

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

**MEMORANDUM
MS 59
(619) 533-5800**

DATE: April 27, 2007

TO: Greg Levin

FROM: City Attorney

SUBJECT: R-2007-524, Wightman Street Neighborhood Park Request for Grant Amendment and Request for Special Park Fees

Sections 7-10 of Resolution 302498 uses Gas Tax funds to reimburse the Mid-City Special Park Fees, Fund #39094, for the expenditures of Special Park Fee money on the Ontario Avenue extension. Recently, your office has raised questions as to whether the language used in the resolution was appropriate to effectuate the intent of the City Council. The transfer was achieved by language stating that the “City Auditor and Comptroller is authorized to de-appropriate \$167,000” from the Ontario Avenue CIP, “to be returned to Special Park Fee, Fund No. 39094.” According to the Auditor’s office, the term “de-appropriate” more commonly refers to “budget” rather than a transfer of “cash.” However, all involved agree that the Council intended a transfer of actual Gas Tax funds into Fund #39094. Thus, you have asked us to interpret the resolution to determine whether the intent of Council may be implemented.

“The interpretation of resolutions and ordinances presents a question of law.” *Water Quality Ass’n v. City of Escondido*, 53 Cal. App. 4th 755, 762 (4th Dist. 1997). In performing this legal function, we turn first to the primary guiding principle:

The fundamental rule of statutory construction is *to ascertain the intent of the legislature in order to effectuate the purpose of the law*.... The words must be construed *in context and in light of the nature and obvious purpose of the statute* where they appear.... The statute “must be given a reasonable and commonsense interpretation consistent with the apparent purpose and intention of the Legislature, *practical rather than technical in nature*, and which, when applied, will result in wise policy rather than mischief or absurdity.” *Lockett v. Keylee*, 147 Cal.App.4th 919, 925 (2d Dist., 2007) (emphasis supplied).

In construing this resolution in light of the purpose of the Council, in order to effect the Council's intent, there can be no doubt that Council intended an actual transfer of funds. This is clear from the legislative history.

On March 27, 2007, Council heard this item, #331. Councilmember Donna Frye asked explicit questions tracking the transfer of funds in Sections 7-10. It was explained that funds (not budget) would be transferred from Gas Tax, to the Ontario Avenue CIP, to the Mid-City Special Park Fee fund.

Further, the "Staff Supporting Information" for Item #331 states that at the January 18, 2007 Park and Recreation Board meeting a "...motion was passed requesting follow up on an alternate funding source for the Ontario Avenue Design Development from Mid-City Special Park Fees to a more compatible funding source. The Mayor's Office has identified General Services/Streets Division (Gas Tax) funds for this."

The noticed Executive Summary and Report to the City Council, as well as the verbal discussion at Council, support an unambiguous reference to the transfer of funds, not budget, from CIP No. 29-596.1 Ontario Avenue to Mid-City Special Park Fee Fund No. 39094.

You also request clarification on the handling of approximately \$475 from the total amount authorized for transfer, \$167,000. Your concern is that, to the extent that transfer of this small amount could be construed as application of Gas Tax funds to non-transportation related activities, transfer of the full \$167,000 would violate restrictions on the use of Gas Tax funds.

The Resolution does not require this result. To effectuate legislative intent, a legislative instrument must be interpreted, where possible, in a manner that results in its validity. *Keys v. Medical Bd.*, 7 Cal. App. 4th 1801, 1813 (4th Dist., 1992). Thus, an interpretation that would result in an unlawful transfer must be avoided if the language permits another interpretation. Section 10 does not mandate a transfer of the full amount of \$167,000, but merely "authorizes" the Auditor to transfer funds not to exceed that limit. The \$167,000 figure was chosen because, at the time the resolution was written, the exact amount was not known. It was felt that this figure would allow enough authority to ensure that the correct amount, which the Auditor's office would thereafter determine, would be within the authorization. The Council must be presumed not to have intended an unlawful transfer, and the actual amount transferred should not include the \$475 in question.

Please send confirmation upon the transfer of funds. Until Mid-City Special Park Fee fund # 39094 is reimbursed, the City still faces potential liability under SDMC section 96.0404.

MICHAEL J. AGUIRRE, City Attorney

By

Peter A. Mesich