

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

**MEMORANDUM  
MS 59**

**(619) 236-6220**

**DATE:** December 10, 2010

**TO:** Mary Lewis, Chief Financial Officer  
Ken Whitfield, Comptroller

**FROM:** City Attorney

**SUBJECT:** Allocations of Mission Bay Park Lease Revenues Pursuant to Charter Section 55.2.

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San Diego voters approved the addition of section 55.2 to the San Diego Charter<sup>1</sup> at the Municipal General Election on November 4, 2008. Section 55.2 requires the City to distribute and allocate all the lease revenues from City-owned property in Mission Bay Park in a particular manner. A threshold amount of the lease revenues must be deposited in the City's General Fund. Any lease revenues above the threshold amount (excess revenues) are to be allocated to the San Diego Regional Park Improvement Fund (Regional Park Fund) and the Mission Bay Park Improvement Fund (Mission Bay Fund), according to an equation established by section 55.2(b).<sup>2</sup>

Voters were provided a fiscal impact statement and chart in their 2008 ballot pamphlets projecting the amounts of excess revenues above the threshold to be allocated to each Park Fund during fiscal years 2010 through 2015. *See* voter information, Attachment A. The total excess revenues beginning in fiscal year 2010 anticipated for allocation to the two Park Funds was \$7.8 million, increasing to \$15.6 million in 2015.<sup>3</sup> The projections anticipated income growth for each year of about three percent and that both Park Funds would be receiving substantial allocations through 2015.

However, in fiscal year 2010 the projections met reality. The excess lease revenues above the threshold amount total less than \$1 million. The Department of Financial Management has asked

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<sup>1</sup> Section references in this memorandum are to the San Diego Charter.

<sup>2</sup> Section 55.2 will be operative for a thirty-year period from July 1, 2009 until June 30, 2039. § 55.2(j).

<sup>3</sup> The projections apparently derive from the Mayor's Five Year Financial Outlook referred to in reports of the Independent Budget Analyst (IBA). The Outlook projected lease revenue increasing by 3.0% annually through 2013 from the \$27.8 million received in fiscal year 2008. *See* IBA Report No. 08-75 (July 11, 2008) at 2; *also* IBA Report No. 08-85 (July 25, 2008).

us what the appropriate allocation of excess lease revenues should be to the Park Funds in this situation. The Department also asks whether the section contemplates that lease revenues *below* the threshold, which would have been deposited in the General Fund, be diverted to ensure a minimum \$2.5 million allocation for the Regional Park Fund.

As we explain below, section 55.2 sets up a mandatory scheme designating which City Funds will receive all Mission Bay Park Lease Revenues. It establishes a priority scheme, requiring lease revenues up to a set threshold amount go to the General Fund. Thereafter, excess revenues are distributed to the two Park Funds: first to the Regional Park Fund and any remainder to the Mission Bay Fund.

Section 55.2 does not contemplate reducing the threshold lease revenues for deposit in the General Fund in order to increase allocations to either of the two Park Funds. Allocations to the two Park Funds must come only from revenues *exceeding* the threshold amount. If there are no excess revenues, neither Park Fund receives an allocation. If the excess revenues are less than \$2.5 million annually, the excess revenues are allocated only to the Regional Park Fund.

## DISCUSSION

The questions require us to interpret section 55.2, to determine how the section should be applied when a substantial reduction in Mission Bay Park lease revenues occurs. We use the same rules to do this as do the courts. A charter is the supreme law of the city, subject only to constitutional limitations and preemptive state law. *Domar Electric, Inc. v. City of Los Angeles* 9 Cal. 4th 161, 170 (1994). Voter-approved changes to a city charter are interpreted or construed in the same manner by courts as are changes made to the state's constitution. *Woo v. Superior Court*, 83 Cal. App. 4th 967,974-975 (2000).

We are primarily concerned with the voters' intent in approving a charter change. To do that, we look first to the words of the provisions, giving "the usual, ordinary, and commonsense meaning to them." *Howard Jarvis Taxpayers Ass'n v. County of Orange*, 110 Cal. App. 4th 1375, 1381(2003). If the language is clear and unambiguous, we presume the voters intended the meaning apparent on the face of the measure and end our inquiry. *Woo*, 83 Cal. App. 4th at 975. If there is some ambiguity in the language, we may look to extrinsic aids, such as the information and arguments contained in the official ballot pamphlet, to indicate the voters' understanding of the measure and their intent in passing it. *Id.* at 976.

### **I. THE DISTRIBUTION AND ALLOCATION REQUIREMENTS UNDER SECTION 55.2(B) ARE MANDATORY.**

We are principally concerned with section 55.2(b), which sets the threshold amounts and the allocation equation. It provides in full:

*“Mission Bay Park Lease Revenues<sup>4</sup> up to the threshold amount in each fiscal year shall be deposited into the San Diego General Fund and may be used for any municipal purpose, including but not limited to, police, fire, streets, sewers, water delivery, roads, bridges, and operation of parks. All Mission Bay Park Lease Revenues in excess of the threshold amount shall be allocated in the City of San Diego budget to two distinct funds. Twenty-five percent (25%) of the Mission Bay Park Lease Revenues in excess of the threshold amount, or two million five hundred thousand dollars (\$2,500,000) whichever is greater, shall be allocated to the San Diego Regional Parks Improvement Fund that solely benefits the San Diego Regional Parks and seventy-five percent (75%) of the Mission Bay Park Lease Revenues over the threshold amount, or the remainder of those revenues if less than 75% is available after the allocation to the San Diego Regional Parks Improvement Fund, shall be allocated to the Mission Bay Park Improvement Fund that solely benefits the Mission Bay Park Improvement Zone. The threshold amount shall be \$23 million beginning fiscal year 2010 and ending fiscal year 2014. The threshold amount shall be \$20 million beginning fiscal year 2015 and shall remain \$20 million thereafter.”* (Italics in original)

It is significant that section 55.2(b) uses the word “shall” to describe the City’s duty to distribute the lease revenues. Absent some indication of contrary intent, the word “shall” is ordinarily construed as mandatory, and “may” is ordinarily construed as permissive. *People v. Ledesma*, 16 Cal. 4th 90, 95 (1997). This is particularly true when the section includes both “shall” and “may” within it. *In re J.N.*, 138 Cal. App. 4th 450, 458 (2006). The first sentence of section 55.2(b) does just that. It provides the lease revenues “up to the threshold amount . . . shall be deposited into the San Diego General Fund and may be used for any municipal purpose . . .” (emphasis added).

The last sentence of the section sets the threshold amounts for pertinent fiscal years, also using the word “shall:” “The threshold amount shall be \$23 million beginning fiscal year 2010 and ending fiscal year 2014. The threshold amount shall be \$20 million beginning fiscal year 2015 and shall remain \$20 million thereafter.” § 55.2(b). The section also uses “shall” to describe the

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<sup>4</sup> Charter section 55.2(a) (7) defines “Mission Bay Park Lease Revenues” to include: “all revenues collected by the City of San Diego from commercial and non-profit sources within *Mission Bay Park*, including but not limited to all monetary consideration received under leases of city owned property within *Mission Bay Park*, as well as revenue collected from contracts for concessions or any other revenues collected for the use of city owned property within *Mission Bay Park*. The term does not include revenue from the Mission Bay Golf Course, unless privately leased; mooring fees; any revenues from taxes including but not limited to Transient Occupancy Taxes, sales taxes, possessory interest taxes, property taxes; or permit fees such as park and recreation fees or special event fees to the extent those fees are levied to recover actual costs incurred by the City of San Diego.”(Italics in original.)

allocation of the excess lease revenues over the threshold, namely, that they “shall be allocated” in varying amounts to the two Park Funds, according to requirements we discuss shortly. *Id.*

Courts have concluded that a similar tax allocation scheme also imposes a mandatory duty on a government entity to comply with the statute’s requirements. *See Glendale Redevelopment Agency v. County of Los Angeles*, 184 Cal. App. 4th 1388, 1398 (2010) (interpreting Cal. Health & Safety Code § 33670 and Cal. Const., art. XVI, § 16). Voters were also told that Section 55.2 “is a charter amendment that CAN’T be waived by politicians.” Ballot Pamp. Municipal Gen. Elec. (Nov. 4, 2008) Arg. in favor of Prop C.

Accordingly, consistent with these authorities and the plain language of the section, we conclude that section 55.2(b) sets up a mandatory distribution and allocation scheme for the lease revenues generated in Mission Bay Park. Section 55.2(b) does not permit or require City officials to divert lease revenues intended for deposit to the General Fund to either of the two Park Funds.<sup>5</sup>

## II. THE PRIORITY OF SECTION 55.2(B) DISTRIBUTIONS AND ALLOCATIONS.

We next review the section’s plain language to determine if it provides guidance on the priority of the distribution of these lease revenues. We find that it does.

The first distribution from the lease revenues is made to the General Fund in an amount “up to the threshold amount” set for each fiscal year. § 55.2(b). For fiscal year 2010, the threshold amount is set at \$23 million. *Id.* Section 55.2(b) then addresses allocation of the lease revenues “in excess of the threshold amount” to the two Park Funds. *Id.* The allocations to the two Park Funds may only occur *after* the threshold amount is deposited in the General Fund because those allocations come only from lease revenues “in excess of” the threshold amount. *Id.*

The allocation priority between the two Park Funds is also clear. The Regional Park Fund is to receive 25% “in excess of the threshold amount” of lease revenues *or* \$2.5 million “whichever is greater.” § 55.2(b). The Mission Bay Fund is to receive 75% in excess of the threshold amount of lease revenues, *or* “the remainder of those revenues if less than 75% is available *after the allocation*” to the Regional Park Fund. *Id.* The section plainly anticipates that the allocation to the Mission Bay Fund of lease revenues in excess of the threshold amount may be less than 75%.<sup>6</sup> How much, if any, the actual allocation to the Mission Bay Fund will be is only

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<sup>5</sup> Section 55.2 also sets parameters for the *use* of lease revenues deposited into the Mission Bay and Regional Park Funds, and for fiscal oversight. §§ 55.2(c)(d) and (e). However, lease revenues deposited to the City’s General Fund may be used for “any municipal purpose.” § 55.2(b). The section also does not “prevent the City of San Diego from spending funds in excess of the *Mission Bay Park Improvement Fund* or *San Diego Regional Parks* Fund for the purposes of improving the *Mission Bay Park Improvement Zone* or the *San Diego Regional Parks*.” § 55.2(i) (Italics in original.) Accordingly, City officials retain full discretion to budget and appropriate revenues from the City’s General Fund or any other appropriate source for Park improvements during the City’s annual budgeting process.

<sup>6</sup> The measure presented to voters was a compromise drafted between the Rules Committee meeting on June 25, 2008 and the City Council meeting July 28, 2008. *See* IBA Reports 08-75 (July 11, 2008) and 08-85 (July 25, 2008). The compromise measure increased threshold amounts to the General Fund from \$20 million to \$23 million;

determined *after* the allocation to the Regional Park Fund, which is set at the *greater* of \$2.5 million or 25% of any excess revenues.

For example, if the total pool of lease revenue is less than the threshold amount, there are no revenues exceeding the threshold, and no revenues for allocation to either Park Fund. If the total lease revenue is over the threshold amount, but not by more than \$2.5 million dollars, the money goes to the General Fund up to the threshold amount and the remainder to the Regional Park Fund. It is only when the pool of revenue exceeds the threshold amount by more than \$2.5 million that funds are allocated to the Mission Bay Park Fund. Accordingly, we conclude that section 55.2 requires all the excess lease revenues be allocated to the Regional Park Fund, when the excess lease revenues are less than one million dollars.

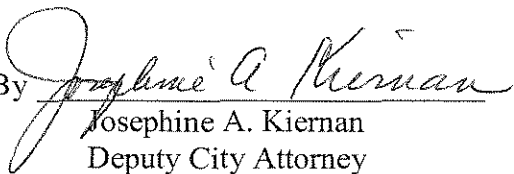
### CONCLUSION

We conclude that section 55.2(b) sets up a mandatory distribution scheme for lease revenues generated in Mission Bay Park. It requires that the revenues up to the section's established threshold amounts first be deposited to the City's General Fund. The City Charter does not permit or require City officials to divert the lease revenues targeted for the General Fund to either the Mission Bay Park Fund or the Regional Park Fund.

Whether the two Park Funds receive any lease revenue depends on whether there are lease revenues *exceeding* the threshold amount for the fiscal year. If there are excess lease revenues, the Regional Park Fund receives the first lease revenues up to \$2.5 million (or 25% of the total excess revenues if greater). If there are lease revenues remaining after the allocation to the Regional Park Fund, they are allocated to the Mission Bay Fund, either at the 75% level or the remainder. When the lease revenues in excess of the threshold amount are *less than* \$2.5 million, as they apparently are for fiscal year 2010, there is to be no allocation from the lease revenues to the Mission Bay Fund. City officials may always use the City's annual budgeting and appropriation process to provide additional funding from the General Fund or other appropriate sources for either Park Fund.

Please let us know if we can be of any further assistance.

JAN I. GOLDSMITH, CITY ATTORNEY

By   
Josephine A. Kiernan  
Deputy City Attorney

JAK:als  
MS-2010-17

**CITY OF SAN DIEGO**

**Proposition C**

(This proposition will appear on the ballot in the following form.)

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**PROP C**

**AMENDS THE CHARTER OF THE CITY OF SAN DIEGO DESIGNATING THE USE OF LEASE REVENUE FROM MISSION BAY PARK.** Shall the City Charter be amended requiring that annual lease revenue generated in Mission Bay Park exceeding \$23 million initially and decreasing to \$20 million after 5 years be appropriated 75% for capital improvements in Mission Bay Park and 25% for capital improvements in Chollas Lake, Balboa, Mission Trails, Otay River Valley, Presidio and San Diego River Parks; open space parks; coastal beaches and contiguous coastal parks; and future regional parks?

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This proposition requires approval by a simple majority (over 50%) of the voters voting on the proposition.

The proposed charter amendment follows the argument in favor.

**OFFICIAL TITLE AND SUMMARY PREPARED BY THE CITY ATTORNEY**

Title

PROPOSITION C. AMENDS THE CHARTER TO DESIGNATE THE USE OF LEASE REVENUE FROM MISSION BAY PARK.

Summary

Shall the City Charter be amended to require that annual lease revenue generated in Mission Bay Park exceeding \$23 million initially and decreasing to \$20 million after 5 years be appropriated 75% for capital improvements in Mission Bay Park and 25% for capital improvements in Chollas Lake, Balboa, Mission Trails, Otay River Valley, Presidio, and San Diego River Parks; open space areas; coastal beaches and contiguous coastal parks; and future regional parks for 30 years?

City Attorney's Impartial Analysis

The San Diego Municipal Code, section 22.0229, requires excess revenue from the lease of city-owned property within Mission Bay to be spent on capital improvements within Mission Bay and on capital improvements, planning, deferred maintenance, and land acquisitions for certain Regional Parks: Balboa Park, Mission Trails Regional Park, Otay River Valley Park, San Diego River Park, Multiple Species Conservation Program open space areas, coastal beaches and contiguous coastal parks. Excess lease revenue is defined as that annual revenue which exceeds \$20 million. Excess lease revenue does not include Transient Occupancy Tax, sales tax, property tax, or any other revenue. There is a \$5 million annual limit on the allocation; apportioned \$2.5 million to the Mission Bay Fund and \$2.5 million to the Regional Park Fund. However, the Municipal Code also allows the City Manager to request that the City Council suspend the requirements of this section, should anticipated revenues be insufficient to maintain City services. The requirements of section 22.0229 terminate June 30, 2012.

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**City Attorney's Impartial Analysis (Continued)**

The proposed Charter amendment would be in effect from July 1, 2009 until June 30, 2039. The amendment establishes a different sum for the excess lease revenues for the first five years: excess lease revenue is defined as annual revenue which exceeds \$23 million beginning in July 1, 2009 and ending June 30, 2014. Starting July 1, 2014, excess lease revenue is again set at \$20 million. The proposed Charter amendment also changes the apportionment of the excess lease revenue: 75% of the excess lease revenue shall be deposited into a Mission Bay Improvement Fund and 25% of the excess lease revenue shall be deposited into a San Diego Regional Parks Improvement Fund.

The funds in the Mission Bay Improvement Fund shall first be spent on specific priority projects. Upon the completion of those projects, the funds shall be used for capital improvements within the defined Mission Bay Improvement Zone as recommended by the Mission Bay Improvement Fund Oversight Committee and approved by City Council.

The excess lease revenue deposited into the San Diego Regional Parks improvement Fund shall be spent for capital improvements in Chollas Lake Park, Balboa Park, Mission Trails Regional Park, Otay River Valley Park, Presidio Park, San Diego River Park, open space parks, coastal beaches and contiguous coastal parks, and future parks serving regional residents and/or visitor populations as may later be determined by ordinance of the City Council. The amendment no longer allows the funds to be spent on planning, deferred maintenance, and land acquisitions. The improvements shall be recommended by the San Diego Regional Parks Improvement Fund Oversight Committee and approved by the City Council.

If this proposition is approved, Municipal Code 22.0229 will be repealed. The Mission Bay Park Committee shall initially be designated by the City Council to serve as the Mission Bay Park Improvement Fund Oversight Committee. The Park and Recreation Board shall initially be designated by the City Council to serve as the San Diego Regional Parks Improvement Fund Oversight Committee.

**FISCAL IMPACT STATEMENT**

- Beginning in fiscal year 2010 and continuing through fiscal year 2014, all Mission Bay lease revenues in excess of \$23 million will be split 25% to the San Diego Regional Parks Improvement Fund and 75% to the Mission Bay Park Improvement Fund.
- Beginning in fiscal year 2015 and each year thereafter, all Mission Bay lease revenues in excess of \$20 million will be split 25% between the San Diego Regional Parks Improvement Fund and 75% to the Mission Bay Park Improvement Fund.
- Based on projections of revenue for future years, beginning in fiscal year 2010 annual General Fund revenues of \$2.8 million will be redirected to the San Diego Regional Parks Improvement Fund and Mission Bay Park Improvement Fund. This will grow each year based upon the growth in overall Mission Bay lease revenues.
- Beginning in fiscal year 2015, an additional \$3 million will be redirected to the San Diego Regional Parks Improvement Fund and the Mission Bay Park Improvement Fund.

Allocation of Mission Bay Lease Revenues (in millions)			
Fiscal Year	San Diego Regional Parks Improvement Fund	Mission Bay Park Improvement Fund	Redirected from General Fund*
2010	\$2.5	\$5.3	\$2.8
2011	\$2.5	\$6.2	\$3.7
2012	\$2.5	\$7.1	\$4.6
2013	\$2.6	\$8.0	\$5.6
2014	\$2.9	\$8.7	\$6.6
2015	\$3.9	\$11.7	\$10.6

\* The General Fund is the City's main operating fund that pays for basic City services, such as public safety, parks, library services, and refuse collection.

## ARGUMENT IN FAVOR OF PROPOSITION C

### MISSION BAY REVENUE SHOULD BENEFIT MISSION BAY PARK.

Mission Bay Park is a recreational and environmental asset for all San Diegans. The Park protects wildlife, provides for dozens of leisure activities and attracts tourists to strengthen our economy.

Unlike other parks, Mission Bay generates millions of dollars for the City through leases with hotels, Sea World, and other businesses. This money was originally used to pay for Mission Bay Park. Over time, it has been siphoned away to pay for other things.

**FACT: Only 8% of Mission Bay lease revenue is spent improving Mission Bay; 92% is used elsewhere – mostly for "general" city expenses.**

### IMPROVE MISSION BAY WITHOUT USING TAX DOLLARS.

Proposition C increases the amount of lease revenue spent annually on projects to improve Mission Bay Park to approximately \$4.4 million. This amount will increase as lease revenues increase. No tax dollars are used. No new taxes are needed.

Priority projects include:

- Expand wetlands and improve water quality.
- Restore water channels for boater safety.
- Complete bicycle and pedestrian paths and bridges.
- Increase wildlife preserves and delicate habitats.
- Improve security by installing sustainable energy lighting.

### BUDGET REFORM AND INDEPENDENT OVERSIGHT

Proposition C is a smart reform to keep the money generated by Mission Bay in Mission Bay. It is a charter amendment that CANT be waived by politicians, and it creates an independent oversight committee ensuring funds are spent only for park improvements.

### MORE MONEY FOR OTHER REGIONAL PARKS

Prop C also allocates \$2.5 million annually for improvements at Balboa, Mission Trails, Presidio, San Diego River, Otay River Valley, and Chollas Lake Parks and open space areas. After five years, this amount increases as lease revenues increase.

### VOTE "YES" ON C TO SAVE MISSION BAY.

(Titles of signers for identification purposes only; does not imply endorsement by any group)

COUNCILMEMBER KEVIN FAULCONER  
Chair, Audit Committee

COUNCILMEMBER DONNA FRYE  
Chair, Natural Resources and Culture Committee

BOB OTTILIE  
Past Chair, Mission Bay Park Committee

WILBUR SMITH  
Chair, San Diego Park and Recreation Board

JERRY SANDERS  
Mayor

## ARGUMENT AGAINST PROPOSITION C

No argument against the proposition was filed  
in the office of the City Clerk.



## PROPOSED CHARTER AMENDMENT

The Charter of the City of San Diego is amended by adding Charter section 55.2 to read as follows:

### SECTION 55.2: MISSION BAY PARK AND REGIONAL PARKS IMPROVEMENT FUNDS

- (a) For the purpose of this Section, the following definitions shall apply and the words shall appear in italics:
- (1) *Capital Improvement* means 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.
  - (2) *Mission Bay Baseline Chart* shall be defined as the Mission Bay dredging plans on file with the City Clerk as Document No. 00-19776. It shall serve as the baseline for depths for navigable waters within Mission Bay. Depths may be increased or decreased for specific areas within Mission Bay only if, after review of these areas by the San Diego Fire Department or the *Mission Bay Park Improvement Fund Oversight Committee*, it is found that either the original depth no longer supports or ensures safe navigation, is inconsistent with the *Mission Bay Park Master Plan*, or needs to be modified in order to create sustainable shorelines. Any changes must be adopted by ordinance of the City Council and shall act as amendments to the original dredging plans.
  - (3) *Mission Bay Park* means the area described in the Mission Bay Park Record of Survey 16891, filed on February 28, 2001, in the Office of the County Recorder as File No. 2001-0113422.
  - (4) *Mission Bay Park Improvement Zone* means those areas encompassed within the boundaries of *Mission Bay Park*, Oceanfront Walk from the Mission Bay jetty to Crystal Pier and the adjoining seawall, coastal parks and ocean beaches contiguous thereto, Rose Creek from its terminus in Mission Bay to the southern end of the Santa Fe Road flood control channel, Tecolote Creek from its terminus in Mission Bay to the western end of the Tecolote Creek flood control channel and the San Diego River as it passes through the boundaries of *Mission Bay Park* as described herein. The boundaries of the San Diego River, Rose Creek and Tecolote Creek shall be the width of those waterways to the nearest property line.
  - (5) *Mission Bay Park Improvement Fund* means a separate interest bearing monetary fund maintained by the City of San Diego to receive and spend the *Mission Bay Park Lease Revenues* identified herein for the benefit of the *Mission Bay Park Improvement Zone*.
  - (6) *Mission Bay Park Improvement Fund Oversight Committee* means the committee determined by ordinance of the City Council to carry out the oversight responsibilities described herein.
  - (7) *Mission Bay Park Lease Revenues* means all revenues collected by the City of San Diego from commercial and non-profit sources within *Mission Bay Park*, including but not limited to all monetary consideration received under leases of city owned property within *Mission Bay Park*, as well as revenue collected from contracts for concessions or any other revenues collected for the use of city owned property within *Mission Bay Park*. The term does not include revenue from the Mission Bay Golf Course, unless privately leased; mooring fees; any revenues from taxes including but not limited to Transient Occupancy Taxes, sales taxes, possessory interest taxes, property taxes; or permit fees such as park and recreation fees or special event fees to the extent those fees are levied to recover actual costs incurred by the City of San Diego.
  - (8) *Mission Bay Park Master Plan* means the Master Plan adopted by the City Council for Mission Bay Park in 1994, the Natural Resources Management Plan, and any amendments or updates that are subsequently adopted by the City Council or any such similar replacement plan that may be subsequently adopted by the City Council. For purposes of this Section, the definition shall also include adopted plans for areas located within the *Mission Bay Park Improvement Zone*.

## PROPOSED CHARTER AMENDMENT (Continued)

- (9) *San Diego Regional Parks* means those parks that serve regional residents and/or visitor populations as determined by ordinance of the City Council. *San Diego Regional Parks* shall initially include Chollas Lake Park, Balboa Park, Mission Trails Regional Park, Otay River Valley Park, Presidio Park, San Diego River Park, open space parks, and coastal beaches along with coastal parks contiguous thereto. For the purposes of this Section, this definition shall specifically exclude the *Mission Bay Park Improvement Zone*.
- (10) *San Diego Regional Parks Improvement Fund* means a separate interest bearing monetary fund maintained by the City of San Diego to receive and spend the *Mission Bay Park Lease Revenues* identified herein for the benefit of the *San Diego Regional Parks*.
- (11) *San Diego Regional Parks Improvement Fund Oversight Committee* means the committee determined by ordinance of the City Council to carry out the oversight responsibilities described herein.
- (b) *Mission Bay Park Lease Revenues* up to the threshold amount in each fiscal year shall be deposited into the San Diego General Fund and may be used for any municipal purpose, including but not limited to, police, fire, streets, sewers, water delivery, roads, bridges, and operation of parks. All *Mission Bay Park Lease Revenues* in excess of the threshold amount shall be allocated in the City of San Diego budget to two distinct funds. Twenty-five percent (25%) of the *Mission Bay Park Lease Revenues* in excess of the threshold amount, or two million five hundred thousand dollars (\$2,500,000) whichever is greater, shall be allocated to the *San Diego Regional Parks Improvement Fund* that solely benefits the *San Diego Regional Parks* and seventy-five percent (75%) of the *Mission Bay Park Lease Revenues* over the threshold amount, or the remainder of those revenues if less than 75% is available after the allocation to the *San Diego Regional Parks Improvement Fund*, shall be allocated to the *Mission Bay Park Improvement Fund* that solely benefits the *Mission Bay Park Improvement Zone*. The threshold amount shall be \$23 million beginning fiscal year 2010 and ending fiscal year 2014. The threshold amount shall be \$20 million beginning fiscal year 2015 and shall remain \$20 million thereafter.
- (c) Funds in the *Mission Bay Park Improvement Fund* may be expended only in the *Mission Bay Park Improvement Zone*, to restore wetlands, wildlife habitat, and other environmental assets within the *Mission Bay Park Improvement Zone*; to preserve the beneficial uses of the *Mission Bay Park Improvement Zone* including, but not limited to, water quality, boating, swimming, fishing, and picnicking by maintaining navigable waters and eliminating navigational hazards; to restore embankments and other erosion control features; and to improve the conditions of the *Mission Bay Park Improvement Zone* for the benefit and enjoyment of residents and visitors, consistent with the *Mission Bay Park Master Plan*.
- (1) To achieve these goals, all of the following identified priorities are intended to be authorized, funded, and completed in the order provided below:
- (A) Restoration of navigable waters within *Mission Bay Park* and elimination of navigational hazards. When depth conditions no longer support and ensure safe navigation, those areas that pose a danger or impede the passage of watercraft shall be dredged in accordance with the *Mission Bay Baseline Chart*.
- (B) Wetland expansion and water quality improvements and the protection and expansion of eelgrass beds as identified in the *Mission Bay Park Master Plan*.
- (C) Restoration of shoreline treatments within the *Mission Bay Park Improvement Zone* including restoration of beach sand and stabilization of erosion control features.
- (D) Expansion of endangered or threatened species preserves and upland habitats on North Fiesta Island and along the levee of the San Diego River floodway as identified in the *Mission Bay Park Master Plan*.
- (E) Completion of bicycle and pedestrian paths and bridges as identified in the *Mission Bay Park Master Plan*, installation of sustainable lighting in the *Mission Bay Park Improvement Zone*, installation of signage and landscaping at points of entry to *Mission Bay Park* and the South Shores, and the repair, resurfacing and restriping of parking lots within the *Mission Bay Park Improvement Zone*.

## PROPOSED CHARTER AMENDMENT (Continued)

- (F) Restoration of the seawall bulkhead on Oceanfront Walk to a condition no less than the quality of restoration previously performed in 1998 from Thomas Street to Pacific Beach Drive or to conditions as may be required by historic standards.
  - (G) Deferred maintenance that are also *Capital Improvements* hereunder on existing assets within the *Mission Bay Improvement Zone* as may be recommended by the *Mission Bay Park Improvement Fund Oversight Committee* and approved by the City Council.
- (2) After each priority project identified in (c)(1)(A-G) above has been budgeted and approved by the City Council and a funding plan adopted for it, construction of a subsequent project may proceed concurrently provided construction of a lesser priority does not unreasonably delay, prolong, or preclude completion of a greater priority. To the extent funds become available from grants or other sources for a lower priority before a higher priority has been completed, or in the event of substantial delay in proceeding with a higher priority, funds may be committed to the next lower priority in the order set forth in (c)(1)(A-G), provided such expenditure of a lesser priority does not unreasonably delay, prolong, or preclude completion of a greater priority. The City Council shall be required to make findings that completion of a higher priority project will not be unreasonably delayed, prolonged, or precluded by expending funds on a lower priority project before approving said expenditure.
- (3) Once the projects identified in (c)(1)(A-G) have been fully budgeted or completed, additional projects shall be prioritized and funded only for *Capital Improvements* as identified in the *Mission Bay Park Master Plan*, recommended by the *Mission Bay Park Improvement Fund Oversight Committee*, and approved by the City Council.
- (4) To the extent items (c)(1)(A-G) that have been completed herein are later in need of additional *Capital Improvements*, then those items shall again have priority over other *Capital Improvements* only if approved by the City Council.
- (5) Except as may be specifically authorized above in this subsection, funds in the *Mission Bay Park Improvement Fund* may not be expended for commercial enterprises or improvements of leasehold interests; for any costs associated with utilities, including, but not limited to, water and sewage; or for roads, vehicle bridges, or vehicular ramps; or on costs that cannot be capitalized; or on daily, weekly, monthly, or annual upkeep of the *Mission Bay Park Improvement Zone* and there shall be no expenditure for contracted labor or services or for city employee salaries, pensions or benefits unless those expenses can be capitalized, and only then at the then-standard rates used by the City of San Diego for all other capital improvement projects.
- (d) Funds in the *San Diego Regional Parks Improvement Fund* may be expended only for non-commercial public *Capital Improvements* for the *San Diego Regional Parks* and only for park uses. Funds in the *San Diego Regional Parks Improvement Fund* may not be expended for commercial enterprises or improvements of leasehold interests; for any costs associated with utilities, including, but not limited to, water and sewage; or for roads, vehicle bridges, or vehicular ramps; or on daily, weekly, monthly, or annual upkeep of the *San Diego Regional Parks*.
- Priority for *Capital Improvements* hereunder shall be recommended by the *San Diego Regional Parks Improvement Fund Oversight Committee*, in accordance with the master plans for each of the *San Diego Regional Parks*, and approved by the City Council.
- (e) The *Mission Bay Park Improvement Fund Oversight Committee* and the *San Diego Regional Parks Improvement Fund Oversight Committee* shall meet at least quarterly to audit and review the implementation of this Charter Section, to recommend priorities for expenditures and *Capital Improvements* hereunder in accordance with the master plans for each of the *San Diego Regional Parks* or with the *Mission Bay Master Plan* or within the priorities identified in (c)(1)(A-G), as applicable; and to verify that the appropriate funds are collected, segregated, retained and allocated according to the intent of this Section, and spent as prioritized in this Section and consistent herewith.

## PROPOSED CHARTER AMENDMENT (Continued)

The San Diego City Auditor, in cooperation with each committee, shall establish and oversee a mechanism to ensure public accountability by effectively reporting and communicating the extent and nature of revenues, expenses and improvements generated hereunder and compliance with the requirements outlined herein. This shall include, at a minimum, an annual audit report to the Mayor, City Council and public. Each report shall, at a minimum, contain a complete accounting of all revenues received, the amount and nature of all expenditures, a report as to whether in each committee's view the expenditures have been consistent with the priorities and provisions hereof, whether the City of San Diego has complied with sections (c)(2), (f), (g) and (h).

In the event that either committee finds that there has been a violation of this Charter Section by the City of San Diego, it should set forth the alleged violation in a written communication to the City Manager and members of the San Diego City Council. If the alleged violation is not resolved to the satisfaction of the aggrieved committee within 30 days, the San Diego City Council shall docket an action item for a public meeting of the San Diego City Council within 60 days. If evidence presented to the San Diego City Council by the aggrieved committee establishes a violation of this Section, the San Diego City Council shall forthwith cure the violation including but not limited to the restoration of inappropriately expended funds.

- (f) The City of San Diego shall take all steps necessary to ensure the collection and retention of all *Mission Bay Park Lease Revenues* for purposes described herein and to utilize those revenues only for the purposes described herein and consistent with the priorities and intentions described herein. The City of San Diego may issue bonds, notes or other obligations to expedite the *Capital Improvements* contemplated herein, utilizing the revenue stream from *Mission Bay Park Lease Revenues* designated herein.
- (g) 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.
- (h) The City of San Diego is encouraged to seek other sources of funding for the purposes of improving the *Mission Bay Park Improvement Zone* and the *San Diego Regional Parks*, including but not limited to grant funding from other governmental agencies, private individuals, or foundations. In the event the City of San Diego receives any such additional funds, they shall be in addition to, and shall not offset or reduce funds dedicated to the *Mission Bay Park Improvement Fund* or *San Diego Regional Parks Fund* under this Section.
- (i) Nothing contained herein shall prevent the City of San Diego from spending funds in excess of the *Mission Bay Park Improvement Fund* or *San Diego Regional Parks Fund* for the purposes of improving the *Mission Bay Park Improvement Zone* or the *San Diego Regional Parks*.
- (j) This Section shall take effect and be in force on July 1, 2009, and will expire on June 30, 2039. Before the expiration of this Section, the City Council shall place on the ballot no later than the last regularly scheduled election prior to June 30, 2039 a measure to amend the Charter to extend the effect of this Section for an additional 30 years.
- (k) In the event of a conflict between any provision of Section 55.2 and any other provision of this Charter or the Municipal Code, Section 55.2 shall govern.