

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

**MEMORANDUM
MS 59**

(619) 533-5800

DATE: May 18, 2016
TO: Honorable Mayor and City Councilmembers
FROM: City Attorney
SUBJECT: Applicability of Charter Section 219 to Mission Bay Golf Course

INTRODUCTION

The City of San Diego is considering the future use of the Mission Bay Golf Course located in Mission Bay Park, which may include a potential lease of the property. The question has arisen whether a lease would be subject to Charter section 219, which prohibits the lease of Pueblo Lands in excess of fifteen years.

In 2011, the Office of the City Attorney issued the attached Report to the Budget Committee identifying legal requirements that must be met before the sale or outsourcing of City-managed golf courses may occur. 2011 City Att’y Report 220 (2011-3; Jan. 19, 2011). The Report states that Mission Bay Golf Course is located on Pueblo Lands and is subject to San Diego Charter section 219. *Id.* This memorandum addresses whether Mission Bay Golf Course is located within Pueblo Lands subject to Charter section 219 in light of the recent ruling in *Linda Vista Village San Diego Homeowners Association, Inc. v. Tecolote Investors, LLC*, 234 Cal. App. 4th 166, 187-88 (2015) (*Linda Vista Village*).

QUESTION PRESENTED

Is Mission Bay Golf Course located on Pueblo Lands subject to Charter section 219?

SHORT ANSWER

No. Contrary to the assertions in the Report, Mission Bay Golf Course is not located on Pueblo Lands subject to Charter section 219 because the property where Mission Bay Golf Course is located has not been continuously held in City ownership since the 1909 amendment of the Charter, having been acquired by the City in 1949 from the federal government.

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ANALYSIS

The sale or lease of City-owned Pueblo Lands is protected by Charter section 219, which requires that any lease of Pueblo Lands in excess of fifteen years be approved by an ordinance of the San Diego City Council and ratified by the electors of the City. Charter § 219; *see also*, 1999 City Att’y Op. 40 (99-2; July 15, 1999). The application of Charter section 219 was the subject of recent litigation in the *Linda Vista Village* decision. 234 Cal. App. 4th at 188. The court determined that Charter section 219 “govern[s] the rights and duties of the City with respect to its own remaining Pueblo lands, determined as of 1909 when the restrictions were imposed.” *Id.* at 188. The court further upheld this Office’s interpretation of Charter section 219, finding that “[i]t would not be consistent with the apparent purpose of section 219 to apply its requirements to parcels . . . that were not continuously held in City ownership in 1909 and thereafter.” *Linda Vista Village*, 234 Cal. App. 4th at 188 (emphasis added).

The City acquired the property where Mission Bay Golf Course is located by quitclaim deed from the federal government in 1949. Since the City has not owned the property continuously since 1909, the provisions of Charter section 219 do not control the City’s rights and duties with respect to leasing property within Mission Bay Golf Course. The inclusion of Mission Bay Golf Course as property subject to Charter section 219 in the attached Report was an inadvertent error; therefore, that conclusion in the Report is overruled. The remainder of the analysis in the Report continues to be applicable to the sale or outsourcing of City-managed golf courses.

CONCLUSION

Based on the analysis of Charter section 219 recently upheld in the *Linda Vista Village* decision, Mission Bay Golf Course is not located on Pueblo Lands subject to Charter section 219.

JAN I. GOLDSMITH, CITY ATTORNEY

By /s/ Heather M. Ferbert

Heather M. Ferbert

Deputy City Attorney

HMF:nja

MS-2016-16

Doc. No.: 1214806

Attachment

cc: Andrea Tevlin, Independent Budget Analyst

Cybele Thompson, Director, Real Estate Assets Department

Herman Parker, Director, Park and Recreation Department