

DATE: June 7, 1990

TO: Coleman Conrad, Deputy City Manager

FROM: City Attorney

SUBJECT: Use of a Portion of Mission Bay Park Land as a
Nonpermanent Boat Yard by America's Cup
Syndicate Challenge

You have asked whether a portion of land and adjacent water area in Mission Bay Park could be leased as a temporary operational base by a sailing syndicate during the America's Cup Challenge Trials. Your memorandum of May 18, 1990 indicated that any lease would be for less than two years and that all tenant improvements and utility extensions could be retained for future City park use. Rent would be paid for an area located at the east side of Mariner's Point; the area is sandy and undeveloped and used only for special permit events. Lease of the area would not exceed the twenty-five percent lease limitation established by City Charter section 55.1.

You have further indicated that any interested sailing syndicate would be required to provide the public with reason-able access to or tours of the syndicate area and facilities. Consistent with the aquatic theme of the park, the recreational public would then be allowed a sense of participation in and understanding of the racing process.

Although Mission Bay Park land is dedicated for park and recreation purposes pursuant to City Charter section 55, this office has concluded in the past that facilities which would allow the public to view the various stages of the boatbuilding process may be construed as a valid recreational use of dedicated park lands consistent with the aquatic theme of the park. See the attached Memorandum of Law dated November 21, 1985. Public access to the facilities on a reasonable basis supports this conclusion, as further noted in a Memorandum of Law dated July 8, 1988 concerning a marine research center at Mission Bay Park. Attached is a copy of that Memorandum of Law (less its attachments).

Thus, as a general rule, we opine that a sailing syndicate lease would be a permissible use within Mission Bay Park, provided the lease or permit takes into account the issues regarding public access. Should the syndicate need to

periodi-cally limit public access in order to protect the security of the project design, such a lease provision would not defeat the concept of public access under the parameters outlined above, provided it was for a reasonable duration and with the City Manager's approval.

If you have further questions on this issue, please do not hesitate to contact the undersigned.

JOHN W. WITT, City Attorney
Rudolf Hradecky
Deputy City Attorney

RH:mb:263.2(x043.2)

Attachments

cc John Leppert

George I. Loveland

Terri Carroll

ML-90-70