

ORDINANCE NUMBER O-19776 (NEW SERIES)

DATE OF FINAL PASSAGE JULY 28, 2008

AN ORDINANCE SUBMITTING TO THE QUALIFIED VOTERS OF THE CITY OF SAN DIEGO AT THE MUNICIPAL SPECIAL ELECTION CONSOLIDATED WITH THE STATEWIDE GENERAL ELECTION TO BE HELD ON NOVEMBER 4, 2008, ONE PROPOSITION AMENDING THE CITY CHARTER BY AMENDING ARTICLE V, BY ADDING CHARTER SECTION 55.2, DESIGNATING THE USE OF LEASE REVENUE FROM MISSION BAY PARK.

WHEREAS, San Diego's regional parks contain environmental and recreational resources unique to our city and help provide our city's identity, enrich the quality of life for all San Diegans, provide wildlife habitat, and serve as visitor attractions that strengthen the local economy; and

WHEREAS, the City receives millions of dollars of revenues each year from leases sited within regional parks, primarily in Mission Bay Park, but little of the monies generated from those leases such as lease revenues, sales taxes, or possessory interest taxes have been specifically allocated to fund capital improvements to protect and maintain beneficial uses of water quality, scenic and recreational opportunities, or to maintain wildlife habitat or navigable waterways in Mission Bay Park or other regional parks; and

WHEREAS, the environmental, scenic and recreational quality of these parks is threatened if a significant portion of the revenues generated by the parks is not retained in the parks for purposes of making capital improvements and maintaining the beneficial uses of the parks; and

WHEREAS, pursuant to Section 223 of the San Diego City Charter, article XIV, section 3(b), article 11 of the California Constitution, and section 9255(a)(2) of the California Elections

Code, the City Council has authority to place charter amendments on the ballot to be considered at a Municipal Special Election; and

WHEREAS, by Ordinance No. O-19770 adopted on July 15, 2008, the City Council of the City of San Diego is calling a Municipal Special Election to be consolidated with the Statewide General Election on November 4 2008, for the purpose of submitting to the qualified voters of the City one or more ballot propositions; and

WHEREAS, the City Council desires to submit to the voters at the Municipal Special Election one proposition amending the Charter of the City of San Diego by adding Charter Section 55.2; and

WHEREAS, the City Council's proposal, on its own motion, of a charter amendment is governed by article XI, section 3(b) of the California Constitution, California Elections Code section 9255(a)(2), and California Government Code section 34458, and is not subject to veto by the Mayor; NOW THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. One proposition amending the Charter of the City of San Diego by amending article V, by adding Charter Section 55.2 is hereby submitted to the qualified voters of the City at the Municipal Special Election to be held on November 4, 2008, the proposition to read as follows:

PROPOSITION

SECTION 55.2: MISSION BAY PARK AND REGIONAL PARKS IMPROVEMENT FUNDS

- (a) For the purpose of this Section, the following definitions shall apply and the words shall appear in italics:

- (1) *Capital Improvement* means physical assets, constructed or purchased, or the restoration of some aspect of a physical or natural asset that will increase its useful life by one year or more or which constitutes an environmental improvement of a natural asset.
- (2) *Mission Bay Baseline Chart* shall be defined as the Mission Bay dredging plans on file with the City Clerk as Document No. OO- _____. It shall serve as the baseline for depths for navigable waters within Mission Bay. Depths may be increased or decreased for specific areas within Mission Bay only if, after review of these areas by the San Diego Fire Department or the *Mission Bay Park Improvement Fund Oversight Committee*, it is found that either the original depth no longer supports or ensures safe navigation, is inconsistent with the *Mission Bay Park Master Plan*, or needs to be modified in order to create sustainable shorelines. Any changes must be adopted by ordinance of the City Council and shall act as amendments to the original dredging plans.
- (3) *Mission Bay Park* means 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.
- (4) *Mission Bay Park Improvement Zone* means those areas encompassed within the boundaries of *Mission Bay Park*, Oceanfront Walk from the Mission Bay jetty to Crystal Pier and the adjoining seawall, coastal parks and ocean beaches contiguous thereto, Rose Creek from its terminus in Mission Bay to the southern end of the Santa Fe Road flood control channel, Tecolote Creek from its terminus in Mission Bay to the western end of the Tecolote Creek flood control channel and the San Diego River as it passes through the boundaries of *Mission Bay Park* as described herein. The boundaries of the San Diego River, Rose Creek and Tecolote Creek shall be the width of those waterways to the nearest property line.
- (5) *Mission Bay Park Improvement Fund* means a separate interest bearing monetary fund maintained by the City of San Diego to receive and spend the *Mission Bay Park Lease Revenues* identified herein for the benefit of the *Mission Bay Park Improvement Zone*.
- (6) *Mission Bay Park Improvement Fund Oversight Committee* means the committee determined by ordinance of the City Council to carry out the oversight responsibilities described herein.
- (7) *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.

- (8) *Mission Bay Park Master Plan* means the Master Plan adopted by the City Council for Mission Bay Park in 1994, the Natural Resources Management Plan, and any amendments or updates that are subsequently adopted by the City Council or any such similar replacement plan that may be subsequently adopted by the City Council. For purposes of this Section, the definition shall also include adopted plans for areas located within the *Mission Bay Park Improvement Zone*.
- (9) *San Diego Regional Parks* means those parks that serve regional residents and/or visitor populations as determined by ordinance of the City Council. *San Diego Regional Parks* shall initially include Chollas Lake Park, Balboa Park, Mission Trails Regional Park, Otay River Valley Park, Presidio Park, San Diego River Park, open space parks, and coastal beaches along with coastal parks contiguous thereto. For the purposes of this Section, this definition shall specifically exclude the *Mission Bay Park Improvement Zone*.
- (10) *San Diego Regional Parks Improvement Fund* means a separate interest bearing monetary fund maintained by the City of San Diego to receive and spend the *Mission Bay Park Lease Revenues* identified herein for the benefit of the *San Diego Regional Parks*.
- (11) *San Diego Regional Parks Improvement Fund Oversight Committee* means the committee determined by ordinance of the City Council to carry out the oversight responsibilities described herein.
- (b) *Mission Bay Park Lease Revenues* up to the threshold amount in each fiscal year shall be deposited into the San Diego General Fund and may be used for any municipal purpose, including but not limited to, police, fire, streets, sewers, water delivery, roads, bridges, and operation of parks. All *Mission Bay Park Lease Revenues* in excess of the threshold amount shall be allocated in the City of San Diego budget to two distinct funds. Twenty-five percent (25%) of the *Mission Bay Park Lease Revenues* in excess of the threshold amount, or two million five hundred thousand dollars (\$2,500,000) whichever is greater, shall be allocated to the *San Diego Regional Parks Improvement Fund* that solely benefits the *San Diego Regional Parks* and seventy-five percent (75%) of the *Mission Bay Park Lease Revenues* over the threshold amount, or the remainder of those revenues if less than 75% is available after the allocation to the *San Diego Regional Parks Improvement Fund*, shall be allocated to the *Mission Bay Park Improvement Fund* that solely benefits the *Mission Bay Park Improvement Zone*. The threshold

amount shall be \$23 million beginning fiscal year 2010 and ending fiscal year 2014. The threshold amount shall be \$20 million beginning fiscal year 2015 and shall remain \$20 million thereafter.

- (c) Funds in the *Mission Bay Park Improvement Fund* may be expended only in the *Mission Bay Park Improvement Zone*, to restore wetlands, wildlife habitat, and other environmental assets within the *Mission Bay Park Improvement Zone*; to preserve the beneficial uses of the *Mission Bay Park Improvement Zone* including, but not limited to, water quality, boating, swimming, fishing, and picnicking by maintaining navigable waters and eliminating navigational hazards; to restore embankments and other erosion control features; and to improve the conditions of the *Mission Bay Park Improvement Zone* for the benefit and enjoyment of residents and visitors, consistent with the *Mission Bay Park Master Plan*.
- (1) To achieve these goals, all of the following identified priorities are intended to be authorized, funded, and completed in the order provided below:
- (A) Restoration of navigable waters within *Mission Bay Park* and elimination of navigational hazards. When depth conditions no longer support and ensure safe navigation, those areas that pose a danger or impede the passage of watercraft shall be dredged in accordance with the *Mission Bay Baseline Chart*.
 - (B) Wetland expansion and water quality improvements and the protection and expansion of eelgrass beds as identified in the *Mission Bay Park Master Plan*.
 - (C) Restoration of shoreline treatments within the *Mission Bay Park Improvement Zone* including restoration of beach sand and stabilization of erosion control features.
 - (D) Expansion of endangered or threatened species preserves and upland habitats on North Fiesta Island and along the levee of the San Diego River floodway as identified in the *Mission Bay Park Master Plan*.
 - (E) Completion of bicycle and pedestrian paths and bridges as identified in the *Mission Bay Park Master Plan*, installation of sustainable lighting in the *Mission Bay Park Improvement Zone*, installation of signage and landscaping at points of entry to *Mission Bay Park* and the South Shores, and the repair, resurfacing and restriping of parking lots within the *Mission Bay Park Improvement Zone*.

- (F) Restoration of the seawall bulkhead on Oceanfront Walk to a condition no less than the quality of restoration previously performed in 1998 from Thomas Street to Pacific Beach Drive or to conditions as may be required by historic standards.
 - (G) Deferred maintenance that are also *Capital Improvements* hereunder on existing assets within the *Mission Bay Improvement Zone* as may be recommended by the *Mission Bay Park Improvement Fund Oversight Committee* and approved by the City Council.
- (2) After each priority project identified in (c)(1)(A-G) above has been budgeted and approved by the City Council and a funding plan adopted for it, construction of a subsequent project may proceed concurrently provided construction of a lesser priority does not unreasonably delay, prolong, or preclude completion of a greater priority. To the extent funds become available from grants or other sources for a lower priority before a higher priority has been completed, or in the event of substantial delay in proceeding with a higher priority, funds may be committed to the next lower priority in the order set forth in (c)(1)(A-G), provided such expenditure of a lesser priority does not unreasonably delay, prolong, or preclude completion of a greater priority. The City Council shall be required to make findings that completion of a higher priority project will not be unreasonably delayed, prolonged, or precluded by expending funds on a lower priority project before approving said expenditure.
 - (3) Once the projects identified in (c)(1)(A-G) have been fully budgeted or completed, additional projects shall be prioritized and funded only for *Capital Improvements* as identified in the *Mission Bay Park Master Plan*, recommended by the *Mission Bay Park Improvement Fund Oversight Committee*, and approved by the City Council.
 - (4) To the extent items (c)(1)(A-G) that have been completed herein are later in need of additional *Capital Improvements*, then those items shall again have priority over other *Capital Improvements* only if approved by the City Council.
 - (5) Except as may be specifically authorized above in this subsection, funds in the *Mission Bay Park Improvement Fund* may not be expended for commercial enterprises or improvements of leasehold interests; for any costs associated with utilities, including, but not limited to, water and sewage; or for roads, vehicle bridges, or vehicular ramps; or on costs that cannot be capitalized; or on daily, weekly, monthly, or annual upkeep of the *Mission Bay Park Improvement Zone* and there shall be no expenditure for contracted labor or services or for city employee salaries, pensions or benefits unless those expenses can be capitalized, and only then at the then-standard rates used by the City of San Diego for all other capital improvement projects.

- (d) Funds in the *San Diego Regional Parks Improvement Fund* may be expended only for non-commercial public *Capital Improvements* for the *San Diego Regional Parks* and only for park uses. Funds in the *San Diego Regional Parks Improvement Fund* may not be expended for commercial enterprises or improvements of leasehold interests; for any costs associated with utilities, including, but not limited to, water and sewage; or for roads, vehicle bridges, or vehicular ramps; or on daily, weekly, monthly, or annual upkeep of the *San Diego Regional Parks*.

Priority for *Capital Improvements* hereunder shall be recommended by the *San Diego Regional Parks Improvement Fund Oversight Committee*, in accordance with the master plans for each of the *San Diego Regional Parks*, and approved by the City Council.

- (e) The *Mission Bay Park Improvement Fund Oversight Committee* and the *San Diego Regional Parks Improvement Fund Oversight Committee* shall meet at least quarterly to audit and review the implementation of this Charter Section, to recommend priorities for expenditures and *Capital Improvements* hereunder in accordance with the master plans for each of the *San Diego Regional Parks* or with the *Mission Bay Master Plan* or within the priorities identified in (c)(1)(A-G), as applicable; and to verify that the appropriate funds are collected, segregated, retained and allocated according to the intent of this Section, and spent as prioritized in this Section and consistent herewith.

The San Diego City Auditor, in cooperation with each committee, shall establish and oversee a mechanism to ensure public accountability by effectively reporting and communicating the extent and nature of revenues, expenses and improvements generated hereunder and compliance with the requirements outlined herein. This shall include, at a minimum, an annual audit report to the Mayor, City Council and public. Each report shall, at a minimum, contain a complete accounting of all revenues received, the amount and nature of all expenditures, a report as to whether in each committee's view the expenditures have been consistent with the priorities and provisions hereof, whether the City of San Diego has complied with sections (c)(2), (f), (g) and (h).

In the event that either committee finds that there has been a violation of this Charter Section by the City of San Diego, it should set forth the alleged violation in a written communication to the City Manager and members of the San Diego City Council. If the alleged violation is not resolved to the satisfaction of the aggrieved committee within 30 days, the San Diego City Council shall docket an action item for a public meeting of the San Diego City Council within 60 days. 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.

- (f) 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. The City of San Diego may issue bonds, notes or other obligations to expedite the *Capital Improvements* contemplated herein, utilizing the revenue stream from *Mission Bay Park Lease Revenues* designated herein.
- (g) The annual budgets allocated for park operations and maintenance in the *Mission Bay Park Improvement Zone* and the *San Diego Regional Parks* shall not be reduced at a greater rate or increased at a lesser rate relative to the overall annual budget of park and recreation as a result of monies available hereunder.
- (h) The City of San Diego is encouraged to seek other sources of funding for the purposes of improving the *Mission Bay Park Improvement Zone* and the *San Diego Regional Parks*, including but not limited to grant funding from other governmental agencies, private individuals, or foundations. In the event the City of San Diego receives any such additional funds, they shall be in addition to, and shall not offset or reduce funds dedicated to the *Mission Bay Park Improvement Fund* or *San Diego Regional Parks Fund* under this Section.
- (i) Nothing contained herein shall prevent the City of San Diego from spending funds in excess of the *Mission Bay Park Improvement Fund* or *San Diego Regional Parks Fund* for the purposes of improving the *Mission Bay Park Improvement Zone* or the *San Diego Regional Parks*.
- (j) This Section shall take effect and be in force on July 1, 2009, and will expire on June 30, 2039. Before the expiration of this Section, the City Council shall place on the ballot no later than the last regularly scheduled election prior to June 30, 2039 a measure to amend the Charter to extend the effect of this Section for an additional 30 years.
- (k) In the event of a conflict between any provision of Section 55.2 and any other provision of this Charter or the Municipal Code, Section 55.2 shall govern.

END OF PROPOSITION

Section 2. The proposition shall be presented and printed upon the ballot and submitted to the voters in the manner and form set out in Section 3 of this ordinance.

Section 3. On the ballot to be used at this Municipal Special Election, in addition to any other matters required by law, there shall be printed substantially the following:

PROPOSITION ___ AMENDS THE CHARTER OF THE CITY OF SAN DIEGO DESIGNATING THE USE OF LEASE REVENUE FROM MISSION BAY PARK. Shall the City Charter be amended requiring that annual lease revenue generated in Mission Bay Park exceeding \$23 million initially and decreasing to \$20 million after 5 years be appropriated 75% for capital improvements in Mission Bay Park and 25% for capital improvements in Chollas Lake, Balboa, Mission Trails, Otay River Valley, Presidio and San Diego River Parks; open space parks; coastal beaches and contiguous coastal parks; and future regional parks?	YES	
	NO	

Section 4. An appropriate mark placed in the voting square after the word “Yes” shall be counted in favor of the adoption of this proposition. An appropriate mark placed in the voting square after the word “No” shall be counted against the adoption of the proposition.

Section 5. Passage of this proposition requires the affirmative vote of a majority of these qualified electors voting on the matter at the Municipal Special Election.

Section 6. The City Clerk shall cause a digest of this ordinance to be published once in the official newspaper on the Friday following adoption by the City Council. No other notice of the election on this proposition need be given.

Section 7. Pursuant to San Diego Municipal Code [SDMC] Section 27.0402, this measure will be available for public examination for no fewer than ten calendar days prior to being submitted for printing in the sample ballot, and the Clerk shall post a public notice of the specific dates that the examination period will run.

Section 8. Pursuant to SDMC Section 27.0403(a), the public examination period will end on the 75th calendar day prior to the date set for the Municipal Special Election.

Section 9. Pursuant to SDMC Section 27.0404, during the public examination period, any voter registered in the City may seek a writ of mandate or an injunction requiring any or all of the measure to be amended or deleted.


Section 10. That a full reading of this ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the City Council and the public a day prior to its final passage.

Section 11. Upon adoption of this Measure, §22.0229 of the San Diego Municipal Code shall be repealed.

Section 12. Prior to the effective date of this Measure, the City Council shall by ordinance designate the Mission Bay Park Committee to fulfill the role of the *Mission Bay Park Improvement Fund Oversight Committee* and the Park and Recreation Board to fulfill the role of the *San Diego Regional Parks Improvement Fund Oversight Committee* in accordance with Section 55.2 (a)6 and 55.2 (a)10, respectively and shall prescribe qualifications for future appointees to ensure that the committee members possess the requisite ability to perform effective oversight.

Section 13. Pursuant to sections 295(b) and 295(d) of the San Diego City Charter, this ordinance relating to elections shall take effect on the date of its passage by the City Council, which is deemed the date of its final passage.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By 
Shannon Thomas
Deputy City Attorney

ST:sc
07/23/08
07/30/08 REV.
Or.Dept: CD-2, CD-6
O-2009-13

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of _____.

ELIZABETH S. MALAND
City Clerk

By _____
Deputy City Clerk

