California Constitution, article XI, section 3(b), Elections Code section 9255(a)(2), and Government Code section 34458, and is not subject to veto by the Mayor; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That one measure amending the City Charter by amending Article V, section 55, related to Park and Recreation, is hereby submitted to the qualified voters at the Municipal Special Election to be held on November 8, 2016, and consolidated with the California State General Election to be held on the same date, with the measure to read as follows:

MEASURE

ARTICLE V

EXECUTIVE AND ADMINISTRATIVE SERVICE

SECTION 55: PARK AND RECREATION

The City Manager shall have the control and management of parks, parkways, plazas, beaches, cemeteries, street trees, landscaping of City-owned property, golf courses, playgrounds, recreation centers, recreation camps and recreation activities held on any City playgrounds, parks, beaches and piers, which may be owned, controlled or operated by the City. The City Council shall by ordinance adopt regulations for the proper use and protection of said park property, cemeteries, playgrounds and recreation facilities, and provide penalties for violations thereof. The Manager is charged with the enforcement of such regulations.

All real property owned in fee by the City heretofore or hereafter formally dedicated in perpetuity by ordinance of the Council or by statute of the State Legislature for park, recreation or cemetery purposes shall not be used for any but park, recreation or cemetery purposes without such changed use or purpose having been first authorized or later ratified by a vote of two-thirds of the qualified electors of the City voting at an election for such purpose. However, real property which has been heretofore or which may

hereafter be set aside without the formality of an ordinance or statute dedicating such lands for park, recreation or cemetery purposes may be used for any public purpose deemed necessary by the Council.

Whenever the City Manager recommends it, and the City Council finds that the public interest demands it, the City Council may, without a vote of the people, authorize the opening and maintenance of streets and highways over, through and across City fee-owned land which has heretofore or hereafter been formally dedicated in perpetuity by ordinance or statute for park, recreation and cemetery purposes.

The City Council may, without a vote of the people, authorize a lease of the property occupied by San Diego High School to the San Diego Unified School District for educational, cultural, recreational, and civic programs and activities, provided that the property is used for a public high school. The property occupied by San Diego High School means the area used by the San Diego Unified School District for San Diego High School as of the date this amendment is effective, and further described in the legal description on file with the City Clerk as Document No. OO- 20721

The City Manager shall also have charge of the management, control, preservation, regulation, improvement and embellishment of all public burial grounds and cemeteries belonging to the City, and the sale of lots therein. At least twenty percent of the net proceeds from the sale of all cemetery lots shall be deposited with the City Treasurer and be kept in a fund to be known as the Cemetery Perpetuity Fund. This fund shall be administered by the Funds Commission and shall be invested in such income-producing securities as the Funds Commission may decide. The principal of the perpetuity fund (subject to such accretion or diminution as may result from investing the same) shall not be available for meeting expenses for maintenance or upkeep of the cemeteries in any manner whatsoever. All income derived

from the investment of the moneys in said perpetuity fund, together with the balance of the sale price of said lots not placed in the perpetuity fund, shall be expended in the maintenance and upkeep of the cemeteries and the perpetual care and upkeep of all graves and lots in said cemeteries; provided, however, that if in any one year such income is more than needed for the purpose of such maintenance, upkeep and perpetual care the Council may direct that the excess over and above that needed as above provided may be used for any other municipal purpose. If the income from said investments of said perpetuity fund and the balance of the sale price of said lots each year are not sufficient to maintain the cemeteries and to provide perpetual care and upkeep of all graves and lots in said cemeteries the Council shall annually appropriate from other revenues an amount sufficient to enable the City to provide perpetual care and upkeep of all graves and lots in the cemeteries.

END OF MEASURE

Section 2. The measure shall be presented and printed upon the ballot and submitted to the voters in the manner and form set out in Section 3 of this ordinance.

Section 3. On the ballot to be used at this Municipal Special Election, in addition to any other matters required by law, there shall be printed substantially the following:

MEASURE ___. CHARTER AMENDMENT REGARDING BALBOA PARK AND SAN DIEGO HIGH SCHOOL. Shall City Charter section 55 be amended to authorize the City Council to lease the dedicated park property in Balboa Park currently occupied by San Diego High School, to the San Diego Unified School District for educational, cultural, recreational, and civic programs and activities, provided that the property is used for a public high school?	YES	
	NO	

Section 4. An appropriate mark placed in the voting square after the word “Yes” shall be counted in favor of the adoption of this measure. An appropriate mark placed in the voting square after the word “No” shall be counted against the adoption of the measure.

Section 5. Passage of this measure requires the affirmative vote of a majority of those qualified electors voting on the matter at the Municipal Special Election.

Section 6. The City Clerk shall cause this ordinance or a digest of this ordinance to be published once in the official newspaper following this ordinance's adoption by the City Council.

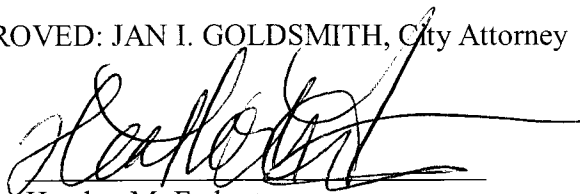
Section 7. Pursuant to San Diego Municipal Code section 27.0402, this measure will be available for public examination for no fewer than ten calendar days prior to being submitted for printing in the sample ballot. During the examination period, any voter registered in the City may seek a writ of mandate or an injunction requiring any or all of the measure to be amended or deleted. The examination period will end on the day that is 75 days prior to the date set for the election. The Clerk shall post notice of the specific dates that the examination period will run.

Section 8. A full reading of this ordinance is dispensed with prior to its passage, a written or printed copy having been available to the City Council and the public prior to the day of its passage.

Section 9. Pursuant to sections 295(b) and 295(d) of the Charter of the City of San Diego, this ordinance shall take effect on the date of passage by the City Council, which is deemed the date of its final passage.

APPROVED: JAN I. GOLDSMITH, City Attorney

By



Heather M. Ferbert
Deputy City Attorney

SBS/HMF:jdf/nja
07/19/16
Or.Dept: Council
Doc. No.: 1322168

Passed by the Council of The City of San Diego on AUG 02 2016, by the following vote:

Council Members	Yeas	Nays	Not Present	Recused
Sherri Lightner	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lorie Zapf	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Todd Gloria	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Myrtle Cole	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mark Kersey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Cate	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scott Sherman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
David Alvarez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marti Emerald	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage AUG 02 2016.

AUTHENTICATED BY:

KEVIN L. FAULCONER
Mayor of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By Atty Brady, Deputy

I HEREBY CERTIFY that the foregoing ordinance was passed on the day of its introduction, to wit, on AUG 02 2016, said ordinance being of the kind and character authorized for passage on its introduction by Section 16 of the Charter.

I FURTHER CERTIFY that said ordinance was read in full prior to passage or that such reading was dispensed with by a vote of five members of the Council, and that a written copy of the ordinance was made available to each member of the Council and the public prior to the day of its passage.

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

(Seal)

By Atty Brady, Deputy

Office of the City Clerk, San Diego, California

Ordinance Number O- 20721