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MEMORANDUM OF LAW

DATE: July 27, 2007

TO: Honorable Mayor Jerry Sanders and City Council Members

FROM: City Attorney

SUBJECT: Mission Bay Ordinance

INTRODUCTION

At the City Council Hearing of July 16, 2007, the City Council voted to approve an Ordinance amending the San Diego Municipal Code providing for a definition of “Waters of Mission Bay,” and “Land of Mission Bay.” See Agenda Item No. 200, City Council Hearing of July 16, 2007. At this first reading of the proposed Ordinance, City Council requested that the City Attorney’s Office provide a legal opinion as to whether the City Charter had to be amended before these definitions could be enacted into law.

QUESTIONS PRESENTED

In order to amend the San Diego Municipal Code to define the “Waters of Mission Bay” and “Land of Mission Bay,” in relation to the implementation of City Charter Section 55.1, must the City of San Diego [City] first amend City Charter, Section 55.1?

SHORT ANSWER

No. The City may amend the San Diego Municipal Code to define the “Waters of Mission Bay” and “Land of Mission Bay,” in order to implement City Charter Section 55.1, as long as this Ordinance amendment implements and does not conflict with the City Charter.

LEGAL ANALYSIS

A city charter is a municipal corporation’s organic law in as much as it is the equivalent of a constitution. See Vol. 5, Section 9:25 of McQuillin’s *Municipal Corporations* (3d Revision 2004). The provisions of the California Constitution, Article XI, Section 3(a) authorize the adoption of a city charter and provides such a charter has the force and effect of state law. See *City of Glendale v. Trondsen*, 48 Cal. 2d 93, 98 (1957). The San Diego City Charter provides

the City with the freedom to manage its own municipal affairs as it deems appropriate without state administrative or legislative interference, but in harmony with the state and federal constitution, state laws dealing with matters of statewide concern and federal laws where the federal law preempts local law. See Vol. 5, Section 9:8 of McQuillin's *Municipal Corporations* (3d Revision 2004); *Harman v. City and County of San Francisco*, 7 Cal. 3d 150, 101 Cal. Rptr. 880 (1972); *Codding Enterprises v. City of Merced*, 42 Cal. App. 3d 375, 377-78, 116 Cal. Rptr. 730 (1974); *California Federal Savings and Loan v. City of Los Angeles*, 54 Cal. 3d 1, 13, 283 Cal. Rptr. 569 (1991). *Rivera v. City of Fresno*, 6 Cal. 3d 132, 98 Cal. Rptr. 281 (1971) (disapproved of by, *Yamaha Corp. of America v. State Bd. Of Equalization*, 19 Cal. 4th 1, 78 Cal. Rptr. 2d 1 (1998) (unaffected by general laws on same subject matters). The City also has the authority to implement those ordinances necessary to carry out the provisions of the Charter. See Cal. Const. art. XI, Section 5(a); see also San Diego City Charter § 2.

Charter Interpretation:

Generally, where the Charter authorizes something to be done, and an ordinance undertakes to carry out such power, courts will lean to a construction of the ordinance that will uphold it. Municipal charters are to be construed in order to ascertain legislative intent. See Vol. 5, Section 9:25 of McQuillin's *Municipal Corporations* (3d Revision 2004); *Domar Electric, Inc. v. City of Los Angeles*, 9 Cal. 4th 161, 36 Cal. Rptr. 2d 521 (1994); *Long v. City of Fresno*, 225 Cal. App. 2d 59, 36 Cal. Rptr. 886 (5th Dist. 1964). Another well recognized general rule is that all laws bearing on a subject must be read together, in construing the Charter. See Vol. 5, Section 9:25 of McQuillin's *Municipal Corporations* (3d Revision 2004); *City of San Jose v. Lynch*, 4 Cal. 2d 760 (1935); *Creighton v. City of Santa Monica*, 160 Cal. App. 3d 1011, 207 Cal. Rptr. 78 (2d Dist. 1984).¹

Consistency with State and Federal Law:

As stated earlier, the San Diego Charter must be consistent with applicable state and federal law. Where there appears to be conflict between a state law and a Charter, the state law and the Charter will be construed to make the provisions harmonious. See Vol. 5, Section 15:19 of McQuillin's *Municipal Corporations* (3d Revision 2004); *People ex rel. Seal Beach Police Officers Assn. v. City of Seal Beach*, 36 Cal. 3d 591, 205 Cal. Rptr. 794 (1984); *San Francisco International Yachting etc. Group v. City and County of San Francisco*, 9 Cal. App. 4th 672, 12

¹ Where the "law is silent as to the mode of exercising such power, the corporate authorities are necessarily clothed with a reasonable discretion to determine the manner in which such powers shall be exercised; all the reasonable methods of executing such power are inferred....In other words, the general rule is that unless restrained by law a municipal corporation may, in its discretion, determine for itself the means and method of exercising its powers....Further, where the means selected have not been directly authorized, those means must be reasonable." Thus, if the manner of exercising a granted power is not prescribed, the common council may proceed either by way of ordinance or resolution.

Vol. 5, Section 10:32 and 10:33 of McQuillin's *Municipal Corporations* (3d Revision 2004); *King v. Leavy*, 124 Cal. App. (1st Dist. 1932).

Cal. Rptr. 2d 25 (1st Dist. 1992). Therefore, an interpretation and application of City Charter Section 55.1 that is in harmony with applicable state and federal law provisions (e.g., Public Trust Doctrine, Clean Water Act), is consistent with this general principle.

Furthermore, an ordinance must be consistent with the Charter and, where applicable, state and federal law. An ordinance proposing to exclude wetlands and marshes from the characterization of “water” and “land” of Mission Bay for purposes of determining what portion of Mission Bay may be leased is consistent with the City Charter, and state and federal law in that it gives the greatest protection to these natural resources in light of the City’s responsibilities under the Mission Bay Park Master Plan, the Public Trust Doctrine and the Clean Water Act.²

CONCLUSION

The definition of waters and land of Mission Bay as approved at City Council on July 16, 2007, is neither inconsistent, contrary to or in conflict with the application, use or overall meaning of City Charter Section 55.1, state or federal law. On the contrary, such definitions are reasonable given that they effectuate the purpose behind Section 55.1 by protecting the natural

² The charter of the city is the organic law of the corporation, being to it what the constitution is to the state, and the charter bears the same general relation to the ordinances of the city that the constitution of the state bears to the statutes. Neither the municipal legislative body nor the mayor may disregard charter mandates or procedures at any time, nor do past variations and looseness, be they occasional or frequent, lend an aura of respectability or legality to any other mode of practice.

Vol. 5, Section 15:17 and 20.41 of McQuillin’s *Municipal Corporations* (3d Revision 2004); *Porter v. City of Riverside*, 261 Cal. App. 2d 832, 68 Cal. Rptr. 313 (4th Dist. 1968); *Howard Jarvis Taxpayers Assn. v. City of Roseville*, 106 Cal. App. 4th 1178, 132 Cal. Rptr. 2d 1 (3d Dist. 2004); *deAryan v. Butler*, 119 Cal. App. 2d 674 (4th Dist. 1953); *Currier v. City of Roseville*, 4 Cal. App. 3d 997, 84 Cal. Rptr 615 (3d Dist. 1970); *Hartford Acc. & Indem. Co. v. City of Tulare*, 30 Cal. 2d 832 (1947); *Skaggs v City of Los Angeles*, 43 Cal. 2d 497 (1954).

At the risk of being struck down as invalid, ordinances must in general conform and not be inconsistent with the public policy of the state, as found in constitution and statutes or, when the constitution and statutes are silent, in its judicial decisions and the constant practice of its public officials. The rule requires at least substantial conformity, and under it an ordinance cannot prohibit what the public policy permits, or permit that which public policy forbids. Nor, under a general grant of power, can a municipal corporation adopt ordinances which infringe the spirit, or are repugnant to the policy, of the state as declared in its legislation.

Northern Cal. Psychiatric Society v. City of Berkeley, 178 Cal. App. 3d 90, 223 Cal. Rptr. 609 (1st Dist. 1986) (electroshock treatments). See Vol. 5, Section 15:19 of McQuillin’s *Municipal Corporations* (3d Revision 2004).

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City Council Members

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resources of Mission Bay and still allow a percentage of Mission of Bay to be leased for commercial or other purposes.

MICHAEL J. AGUIRRE, City Attorney

By

Shirley R. Edwards
Chief Deputy City Attorney

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