

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

**MEMORANDUM
MS 59**

(619) 236-6220

DATE: November 22, 2023

TO: Honorable Mayor and Councilmembers

FROM: City Attorney

SUBJECT: Disposition of Petco Park City Suite Tickets

INTRODUCTION

The City of San Diego (City) owns the Petco Park site, whereas Padres, L.P., a Delaware limited partnership (Padres), owns the capital improvements at Petco Park, including the Ballpark Structure and the Outfield Park (collectively, Petco Park Improvements). The City and the Padres are parties to several agreements relating to Petco Park, including: (1) the 1998 Memorandum of Understanding (MOU) with the Padres, the Redevelopment Agency of the City of San Diego (Agency),¹ and Centre City Development Corporation (CCDC),² for development of Petco Park and the surrounding area; and (2) the Joint Use and Management Agreement (JUMA) dated February 1, 2000, and amended May 21, 2012, implementing the MOU and providing more detail about the respective rights and responsibilities of the City, the Agency, CCDC, and the Padres for the funding, construction, maintenance, operation, and occupancy of Petco Park. Together, the MOU and the JUMA³ (as respectively amended) are referred to in this Memorandum as the “Petco Park Agreements.” Upon the expiration or earlier termination of the JUMA,⁴ the Padres must transfer ownership of the Petco Park Improvements to the City.

Under JUMA section 2.3, the City has exclusive access to and use of one of the private suites within Petco Park (City Suite) and receives free admission tickets for all seats in the City Suite (City Suite Tickets) for all events at Petco Park. In 2018, after the City entered into the Petco Park Agreements, local voters passed Measure L adding section 303(c) to the San Diego Charter (Charter). As described in the ballot materials, the Measure L proponents sought to eliminate free perks and benefits for local elected officials. Among other requirements, Charter section 303(c)

¹ The Agency dissolved on February 1, 2012, as part of the statewide elimination of redevelopment agencies. The City, in its capacity as the Successor Agency for redevelopment purposes, administers the Agency’s continuing obligations related to Petco Park.

² CCDC later merged into Civic San Diego, a California non-profit public benefit corporation.

³ All capitalized terms not defined in this Memorandum have the meaning ascribed to them in the JUMA.

⁴ Under JUMA section 4.1.2(b), the Initial Expiration Date of the JUMA is October 15, 2031; however, if this date “occurs during the course of a Major League Baseball Season, then [the Initial Expiration Date shall occur] upon the end of that Major League Baseball Season.” JUMA § 4.1.2(b)(ii). Under JUMA section 4.2, the Padres have the option to extend the JUMA term for two additional periods of five years each, until 2041.

states that all City Suite Tickets must be “marketed to the public at fair market value with all revenues received to be directed to the City Treasurer.”

City management has asked whether the City can enter into an agreement with the Padres to market and sell City Suite Tickets and whether such an agreement would require San Diego City Council (Council) approval.

QUESTIONS PRESENTED

1. Is the City permitted under the Petco Park Agreements and Charter section 303(c) to authorize the Padres to sell City Suite Tickets on the City’s behalf?

2. Must Council approve an agreement authorizing the Padres to sell City Suite Tickets on the City’s behalf?

SHORT ANSWERS

1. Yes. Under the Petco Park Agreements and Charter section 303(c), the City may enter into an agreement with the Padres to sell City Suite Tickets on the City’s behalf.

2. No. A new agreement authorizing the Padres to sell City Suite Tickets on the City’s behalf would not change the material terms of, or the City’s or the Padres’ rights under, the Petco Park Agreements, which the Council approved. Signing and implementing a new City-Padres agreement of this nature is an administrative function within the Mayor’s authority.

BACKGROUND

A. MOU (1998)

In November 1998, local voters approved Proposition C adopting Ordinance O-18613 (Ordinance), which authorized the City to enter into the MOU. *See* City Clerk Document No. OO-18565. The Ordinance authorizes the City “to enter into any amendments, or agree to any modifications, to the MOU” and “to enter into the agreements necessary to implement the provisions of [the Ordinance] and the MOU, and to carry out their purposes and intent,” if the Council determines that the amendments or implementing agreements are “in the best interests of the City, Agency and CCDC” and do not materially: (1) decrease the rights or increase the obligations of the City under the MOU; (2) increase the financial commitments of the City under the MOU; or (3) decrease revenue to the City under the MOU. *See* Ordinance § 2 (amendments) and § 3 (implementing agreements).

The MOU does not contemplate the Padres providing the City Suite to the City. Instead, the MOU provides that all “Private Suites” are under the exclusive control of the Padres, and the Padres are entitled to retain all licensing revenue from the Private Suites, except that revenue, “if any, from the sale of admission tickets to the exterior seats of such private suites will be shared, with the City receiving such revenue from City Events on a net basis (after payment of all

Incremental Ballpark Expenses for such events), and the Padres receiving such revenue for Padres' Games and Events." See MOU § II and § XXVII.

B. JUMA (2000)

In 2000, the City and the Padres entered into the JUMA, which provided more detail about their respective rights and responsibilities for the use and management of Petco Park. The Council approved the JUMA on February 1, 2000, by Resolution R-292706. The JUMA supplements MOU section XXVII in two relevant respects:

1. **City Suite:** JUMA section 2.3 establishes the City's right to obtain exclusive use and occupancy of the City Suite from the Padres. Under JUMA section 2.3.3, the City is entitled to one admission ticket for each seat in the City Suite for each Event at Petco Park, free of charge. JUMA section 3.2.1 explicitly carves out the City Suite from the Padres' exclusive right to grant licenses to use the Private Suites. JUMA section 2.3.4 prohibits the City from assigning its right to use and occupy the City Suite (Anti-Assignment Provision).

2. **Private Suite Revenue Allocation:** JUMA section 3.2.4 states that "[t]he Padres shall retain all revenue resulting from granting licenses to use the Private Suites, including Private Suite ownership fees, founders' fees or construction contributions associated with the purchase of such Private Suites, except for (a) City Revenue from admission tickets to the Private Suites for City Events, which shall be remitted to the City, [and] (b) revenue from admission tickets for 70/30 Events, which shall be shared by the parties in accordance with Article 6." Basically, the JUMA allocates revenue from Private Suite (including City Suite) admission ticket sales between the City and the Padres based on the type of Event for which the tickets are sold. The City is entitled to receive certain Private Suite admission ticket sales revenue, less certain expenses, for City Events. The City is also entitled to receive 30 percent of Private Suite admission ticket sales revenue for 70/30 Events. The Padres receive all Private Suite (including City Suite) admission ticket sales revenue for Padres' Games and Events and 70 percent of Private Suite admission ticket sales revenue for 70/30 Events.

C. Measure L (2018)

In November 2018, local voters passed Measure L, which added section 303(c) to the Charter, as follows:

"Elective officers are prohibited from attending any sports or entertainment event in a venue owned, partially or in whole, by the City unless the officer has paid fair market value for admission, seats, or other accommodations. Elective officers are prohibited from giving away any City-held ticket, unless the recipient pays the face value of the ticket to the City. Any seats or similar amenities or services owned or controlled by the City, in part or in whole, within any sports or entertainment venue, must be marketed

to the public at fair market value with all revenues received to be directed to the City Treasurer.”

D. Sale by City of City Suite Tickets to the Public

In email correspondence dated August 14, 2018, this Office advised City management that the Anti-Assignment Provision in the JUMA likely prevented the City from selling City Suite Tickets to the public under Charter section 303(c)’s directive that “[a]ny seats or similar amenities or services owned or controlled by the City, in part or in whole, within any sports or entertainment venue, must be marketed to the public at fair market value with all revenues received to be directed to the City Treasurer.” City management has now asked whether the Padres could sell City Suite Tickets on the City’s behalf. This Memorandum evaluates that alternative proposal.

ANALYSIS

I. THE CITY MAY ENTER INTO AN AGREEMENT WITH THE PADRES TO SELL CITY SUITE TICKETS

A. The Padres Can Waive the Anti-Assignment Provision in the JUMA

To the extent the Anti-Assignment Provision applies to a new City-Padres agreement for the Padres to sell City Suite Tickets on the City’s behalf, the Padres, as the sole beneficiary of the Anti-Assignment Provision, may expressly waive the Anti-Assignment Provision in the new agreement.

B. The Petco Park Agreements and Charter Section 303(c) Can Be Harmonized Because the Allocation of Admission Ticket Sales Revenue Is Based on Event Type, Not Suite Control

Under JUMA section 3.2.1, the City and the Padres expressly excluded the City Suite from the Private Suites that “[t]he Padres shall have the exclusive right to grant licenses to use.”⁵ By contrast, the City and the Padres did not expressly exclude the City Suite from the Private Suites in describing the allocation of Private Suite ticket sales revenue under JUMA section 3.2.4. Accordingly, it is reasonable to conclude that the City and the Padres intended to allocate City Suite Ticket sales revenue (whether the tickets are sold by the City or by the Padres on the City’s behalf) between them under JUMA section 3.2.4. This interpretation is supported by the Private Suite revenue allocation scheme described in the MOU. *See* MOU § XXVII.

⁵ JUMA section 28.22 states that if any provision in the JUMA “is found to be ambiguous . . . the MOU may be of assistance in the interpretation of that ambiguity. Without limiting the foregoing, [the JUMA] shall not be deemed to supersede provisions of the MOU that address subject matter not addressed” in the JUMA. Here, the revenue allocation provisions in JUMA section 3.2.4 are unambiguous, and the City Suite is addressed in the JUMA but not contemplated in the MOU. Accordingly, JUMA section 28.22 is irrelevant here.

If the City and the Padres intended to exclude the City Suite from the revenue allocation provisions of JUMA section 3.2.4, they presumably would have done so, as they did in the license provisions of JUMA section 3.2.1. The contrast between these two JUMA provisions appears to be a deliberate choice by the City and the Padres. *See, e.g., Gregg v. Uber Tech., Inc.*, 89 Cal. App. 5th 786, 800 (2023) (applying a rule of construction that “an author’s choice to specify one thing tends to exclude others” in interpreting contractual arbitration provision and severance clause and holding that “an interpretation that leaves part of a contract as surplusage is to be avoided”) (internal quotation marks and citations omitted). Applying this rule of construction here, the parties’ express exclusion of the City Suite from the licensing provisions of JUMA section 3.2.1 “necessarily means” that they intended to include the City Suite in the revenue allocation provisions of JUMA section 3.2.4. *See Gikas v. Zolin*, 6 Cal. 4th 841, 852 (1993) (“The expression of some things in a statute necessarily means the exclusion of other things not expressed.”) (internal citation omitted).

The revenue allocation provisions in JUMA section 3.2.4 pertaining to Private Suites⁶ and the final sentence of Charter section 303(c) can be harmonized. The Private Suite ticket sales revenue allocation under JUMA section 3.2.4 is based on Event type, rather than suite control. Under the final sentence of Charter section 303(c), City Suite Tickets “must be marketed to the public at fair market value with all revenues received to be directed to the City Treasurer.” The phrase “all revenue received” in Charter section 303(c) may be reasonably interpreted to refer to all revenue actually received by the City from the sale of City Suite Tickets. This reading of Charter section 303(c) does not conflict with the JUMA’s Private Suite admission ticket sales revenue allocation provisions. Under this interpretation of Charter section 303(c), the revenue to be directed to the City Treasurer is the net revenue from the sale of City Suite Tickets payable to the City under the JUMA’s terms.

An alternative interpretation, in which the phrase “all revenue received” in Charter section 303(c) is interpreted to mean that the City must receive all revenue generated from the sale of City Suite Tickets, conflicts with the JUMA Private Suite admission ticket sales revenue allocation. Stated another way, the City is contractually prohibited under the JUMA from receiving “all” revenue from City Suite Ticket sales.

Additionally, where a voter-approved Charter amendment (Charter section 303(c)) conflicts with a prior voter-approved ordinance (the Ordinance approving the MOU), the more specific enactment controls. *Mercury Ins. Co. v. Golestanian*, 82 Cal. App. 5th Supp.1, 9 (2022). The Private Suite admission ticket sales revenue allocation under MOU section XXVII (approved by local voters in the Ordinance and implemented in JUMA section 3.2.4) is more specific about allocation of revenue from sales of City Suite Tickets than the general and ambiguous requirement in the later-enacted Charter section 303(c) that “all revenue received” from the sale of City Suite Tickets is “to be directed to the City Treasurer.” Therefore, even if the revenue allocations from admission ticket sales for Private Suites in JUMA section 3.2.4 and the final sentence of Charter section 303(c) cannot be read in harmony with each other, the revenue allocations in JUMA section 3.2.4 (as implementing MOU section XXVII) control.

⁶ The City Suite is one of the Private Suites. *See* JUMA § 2.3.

II. COUNCIL APPROVAL IS NOT REQUIRED FOR THE PROPOSED NEW CITY-PADRES AGREEMENT BECAUSE IT DOES NOT AMEND THE JUMA AND THE MAYOR HAS ADMINISTRATIVE AUTHORITY TO IMPLEMENT CHARTER SECTION 303(c)

As the MOU does not contemplate the existence of the City Suite, an amendment to the MOU is not necessary. This leaves only the question of whether a proposed new agreement might be an amendment of the JUMA.

Council approval of a proposed new agreement would be required if the agreement materially amends the JUMA. For a JUMA amendment, under Ordinance section 3, the Council must make findings, supported by evidence in the record, that the agreement is in the City's best interests and does not materially: (1) decrease the City's rights or increase the City's obligations under the MOU; (2) increase the City's financial commitments under the MOU; or (3) decrease revenue to the City under the MOU. *Id.* Also, the Council approved the JUMA by resolution in 2000, so the Council would need to approve any amendment to the JUMA by resolution. Whether the proposed new agreement changes a material term of the JUMA is a fact-specific determination.

A. An Agreement for the Padres to Sell City Suite Tickets on the City's Behalf Is Not an Amendment of the JUMA

A new City-Padres agreement for the Padres to sell City Suite Tickets on the City's behalf would not be an amendment of the JUMA because it would not modify any terms of the JUMA, which is silent on how the City may dispose of the City Suite Tickets. The City would receive new consideration from the Padres for the right to sell the City Suite Tickets for the City; the Padres, meanwhile, would receive new consideration because activating the City Suite (i.e., people sitting in the City Suite for Major League Baseball Games and other events, instead of the City Suite being left idle due to Charter section 303(c)) would generate new revenue for the Padres.

The proposed new City-Padres agreement would not modify the Private Suite revenue allocation provisions of JUMA Section 3.2.4. The City and the Padres would continue to receive all revenue from Private Suite admission ticket sales they are entitled to receive under the JUMA.

City management is considering two alternative options for a new City-Padres agreement for the Padres to sell City Suite Tickets on the City's behalf. Under the first option, the Padres would share revenue with the City from City Suite Ticket sales as they do for 70/30 Events for all Events other than City Events (i.e., the City would continue to receive all revenue from City Events). Under the second option, the Padres would pay a flat annual fee to the City in exchange for the right to sell City Suite Tickets and retain all the revenue from such sales for all Events other than City Events (i.e., the City would continue to receive all revenue from City Events). Neither alternative option would constitute an amendment to the JUMA because the Padres' rights under the JUMA to receive revenue would not be changed. Instead, the Padres would be directing some of their revenue to the City in exchange for the right to sell City Suite Tickets.

