

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

**MEMORANDUM
MS 59**

(619) 533-5800

DATE: October 2, 2026
TO: Honorable Mayor and Councilmembers
FROM: City Attorney
SUBJECT: Use of Modular Buildings on Dedicated Parkland for Childcare Purposes

INTRODUCTION

In 2022, voters passed San Diego Measure H, which amended San Diego Charter section 55 to allow childcare on dedicated parkland. Since the passage of Measure H, several questions have arisen regarding the measure's implementation.

Most recently, during a Budget Review Council Committee meeting on May 5, 2026, the Committee raised the issue of whether modular buildings¹ can be used for childcare purposes and sought legal guidance from the Office of the City Attorney.

QUESTION PRESENTED

May new buildings and facilities, including modular buildings, be used for childcare purposes on dedicated parkland under Charter section 55 as amended by Measure H?

SHORT ANSWER

Yes, but new buildings and facilities, including any modular buildings, may not be used solely for childcare purposes as the Charter requires the use occur in recreation facilities and buildings consistent with Charter section 55, as amended by Measure H.

¹ Modular buildings are generally structures built in prefabricated modules or components, which are manufactured in a factory and then transported to the site for assembly.

ANALYSIS

CHILDCARE MAY TAKE PLACE IN NEW RECREATION BUILDINGS AND FACILITIES, INCLUDING MODULAR RECREATION BUILDINGS

Measure H added the following language to Charter section 55: “The City Manager may, without a vote of the people, authorize *childcare at recreation facilities and buildings* on 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 or recreation purposes.”² San Diego Charter § 55 (emphasis added).

In determining how to implement Measure H to provide additional childcare options, the City has considered whether it may use modular buildings. Measure H is silent on whether modular buildings may be used on dedicated parkland for childcare purposes.³

As highlighted in italics above, while Measure H authorized childcare within dedicated parkland, it did not allow unlimited use of dedicated parkland for childcare purposes. Instead, it provided that childcare use was allowed at recreation facilities and buildings.⁴ Absent an express prohibition on the use of modular buildings for childcare, such use is permitted, but must comply with this limitation.

To interpret Measure H, this Office analyzed whether the term “recreation” as used in Measure H was intended to modify both the terms “facilities” and “buildings” or simply the term “facilities.” In other words, the language of Measure H could be read to mean that childcare can only take place in recreation facilities and recreation buildings on dedicated parkland. Alternatively, it could be read more expansively to mean that childcare is authorized in recreation facilities and other non-recreation buildings on dedicated parkland.

To determine the proper interpretation of a statute such as Measure H, courts will first look to its express language. *People v. Financial Casualty & Surety, Inc.*, 78 Cal. App. 5th 879, 884 (2022). When the express language of a statute is ambiguous or unclear, courts will attempt to ascertain

² Measure H also added the following language: “For purposes of this section, childcare means any State-licensed childcare facility, other than in-home family day care, in which nonmedical care and supervision is provided for children under age 18 in a group setting for less than 24 hours per day, excluding educational or instructional use provided by public, private, home, or charter schools.” San Diego Charter § 55.

³ All childcare facilities must comply with all state licensing and oversight regulations.

⁴ Measure H does not define the term “recreation facilities and buildings.” According to the Parks and Recreation Department, a recreation facility or recreation building is a facility or building used for recreation purposes. Although no exact percentage of recreation use determines whether a facility or building is a recreation facility or recreation building, the more the City uses a building or facility for recreation purposes, the more likely a court would find the use consistent with Charter section 55.

the legislative intent of the statute and may use applicable canons of statutory interpretation and rules of grammar to do so. *See Assn. for Los Angeles Deputy Sheriffs v. County of Los Angeles*, 94 Cal. App. 5th 76, 779 (2023).

In this case, the “series qualifier” rule of grammar applies which interprets a modifier before two nouns to mean that the modifier applies to both nouns. *Assn. for Los Angeles Deputy Sheriffs*, 94 Cal. App. 5th at 783. Applying the series qualifier rule to the language of Measure H, the modifier “recreation” applies to both nouns, “facilities” and “buildings.” In other words, a court would likely interpret Charter section 55 to mean that childcare is authorized at recreation facilities and recreation buildings.

The City Council’s legislative record confirms this interpretation. During the discussion at the City Council hearing on July 25, 2022, to consider placing Measure H on the ballot, the City Council identified it as “a very prudent move to give the City flexibility to effectively manage its recreation center resources.” The City Council further discussed how the two uses of childcare and recreation can be complementary as childcare primarily takes place in the morning and recreation centers are mostly busy in the afternoon and on weekends. The City Council stated that “no new facilities shall be constructed for childcare use alone” and recognized this was an appropriate restriction to ensure that the City did not lose park space as a result of Measure H. City of San Diego City Council video, Special Council Meeting, Item 603 at 02:42:21 (July 25, 2022), https://sandiego.granicus.com/player/clip/8496?view_id=3&redirect=true. Furthermore, the City Attorney’s Impartial Analysis accompanying the ballot measure reflected the City Council’s legislative intent, stating “[t]his amendment would not authorize the construction of new buildings on dedicated parkland *solely* for childcare.” Ballot Pamp., Gen. Elec. (Nov. 8, 2022), City Att’y Impartial Analysis on Measure H at 41(emphasis added).

As such, a court would likely find Measure H only authorized childcare within recreation buildings and recreation facilities on dedicated parkland, which would include modular recreation buildings.⁵

CONCLUSION

New recreation buildings and facilities, including modular recreation buildings, may be constructed or placed on dedicated parkland to offer childcare. However, childcare may not be

⁵ The construction or placement of a new or modular building must also comply with all environmental, permitting, and other legal requirements.

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the sole use of such buildings, because Charter section 55 requires any building used for childcare retain its recreational character.

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cc: Rania Amen, Chief Community Services Officer and City Engineer
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