Office of
The City Attorney
City of San Diego

MEMORANDUM
MS 59

(619) 533-5800

DATE: November 3, 2026

TO: Honorable Mayor and Councilmembers

FROM: City Attorney

SUBJECT: Legal Analysis Relating to Charging City Residents and Nonresidents Differently for Parking in City-Owned Parking Lots Used to Access Beach Areas

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INTRODUCTION

On August 26, 2026, the Rules Committee of the City Council (Committee) heard a proposal for an ordinance that would preserve free parking in beach areas and Mission Bay in the City of San Diego. The proposed ordinance prohibited the City from charging anyone for parking in City-owned parking lots used for access to beach areas[1] with certain exceptions.

At the hearing, the Committee recommended amendments[2] to the ordinance limiting the City's prohibition on charging for beach area access parking on City-owned parking lots to only City residents. The Committee wanted to preserve the City's ability to charge nonresidents for parking in these lots in the future.

QUESTION PRESENTED

Is it legally permissible for the City to charge nonresidents of the City for parking in beach areas while not charging City residents?

SHORT ANSWER

Possibly no. City property subject to tidelands trust grant deeds may be subject to restrictions prohibiting the City from differentiating between residents and nonresidents for parking fees. State law also requires that nonresidents be permitted to use beaches on the same terms and conditions as residents, but it is not clear whether the prohibition applies to parking.

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[1] The proposed ordinance uses the definition of "beach area" found in San Diego Municipal Code section 63.20(b) which means "any beach or land (with waters immediately abutting and adjacent) under the jurisdiction and control of the Parks and Recreation Department", which includes Mission Bay. San Diego Municipal Code § 63.20(b).
[2] The Committee also approved an amendment to the ordinance that eliminates the ten-year sunset clause on the prohibition on charging for beach area access parking in City-owned parking lots.

ANALYSIS

State law requires that a city provide residents and nonresidents equal access to beaches. *See* Cal. Gov't Code § 54091; Cal. Pub. Res. Code § 5162. State law does not, however, expressly prohibit or allow cities to charge different beach access parking rates for residents and nonresidents. Whether the City may charge different rates for parking on City-owned property at beaches and in Mission Bay will depend on how the City acquired the property, whether the property is subject to the tidelands trust from the State of California, and whether California Government Code (Government Code) section 54091 may be extended to parking lots.

When the State of California transferred its interest in the tidelands to the City, the City acts as a trustee of the tidelands for all people of the State and the City is subject to any restrictions in the tideland trust deed. *See City of Long Beach v. Morse*, 31 Cal. 2d 254, 257 (1947). For example, the State granted the City a significant portion of Mission Bay pursuant to a tidelands trust deed that expressly states that "in the management, conduct or operation of said harbors and tidelands . . . no discrimination in rates, tolls or charges or in facilities for any use or service in connection therewith shall ever be made, authorized or permitted by said city or its successors." Cal. Stats. 1945, ch. 142 § 1(c). Therefore, the City could not charge different parking rates based on residency at any City-owned parking lots located on property subject to this tidelands trust grant deed. Before adopting resident and nonresident parking rates, the City should evaluate any applicable deed restrictions and tidelands trust grant deeds that control the City's use of the property for similar language.

Before charging different parking rates based on residency on other City-owned parking lots serving Mission Bay or City beaches, the City should also consider California Government Code section 54091, which states in relevant part that "[a]ny city . . . that owns, operates, or controls any public beach shall allow the use of that public beach by all persons regardless of . . . residence. Nonresidents of the city . . . shall be permitted to use that public beach upon the same terms and conditions as are residents of the city . . ." Cal. Gov't Code § 54091.[3] Two questions must be addressed to determine whether this state law applies to the City and prohibits treating residents and nonresidents differently for parking in beach areas: (A) whether Government Code section 54091 applies to a charter city; and (B) whether parking is considered a term and condition of the use of a public beach.

[3] California Public Resources Code section 5162, which was enacted in the same year in the same legislative session as Government Code section 54091 contains similar language stating: "Any beach or seashore recreation areas owned, leased, operated, controlled, maintained or managed by a city or county, which is open to the use of residents of such city or county shall be open to all members of the public upon the same terms, fees, charges and conditions as are applicable to the residents of such city or county." Cal. Pub. Res. Code § 5162. This Office is aware of no case law or authority that defines "seashore recreation areas." The analysis of Public Resources Code section 5162 is similar to the analysis for California Government Code section 54091.

A. A Court Would Likely Determine that California Government Code Section 54091 Applies to the City of San Diego as a Charter City.

Unlike a general law city, as a charter city, the City has authority over municipal affairs and must comply with state law only when it involves a matter of *statewide* concern. Cal. Const. art. XI, § 5(a); *State Bldg. & Constr. Trades Council of Cal. v. City of Vista*, 54 Cal. 4th 547, 552 (2012); *American Financial Services Ass'n v. City of Oakland*, 34 Cal. 4th 1239, 1251 (2005). Whether an issue is a municipal affair or a matter of statewide concern is a legal question to be decided by a court. *California Fed. Sav. & Loan Ass'n v. City of Los Angeles*, 54 Cal. 3d 1, 17 (1991). A court will "look to the whole purpose and scope of the legislative scheme" to determine whether it preempts local legislation. *San Diego Gas & Elec. Co. v. City of Carlsbad*, 64 Cal. App. 4th 785, 793 (1998). If it is unclear, "any fair, reasonable and substantial doubt whether a matter is a municipal affair or broader state concern must be resolved in favor of the legislative authority of the state." *Cox Cable San Diego, Inc. v. City of San Diego*, 188 Cal. App. 3d 952, 962 (1987) (quoting *Abott v. City of Los Angeles*, 53 Cal. 2d 674, 681 (1960)).

Here, based on the legislative history, a court would likely find that Government Code section 54091 is applicable to the City, even though it is a charter city, because civil rights and coastal access are likely considered matters of statewide concern.

1. Civil Rights Are Generally a Matter of Statewide Concern

Along with corresponding sections in Chapter 5, Article 4 of the Government Code titled "Beach Access" (sections 54090 through 54093), which prohibit discrimination in beach access, section 54091 was enacted in 1963 in the midst of the Civil Rights Movement. Like other civil rights measures, Government Code section 54091 prohibits discrimination in beach access on the basis of several protected characteristics and, notably, includes residence. *See* Cal. Civ. Code § 51. A legislative summary of Assembly Bill 14 (2007-2008 Reg. Sess.), amending Government Code section 54091 to conform the list of protected classes with the Unruh Civil Rights Act characterized Government Code section 54091 as a California civil rights statute. Dept. of Fair Employment and Housing (2008), https://calcivilrights.ca.gov/wp-content/uploads/sites/32/2017/06/2007LegislativeSummary.pdf.

There is no case law directly addressing the applicability of Government Code section 54091 to charter cities. However, based on the language of Government Code section 54091 and the surrounding legislative scheme, a court would likely find that prohibiting discrimination in beach access, including discriminatory treatment based on residence, is a matter of statewide concern.

2. Coastal Access Is Likely a Matter of Statewide Concern

The State has taken additional legislative action to establish coastal access as a matter of statewide concern.[4] In 1976, the State enacted the California Coastal Act, which protects, conserves, restores, and enhances the natural and scenic resources of the California coastline while guaranteeing public access to the shore. Cal. Pub. Res. Code §§ 30000-30900. In doing so, the State found that "the California coastal zone is a distinct and valuable natural resource of vital and enduring interest to all the people" and that "the permanent protection of the state's natural and scenic resources is a paramount concern." Cal. Pub. Res. Code § 30001(a)-(b). The Coastal Act also created the California Coastal Commission, which among other responsibilities, ensures that the public's right to access the coast is protected.

The California Coastal Act of 1976 was the permanent legislative follow-up that made the protections and oversight in the Coastal Zone Conservation Act of 1972 into permanent law. In 1974, a court found that the Coastal Zone Conservation Act of 1972, a temporary voter-approved initiative enacted to protect the state's shoreline and create a comprehensive management plan, was a matter of statewide concern. *CEEED v. Cal. Coastal Zone Conservation Commission*, 43 Cal. App. 3d 306, 320 (1974).

Based on the foregoing, a court would likely find that ensuring equal access to public beaches under Government Code section 54091 is a matter of statewide concern and therefore section 54091 applies to charter cities such as the City of San Diego.

B. Although California Government Code Section 54091 Does Not Directly Address Parking, a Court Could Conclude that Parking is a Condition of Use of a Public Beach.

California Government Code section 54091 requires that nonresidents of the City be permitted to use public beaches on the same terms and conditions as City residents. As used in this section, public beach means "any beach area used for recreational purposes, which is owned, operated or controlled by the State, any state agency or any local agency." Cal. Gov't Code § 54090. At issue is whether a City-owned parking lot located near a beach is also subject to the restrictions of section 54091.

This Office is not aware of any court opinion prohibiting different parking rates for residents and nonresidents at City-owned parking lots used for beach or Mission Bay access. There is a California Attorney General Opinion, which could provide additional guidance to a court, if a non-resident parking fee was challenged.[5] In the Opinion, the Attorney General relied on a similar Government Code section prohibiting discrimination at public harbors based on

[4] While this Office has not found any binding published court decisions on Government Code section 54091, in an unpublished, non-binding, and non-citable decision, a California court stated that "it is apparent that access to the public beach by all of our citizens is of paramount importance to the [State] Legislature." *Jonathan Club v. Cal. Coastal Commission*, 243 Cal. Rptr. 168, 177 (1988).

[5] Courts consider Attorney General opinions to have persuasive effect on their decisions. *Cal. Bldg. Indus. Ass'n v. State Water Res. Control Bd.*, 4 Cal. 5th 1032, 1042 (2018).

residency. 58 Op. Cal. Att'y Gen. 651, 652 (1975). The Attorney General concluded that the city could not provide preferential access to local residents where state funds were used to construct the harbor and the city could not charge different mooring rates based on city residency. *Id*.

If the City adopted nonresident parking fees at City parking lots adjacent to a City beach, there is some risk that a court could extend the application of Government Code section 54091 to the beach parking lot. The analysis would depend on the specific facts, including geographic layout of the beach and parking lot, and access options. Although a parking lot is not covered by the definition of public beach in Government Code section 54091, a California court in a quiet title action considered a parking lot used to access the beach to be a necessary and incidental use of a beach. *See Abbott Kinney Co. v. Los Angeles*, 223 Cal. App. 2d 668, 673 (1963).

CONCLUSION

The ordinance before the Council proposes free parking for residents in City-owned lots that provide access to beach areas and Mission Bay. It further allows the City to charge nonresidents in the future, if legally permissible. Any proposal to charge nonresidents for parking at these lots would require additional analysis. This Office is available to assist with any additional legal questions or future proposals regarding nonresident parking fees.

HEATHER FERBERT, CITY ATTORNEY

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