

June 25, 2001

Mayor Beverly O'Neill and Members of the City Council
333 West Ocean Boulevard
14th Floor
Long Beach, California 90802

Dear Mayor O'Neill and Members of the City Council:

As you are aware, the authority of the Recreation Commission is included in Article IX, Section 902 of the City of Long Beach Charter. The City Charter states that...

"The Recreation Commission shall have such authority over all public leisure activities of a recreational nature upon City-owned property as may be prescribed by the City Council by ordinance, and with respect thereto shall have the following powers and duties:

- a) Recommend to City Manager and City Council the acquisition or abandonment of lands, waterways, buildings, or other facilities for public recreation.
- b) Exercise control over the operation of public recreation functions under the jurisdiction of the City-School District Coordinated Recreation Plan.
- c) Approve plans for improvement of lands for public recreation.
- d) Approve plans for the construction or improvement of buildings or other facilities to be used for public recreation."

The Recreation Commission was prepared to address the issue of the proposed North Long Beach Police Station in Scherer Park at its meeting on May 17, 2001. However, an opinion was received from the City Attorney's Office (see attached), which opined that the Recreation Commission did not have the authority under the provisions of the City Charter to review many aspects of the project and that the basic land use decisions involved were within the exclusive jurisdiction of the Planning Commission and City Council. The Recreation Commission is disappointed in the City Attorney's interpretation. Needless to say, we are concerned about the Recreation Commission's inability to officially comment on this important project. Not only would we welcome the opportunity to discuss this in more detail with you and the City Attorney, we would also recommend that this issue be addressed in future discussions concerning proposed Charter amendments.

The Recreation Commission members strongly feel that if they are to continue to be effective in their charge to protect public park property and the activities therein, the City Charter must be amended to provide for Recreation Commission

review in situations where existing park land is proposed to be converted to other uses. Without this responsibility, the Commission believes that its overall mandate is jeopardized.

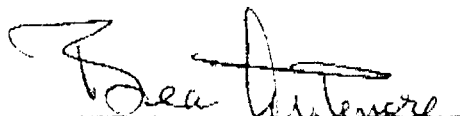
At its meeting on June 21, 2001, the Recreation Commission did agendaize the topic of the proposed North Long Beach Police Station in Scherer Park. Despite the City Attorney's opinion regarding Commission jurisdiction, the Commission unanimously voted at its June 21 meeting to oppose the project because it would significantly reduce park land. While we realize that this decision has no official status, we do feel that you should be made aware of our concerns about this project in a public park. In addition, if the project does move forth, we strongly feel that the loss of park land in Scherer Park must be mitigated (as suggested in the Environmental Impact Report) with additional park land in the North Long Beach area on at least a one to one ratio.

Again, we welcome the opportunity to discuss the City Charter issue with you, along with the proposed North Long Beach Police Station in more detail. Thank you, in advance, for your consideration.

Respectfully submitted,



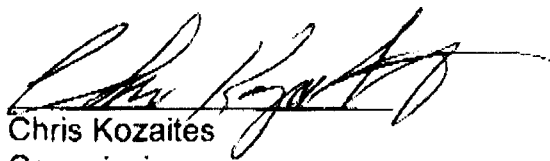
William H. Marmion, Ph.D.
President



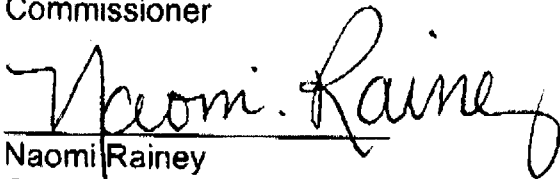
Bea Antenore
Vice President



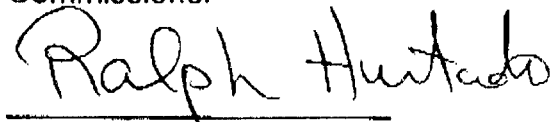
William Clark
Commissioner



Chris Kozaites
Commissioner



Naomi Rainey
Commissioner



Ralph Hurtado
Commissioner

Attachment

cc: Robert E. Shannon, City Attorney
Henry Taboada, City Manager
Gerald R. Miller, Assistant City Manager
Reginald I. Harrison, Deputy City Manager
Phil T. Hester, Director of Parks, Recreation and Marine
Dennis Eschen, Manager, Planning and Development

Michael Mais

05/15/2001 12:30 PM

To: Phil Hester/PR/CLB@CLB
cc: Dennis Eschen/PR/CLB@CLB
Subject: Scherer Park

City of Long Beach

Memorandum

Working Together to Serve

Date: May 15, 2001

To: Phil T. Hester, Director of Parks, Recreation and Marine

From: Michael J. Mais, Principal Deputy City Attorney, Ext. 82230

Subject: Recreation Commission Jurisdiction (Scherer Park)

A recent question was posed regarding the Recreation Commission's role in the approval of the North Long Beach Police Station which is proposed to be built on land which is currently a part of Scherer Park. If the project is ultimately approved by the City Council, the land in question will be rezoned from a designation of "Park" (P) to "Institutional" (I) and the City's General Plan will be amended to change the land use designation for the project area from "Land Use District 11" (Open Space/Parks) to "Land Use District 10" (Institutions/Schools).

In analyzing the Commission's jurisdiction, one must first look to the City's Charter which is, in effect, the City's "Constitution". All municipal charters act as "documents of limitation". This means that the various individuals, agencies, departments and commissions which are governed by the Charter are restricted in their authority by the express limitations contained in the Charter. Put simply, the jurisdiction of the Recreation Commission is strictly limited to those powers specifically set forth in the Charter, as supplemented by any ordinances relating to the Commission which are not inconsistent with the Charter's grant of authority. The acts of individuals, agencies, departments or commissions which exceed the authority specifically granted to them by the Charter are considered void.

In this instance, the Commission's role in the approval of the Project (i.e., the Police Station) is somewhat limited. Section 902 of the Charter (attached) establishes the "Powers and Duties" of the Commission. The first paragraph of the Section sets forth the Commission's basic authority. It states: The Recreation Commission shall have such exclusive authority over **all public leisure activities of a recreational character**

upon City-owned property as may be prescribed by the City Council by Ordinance..." (Emphasis added). The initial paragraph of Section 902 is followed by seven separate Subsections which more clearly define the Commission's "Power and Duties." Only three of the Subsections arguably have any possible application to the Project.

In describing the Commission's "Powers and Duties" (i.e., jurisdiction), Subsection (a) states: "Recommend to [the] City Manager and City Council the acquisition or abandonment of lands, waterways, buildings or other facilities **for public recreation**"; Subsection (c) states: Approve plans for improvement of lands **for public recreation**"; and subsection (d) states: "approve plans for the construction or improvement of buildings or other facilities **to be used for public recreation**" (emphasis added).

As you can see from the above quoted language, the overarching intent of the Charter is to Grant the Commission jurisdiction over the public leisure and recreation activities of the City. However, the Charter clearly does not grant the Commission the authority over basic land use decisions such as zoning, land use permits or General Plan issues or approvals. Those areas are specifically reserved to the City Council (Charter sections 205, 210) and the Planning Commission (Charter section 1002).

Charter Section 902 specifically limits the Recreation Commission's authority to either "recommending approval" (Section 902(a)) or "approving" (Sections 902 (c)(d) certain projects that are either for "public recreation" or which are "to be used for public recreation". The bulk of the proposed police station project is obviously not for or to be used for "public recreation". Therefore, the Charter does not vest the Commission with jurisdiction to determine whether the proposed land use is appropriate or to determine whether or not the proposed buildings or structures which make up the police station are appropriate.

It should be noted that applicable ordinances have not broadened in any manner, the authority of the Recreation Commission as delineated by the Charter. Long Beach Municipal Code Section 2.4.005.A describes the authority of the Commission with reference to Charter Section 902 and likewise limits the authority of the Commission to public leisure activities of a recreational character.

In this case, the approval of the Project will result in the adoption of several mitigation measures which will require the installation or construction of various amenities which will be used for public recreation activities within Scherer Park. In our view, the various proposed amenities are clearly within the jurisdiction of the Commission. As such, the Commission is required to review, consider and approve, if appropriate, the plans for the construction of any and all park amenities which result from the approval of the overall Project, if it is in fact approved by the City Council. Obviously, the Recreation Commission's jurisdiction will not come into play unless and until the Council approves the construction of the police station later this year.

Hopefully, this answers any questions you have regarding this issue. If you would like to discuss the matter further, please do not hesitate to contact me.