

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

MEMORANDUM

DATE: July 27, 2007

TO: Stacey LoMedico, Park & Recreation Department Director

FROM: City Attorney

SUBJECT: Valet Parking in Balboa Park

NOTICE OF VIOLATION

This is to inform you that the current designation and reservation of 80 parking spaces in the Alcazar Parking Lot in Balboa Park [Alcazar Lot] for the private storage of valet-parked vehicles, together with related signage, violates The City of San Diego City Charter [Charter] section 55 and San Diego Municipal Code [Code] section 63.05. As the Director of the City's Park & Recreation Department, you are best positioned to facilitate compliance with the law. You are hereby advised to immediately cease the illegal practice of reserving dedicated City parkland for such private use, and to remove all signage that furthers that purpose.

BACKGROUND

On or about June 7, 2007, it came to the attention of the City Attorney that on or about April 17, 2007, Sunset Parking Services LLC, a California limited liability company [Sunset], had placed signage consisting of post signs and pavement-painted signs in the Alcazar Lot designating parking spaces for "Permit Parking Only" for use by Sunset's valet parking service. By Memorandum dated June 7, 2007, attached hereto, the City Attorney informed the City's Park & Recreation Department Director that Sunset's installation of signs in the Alcazar Lot violated the Code. The City Attorney also met with representatives of Sunset to discuss the legality of the signs. The post signs were subsequently removed by Sunset.

On or about June 12, 2007, the Park & Recreation Department asked the City Attorney to draft a right-of-entry permit between the City and Sunset, whereby Sunset would be allowed to store valet-parked cars in a reserved section of the Alcazar Lot. By Memorandum dated June 12, 2007, attached hereto, the City Attorney informed the Park & Recreation Department Director that the private use of dedicated public parkland for the reserved storage of valet-parked vehicles is not a valid park and recreation use and would violate Charter section 55. The City Attorney did draft a right-of-entry permit, attached hereto, in response to the request from the Park & Recreation Department, but that draft was not used.

Pursuant to a certain CITY OF SAN DIEGO RIGHT OF ENTRY PERMIT [Permit] dated June 12, 2007, prepared by the Park & Recreation Department and attached hereto, the City's Park & Recreation Department purports to have granted Sunset a right of entry to use up to 80 parking spaces in the Alcazar Lot on a non-exclusive basis. By letter [Letter] dated June 14, 2007, attached hereto, from Kathleen S. Hasenauer, Acting Deputy Park & Recreation Director, to Mr. Kynn Knight, Director of Valet Operations for Sunset, the Park & Recreation Department purported to authorize the designation of 80 parking spaces to Sunset's operations. At some time prior to June 14, 2007, the post signs that had been removed by Sunset on or about June 7, 2007, were replaced, apparently by the Park & Recreation Department. The Letter states, "...the signs that we installed in the Alcazar Parking Lot are City Property."

DISCUSSION

Charter Section 55

Balboa Park is a dedicated public park and may be used only for park and recreation purposes under Charter section 55. Any other use of dedicated parkland would require a two-thirds vote of the electorate.

Property that has been dedicated as a public park may be used as a site for the erection of a museum, library, art gallery, conservatory, or similar structure, as long as the structure is designed for the recreation and enjoyment of the community. *Spires v. City of Los Angeles*, 150 Cal. 64. The erection of a municipal auditorium for the benefit of the general public is not inconsistent with the dedication of property for park purposes. *Los Angeles Athletic Club v. Long Beach*, 128 Cal. App. 427, 430-431. There is a consistent thread in defining valid park uses. That thread is a finding that the use in question must be open to the general public, rather than restricted to use by any number less than the whole. The reservation of parking spaces for the parking of cars by a private valet service company is, therefore, inconsistent and incompatible with the general public's use and enjoyment of a dedicated public park.

It is highly unlikely that a use of dedicated public parkland that does not benefit the general public will be found to be a valid park use. The general rule for permissible park uses has been stated by the City Attorney's Office as follows:

[A] proper park use is one that does not interfere with the enjoyment by the general public of the park for park and recreational purposes and is consistent with and complimentary to or enhances such purposes.

1975 Op. City Att'y 139, 140.

Therefore, any use of dedicated parkland that removes a portion of the park from use by the general public could not reasonably be considered a valid park and recreational use.

Code section 63.05

Code section 63.05, Vehicle Access and Parking in any Public Parks, grants authority to the City Manager (currently, the Mayor) to regulate parking in any public park. Code section 63.05 also provides:

“Furthermore, the City Manager shall have the authority to close any public park ... property to automobile ... traffic, **subject to any covenants or legally binding conditions upon such land.**

Appropriate signs shall be erected or placed giving notice of any special conditions or regulations that are imposed under this section.” (*emphasis added*)

In the instant case, Charter section 55 provides the covenant and legally binding condition that precludes the reservation of the Alcazar Lot, or any other part of Balboa Park, to private use for the storage of valet-parked automobiles. The signs placed in apparent reliance on Code section 63.05 are, therefore, unauthorized and similarly precluded.

CONCLUSION

The use of dedicated public parkland for the reserved storage of valet-parked cars removes a portion of the public parking lot from use by the general public. It is not a proper park and recreational use, violates Charter section 55, and must not be allowed to continue. The post signs and pavement-painted signs in the Alcazar Lot violate Code section 63.05 and must be removed immediately.

MICHAEL J. AGUIRRE, City Attorney

By

Brock Ladewig
Chief Deputy City Attorney

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cc: The Honorable Mayor and City Council Members
Rick Reynolds, Business Office Director
Karen Heumann, Assistant City Attorney