

Office of  
The City Attorney  
City of San Diego

MEMORANDUM  
MS 59

(619) 533-5800

**DATE:** December 4, 2009  
**TO:** Stacey LoMedico, Director, Park and Recreation Department  
**FROM:** City Attorney  
**SUBJECT:** Interpretation of San Diego Charter Section 55.2(g)

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You have asked for an interpretation of San Diego Charter section 55.2(g), which states:

The annual budgets allocated for park operations and maintenance in the *Mission Bay Park Improvement Zone* and the *San Diego Regional Parks* shall not be reduced at a greater rate or increased at a lesser rate relative to the overall annual budget of park and recreation as a result of monies available hereunder.

Essentially, this section prohibits the City from reducing the annual budgets for operations and maintenance for the Mission Bay Park and the San Diego Regional Parks at a different rate than the overall annual Park and Recreation budget *because of* the money in the Improvement Funds made available to these parks by the application of Charter section 55.2.

To summarize, the City may not reduce the Mission Bay Park or San Diego Regional Park budgets for operation and maintenance because of the availability of the Improvement Funds. However, even without subsection (g), Charter section 55.2 prohibits the expenditure of Improvement Funds except for certain specified purposes. The permissible uses of the Improvement Funds for Mission Bay and the Regional Parks are set forth in sections 55.2(c) and (d), respectively. None of the permissible expenses are operational, and none, with the exception discussed further below, are maintenance.

Charter section 55.2(c)(1)(G) does allow Improvement Funds to be spent on deferred maintenance in Mission Bay Park that is *also* a Capital Improvement. Charter section 55.2(a)(1)

Stacey LoMedico, Director

December 4, 2009

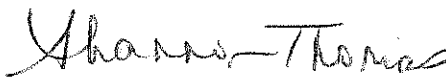
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defines Capital Improvements to mean "physical assets, constructed or purchased, or the restoration of some aspect of a physical or natural asset that will increase its useful life by one year or more or which constitutes an environmental improvement of a natural asset." Therefore, the only circumstances for which it would be permissible to reduce the annual maintenance budget for Mission Bay Park in reliance on the use of Improvement Funds would be for those deferred maintenance items that are also Capital Improvements, as defined.

Maintenance or repair for accounting purposes is defined by the Office of the Comptroller to be those costs subsequent to the capitalization of an asset that do not result in either an extension of the asset's original intended life or an improvement in the asset's original performance or capacity. Maintenance has similarly been defined as "[t]he care and work put into property to keep it operating and productive; general repair and upkeep." Black's Law Dictionary, 973 (8th ed. 1999). On the other hand, capital improvements for the City's Capital Improvement Program must "have a useful life in excess of one year, extend the initial estimated useful life of an asset or increase usable capacity or improve functionality of the asset." San Diego Admin. Reg. 1.60 § 1.2. The definitions of maintenance (i.e., general repair not extending an asset's original life) and capital improvement (i.e., extending the initial estimated useful life of an asset) are mutually exclusive, therefore, Charter section 55.2 already prohibits the use of the Improvement Funds for maintenance.

It is important to note that Charter section 55.2(c)(1) provides a list of priority projects for Mission Bay Park, and those priorities are to be authorized, funded, and completed in the order provided.<sup>1</sup> The deferred maintenance is the last priority listed. Therefore, the other priority items listed must be authorized, funded, and completed prior to the use of the Improvement Funds for deferred maintenance. Additionally, any use of Mission Bay Park Improvement Funds for deferred maintenance pursuant to this section must be recommended by the Mission Bay Oversight Committee (Mission Bay Park Committee) and approved by Council. An annual budget reduction for any other maintenance of Mission Bay Park that is based on the availability of Improvement Funds would be prohibited by Charter section 55.2(g).

JAN I. GOLDSMITH, City Attorney

By   
Shannon Thomas  
Deputy City Attorney

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<sup>1</sup>Once a priority item has been budgeted, approved by City Council, and has a funding plan, construction of a lesser priority may proceed concurrently as long as that construction does not delay construction of the greater priority. San Diego Charter § 55.2(c)(2).