

PAUL E. COOPER
EXECUTIVE ASSISTANT CITY ATTORNEY

MARY T. NUESCA
ASSISTANT CITY ATTORNEY

HEATHER M. FERBERT
DEPUTY CITY ATTORNEY

OFFICE OF

THE CITY ATTORNEY

CITY OF SAN DIEGO

Jan I. Goldsmith

CITY ATTORNEY

1200 THIRD AVENUE, SUITE 1620
SAN DIEGO, CALIFORNIA 92101-4178
TELEPHONE (619) 236-6220
FAX (619) 236-7215

OPINION NUMBER 2016-1

DATE: November 2, 2016

SUBJECT: Application of Charter Section 55.2 to Revenue Derived from De Anza Cove RV Park

REQUESTED BY: Herman Parker, Director, Park and Recreation Department

PREPARED BY: City Attorney

INTRODUCTION

The De Anza Cove Mobile Home Park, formerly known as De Anza Harbor Resort, is located within Mission Bay Park.¹ The De Anza Cove Mobile Home Park is managed by Newport Pacific Capital Company, Inc. (Newport) and contains over 500 mobile homes and a 259-space recreational vehicle park (RV Park). According to City staff, since 2003, the City has segregated revenues from the De Anza Cove Mobile Home Park into an account separate from other revenues generated in Mission Bay Park.

San Diego Charter section 55.2 governs the allocation and use of Mission Bay Park Lease Revenues, as defined in the Charter. The Office of the San Diego City Auditor annually reviews compliance with the requirements of Charter section 55.2, including accounting for revenues received and the nature of expenditures made pursuant to that section. San Diego Charter § 55.2(e). In connection with the Fiscal Year 2015 audit, the Auditor and the Park and Recreation Department have requested the Office of the City Attorney provide an opinion whether revenue derived from the RV Park is “Mission Bay Park Lease Revenues” as defined in Charter section 55.2 and, if so, whether such revenue would have to be repaid to the appropriate funds according to the formula in Charter section 55.2 for the allocation of Mission Bay Park Lease Revenues.

¹ “Mission Bay Park” is defined in San Diego Charter section 55.2 as “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.” San Diego Charter § 55.2(a)(3). Proposed amendments to the definition of “Mission Bay Park” will appear on the ballot in the California General Election held on November 8, 2016. If adopted, those amendments will not impact the analysis in this Opinion.

QUESTIONS PRESENTED

1. Is revenue derived from the RV Park considered “Mission Bay Park Lease Revenues” as that term is defined in Charter section 55.2?
2. If the revenue derived from the RV Park is considered “Mission Bay Park Lease Revenues,” would the revenue collected from the RV Park since the adoption of Charter section 55.2 have to be repaid according to the formula established in Charter section 55.2?

SHORT ANSWERS

1. Yes. Revenue derived from the RV Park would likely be considered Mission Bay Park Lease Revenue because it is revenue collected from a commercial source for the use of City owned property within Mission Bay Park.
2. Yes. The Charter requires that the City take all steps necessary to ensure Mission Bay Park Lease Revenues are used for the purposes described in Charter section 55.2 and in a manner that is consistent with its priorities and intentions. The revenue derived from the RV Park should be repaid according to the formula for allocating Mission Bay Park Lease Revenues for each fiscal year since Fiscal Year 2010.

ANALYSIS

I. REVENUE DERIVED FROM THE RV PARK WOULD LIKELY BE CONSIDERED “MISSION BAY PARK LEASE REVENUES” AS DEFINED IN CHARTER SECTION 55.2

In 2008, the electorate approved Proposition C, enacting Charter section 55.2, which establishes requirements for the allocation and use of lease revenue from Mission Bay Park. “Mission Bay Park Lease Revenues” is defined in the Charter as follows:

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.

San Diego Charter § 55.2(a)(7) (emphasis added).

1. Revenue from the RV Park is Collected by a Commercial Source and is Collected for the Use of City Owned Property Within Mission Bay Park

This Office has previously opined that rents paid to the City by homeowners in the De Anza Cove Mobile Home Park do not fall within the Charter definition of Mission Bay Park Lease Revenues because the mobile home use is a residential use and homeowners “are neither commercial nor non-profit sources of revenue.” City Att’y MS 2014-25 (Mar. 18, 2014) (attached). The question before us is whether revenue derived from the RV Park portion of De Anza Cove Mobile Home Park falls within that definition.

As discussed in the attached Memorandum, when construing a city charter, courts will generally seek to determine what voters intended in approving the charter provision. *Id.* (citing *Woo v. Superior Court*, 83 Cal. App. 4th 967, 974-75 (2000)). Courts generally review measures adopted by voters in the same manner as they interpret statutes. *Howard Jarvis Taxpayers Ass’n v. County of Orange*, 110 Cal. App. 4th 1375, 1381 (2003). Words in a charter or statute are generally construed from the perspective of the voters and given their “usual, ordinary, and commonsense meaning.” *Id.* “If the language is clear and unambiguous, there ordinarily is no need for construction. [The courts] presume the voters intended the meaning apparent on the face of the measure” and end their inquiry. *Woo*, 83 Cal. App. 4th at 974-75 (internal citations omitted).

Mission Bay Park Lease Revenues is defined as “all revenues . . . from commercial and non-profit sources within *Mission Bay Park*.” San Diego Charter § 55.2(a)(7). The plain meaning of “commercial” is “[o]f or relating to commerce.” *Webster’s II New College Dictionary* 231 (2005). “Commerce” means “[t]he buying and selling of goods especially on a large scale.” *Id.* According to City staff, the RV Park operates on City owned property within Mission Bay Park pursuant to a management arrangement with Newport. Users of the RV Park pay camping fees to Newport. The revenues from the RV Park are remitted to the City. Based on this information, Newport would likely be considered a commercial source of revenue to the City.

The definition of Mission Bay Park Lease Revenues identifies specific sources of covered revenue, including money received from leases of City property, contracts for concessions,² and “any other revenues *collected for the use of city owned property* within Mission Bay Park.” San Diego Charter § 55.2(a)(7) (emphasis added). In the attached Memorandum, this Office opined that the phrase “other revenues collected for the use of city owned property” “must be read in relation to the rest of the definition in order to harmonize both parts such that *additional revenue sources would be similar to those revenue sources included in the definition.*” City Att’y MS 2014-25 (Mar. 18, 2014) (emphasis added). In other words, “other revenues” would include revenue sources that are commercial or nonprofit in nature and would not likely include residential uses.³ Unlike the homeowners in the mobile home park, users of the RV Park are

² The plain meaning of concession is “[s]omething, as a land tract, granted especially by a government to be used for a specific purpose.” *Webster’s II New College Dictionary* 238 (2005).

³ The attached Memorandum also distinguished revenue derived from homeowners in De Anza Cove Mobile Home Park as revenues within the Charter definition because the homeowners were engaged in an illegal residential use of the Park that was not likely contemplated by the voters when Charter section 55.2 was adopted in 2008. City Att’y MS 2014-25 (Mar. 18, 2014).

generally engaged in tourist and recreational activities, similar to patrons of the many hotels in Mission Bay Park. These recreational uses are contemplated for Mission Bay Park pursuant to the tidelands trust grant and the dedication of the property for park and recreation purposes. *See* Cal. Stats. 1945, ch. 142; Cal. Stats. 1963, ch. 2139 § 2; *see also*, 2000 City Att’y MOL 199 (2000-07; Mar. 9, 2000); San Diego Ordinance O-8628 (Apr. 24, 1962) (dedicating Mission Bay Park for a public park). Therefore, a court could reasonably conclude that revenue from the RV Park is derived from a commercial recreational use and should be treated as Mission Bay Park Lease Revenues.

2. Revenue from the RV Park is not Subject to Any Exceptions Provided in the Charter Definition of Mission Bay Park Lease Revenue

The definition of Mission Bay Park Lease Revenues expressly excludes revenue from the Mission Bay Golf Course unless privately leased, mooring fees, tax revenues, and permit fees levied to recover actual costs incurred by the City. San Diego Charter § 55.2(a)(7). As discussed in the attached Memorandum, the Charter definition excludes revenues collected directly by the City from end-users of Mission Bay Park. If the RV Park users paid a permit fee directly to the City, those revenues would likely fall within this exception. Since the RV Park is managed by Newport and revenues are remitted to City based on the relationship between the City and Newport, it is unlikely that a court would apply this exception to revenues from the RV Park.

II. THE CITY MUST REPAY REVENUES DERIVED FROM THE RV PARK ACCORDING TO THE ALLOCATION FORMULA ESTABLISHED BY CHARTER SECTION 55.2

Charter section 55.2 establishes a formula for the allocation of Mission Bay Park Lease Revenues that requires a threshold amount in each fiscal year be deposited into the City’s General Fund. San Diego Charter § 55.2(b). The excess Mission Bay Park Lease Revenues are then allocated to the San Diego Regional Parks Improvement Fund and Mission Bay Park Improvement Fund, with the greater of 25 percent of the excess Lease Revenues or \$2.5 million first allocated to the San Diego Regional Parks Improvement Fund. *Id.*; *see also*, 2010 City Att’y MS 1090 (2010-17; Dec. 10, 2010).

With respect to the City’s obligations under section 55.2, the Charter states:

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*. San Diego Charter § 55.2(f) (emphasis added).

The plain language of this section clearly requires the City to allocate and use Mission Bay Park Lease Revenues as required in Charter section 55.2. Here, the revenues derived from the RV Park have been allocated to a separate fund and not distributed according to the formula in the Charter. Since a court would likely find the revenues from the RV Park to be Mission Bay

Park Lease Revenues, if the prior use of those funds were challenged, a court would also likely require those funds to be repaid pursuant to the allocation formula in Charter section 55.2. This conclusion is further supported by the review process established for the two oversight committees created by the Charter. In that review process, the Charter clearly contemplates repayment of inappropriately expended funds, stating: "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.*" San Diego Charter § 55.2(e) (emphasis added). Based on the plain language of the Charter, if challenged, a court would likely require the repayment of revenues derived from the RV Park according to the formula applicable in each fiscal year since application of Charter section 55.2 began.⁴

CONCLUSION

Based on the information provided about the relationship between the City and managers of the RV Park, a court would likely conclude that revenue from the RV Park is Mission Bay Park Lease Revenues defined in Charter section 55.2 because that revenue is received from a commercial source for use of Mission Bay Park property. Additionally, a court is unlikely to apply the exception from this definition to the RV Park revenues. Since Charter section 55.2 requires the City to take all steps necessary to ensure Mission Bay Park Lease Revenues are used in a manner consistent with the priorities and intentions in that section, the RV Park revenues should be repaid and allocated according to the formula for allocation of Mission Bay Park Lease Revenues for each fiscal year they were collected by the City.

JAN I. GOLDSMITH, CITY ATTORNEY

By /s/ Heather M. Ferbert
Heather M. Ferbert
Deputy City Attorney

HMF:nja
LO-2016-1
Doc. No.: 1283421
Attachment

cc: Honorable Mayor and Councilmembers
David Graham, Deputy Chief Operating Officer
Eduardo Luna, San Diego City Auditor
Andrea Tevlin, Independent Budget Analyst

⁴ For example, in Fiscal Year 2010, the threshold amount of Mission Bay Park Lease Revenues that was deposited into the General Fund was \$23 million. San Diego Charter § 55.2(b). The excess Mission Bay Park Lease Revenues were allocated between the two Improvement Funds, with the greater of \$2.5 million or 25 percent of the excess Lease Revenues allocated to the San Diego Regional Parks Improvement Fund. *Id.* If the San Diego Regional Parks Improvement Fund was not allocated the full \$2.5 million in Fiscal Year 2010, all of the revenues derived from the RV Park should be repaid into that Fund. The threshold amounts and allocation formula should be analyzed for each fiscal year in which the City collected revenue from the RV Park.

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

MEMORANDUM

DATE: March 18, 2014

TO: Mary Lewis, Chief Financial Officer

FROM: Brant Will, Deputy City Attorney

SUBJECT: De Anza Cove Mobile Home Park Rental Revenue and Charter Section 55.2

INTRODUCTION

Since at least 2003, the City of San Diego (City) has been segregating rents paid to the City by homeowners in the De Anza Cove Mobile Home Park (De Anza) from other revenues generated in Mission Bay Park. The intent of the City is to use that rental income to defray costs to the City's General Fund related to the closure of the park.

You have asked whether it is permissible to continue to segregate the De Anza rental income in light of San Diego Charter (Charter) section 55.2, which requires certain revenues collected from the use of property within Mission Bay Park to be used to fund improvements in Mission Bay Park and other regional parks. This memorandum analyzes the relationship between the De Anza rental income and the requirements of Charter section 55.2.

QUESTION PRESENTED

Are rents paid to the City by homeowners in the De Anza Cove Mobile Home Park considered "Mission Bay Park Lease Revenues" as that term is defined in Charter section 55.2?

SHORT ANSWER

No. Rents paid to the City by homeowners in the De Anza Cove Mobile Home Park do not fit within the definition of "Mission Bay Park Lease Revenues" in Charter section 55.2(a)(7). Mission Bay Lease Revenues means "all revenues collected by the city from commercial and non-profit sources within Mission Bay Park." The homeowners in

De Anza are neither commercial nor non-profit sources of revenue. Moreover, residential use in Mission Bay Park was an illegal use at the time that Charter section 55.2 was adopted by voters and therefore it is reasonable to infer that the revenue from such illegal use was intentionally omitted from the definition of Mission Bay Park Lease Revenues. While this question is not without doubt due to the language in the Charter, we believe the conclusion herein is the best interpretation of the Charter language.

BACKGROUND

The City owns approximately 70 acres of land at De Anza Point in Mission Bay Park, generally referred to as the De Anza Cove Mobile Home Park. The Mission Bay tidelands, which includes most of Mission Bay Park, were conveyed to the City by the State of California in 1945 to be used and held in trust for park and tidelands purposes.

In 1953, the City entered into a lease with the original lessee of De Anza. The lease required the lessee to construct facilities to be used as a "tourist and trailer park area." The 50-year lease expired in November 2003. The leasehold area is mostly on filled tidelands and subject to the tidelands trust.

After 1953, "trailers" became less and less mobile and, by the late 1960s and mid-1970s, it became apparent that the mobile homes occupying the leasehold were in fact permanent, private residences, which is an illegal use of state tidelands. 1994 City Att'y MOL 509 (94-57; Jul. 11, 1994).

In 1962, the De Anza property was included in the dedication of Mission Bay Park. Private residences are also not a valid use of dedicated park land. *Id.*

In 1978, the City Attorney, responding to a question raised by the Mayor and City Council, issued an opinion stating that the use of the property for a residential purpose was not consistent with the use restrictions included in the State's grant of the property. At that time, approximately 510 mobile homes were located on the property. 1978 Op. City Att'y 97 (78-14; Aug. 2, 1978).

In 1981, as a special accommodation to the mobile home owners on the property, the State of California acknowledged the improper use of the tidelands and adopted legislation permitting the then-existing residential use to continue until the lease expired on November 23, 2003. The bill specified that the property must be used for park and recreation purposes after the expiration of the lease. 1989 City Att'y MOL 425 (89-80; Aug. 11, 1989).

On November 23, 2003, the City retook possession of the De Anza property when the lease expired. In accordance with the state legislation permitting residential use on the state tidelands, the De Anza residents were then supposed to move their mobile homes from the property. San Diego Resolution No. R-298609 (Nov. 18, 2003). The mobile home owners have not complied with the mandated departure and litigation regarding

their relocation is ongoing. City Mgr. Report No 03-229 (Nov. 13, 2003); City Mgr. Report No. 04-111 (May 20, 2004).

The mobile home owners have continued to pay rent for their use of the property since the lease expired in November 2003. Before the lease expired, residents paid rent to De Anza Harbor Resort and Golf, LLC, the City's then-lessee. Since the lease expired and the City regained possession of the property, the mobile home owners have paid rent directly to the City.

In 2008, San Diego voters approved Proposition C, which amended the City Charter by adding section 55.2, Mission Bay Park and Regional Parks Improvement Funds. This Charter section requires that certain revenue collected from within Mission Bay Park be allocated between the Mission Bay Park and Regional Parks Improvement Funds and used to fund various improvements.

ANALYSIS

Charter section 55.2 defines "Mission Bay Park Lease Revenues" as follows,

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.

San Diego Charter § 55.2(a)(7). Rent paid by homeowners in De Anza is not addressed in the Charter. The Charter specifies that Mission Bay Park Lease Revenues is that revenue collected "from commercial and non-profit sources within Mission Bay Park," and then set forth certain sources of revenue, ending with "any other revenue collected for the use of City owned property within Mission Bay Park." *Id.* Charter section 55.2(a)(7) further defines Mission Bay Park Lease Revenues by excluding certain private sources such as mooring fees and public sources, such as taxes. *Id.*

When construing a statute, courts strive to ascertain and effectuate the legislature's intent or, in the case of a statute passed by an initiative measure, to ascertain and effectuate the

intent of the voters. *Williams v. Superior Court*, 92 Cal. App. 4th 612, 622 (2001). Charter provisions are construed in the same manner by courts as are constitutional provisions. *Woo v. Superior Court*, 83 Cal. App. 4th 967, 974-75 (2000). The principal determination is what voters intended in approving the charter provisions. Courts look first to the actual 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, the courts will presume the voters intended the meaning apparent on the face of the measure and end their inquiry. *Woo*, 83 Cal. App. 4th at 975. If there is some ambiguity in the language, courts 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 PLAIN MEANING OF LANGUAGE USED IN CHARTER SECTION 55.2

Courts generally give the words of statutes their plain meaning. Each word should be given its plain meaning, unless the word is specifically defined in the statute. *People v. Cruz*, 13 Cal. 4th 764, 775 (1996); *Halbert’s Lumber, Inc. v. Lucky Stores, Inc.*, 6 Cal. App. 4th 1233, 1238 (1992). When statutory language is clear and unambiguous, a court need not construe its meaning. *Howard Jarvis*, 110 Cal. App. 4th at 1381.

Mission Bay Park Lease Revenues includes “all revenues collected . . . from commercial and non-profit sources within Mission Bay Park.” San Diego Charter § 55.2(a)(7). Here, a court may inquire into the plain meaning of “non-profit” to determine whether rents paid by homeowners in the De Anza Mobile Home Park are considered Mission Bay Park Lease Revenues.¹

A court likely would find the homeowners in De Anza *not* to be non-profit sources from whom the City collects revenue. The plain meaning of “nonprofit” is “an organization, such as a charity, that does not seek or produce a profit.” *American Heritage Dictionary of the English Language* (5th ed. 2011). The homeowners in De Anza are not “non-profits” based on a plain and ordinary definition.

Similarly, the California Corporations Code defines a “nonprofit association” as “an unincorporated association with a primary common purpose other than to operate a business for profit.” Cal. Corp. Code § 18020. While the De Anza Cove Homeowners’ Association (Homeowners’ Association) may be considered a non-profit, the City does

¹ It is unlikely that a court would question whether private homeowners are “commercial” sources and, accordingly, this memorandum will not address the issue. The Municipal Code identifies mobilehome parks as a residential and not a commercial use. *See* SDMC § 131.0112(a)(3)(B). Also, according to Black’s Law Dictionary the word commercial means “relates to or is connected with trade and traffic or commerce in general; is occupied with business or commerce.” Black’s Law Dictionary 184 (6th ed., abr. 1991). Residential use is not commercial use.

not receive revenues from the Homeowners' Association, nor is the Homeowners' Association involved in the payment of rent by the homeowners to the City.

Based on the plain meaning of the language in Charter section 55.2, a court would likely find that the homeowners in the De Anza Cove Mobile Home Park are not non-profit sources of revenue.

While it is clear that the residential use is neither a commercial nor non-profit revenue source, it is unclear to whether "other revenues collected" is intended to relate to commercial and non-profit sources or any sources. Therefore a constructive interpretation of Charter section 55.2 is necessary.

II. CONSTRUCTIVE INTERPRETATION OF CHARTER SECTION 55.2

The rules of statutory construction are an aid to resolve doubts and not to create them. *Santa Monica Mountain Park Co. v. United States*, 99 F.2d 450, 455 (9th Cir. 1938). Where statutory language or intent is uncertain or ambiguous, rules of construction, legislative history or historical use may aid in determining the meaning or intent. *Heiman v. Workers' Comp. Appeals Bd.*, 149 Cal. App. 4th 724, 734 (2007).

A. Intended Scope of Mission Bay Park Lease Revenues

A court's first task in construing a statute is to ascertain its intent so as to effectuate the purpose of the law. *Metropolitan Water Dist. v. Superior Court*, 32 Cal. 4th 491, 511 (2004). Courts do not consider the statutory language in isolation, but rather examine the entire substance of the statute in order to determine the scope and purpose of the provision, construing its words in context and harmonizing its various parts. *Alford v. Superior Court*, 29 Cal. 4th 1033, 1040 (2003). "[I]f possible, significance should be given to every word, phrase, sentence and part of an act in pursuance of the legislative purpose." *People v. Cruz*, 13 Cal. 4th at 782. Conversely, a construction that renders a word surplusage should be avoided. *Delaney v. Superior Court*, 50 Cal. 3d 785, 799 (1990). Where qualifying words, phrases or clauses are used they are construed as referring to the words, phrases and clauses immediately preceding their use. *In re Mechor P.*, 10 Cal. App. 4th 788, 792 (1992).

If an ambiguity exists in the language of a provision, a court will look to the intent of voters in adopting such provision. *Delaney v. Superior Court*, 50 Cal. 3d 785, 798 (1990). Ballot arguments may be used to determine voter intent for charter amendments enacted by initiative. *The Recorder v. Commission on Judicial Performance*, 72 Cal. App. 4th 258, 271 (1999).

Here, a court would look beyond the terms "commercial and non-profit" and consider the definition of Mission Bay Park Lease Revenues in Charter section 55.2(a)(7) in its entirety to determine the intended status of the rents paid by homeowners in

De Anza. In considering the definition of Mission Bay Park Lease Revenues in its full scope and purpose, a court would compare the rents paid by the homeowners with those revenues included and excluded from the definition of Mission Bay Park Revenues.²

1. Included Revenues

The definition of Mission Bay Park Lease Revenues includes “revenue collected from contracts for concessions or any other revenues collected for the use of city owned property within Mission Bay Park.” San Diego Charter § 55.2(a)(7).

Applying the rules of statutory construction here, it is apparent that “any other revenues” is not intended to be a catchall to absorb every revenue stream into Mission Bay Park Lease Revenues. To interpret it as such would render all preceding language in the definition of Mission Bay Park Lease Revenues superfluous. If the intent was to include all revenues collected in Mission Bay Park, less the defined exclusions, the definition could simply read, “Any revenues collected for the use of city owned property within Mission Bay Park.” While the meaning of “any other revenues” is not clear, the phrase must be read in relation to the rest of the definition in order to harmonize both parts such that additional revenue sources would be similar to those revenue sources included in the definition and dissimilar to those expressly excluded.

A court would likely find that San Diego voters did not intend the phrase “any other revenues” in the definition of Mission Bay Park Lease Revenues to be a catchall encompassing rents paid by homeowners in De Anza because this would require a construction that renders most of the definition surplusage.

2. Excluded Revenues

The definition of Mission Bay Park Lease Revenues contains the following exclusions,

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.

San Diego Charter § 55.2(a)(7). Most relevant here are the exclusions of revenue derived from the Mission Bay Golf Course and the mooring fees. The rents paid by the mobile home owners parallel these excluded revenue streams. In these instances the City is

² Proposition C did not include any discussion of the definition of Mission Bay Park Lease Revenue other than the text of the Charter amendment. The argument in favor of Proposition C does, however, observe that “Mission Bay generates millions of dollars for the City through leases with hotels, Sea World, and other businesses.” Non-profit use, City use and De Anza Mobilehome Park rents are not mentioned.

receiving revenue directly from what may be thought of as end-users of the property rather than commercial or non-profit organizations. In contrast to these excluded revenues, included revenues come from lessees of City property commercial enterprises who hold the property open to third-parties for their private benefit, such as the Mission Bay hotels or SeaWorld.

Highlighting this distinction is the provision that Mission Bay Golf Course revenues are excluded if the golf course is operated by the City, but are included in Mission Bay Park Lease Revenues if the golf course is privately leased. It follows that rents paid by individual homeowners are not intended to be included in Mission Bay Park Lease Revenues but if someone were to lease the entire trailer park, similarly, those lease revenues would be included (assuming, of course, that De Anza could be legally leased as a trailer park). The distinguishing characteristic for excluding a particular revenue stream seems to be that it is a payment by individuals to the City for their own personal use and enjoyment rather than a payment by an operator under a leasehold interest.

The exclusion of mooring fees further bolsters an interpretation that the rents paid by mobile home owners are not intended to be included in Mission Bay Park Lease Revenues. From a functional standpoint, the circumstances of the mooring fees are very similar to the rents paid by the homeowners. Pertaining to the excluded mooring fees, the city is receiving payment from individuals who have anchored their property – their boats – upon the City’s property – the moorings. Similarly, the mobile home owners are paying to keep their mobile homes upon the City’s property – the land underneath them.

B. Illegal Use of City Owned Property

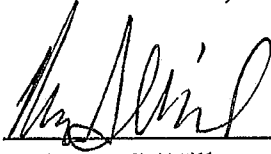
Residential use at De Anza has been illegal since November 24, 2003 and was expected to cease at that time. *See* San Diego Resolution No. R-298609 (Nov. 18, 2003). Charter section 55.2 was approved by voters on November 4, 2008. [Proposition C]. Charter section 55.2 does not mention the De Anza Cove Mobilehome Park but it does mention other specific uses in Mission Bay Park. A court could reasonably infer that rent payments from De Anza were intentionally omitted from the definition Mission Bay Park Lease Revenues because residential use in Mission Bay Park is illegal and, necessarily, temporary.

A court would likely find that San Diego voters did not intend for Mission Bay Park Lease Revenues to include rents paid by homeowners in the De Anza Cove Mobile Home Park based on their practical similarities to excluded revenue streams. Moreover, because residential use at De Anza is illegal it is reasonable to infer that voters did not intend to include revenue from such illegal use when Charter section 55.2 was adopted.

CONCLUSION

Rents paid by homeowners in the De Anza Cove Mobile Home Park to the City of San Diego are not Mission Bay Park Lease Revenues pursuant to Charter section 55.2. The rents do not fall within the definition of Mission Bay Park Lease Revenues under Charter section 55.2(a)(7) – the individual homeowners are neither commercial nor non-profit sources of revenue based on the plain and ordinary meanings of those words and they do not make payments to the City pursuant to a lease. Furthermore, if a court were to find the language of the definition ambiguous, it would likely conclude that the voters did not intend these rents to be included in Mission Bay Park Lease Revenues. While the question is not without doubt, we believe this is the best interpretation of the Charter language. The rents paid by the homeowners in the De Anza Cove Mobile Home Park parallel other revenue streams that are explicitly excluded from Mission Bay Park Lease Revenues. Further, it is reasonable to infer that revenue from the temporary, illegal residential use at De Anza was intentionally omitted from the definition of Mission Bay Park Lease Revenues.

JAN I. GOLDSMITH, CITY ATTORNEY

By 

Brant C. Will
Deputy City Attorney

BCW:AG:jdf

MS-2014-25

cc: Scott Chadwick, Chief Operating Officer

Doc. No.: 749486