

DATE: November 20, 1987

TO: Mayor Maureen O'Connor
FROM: City Attorney
SUBJECT: Save Mission Beach Park Initiative
(Proposition G - November 3, 1987 Election)

Your November 4 memorandum indicates that, in your view, the passage of Proposition G alters the status and merits of the Belmont Park project and you ask for our views with respect to (1) the "affect/impact that passage of the initiative has upon the ongoing development" and (2) what options are available for relieving the City of its obligations under the current lease agreement with Belmont Park Associates. A copy of your memorandum is attached as Enclosure (1). Assistant City Attorney Curtis M. Fitzpatrick and I have conferred on the questions you ask. This is our reply.

It seems to us that some of the answers to your questions are contained in the language of the initiative proposition itself. First, we would direct your attention to Sections 2 and 4 of the initiative, which provide:

Section 2. Immediately following the effective date of this measure, the City Council shall initiate a program to carry out the provisions of this measure by amending the appropriate planning and zoning documents applicable to the Mission Beach Park property so that they are consistent with this measure. This program shall include, as necessary, amendments to the Progress Guide and General Plan, Mission Beach Local Coastal Program, Mission Beach Planned District Ordinance, Mission Beach Precise Plan, and all applicable City Zoning Ordinances.

Section 4. Implementation. The City Council, City Planning Commission, and City staff are hereby directed to take any and all actions necessary under this Initiative measure, including but not limited to adoption and implementation of any amendments to the Progress Guide and General Plan, Mission Beach Local Coastal Program, Mission Beach Planned District Ordinance, Mission Beach Precise Plan, all applicable City Zoning Ordinances, or City Code, reasonably necessary to carry

out the intent and purpose of this Initiative measure. Said actions shall be carried out forthwith.

Thus, it would seem to us that the first appropriate action to be taken would be a City Council direction to the Planning Department to commence the necessary zoning action, pursuant to state and local law, regulation and procedures, which would bring the local land use categories into conformance with Proposition G's mandate.

Another action which should be considered by the City Council is what, if any, procedural guidelines are appropriate under the circumstances.

Section 5 of the proposition provides as follows:

Section 5. Guidelines. The City Council may adopt reasonable guidelines to implement this Initiative measure following notice and public hearing, provided that any such guidelines shall be consistent with the intent and purpose of this measure.

Finally, with respect to the Belmont Park Associates' project, we are in receipt of a letter dated November 16, 1987 from Steven S. Wall of Luce, Forward, Hamilton and Scripps, representing Belmont Park Associates, a copy of which is attached as Enclosure (2). As you can see, it requests that the City Council proceed with a hearing in accordance with Section 6 of the initiative proposition.

Section 6 provides as follows:

Section 6. Exemptions for Certain Projects. This measure shall apply to all proposed development or redevelopment of Mission Beach Park except a development or redevelopment proposal which has obtained a "vested right" as of the effective date of this measure. For purposes of this measure, a "vested right" shall have been obtained only if each of the following criteria is met:

- (a) The project has received its final discretionary approval; and
- (b) Substantial expenditures have been incurred in good faith reliance on the final discretionary approval; and
- (c) Substantial construction has been performed on the property in good faith reliance on the final discretionary approval.

The "substantiality" of the expenditures

incurred and of construction performed and the question of whether or not such expenditures and construction were in "good faith" are questions of fact to be determined on a case by case basis by the City Council following application by the landowner or developer and upon notice to the interested public, and following public hearing.

We have already advised Mr. Wall that his request for a public hearing should be addressed to the Mayor and City Council through the City Clerk. Whether it can be held prior to the trial date of December 18, 1987 to which his letter alludes is, of course, not within the jurisdiction of this office.

Thus, we believe that the appropriate actions to be taken by the City Council are to:

- 1) Commence implementation of the initiative's mandate regarding rezoning by direction to the Planning Department.
- 2) Consider the need for guidelines to implement the initiative and, if deemed necessary and appropriate, direct their preparation by the City Attorney; and

3) Consider the request of Belmont Park Associates for the "vested right" exemption to which Section 6 and Enclosure (2) allude.

Sincerely,
JOHN W. WITT
City Attorney

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Enclosures

ML-87-111