

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

**MEMORANDUM  
MS 59**

**(619) 533-5800**

**DATE:** June 26, 2014

**TO:** Kristin Geitz, Interim Director, Real Estate Assets Department

**FROM:** City Attorney

**SUBJECT:** Legality of Two Leases with San Diego Unified School District to Allow the District's Continued Use of Dedicated Parkland

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**INTRODUCTION**

This Memorandum is in response to the Real Estate Assets Department's (READ) request for a legal opinion concerning the legality of entering into two leases with the San Diego Unified School District (District) to allow the District's continued use of two separate parcels of City-owned property when the existing leases expire.<sup>1</sup> The first lease includes a 0.784-acre parcel of property located adjacent to Roosevelt Middle School, over which the District built a performing arts auditorium.<sup>2</sup> The second lease includes an approximately 34-acre parcel of property used by the District for public school purposes (San Diego High School) and a stadium (Balboa Stadium).<sup>3</sup> Both parcels are located in Balboa Park, which is dedicated parkland subject to San Diego Charter section 55.<sup>4</sup>

**QUESTIONS PRESENTED**

1. May the City legally enter into a lease with the District to continue the District's use of dedicated parkland for an auditorium located adjacent to Roosevelt Middle School?

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<sup>1</sup> The inquiry originated with the District asking READ whether the City would allow the District's continued use of the two leaseholds. At this time, it is unknown how the District will proceed with respect to use of these two properties, but this Office is available to assist with any such discussions in the future.

<sup>2</sup> Agreement Between the City of San Diego and San Diego Unified School District and Lease of Property Adjacent to Roosevelt Junior High School (November 14, 1974) (on file with San Diego City Clerk as Document No. 749248) (Roosevelt Lease). The San Diego City Council approved the Roosevelt Lease on October 31, 1974, by San Diego Resolution R-211907. The Roosevelt Lease expires in 2024.

<sup>3</sup> Agreement Between the City of San Diego and San Diego Unified School District for Lease of San Diego High School Property and Balboa Stadium (May 9, 1974) (on file with the San Diego City Clerk as Document No. 747335) (SDHS Lease). The SDHS Lease was approved by City Council on May 9, 1974, by San Diego Resolution R-210590. The SDHS Lease expires in 2024.

<sup>4</sup> Balboa Park was dedicated by the City as a park for public use in 1868 and ratified by the State Legislature in 1870. 1933 Op. City Att'y 746 (Nov. 2, 1933).

2. May the City legally enter into a lease with the District to continue use of dedicated parkland for San Diego High School?

3. May the City legally enter into a lease with the District to continue use of dedicated parkland for Balboa Stadium?

### SHORT ANSWERS

1. Yes. An auditorium is a legally permissible use of dedicated parkland consistent with Charter section 55, provided that the auditorium remains available to use by the public. Therefore, the City may legally lease the 0.784-acre parcel to the District on terms similar to the current Roosevelt Lease providing for the public's use and enjoyment of the auditorium.

2. No. A school is not a permissible use of dedicated parkland and is inconsistent with Charter section 55. Therefore, the City may not legally lease dedicated parkland to the District for a public high school unless approved by two-thirds of the City electorate.

3. Yes. A stadium is a legally permissible use of dedicated parkland consistent with Charter section 55. Therefore, the City may legally lease Balboa Stadium to the District on terms similar to the current SDHS Lease providing for the public's use and enjoyment of the stadium.

### ANALYSIS

#### I. USE OF DEDICATED PARKLAND

Charter section 55 governs the use of City-owned real property dedicated for park and recreation purposes, and states, in part:

All real property owned in fee by the City heretofore or hereafter formally 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 voting at an election for such purpose.  
(emphasis added.)

As a general rule, a permissible park use is one that is consistent with the recreational character of a park and does not interfere with the enjoyment of the park by the public. *Simons v. City of Los Angeles*, 63 Cal. App. 3d 455, 470 (1976); *San Vicente Nursery School v. Los Angeles County*, 147 Cal. App. 2d 79, 86 (1956). Permissible uses which the courts have generally recognized include public libraries, hotels, restaurants, museums, art galleries, zoological and botanical gardens, conservatories, monuments and memorials. *Spires v. City of Los Angeles*, 150 Cal. 64, 66-67 (1906); *Slavich v. Hamilton*, 201 Cal. 299, 306-07 (1927). By contrast, case law has repeatedly confirmed that a city hall, fire-engine station, hospital, jail or other buildings for the transaction of municipal business are not permissible uses of dedicated parkland. *Id.*

## **II. AN AUDITORIUM AT ROOSEVELT MIDDLE SCHOOL IS A PERMISSIBLE USE OF DEDICATED PARKLAND THAT IS CONSISTENT WITH CHARTER SECTION 55**

Adjacent to Roosevelt Middle School is a 0.784-acre parcel of City-owned property, bounded by the school, Park Boulevard and Zoo Drive, located in Balboa Park.<sup>5</sup> In 1974, the City leased that parcel to the District for fifty years and authorized the District's construction of an encroachment over dedicated parkland to build a performing arts auditorium.<sup>6</sup> Generally, an auditorium is a legally permissible use of dedicated parkland. *Los Angeles Athletic Club v. City of Long Beach*, 128 Cal. App. 427, 431 (1932); 10 McQuillin Mun. Corp. § 28.67 (3d ed. 2010); 1931 Op. City Att'y 132 (May 1, 1931) (community theater a permissible park use). There is substantial evidence that a court could rely on to determine that the auditorium does not unreasonably interfere with the public's enjoyment of the park. Specifically, the Roosevelt Lease requires the District to use the auditorium for "park purposes" and make the auditorium available to the public for recreational and cultural purposes. Roosevelt Lease, Art. II "Responsibilities of District," paras. 1-2. The District is further required to use the remaining portion of the 0.784-acre parcel "for park purposes." *Id.*

The Roosevelt Lease states that it may be renewed by mutual consent of the District and the City, as permitted by law. Roosevelt Lease, Art. VI "Additional Terms and Conditions," para. 11. Based on the information provided, a court would likely find that the District's continued use of dedicated parkland for an auditorium, pursuant to terms similar to that of the present Roosevelt Lease, is a permitted use of dedicated parkland consistent with Charter section 55. Therefore, the City may legally lease the 0.784-acre parcel to the District for the District's continued use of the auditorium, provided that the public continues to be able to use and enjoy the auditorium.

## **III. SAN DIEGO HIGH SCHOOL IS NOT A PERMISSIBLE USE OF DEDICATED PARKLAND**

In 1974, the District filed an eminent domain action against the City (San Diego Superior Court Case No. 350540). Compl. at 3 (Feb. 1, 1974). In settlement of this litigation, the City and the District entered into the SDHS Lease of approximately 34-acres of City-owned property for fifty years.<sup>7</sup> The property will be returned to the City when the SDHS Lease terminates. SDHS Lease, Art. IV "Terms and Conditions," para. 4. At that time, the City may request the District remove all buildings and improvements on the property. *Id.*

Based on the information provided, the District's use of the leased property is primarily for public school purposes. The SDHS Lease authorized the District's construction of school improvements, including a gymnasium, media center, administration center, performing arts, and several school buildings, now commonly known as San Diego High School. SDHS Lease, Art. II

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<sup>5</sup> Roosevelt Middle School is located on dedicated parkland in Balboa Park, which was granted by the City to the District for school use in 1921. The City electorate ratified the change in use. *See* Roosevelt Lease.

<sup>6</sup> The auditorium encroaches on approximately one-third of leased property. The District maintains the remainder of the property with landscaping for public open space park purposes. Roosevelt Lease, Art. II "Responsibilities of District", para. 3; Resolution R-211907 (Oct. 31, 1974).

<sup>7</sup> At that time, the District and the City agreed that the school was "a higher and more necessary use" of the property and entered into the SDHS Lease as part of the settlement. Stipulation for Judgment at 2 (Apr. 23, 1974).

“Responsibilities of District,” para. B. The SDHS Lease requires that the entire property be used for “*educational*, cultural, recreational, and civic programs and activities.” SDHS Lease, Art. IV “Terms and Conditions,” para. 1 (emphasis added).

It is well established that a school use is not consistent with legally accepted uses of dedicated parkland. *City of Salem v. Attorney General*, 183 N.E.2d 859, 862 (Mass. 1962). A school generally interferes with the public’s enjoyment of the dedicated parkland. *San Vincente Nursery School*, 147 Cal. App. 2d at 86. Furthermore, this Office has declined to interpret Charter section 55 as allowing the use of dedicated parkland for school and child care purposes. 1919 Op. City Att’y 46 (Dec. 16, 1919) (private dancing school); 1933 Ops. City Att’y 746 (Nov. 2, 1933) (children’s home); 1979 Op. City Att’y 385 (July 23, 1979) (child care center); 1985 City Att’y MOL 252 (85-49; Aug. 28, 1985) (child care facility for City employees).

The SDHS Lease provides that it may be renewed by mutual consent of the City and the District “as permitted by law and by the Court.” SDHS Lease, Art. IV “Terms and Conditions,” para. 20. Based on the information provided, a court would likely find the District’s use of dedicated parkland for school purposes to be impermissible pursuant to Charter section 55 because a school is not consistent with the recreational character of the park and would interfere with the public’s enjoyment of the park. Pursuant to Charter section 55, an inconsistent use of dedicated parkland may only be authorized by a two-thirds vote of the qualified electors of the City. Therefore, the City may not legally lease dedicated parkland to the District for San Diego High School unless the school use is approved by the electorate.

#### **IV. BALBOA STADIUM IS A PERMISSIBLE USE OF DEDICATED PARKLAND THAT IS CONSISTENT WITH CHARTER SECTION 55**

Approximately one-fifth of the property leased to the District pursuant to the SDHS Lease is used by Balboa Stadium, which is operated by the District.<sup>8</sup> SDHS Lease, Art. I “Interest Acquired by District.” The District is required to use Balboa Stadium “only for park and/or recreation purposes.” SDHS Lease, Art. II “Responsibilities of District,” para. E and Art. IV “Terms and Conditions,” para. 23. Like an auditorium, a stadium is generally a permissible use of dedicated parkland. 10 McQuillin Mun. Corp. § 28.67 (3d ed. 2010); *Aquamsi Land Co. v. City of Cape Girardeau*, 142 S.W.2d 332, 335 (Mo. 1940). Stadiums and sporting facilities have been found to aid in the public’s enjoyment of the park and not unreasonably interfere with use of the park. *See Spires*, 150 Cal. at 66-67. Based on the information provided, a court would likely find Balboa Stadium to be a permissible park use that is consistent with Charter section 55. Therefore, the City may legally enter into a lease with the District over that portion of dedicated parkland occupied by Balboa Stadium, provided that the lease contained similar terms and conditions as in the current SDHS Lease providing for the public’s continued use and enjoyment of the stadium.

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<sup>8</sup> The City, the District and San Diego Community College District share the maintenance and costs of Balboa Stadium pursuant to a written agreement that expires at the same time as the SDHS Lease. Agreement Between the City of San Diego, San Diego Unified School District, and San Diego Community College District (February 9, 1987) (on file with the San Diego City Clerk as Document No. RR-267647).

### CONCLUSION

Under the facts provided to this Office, the City may legally lease dedicated parkland to the District for continued use by Roosevelt Middle School's auditorium and Balboa Stadium because a court would likely find these uses to be consistent with park purposes as required by Charter section 55. However, since a school is not a permissible use of dedicated parkland, the City may not legally lease dedicated parkland to the District for San Diego High School unless that use is approved by two-thirds of the City electorate pursuant to Charter section 55.

JAN I. GOLDSMITH, CITY ATTORNEY

By /s/ Heather M. Ferbert

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