

MEMORANDUM OF LAW

DATE: September 14, 1987

TO: Patricia Frazier, Director, Financial
Management

FROM: City Attorney

SUBJECT: Parking Fees on Mission Bay Park Parking Lots

By memorandum dated October 6, 1986, you requested this office to comment as to the legality of charging parking fees on Mission Bay parking lots and as to what limitations exist with regard to use of revenue from such fees. A copy of your memorandum is attached for reference.

We were recently requested to report on the status of your October 6, 1986, request and could not determine if or when it had been received. In any event, we apologize for the delay.

Your specific questions are as follows:

1. Is there anything prohibiting the City from charging parking fees on Mission Bay Park parking lots?
2. Could the suggestion be implemented with the fee revenues being used for maintenance of Mission Bay Park?
3. Could the suggestion be implemented with the fee revenues being placed into the General Fund?

Please see the attached memoranda of law dated August 4, 1978, and July 13, 1984.

The 1945 grant of the Mission Bay tidelands from the State of California specifically anticipated "rates, tolls or charges" for uses or services in connection with use of the tidelands but prohibited discrimination in such rates, tolls or charges. Chapter 142 Statutes of 1945, Section 1(c).

Mission Bay Park, as you know, is composed of both tidelands received in connection with the 1945 grant and also uplands which are not subject to the tidelands trust but which were, with the tidelands, dedicated to park use by Ordinance 8628 (New Series) in 1962.

There is no language in the ordinance dedicating the property to park use which limits the ability to charge fees for parking or for other facilities or services. Therefore, in answer to your first question, there is nothing in either the tidelands grant or the park dedication ordinance which precludes the City from charging parking fees on Mission Bay Park parking lots.

Your memorandum indicated that your preliminary research on the subject indicates: "There may have been a stipulation when the voters approved bond issuances for Mission Bay Park requiring that the Park be provided free of charge." This office is unable to find any language to that effect in the bond documents. In fact, numerous park facilities already charge fees for use and services. For example, the various hotels, Sea World, the various marinas and the aquatic recreation facilities on Santa Clara Point.

The only legal problems appear to arise out of existing Municipal Code provisions. While Section 63.05 was added in 1984 to specifically give the City Manager authority to regulate parking in City parks, that section does not contain any specific provision authorizing the imposition of parking fees. A copy of Section 63.05 is attached for your information.

Also, Sections 82.04 through 82.09 relate to the installation of parking meters by the City Manager. If fees charged for parking in Mission Bay Park parking lots are proposed to be collected through the installation of parking meters, it would be appropriate to amend Section 82.04, et seq. to allow for installation of parking meters on other than portions of public streets since Mission Bay parking lots would probably not qualify as "public streets."

Further, if it is proposed to utilize the funds for purposes other than as set forth in Sections 82.08 and 82.09, those sections should likewise be amended to so provide.

In answer to your second question, if fees were collected through other than the installation of parking meters and the parking lots in question are on part of the tidelands grant, it would be necessary for such revenues to be utilized for tidelands purposes in accordance with the rules relating to all income arising from use of tidelands.

If, on the other hand, and in answer to your third question, the parking lots are located on dedicated park land which are not part of the tidelands, the fees could be placed into the City's General Fund. It is recommended that you request a plat of Mission Bay Park from the Property Director so that the tidelands/non-tidelands areas can be easily ascertained.

Finally, if parking meters are to be used as the device to collect such fees, the same rules as above would apply but it would be appropriate to amend Sections 82.08 and 82.09 to specifically allow such use of the fees.

JOHN W. WITT, City Attorney

By

Harold O. Valderhaug

Deputy City Attorney

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Attachments 3

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