

**Office of
The City Attorney
City of San Diego**

MEMORANDUM

DATE: April 19, 2007
TO: Park and Recreation Board
FROM: Kimberly Ann Davies
SUBJECT: Park and Recreation Board: Powers and Operating Procedures

INTRODUCTION

You have asked this office to provide you with a legal analysis of the powers and duties of the Park and Recreation Board [Board], and to address questions regarding certain operating procedures of the Board.

QUESTIONS PRESENTED

1. What is the role of the Board, as conferred by the City Charter and Municipal Code?
2. How can resignations be accepted and new members appointed?
3. How can the quorum requirements be changed?

SHORT ANSWERS

1. The Board advises the City Council through the Mayor, or his designee, regarding park and recreation matters.
2. Since the Mayor has authority to appoint members of the Board, resignations should be submitted to the Mayor, or to his designee, the Park and Recreation Director. The Mayor then requests nominees from each member of City Council and selects his appointees, who are confirmed by Council.
3. The Board can change the quorum requirements by enacting bylaws; however, we advise Council approval.

ANALYSIS

I. The Role of the Park and Recreation Board

San Diego City Charter [Charter] section 43(a) provides that the City Council may by ordinance create advisory boards, whose duty is to “consult and advise with the Mayor or Council, but not to direct the conduct of any Department...”

San Diego Municipal Code [SDMC] section 26.30 establishes a Park and Recreation Board, described as a “policy advisory board” on matters related to the acquisition, development, maintenance and operation of parks and recreation property. The Board is directed to appoint standing and ad hoc committees concerned with problems or areas of interest to the Board.¹ The Park and Recreation Director serves as Secretary to the Board.

By comparison, Charter section 55 provides that the City Manager (now Mayor) shall have “control and management” of parks, beaches, etc., and recreation activities held on City property. SDMC section 22.1502 provides that the Park and Recreation Director [Director] shall be responsible for the control and management of the parks, beaches, etc. SDMC section 22.1503 provides that the Director shall represent the City Manager (now Mayor) in the acquisition, construction, etc., of park property, etc.

SDMC section 26.31 spells out the powers and duties of the Board more specifically:

1. Advise the City Council through the City Manager (now Mayor) on public policy matters relating to the acquisition, development, maintenance and operation of parks, beaches, playgrounds and recreational activities;
2. Periodically review the recreational program of the City in relation to the needs and desires of the citizens;
3. Coordinate the work of such committees as may be established towards the end of developing integrated and balanced policy recommendations; and
4. Conduct such investigations, studies and hearings which, in the judgment of the Board, will aid in effectuating its general purposes.

From the above, it can be seen that the role of the Board is clearly advisory. The importance of this advisory role is underscored by the way in which the Board, together with its committees, is structured to provide input from community leaders, stakeholders and concerned citizens. The Mayor, through the Park and Recreation Department, has responsibility for control and management of park matters. The Board exists solely to advise the Mayor, or the Council through the Mayor, and the Director is the Mayor’s designee to the Board. The Board does not have any decision-making authority other than what the Director may choose to give it.

¹ This section also establishes a San Diego-La Jolla Underwater Park committee, a Balboa Park Committee, and a Mission Bay Park Committee, which all serve in an advisory capacity to the Board. The chairs of the Balboa Park Committee and the Mission Bay Park Committee are Board members.

II. Operating Issues

A. Resignations and Appointments of New Members

According to SDMC section 26.30(b), the Board is to consist of eleven members, appointed by the Mayor and approved by the Council. The members shall serve two-year terms, and each member shall serve until his successor is duly appointed and qualified. The members shall be appointed in such a manner that the terms of not more than six members shall expire in any year. The expiration date is March 1. Per Charter section 43(a), members are limited to a maximum of eight consecutive years in office, and an interval of four years must pass before reappointment.

In addition, California Government Code sections 54970--54974 contain requirements for annual preparation of a local appointment list (on or before December 31), and provide for the posting of notices of unscheduled vacancies on any board or committee within twenty days of the vacancy. According to Council Policy 000-13 (December 3, 1984), when a vacancy occurs, the Mayor is required to notify each member of the City Council and request nominees. The Mayor's appointees must be confirmed by Council. In cases of emergency, either the Mayor or the Council can fill the unscheduled vacancy immediately. Further, Charter section 43(c) provides that where the Mayor is vested with authority to appoint members of a board, and does not take action within forty-five days after a vacancy occurs, the Council shall make such appointments.

Nothing in the SDMC or Charter provides a procedure for resignations.

We understand that as of this date, some members have been serving expired terms; that is, they have been serving past their original terms without being re-appointed, and some are serving past the eight-year limit. Since appointments are made by the Mayor, we suggest that if any members wish to resign, they submit written resignations to the Mayor. Until their successors have been appointed, members are required under SDMC section 26.30(b) to retain their seats.

B. Rules Regarding Quorum

It is our understanding that with the three existing vacancies, the Board has sometimes had difficulties obtaining a quorum of members to conduct business. There is no reference in the Charter or SDMC with respect to quorum requirements. SDMC section 26.30 allows the Board to adopt such rules for the conduct of its business as it may deem necessary. At this date, the Board has not adopted operating rules.

Without duly enacted bylaws or other operating procedures, we refer to "Robert's Rules of Order." In boards, "the quorum is a majority of the members of the board unless a different quorum is fixed: (a) by the bylaws... or (b) by a rule of the parent body or organization or by the motion establishing the particular committee..." Chapter XI Scott, Foresman, Robert's Rules of Order Newly Revised (9th ed.1990) Section 39, p. 341. A quorum can be less than a majority. Robert's Rules of Order section 39, p. 340. A board does not have the power to determine its quorum unless its bylaws so provide. Robert's Rules of Order section 39, p. 341.

The Board was created to consist of eleven members. Currently, three members have resigned, leaving eight members. According to the general rule, six members (a majority of the total Board of eleven) are needed for the Board to have a quorum.

If the Board finds it difficult to reach a quorum of six, it may decide to provide for a quorum of five in its bylaws. Bylaws may be adopted by a majority vote (a vote of approval by more than half of the members present and voting at a regular meeting at which a quorum is present). Robert's Rules of Order section 53, p. 553. However, since here, the Board has been established and functioning for a period of time without bylaws, we suggest following the procedure to *amend* bylaws; i.e., at least notice and a two-thirds vote, with a vote of the majority of the entire membership as an allowable alternative. *Id.*, p. 585. Finally, since SDMC section 26.30(c) does not specifically address whether the Board can alter its quorum requirements, if the Board decides to change the quorum to less than six, we advise the Board to first seek approval from City Council.

CONCLUSION

The role of the Park and Recreation Board is to consult with and advise the Mayor, through the Park and Recreation Director and/or City Council, regarding park and recreation matters. When members wish to resign, they should submit a letter of resignation to the Mayor, who is responsible for appointing new members. To operate more effectively, the Board may want to enact bylaws, to include reasonable quorum requirements; however, we advise the Board to seek City Council approval before doing so.

MICHAEL J. AGUIRRE, City Attorney

By

Kimberly Ann Davies
Deputy City Attorney

KAD:ca

cc: Stacy Lomedico, Deputy Director, Park and Recreation Department