

MEMORANDUM OF LAW

DATE: July 26, 1994

TO: Gary K. Himaka, Associate Civil Engineer,  
Metropolitan Wastewater Department

FROM: City Attorney

SUBJECT: Use of Dedicated Park Land for Sludge Pipeline  
"Pigging Station" Generally Prohibited

This is in reply to your memorandum of June 3, 1994 concerning a proposal to locate a component facility of the metropolitan wastewater treatment system on dedicated park land. In a subsequent meeting you explained that the proposed facility is a sludge pipeline "pigging station" (i.e., a clean-out maintenance station for the pipeline) which, ideally for purposes of design and cost, would be situated above ground within the boundaries of Mission Bay Park south of Sea World Drive near the San Diego River floodway. You asked whether this proposal presents a conflict with certain provisions of San Diego City Charter section 55. Generally, the answer is yes, the proposal does present a legal conflict with the City Charter.

The relevant limitation of Charter section 55 reads as follows:

All real property owned in fee by the City heretofore or hereafter dedicated in perpetuity by ordinance of the Council or by statute of the State Legislature for park, recreation or cemetery purposes shall not be used for any but park, recreation or cemetery purposes without such changed use or purpose having been first authorized or later ratified by a vote of two-thirds of the qualified electors of the City . . . .

The effect of this provision is clear: Dedicated park land may only be used for legitimate park related purposes unless a

two-thirds vote of the electorate allows otherwise. The attached memoranda (dated March 29, 1983; February 11, 1986; August 10, 1988; January 26, 1990; and August 20, 1992) all discuss this Charter limitation in reply to questions similar to yours, which arose in various factual contexts over the years. These provide background and case examples of what can and cannot be lawfully regarded as valid uses of dedicated public parks.

The proposed above ground pigging station would definitely not be a valid use of dedicated park land. The sludge pipeline and the pigging station will be components of a wastewater treatment system which, if visibly situated, would be nearly the antithesis of a legitimate park use. This would be unlawful under Charter section 55 unless two-thirds of the voters approve of it.

An exception may be lawfully permitted, however, if the station were located underground, so as to be invisible and not detractive from proper park uses. See memoranda dated March 29, 1983 and January 26, 1990. The exception for underground utilities would apply only in circumstances where facilities do not substantially interfere with proper use of the park.

Your memorandum mentions that the Water Utilities Department has an above ground pump station in Mission Bay Park, but be that as it may, that fact would not render such a use legal, unless the pump station principally serves park purposes.

One issue that perhaps remains is whether the site for the proposed pigging station is actually dedicated park land. Mission Bay Park was dedicated on April 24, 1962 by Ordinance No. 8628 (New Series). This ordinance gives the legal description of the dedicated lands, and you may wish to confirm with the Real Estate Assets Department whether the project site lies within or outside the park boundary. From the explanation you gave at our meeting, it appears that the site likely does indeed lie within the park, and therefore the proposed project would be subject to the legal restrictions discussed here.

JOHN W. WITT, City Attorney

By

Frederick M. Ortlieb

Deputy City Attorney

FMO:mb:263(x043.2)

Attachments

cc Terri C. Williams,

Deputy Park & Recreation Director

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