

DATE: August 15, 1988

TO: Maureen Stapleton, Deputy City Manager
FROM: City Attorney
SUBJECT: Belmont Park - Proposition G - Limitations on
Use

By memorandum dated July 5, 1988, copy attached as Attachment 1, you requested our legal opinion "on the effects of Proposition G on uses planned for both the Belmont Park and roller coaster leaseholds." Your memorandum indicated that there are a number of proposed uses of leasehold areas, incidental to the uses of the structures, including "cart sales of popcorn, suntan oil, etc., entertainment with clowns, mimes, etc., . . . and children's rides consisting of a small carousel and ferris wheel."

The Provisions of Proposition G

As you know, Proposition G was an initiative approved by the electorate at the November, 1987 election. The Proposition read as follows:

Shall the Mission Beach Park property owned by the City of San Diego be restricted to the following uses:

(a) Public park and recreation uses such as grass, picnic areas, public open space, public parking, public recreation and meeting facilities. Expressly excluded are retail and commercial uses except within a historically rehabilitated Plunge Building which would serve park and beach visitors, such as restaurants, fitness center and the like.

(b) Historical preservation uses, such as preservation and rehabilitation of the historic Plunge Building, Roller Rink Building

and Roller Coaster where economically feasible.

(c) Incidental and related uses to those uses authorized by (a) and (b) above provided such incidental and related uses are clearly subordinate to the authorized uses and are minor in nature?

A copy of the ballot language, the full initiative language and the arguments for and against Proposition G are attached as Attachment 2.

It is clear that the intent of Proposition G was to place

restrictions on the use of Mission Beach Park, portions of which have been leased to Belmont Park Associates (BPA) and Save The Coaster Committee. While the BPA development, pursuant to its lease from the City, and the roller coaster restoration have been determined by the City Council to have "vested" rights and are, therefore, exempt as specified in Proposition G, all development and use, beyond those provided for in the BPA lease and the roller coaster restoration plan, must conform to the restrictions contained in Proposition G.

Authorized Uses Under the Belmont Park Associates Lease

The BPA lease authorizes development and use in accordance with its specified development plan "and for such other related or incidental purposes as may be first approved in writing by the City Manager, which approval shall not be unreasonably withheld, and for no other purpose whatsoever." Therefore, since the leasehold uses under the BPA lease have been determined to be vested, the City Manger may allow, pursuant to the lease, minor additional uses incidental to the primary leasehold uses of construction, operation and maintenance of a park/visitor-oriented commercial and recreational center.

Thus, with regard to the BPA leasehold, it appears that the City Manager could approve such things as cart sales of popcorn and entertainment with clowns and mimes as "related or incidental" uses. With regard to "children's rides" consisting of a small carousel and ferris wheel, it would be appropriate to review the development plan which is attached to the lease, together with the lease as a whole, in determining whether such "children's rides" are consistent with and incidental to the project. It is my understanding that a carousel was, in fact, contemplated as a potential amenity during the preparation of the development plan but that a ferris wheel was not considered for

inclusion until recently. Also, the "contemplated uses" provision of the development plan for the BPA lease does contain a provision for City Manager approval of incidental "visitor-oriented commercial and recreational uses."

If no charge is proposed for the use of the carousel and ferris wheel, they would probably not be considered "commercial uses." But if a charge is proposed, each such facility must be justified as a logical "incidental" use since they are not specifically provided for in the development plan attached to the lease.

Authorized Uses Under Proposition G

In addition, subsection (b) of Proposition G specifically allows "historical preservation uses" in Mission Beach Park. In the event a carousel or ferris wheel can logically qualify as a

"historical preservation use," such uses are therefore allowable.

Finally, subsection (c) of Proposition G authorizes "incidental and related uses to those uses authorized by (a) and (b) above provided such incidental and related uses are clearly subordinate to the authorized uses and are minor in nature."

Subsection (c), therefore, would allow, for example, the incidental and related uses to the commercial uses authorized within the Plunge Building under subsection (a), and incidental and related uses to historical preservation uses such as the roller coaster rehabilitation project.

With regard to the roller coaster leasehold, subsection (c) of Proposition G clearly authorizes incidental and related uses with the roller coaster ("historical preservation") operation and, therefore, the proposed inclusion of a small museum and a retail shop specializing in coaster related items, which I understand are the incidental uses proposed in connection with the roller coaster restoration, would appear legally appropriate.

Summary

In summary, cart sales of popcorn, suntan oil and similar items, and entertainment with clowns and mimes would clearly qualify as "incidental" uses on the BPA leasehold. The proposed installation of a small carousel and a ferris wheel do not so easily or clearly fit within the "incidental use" provision of the BPA lease. However, the development plan for the BPA lease under "contemplated uses" does, in addition to specific commercial uses, contain a provision allowing "such other

visitor-oriented commercial and recreational uses as may be approved by the City Manager." If the City Manager, therefore, determines that a small carousel and/or a small ferris wheel is appropriate as an "incidental use" of the lease premises, such a determination would appear to be a justifiable and legal determination in accordance with the lease documents as part of the "vested" project.

With regard to the roller coaster, it is my understanding that a small museum and museum related retail shop is proposed in connection with the historical rehabilitation of the roller coaster. A relatively small museum and retail shop would appear legally appropriate as an "incidental and related use" to the historical preservation use in accordance with subsections (b) and (c) of Proposition G.

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By

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Deputy City Attorney

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Attachments 2
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