Hadley, Steven

From: SD Charter Review
Subject: Charter Language protective of Public Park lands

Sent: Friday, June 05, 2015 2:21 PM
To: SD Charter Review; Councilmember Sherri Lightner; Councilmember Mark Kersey; CouncilMember Marti Emerald; Goldsmith, Jan; SDAT City Attorney; CouncilMember Chris Cate
Cc: Angela Carone; Cubbison, Gene (NBCUniversal, KNSD); roger.showley@utsandiego.com
Subject: Charter Language protective of Public Park lands

Dear Stephen:

I've seen the agenda for the June 11 meeting. Thank you for including us in opposition to the Museum Charter School proposal.

How may we move forward as proponents of the specific strengthening of Charter provisions to increase the protections for Park lands as detailed in my earlier E Mail to you and the Committee? [Language set forth below]. We request this detailed and affirmative proposal be placed on the Carter Review Committee Agenda as soon as may be appropriate.

We do not simply want to oppose the Museum School's proposal, but wish our explicit suggestions to be part of a robust and public dialogue on how the Charter language may be strengthened and clarified to provide greater protection for Park lands.

Here is our detailed proposal:

Dear Council President Lightner and Members of the Charter Review Committee:

As President of the newly-formed Balboa Park Heritage Association, a California non-profit public benefit corporation, I write to you to both [1] strongly oppose any weakening of the existing park lands protective language in the City Charter and [2] propose new, more explicit protective language as amendments to the City Charter as part of your comprehensive Charter Review process.

Park lands are a scarce and precious public resource in any city, particularly in one expanding and becoming increasingly urbanized. Park lands will always be under pressure to be used for other purposes, to be sold or leased, or to be developed in part for non-park purposes. We believe to best preserve park lands for the next several generations of San Diego residents and visitors, existing Charter protections of park lands should be both maintained and strengthened.

We propose clear, explicit and easily understood language as a Charter Amendment to achieve this purpose. Absent strengthened protections, park lands will be subject to intense uses incompatible with the look, feel, atmosphere and objective of public park lands.

I.

Only last month a San Diego Charter School operator proposed locating a newly-created "educational complex" for their campus in Balboa Park. To make this permissible, the proponents have suggested unspecified new Charter language to permit "educational use" of park lands, including Balboa Park.

This proposed Amendment could lead to the development of open public Balboa Park lands for privately controlled buildings, dedicated and secured recreational facilities and grounds, and additional development incompatible with the public recreational use of precious Balboa Park lands and assets.

To our knowledge, the sole proponent of this proposal is the operator of a Bankers Hill Charter School having designs on acquisition of a favorable leasehold or purchased lands in Balboa Park and development of a school campus. This proponent states its proposal is "a possibility for a small change that could open up a big idea." It suggests that revenues from such a "public-private partnership" could be a partial solution to the millions of dollars in unfunded "deferred maintenance" liabilities facing the Park.

That "big idea" is a prescription for disaster for both the public and the Park. It is the City's moral and legal obligation to properly maintain the Park. This duty is non-delegable. Breaching this duty should never be used as justification to surrender parts of the Park to non-park uses. The Park could be converted to a commercial mall and revenue-producing site for multiple charter schools. Generating revenues is not the purpose for San Diego's public parks.

We urge this Committee to reject this proposal as wholly incompatible with both the critically important Charter protections now applicable to Balboa Park and other park lands, and to the moral and legal duty of this Committee, the City Council and Office of The Mayor to maintain, protect and defend this precious and unique public property from unneeded and unnecessary encroachment.

II.

Existing park protective language in the Charter reads as follows at Article V, Section 55:

"All real property owned in fee by the City heretofore or hereafter formally dedicated inperpetuity by ordinance of the Council or by statute of the State Legislature for park,recreation or cemetery purposes shall not be used for any but park, recreation or cemetery purposes without such changed use or purpose having been first authorized or later ratified by a vote of two-thirds of the qualified electors of the City voting at an election for such purpose. However, real property which has been heretofore or which may hereafter be set aside without the formality of an ordinance or statute dedicating such lands for park, recreation or cemetery purposes may be used for any public purpose deemed necessary by the Council.

Whenever the City Manager recommends it, and the City Council finds that the public interest demands it, the City Council may, without a vote of the people, authorize the opening and maintenance of streets and highways over, through and across City fee-owned land which has heretofore or hereafter been formally dedicated in perpetuity by ordinance or statute for park, recreation and cemetery purposes."

We propose that this language be amended, clarified and strengthened to read as follows:

"All 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, recreation or cemetery purposes and real property which has been heretofore or which may hereafter be set aside without the formality of

an ordinance or statute dedicating such lands for park, recreation or cemetery purposes [Hereinafter "Park Lands"] shall not be used for any but park, recreation or cemetery purposes without such changed use or purpose having been first authorized or later ratified by a vote of two-thirds of the qualified electors of the City voting at an election for such purpose.

The Proponent of any non-park, recreation or cemetery use of Park Lands shall have the burden of first demonstrating by a preponderance of the evidence that such proposed use of Park Lands will affirmatively enhance and not diminish the free public park and recreational use and enjoyment of Park Lands, before such proposal may be authorized or later ratified by a vote of two-thirds of the qualified electors of the City voting at an election for such purpose. This predicate determination shall be made by the City Council, and shall be subject to *de novo* review by any Court having jurisdiction over Park Lands and subject matter.

The City Council may authorize the opening and maintenance of streets and highways over, through and across Park Lands [Hereinafter "Streets and Highways Use"], provided the City Council shall have the burden of first making an affirmative finding supported by a preponderance of the evidence that such proposed Streets and Highways Use of Park Lands will affirmatively enhance and not diminish the free public park and recreational use and enjoyment of Park Lands. This predicate determination shall be made by the City Council, and shall be subject to *de novo* review by any Court having jurisdiction over Park Lands and subject matter.

This proposed amendment does the following to clarify, enhance and strengthen protections of park lands:

1. The definition of "Park Lands" is made inclusive of *both* properties formally dedicated in perpetuity by ordinance of the Council or by statute of the State Legislature for park, recreation or cemetery purposes *and* real property which has been heretofore or which may hereafter be set aside without the formality of an ordinance or statute dedicating such lands for park, recreation or cemetery purposes;

2. Any proponent of any non-park, recreation or cemetery use of Park Lands would have the burden of first demonstrating by a preponderance of the evidence that such proposed non-compliant use of Park Lands will affirmatively enhance and not diminish the free public park and recreational use and enjoyment of Park Lands; and

3. Use of Park Lands for street and highway uses would be fully subject to this same standard, protecting park lands from *de facto* condemnation for street and highway uses regardless of the impact on use and enjoyment of park lands.

We respectively request that this proposal be made part of the Agenda for the next meeting of the Charter Review Committee. We understand the Charter Review is a process, involving all elements of City government and the public. We hope these suggestions will assist in a process that ultimately will be successful to best preserve park lands for the next several generations of San Diego residents and visitors by both maintaining and strengthening existing Charter protections of scarce and increasingly precious park lands.

Respectively submitted,

Thank you,

--

David Lundin
President, Balboa Park Heritage Association
894 Felspar Street
San Diego
California 92109

619 807-2694