BUDGET MAR 1 6 2011 #3

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March 1, 2011

REPORT TO THE BUDGET COMMITTEE

ABILITY TO GENERATE ADDITIONAL REVENUE TO THE CITY'S GENERAL FUND FROM THE CITY-OPERATED GOLF COURSES

INTRODUCTION

At a recent City Council meeting, this Office was asked what ability the City had to generate additional revenue to the City's General Fund from the City-operated golf courses. The ability of the City to sell the City-owned golf courses was the subject of a Report to the Budget Committee dated January 19, 2011, from this Office; therefore, for the purposes of this Report, it is assumed that the City would retain ownership of the golf courses.

QUESTIONS PRESENTED

What actions may the City take to generate additional revenue to the City's General Fund from the City-operated golf courses?

SHORT ANSWERS

The City may terminate the Golf Enterprise Fund, enter into leases for the operation of the golf courses or for a different use with higher expected revenue, change the City's own use of the property for a different use with a higher revenue, revise the formula used to calculate the rent payment that the Golf Enterprise Fund currently makes to the General Fund, or take action on a combination of these measures.

BACKGROUND

The Golf Enterprise Fund was created as part of the Fiscal Year 1992 budget. San Diego Ordinance O-17667 (July 23, 1991). At that time, the General Fund was expending money to support the golf courses, and the creation of the Golf Enterprise Fund was a method to create a self-sustaining endeavor. *See* FY 2006 City Council Referral Regarding the Fiscal Year 2006 Proposed Budget (Referral), Attachment 1.

As the attached Referral notes, the Golf Enterprise Fund pays rent to the General Fund based on a formula established in 1995 by the Financial Management Department. *See* Letter from Bruce Herring to Golf Advisory Council dated May 18, 1995 (Letter), Attachment 2.

ANALYSIS

I. TERMINATION OF THE GOLF ENTERPRISE FUND

The Golf Enterprise Fund is a City Council created concept, and the Council can terminate the Golf Enterprise Fund in the same manner as it was created. Unlike water revenue and expenditures, there is no Charter requirement to create and maintain a separate Golf Enterprise Fund. *See* San Diego Charter § 53. The fiscal year 2011 Appropriations Ordinance provided that all Enterprise Funds were "appropriated for the purpose of providing for the operation, maintenance and development of their respective purposes." San Diego Ordinance O-19976, at 7 (July 26, 2010). An ordinance amending the Appropriations Ordinance may be passed to effectuate the termination. However, if the golf-courses remain City-operated, the fees set for the use of the golf courses must still be based on the cost of providing the service. User fees based on the cost of providing the service are not taxes subject to a vote by the electorate. *Weisblat v. City of San Diego*, 176 Cal. App. 4th 1022, 1038 (2009). Council Policy 100-05 provides guidance on the types of costs that may be included in calculating the cost of providing the service.

II. LEASE OF CITY PROPERTY

The City may lease its property.[1] San Diego Charter § 1; Cal. Gov. Code §§ 37350, 37380, 37395. This includes the City property currently operated as golf courses. As noted in the earlier Report, however, some of the property is subject to restrictions on type and length of the use, pursuant to other Charter sections. *See* City Att'y Report 2011-3 (Jan. 19, 2011). To summarize here, Charter section 55 requires the property be used for park and recreational purposes and Charter section 219 requires that Pueblo Lands not be leased in excess of 15 years without a vote of the electorate. These specific limitations are interpreted to govern the more general authority granted in Charter section 1. 58 Cal. Jur. 3d *Statutes* § 122 (2004, Supp. 2010).

City leases usually provide for both a minimum rent payment, as well as a percentage rent that varies based on the category of income by the lessee. The City may consider leasing a portion of the golf courses for golf course use or for other uses, taking into account various factors such as demand, current zoning, Charter sections 55 and 219, and other relevant matters.

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[1] The use of a franchise to operate the golf courses has been mentioned. The grant of a franchise is not the appropriate method to contract out the operation of the golf courses. Franchises granted by a government are typically used when an exclusive agreement is entered into for the purpose of providing an inherently governmental service that the government is obligated to provide to its citizens such as water, trash service, electricity, or for the use of its streets. 34A Cal. Jur. 3d *Franchises from Governmental Bodies* § 1 (2008, Supp. 2010). When the City is acting in its proprietary capacity (i.e., as a land owner), rather than its governmental capacity, the grant of a privilege is a license, not a franchise. *Id.* § 2.

III. CITY USE FOR USES OTHER THAN GOLF COURSES

In lieu of leasing the property to a third party for another use, the City may also consider whether changing its own use of the property would produce more revenue. The same use restrictions would apply as discussed in Section II.

IV. REVISION OF LEASE PAYMENT FORMULA FROM THE ENTERPRISE FUND TO THE GENERAL FUND

The Golf Enterprise Fund currently pays the General Fund lease payments based on two components: a fixed annual rate of $1,806 per acre, plus 9.9% of the gross revenue, subject to review every five years.[2] This land use fee formula was established in 1995 by the City's Financial Management Department. *See* Letter at 1. The fixed annual rate component was comparable to the revenue expected under a lease arrangement similar to the one at Mission Trails. *See* Letter at 3. The gross revenue percentage was developed to replace the revenue the General Fund would have received from the operation of the Torrey Pines and Balboa Park Golf Courses as municipal facilities.

This formula could be revisited to determine whether these components and percentages are still appropriate, keeping in mind the requirement that fees that exceed the cost of providing the service will be considered a tax, and are subject to a vote. *Weisblat*, 176 Cal. App. 4th 1022.

This Office cannot represent that any of these actions would actually result in increased revenue to the General Fund, however. There are many factors to be considered such as the fair market value of the property, the ability to attract more play if the land is used as a golf course, and the ability of the market to absorb increased fees. It should be noted that a recent public report on the revenues and expenses of the Golf Enterprise Fund indicates that the Torrey Pines Golf Course currently provides revenue to support the Balboa Golf Course. IBA Report No. 07-91 (Sept. 20, 2007). In addition, the Mission Bay Golf Course, which was previously leased to a private entity for 50 years, was determined to be operating at a breakeven point.[3] *Id.*

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[2] The $1500 per acre amount set forth in Attachment 1 was revised in the FY11 Budget, pg. 120 http://www.sandiego.gov/fm/annual/pdf/fy11/14v2parkandrec.pdf

[3] At the time the leasehold was returned to City control, it was determined that the property had not been maintained at an acceptable level. City Mgr, Report No. 03-229 (Nov. 13, 2003).

CONCLUSION

There are various actions the City could consider in regards to increasing revenue to the General Fund from the City-operated golf courses. This Office cannot make any representations regarding the economic feasibility of or projected revenue from the exercise of any of the above options.

JAN I. GOLDSMITH, CITY ATTORNEY

By Shannon M. Thomas
Shannon M. Thomas
Deputy City Attorney

SMT:als
RC-2011-12
Attachment:
1. City Council Referral Regarding the Fiscal Year 2006 Proposed Budget
2. Letter from Deputy City Manager, May 18, 1995

File No: 22

CITY COUNCIL REFERRAL
REGARDING THE FISCAL YEAR 2006 PROPOSED BUDGET

TO: Honorable Mayor and City Council

FROM: P. Lamont Ewell, City Manager

RESPONDING DEPARTMENT: Park and Recreation

ISSUE: During the City Council meeting of May 23, 2005 regarding the Fiscal Year 2006 Proposed Budget, Councilmember Young requested information on the reason for the projected decline in Golf Course rent to the General Fund below the Fiscal Years 2004 and 2005 levels. In addition, Councilmember Young would like to know what the Council needs to do to adjust the formula that is currently used to charge rent to the golf courses and what the maximum amount of rent is that can be legally charged to the golf courses.

RESPONSE: The Golf Enterprise Fund was created as of July 1, 1991. The reasons for its formation were to limit the General Fund's future obligations to support the city golf courses and to allow the courses flexibility to make capital improvements to the extent that revenues and expenses allow. In 1995, the City began charging the Golf Course Enterprise Fund a set rent based on two components. The first component was a fixed annual rate of $1,500 per acre. This amount was comparable to rent being paid by the Mission Trails Golf Course. The second component was 9.9% of the gross revenues. It was expected that the rent would be reviewed every five years.

"Enterprise" is defined as "a revenue-producing improvement, building, system, plant, work, facilities, or undertaking used for or useful for any of the following purposes: The providing of public golf courses, and facilities and improvements in connection therewith." Ca. Gov. Code § 54309(i). The Council can change the rent paid by the Enterprise Fund through the Appropriations Ordinance or by resolution. However, the Golf Enterprise Fund consists of rents paid by lessees and fees for services paid by golfers. To the extent any maintenance of and improvements to the golf courses suffer due to decreased availability of funds, the City's revenues will also suffer. Additionally, fees for services cannot be higher than the cost to provide the service, or the fee becomes a tax. At some point, the Golf Enterprise Fund would no longer be a revenue-producing undertaking for the purpose of providing the necessary facilities and improvements.

The annual rent calculation is based on the previous year's budgeted revenue. The proposed FY 2006 rent calculation of $1,557,178 is a reduction from the previous year's rent due to the proposed six month closure of the Torrey Pines

Golf Complex's North Course in FY 2005. This proposed closure reduced the FY 2005 revenue projections for North Course green fees by approximately $1.7 million from the FY 2004 projection. This decline in revenue subsequently reduced the proposed rent to be paid by the Golf Enterprise Fund in FY 2006.

However, since Torrey Pines Golf Complex's North Course did not close as planned in FY 2005, staff recommends utilizing the FY 2004's actual revenue as the basis for the FY 2006 rent calculation. Utilizing this methodology would increase the annual rent projection by $64,614 to $1,621,792.

THE CITY OF
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CITY ADMINISTRATION BUILDING • 202 C STREET • SAN DIEGO, CALIFORNIA 92101

OFFICE OF THE
CITY MANAGER
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May 18, 1995

Mr. Hal Boston
Chairman, Golf Advisory Council
2103 Domingo Glen
Escondido, CA 92026

Dear Mr. Boston,

The Golf Advisory Council members at the March 2, 1995 meeting expressed concerns regarding not having a set "land use fee" for the Golf Course Enterprise Fund transfer to the City's General Fund. After listening these comments, I requested that staff develop a Golf Operation "land use fee" formula which would create a set fee for the Manager's Proposed Budget to be reviewed every five years. This annual fee would be contingent upon acceptance of the Proposed Budget by the City Council. With a set "use" fee formula in the budget, the Golf Advisory Council could make better decisions with respect to fee increases and projected earnings. The projected retained earnings could be identified for future capital improvement projects at both golf course facilities and future additional golf facilities.

The Financial Management Department staff has established a land use fee formula for the Golf Operations Enterprise Fund. The Land Use Fee has two components which are based on existing City golf course leases. The first component is a fixed annual rate based on a per acre fee of $1,500. The annual fee for the 380 acres utilized for the golf operations will be $570,000. The second component is a variable amount established at 9.9% of the last full fiscal year's gross golf and concession revenues. For Proposed Fiscal Year 1996 the figures would reflect the earnings from fiscal year ending June 30, 1994, when golf and concession fees totaled $4,852,000. At 9.9%, this would represent a fee of $480,000, rounded to the nearest thousand, thus the projected annual fee for the Golf Operations Enterprise Account based on these two components for Fiscal Year 1996 will be $1,050,000.

ATTACHMENT 2

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DIVERSITY

I hope that this established fee addresses the problems that the GAC members had regarding the budget. If you have any questions concerning the compensation to the General Fund, John Walter and Carol Wood will be available to respond to questions at the June 1, 1995 Golf Advisory Council meeting.

Sincerely,

BRUCE HERRING
Deputy City Manager

cc: Park and Recreation Director
Golf Operations Manager

Attachment 3.

Other Charges

Golf Course

Land Rental The annual charge of $1,050,000 to the Golf Course Fund is based on the following factors:

	Charge	Amount
380 acres at $1500 per acre.	Annual Fixed Land Use Fee (1)	$ 570,000
	Annual Subsidy Compensation Fee (2)	$ 480,000
160 Balboa 220 TP	Total	$1,050,000

(1) This charge is based on a per acre charge of $1,500 per acre multiplied by the total acreage for both Torrey Pines and Balboa. The per acre charge is comparable to the per acre charged for Mission Trails Golf Course. This annual rate is an estimate of what the City would receive if both courses were operated under lease arrangements similar to Mission Trails. Since the combined facilities of Torrey Pines and Balboa Park could generate a significantly greater return per acre than Mission Trails if full market rate fees were charged, the rate can be appropriately characterized as a "minimum" annual land use fee.

(2) In addition to the fixed land use fee, the General Fund is also compensated for a portion of the revenues foregone as a result of operating the Torrey Pines and Balboa Park as municipal facilities, with annual green fees equal to approximately one-third of estimated market rates. This subsidy compensation fee would be at a rate of 9.9% of annual golf fees and concessions revenues. For FY 96, the fee amount is estimated at $480,000.

Revenue Category	Budgeted FY 96 Revenues	Fee Rate*	Amount
Golf Fees	$4,422,200		
Concessions	$ 430,000		
Total	$4,852,200	9.9%	$480,000