



THE CITY OF SAN DIEGO

MEMORANDUM

DATE: November 18, 2008

TO: Andrea Tevlin, Independent Budget Analyst

FROM: Stacey LoMedico, Park and Recreation Department Director

SUBJECT: FY 2009 Proposed Mid-Year Reductions  
Park and Recreation Responses to November 12 Council Questions

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**Recreation Center Closures**

In order to address the deficit in the City's General Fund, departments were requested to identify 10 percent reductions to their Fiscal Year 2009 budget appropriations. The Park and Recreation Department identified various programs for reduction or elimination, all of which were difficult decisions to make. Since the Department has had significant reductions in the past (over \$16 million in the last 5 fiscal years), it was not possible to provide enough savings by only "shaving off" pieces of services or programs. Many of the proposed mid-year reductions impact core services. Of all the reductions, the closure of nine recreation centers and one gymnasium will have the greatest impact to the citizens of San Diego and visitors to our parks.

In the City's park and recreation system, recreation centers come in various sizes and amenities. As part of the process to identify reductions, the Department reviewed recreation center operations to identify a methodology that would have the least impact to park users system wide. Key factors considered included the size and layout of the facility, the location, and the proximity to other similar facilities, estimated site attendance, and staffing levels. After analysis, the decision was made to propose the reduction of the smallest centers within the system, which are budgeted at Recreation Center I sites (listed below). (Other centers are staffed by Recreation Center Director II's or III's.)

The Department reviewed 3 other scenarios for recreation center reductions. Each involved in reducing overall hours at all centers system-wide. Most recreation centers operate an average of 40 hours per week. There are some sites that currently operate at 48 hours; however, these will be reduced to 40 hours with the proposed reduction of the Assistant Recreation Center Directors as part of the Department's mid-year submittal. Based upon input from staff the further reduction of center hours system-wide will have a greater impact on the public than the closure of some centers.

It should be noted that while some communities may reduce this impact by donating funds to increase the center's hours of operation, these additional hours will likely be inconsistent and not staffed by center directors which will impact the range of services offered.

- Scenario 1:** Reduction of operating hours from 40 to 35 per week. This reduces hourly staffing levels. Estimated net annual reduction is \$218,493 (6.25 FTE). Mid-year savings is estimated at \$109,247.
- Scenario 2:** Reduction of operating hours from 40 to 30 per week. This reduces benefited and hourly staffing levels. Full-time recreation center directors would be reduced to three-quarter time status (requires meet and confer before implementation). Estimated net annual reduction is \$1,205,019 (19.00 FTE). Mid-year savings is estimated at \$602,509.
- Scenario 3:** Reduction of operating hours for small and medium centers from 40 to 30 per week and large centers from 40 to 35 hours. This reduces benefited and hourly staffing levels. Full-time Recreation Center Director I's and II's would be reduced to three-quarter time status (requires meet and confer before implementation). Estimated net annual reduction is \$648,491 (12.00 FTE). Mid-year savings is estimated at \$324,246.

Reduction of hours will also not reduce the overall supervision required by the area supervisors, as the centers will still be open, just for a reduced number of hours per week.

The information below provides additional details on the proposed site closures. Mid-year net restoration costs total \$723,181 and includes two area supervisors (Area Manager) which are prorated below for each site.

Adams Recreation Center  
Council District 3  
3491 Adams Ave., 92116  
(619) 235-1149  
Sq. Ft. 2,360

Estimated annual attendance at this site is 24,000. Amenities include two multi-purpose rooms, children's play areas, kitchen, one lighted softball field, two outdoor basketball courts (no lights), and an outdoor stage.

Permits for outdoor use can be obtained from North Park (est. 1.81 miles).  
Net mid-year restoration cost: \$73,495.

Azalea Recreation Center  
Council District 3  
2596 Violet St., 92105  
(619) 235-1162  
Sq. Ft. 1,790

Estimated annual attendance at this site is 75,000. Amenities include one multi-purpose room, outdoor lighted basketball courts, and children's play area.

Permits for outdoor use can be obtained from City Heights (3.00 miles).  
Net mid-year restoration cost: \$87,108.

Black Mountain Gymnasium

Council District 1

9353 Oviedo St., 92129

(858) 538-8128

Sq. Ft. 13,677

Estimated annual attendance at this site is 10,600. Amenities include one multi-purpose room and one indoor basketball court. The City has a 50-year agreement (signed in 1990) with the Poway Unified School District for this site. Preliminary review of the agreement reflects that the City must continue to pay for utilities. The site will be managed by the school district.

Net mid-year restoration cost: \$51,088.

Cabrillo Recreation Center

Council District 2

3051 Canon St., 92106

(619) 531-1534

Sq. Ft. 1,984

Estimated annual attendance at this site is 49,700. Amenities include a large multi-purpose room, kitchen, basketball courts, tennis courts (operated by Tennis Club), one multi-purpose field, lighted softball field, and a children's play area.

Permits for outdoor use can be obtained from Ocean Beach (2.35 miles).

Net mid-year restoration cost: \$48,670.

Cadman Recreation Center

Council District 6

4280 Avati Dr., 92117

(858) 581-9929

Sq. Ft. 3,918

Estimated annual attendance at this site is 15,600. Amenities include two multi-purpose rooms, two softball fields, little Padres baseball field, children's play area, dog off-leash park, tennis court, one outdoor basketball court, and one horse shoe pit.

Permits for outdoor use can be obtained from North Clairemont (2.01 miles).

Net mid-year restoration cost: \$66,262.

Lopez Ridge Field House

Council District 5

7245 Calle Cristobal

(858) 538-8171

Sq. Ft. 2,588

Estimated annual attendance at this site is 9,600. Amenities include two multi-purpose rooms, kitchen, outdoor basketball courts, baseball field, and children's play area.

Permits for outdoor use can be obtained from Mira Mesa (3.20 miles).

Net mid-year restoration cost: \$68,064.

Penn Field House

Council District 4  
2550 Dusk Dr., 92139  
(619) 527-3458  
Sq. Ft. 2,880

Estimated annual attendance at this site is 90,000. Amenities include one multi-purpose room, large multi-purpose field, lighted softball field, children's play areas, weight room, and kitchen. Permits for outdoor use can be obtained from Paradise Hills (0.61 miles).

The City had an agreement with the San Diego Unified School District for this site. Preliminary review of the agreement reflects that the City may be required to continue to pay for utilities and may be requested to remove improvements at the site.

Net mid-year restoration cost: \$76,587.

Presidio Recreation Center

Council District 2  
2811 Jackson St., 92110  
(619) 692-4918  
Sq. Ft. 5,302

Estimated annual attendance at this site is 29,000. Amenities include indoor and outdoor basketball courts and a lighted softball field.

Permits for outdoor use can be obtained from Robb Field (4.67 miles).

Net mid-year restoration cost: \$66,911.

Stockton Recreation Center

Council District 8  
330 32<sup>nd</sup> Street, 92102  
(619) 235-1163  
Sq. Ft. 2,354

Estimated annual attendance at this site is 4,000. Amenities include two multi-purpose rooms, kitchen, lighted basketball courts, one softball field, one multi-purpose field, and children's play areas.

Permits for outdoor use can be obtained from Memorial (1.09 miles).

Net mid-year restoration cost: \$63,425.

Tecolote Recreation Center

Council District 6  
4675 Tecolote Road, 92110  
(858) 581-9930  
Sq. Ft. 1,694

Estimated annual attendance at this site is 13,000. Amenities include one multi-purpose room, five baseball fields, one flag football field, outdoor basketball courts and picnic areas.

Permits for outdoor use can be obtained from Robb Field (3.54 miles).

Net mid-year restoration cost: \$75,263.

Mid-City Gymnasium

Council District 3

4302 Landis Street, 92105

(619) 516-3082

Sq. Ft. 8,600

This site is not closing; however, it will be managed from the City Heights Recreation Center. Estimated annual attendance at this site is 70,000. Amenities include a gymnasium. Permits can be obtained from City Heights (across street). Net mid-year restoration cost: \$46,308.

**Use of Golf Enterprise Fund Balance**

Attachment 1 is a FY 2006 Proposed Budget – Budget Referral regarding the use of golf fund balance for general fund purposes. In Fiscal Year 2009, Golf Operations is budgeted for the following transfers to the General Fund:

Land Use Payment (per established formula):	\$2,130,934
General Government Services Billing	\$ 477,125

Golf Operations is also billed for specific support from various departments such as auditors and engineering and capital projects. Fund balance is needed for future capital projects to maintain the courses and protect these assets.

**Operation of Skate Parks by Non-City Staff**

(Will defer to the Business Office to respond.)

**New Facilities Not Yet Under Construction**

Engineering and Capital Projects (E&CP) and City Planning and Community Investment (CP&CI) departments could provide a list of projects not yet under construction and the ability to terminate agreements. The Department is supportive of new facilities and deferred maintenance projects; however, operating costs for new sites cannot be absorbed without reductions in other services. Attachment 2 is a list of projects that were programmed for Fiscal Year 2009 for the Mission Bay Improvement Fund (10502) and the Regional Park Improvement Fund (10518). Project status or changes to allocations should be confirmed with E&CP and CP&CI. Of the projects listed, Park and Recreation has noted those projects that are NOT recommended for suspension at this time.

**Competitive Level Swim Teams**

The estimated annual direct cost for the City to operate a non-recreational-based competitive youth swim team at 2 of the 13 pools (City Heights and Memorial) is \$39,911. This does not include non-personnel expenses. Revenue is estimated at \$4,500.

Currently there are 22 registered swimmers participating in this program. It is currently the only competitive youth sports program offered by city staff. Other youth sports club programs (competitive and recreational) use facilities within the park system and are not directly supervised and managed by Park and Recreation Department staff and city taxpayer monies.

The existing program could be offered by a private operator who would rent the pool at the City of San Diego's current rental fee of \$41.75 per hour for non-exclusive use. Estimating a total of 840 rental hours per year for two teams and providing for an outside coach (estimated at \$15 per hour) participants would pay an average of \$180 per month for private operation. This is the same method hundreds of other youth competitive teams/providers currently use city facilities.

Another option is for the current participants to join with another recognized swim club (approximately thirty-one in San Diego County). Many of these clubs offer scholarships and some are within 15 minutes of the current locations.

The competitive level swim team operated at Memorial Pool is eligible for restoration through the use of EDCO fund monies (#41205). The available EDCO funds are estimated at \$435,000 by the City Comptroller's office. All park bond funds eligible for programming have been allocated and are not available.

### **Unsupervised Skate Parks**

Attachment 3 has the two previous City Attorney opinions regarding the liability of unsupervised skate parks.

### **Beach Grooming**

#### **Mechanized Beach Maintenance**

The city coastline includes 100 acres of naturally maintained beaches and 150 acres of fully maintained beaches. The Park and Recreation Department's mechanized beach maintenance operates with a staff of 16 which provide the following services: removal of trash from beach barrels, illegal dumps, fire debris, abandoned boats, dead marine animals, fire ring material (proposed for reduction), kelp and sea grasses; provide for safe and attractive beaches by transport and deposit of sand, erosion control by contouring of sand to proper shoreline slope, filling of dangerous beach depressions and holes, raking and sifting sand to remove dangerous objects; creation of shoreline sand berms to protect public property and assets from wave damage, recovery of bay sand transported into shoreline coves and inlets by tidal action; creation of sand dunes for endangered wildlife; support of lifeguard service operations by placement and removal of portable watch towers, building of sand beach emergency vehicle access roads, and construction of sand ramp-ways under seasonal towers to provide for faster emergency rescue response time.

Elimination of the beach grooming function removes the year-round functions of raking and screening of sand as well as kelp removal. The sand raking removes litter, debris such as glass and nails, and other hazardous objects found in the sand. The beach grooming also removes the kelp and eel grass from the mean high tide. Reduction in these services eliminates 5.00 Equipment Operator II's (\$394,688), 4.00 Heavy Truck Driver I's (\$307,162) and non-personnel costs (\$355,607) annually and will impact operations:

- Kelp will not be removed from shoreline beaches from La Jolla to Ocean Beach. This kelp is used for winter and other storm related safety berm construction.
- Raking the sand helps to remove objects that become buried in the sand and can cause injuries to people who run or walk on the beach. These items include glass, crushed aluminum cans with sharp edges, nails, and syringes.

- Raking the sand helps to smooth out holes and/or depressions that people dig. People who lay in these holes/depressions are difficult for lifeguards, police or other City workers to see when they drive vehicles on the beach. Lifeguards have indicated this service is warranted to support their operations.
- Lifeguards avoid driving over piles of kelp whenever possible. Children may burry themselves with the kelp, or people can hide items under kelp when they go out into the water. Increased kelp hampers the safe operation of emergency vehicles.

In addition, as kelp decomposes, it can become foul smelling and attract flies. This becomes a source of complaints from beach patrons. With the reduction of this unit, the Department's ability to protect and recover from storm damage related emergencies will also be diminished. The crew not only supports beach and shoreline park related storm clean up, but also throughout the park system.

cc: Jay Goldstone, Chief Operating Officer  
Patty Jencks, Supervising Management Analyst

**CITY COUNCIL REFERRAL  
REGARDING THE FISCAL YEAR 2006 PROPOSED BUDGET**

**TO:** Honorable Mayor and City Council

**FROM:** P. Lamont Ewell, City Manager

**RESPONDING DEPARTMENT:** Park and Recreation

**ISSUE:** During the City Council meeting of May 23, 2005 regarding the Fiscal Year 2006 Proposed Budget, Councilmember Young requested information on the reason for the projected decline in Golf Course rent to the General Fund below the Fiscal Years 2004 and 2005 levels. In addition, Councilmember Young would like to know what the Council needs to do to adjust the formula that is currently used to charge rent to the golf courses and what the maximum amount of rent is that can be legally charged to the golf courses.

**RESPONSE:** The Golf Enterprise Fund was created as of July 1, 1991. The reasons for its formation were to limit the General Fund's future obligations to support the city golf courses and to allow the courses flexibility to make capital improvements to the extent that revenues and expenses allow. In 1995, the City began charging the Golf Course Enterprise Fund a set rent based on two components. The first component was a fixed annual rate of \$1,500 per acre. This amount was comparable to rent being paid by the Mission Trails Golf Course. The second component was 9.9% of the gross revenues. It was expected that the rent would be reviewed every five years.

"Enterprise" is defined as "a revenue-producing improvement, building, system, plant, work, facilities, or undertaking used for or useful for any of the following purposes: The providing of public golf courses, and facilities and improvements in connection therewith." Ca. Gov. Code § 54309(i). The Council can change the rent paid by the Enterprise Fund through the Appropriations Ordinance or by resolution. However, the Golf Enterprise Fund consists of rents paid by lessees and fees for services paid by golfers. To the extent any maintenance of and improvements to the golf courses suffer due to decreased availability of funds, the City's revenues will also suffer. Additionally, fees for services cannot be higher than the cost to provide the service, or the fee becomes a tax. At some point, the Golf Enterprise Fund would no longer be a revenue-producing undertaking for the purpose of providing the necessary facilities and improvements.

The annual rent calculation is based on the previous year's budgeted revenue. The proposed FY 2006 rent calculation of \$1,557,178 is a reduction from the previous year's rent due to the proposed six month closure of the Torrey Pines Golf Complex's North Course in FY 2005. This proposed closure reduced the FY 2005 revenue projections for North Course green fees by approximately \$1.7



million from the FY 2004 projection. This decline in revenue subsequently reduced the proposed rent to be paid by the Golf Enterprise Fund in FY 2006.

However, since Torrey Pines Golf Complex's North Course did not close as planned in FY 2005, staff recommends utilizing the FY 2004's actual revenue as the basis for the FY 2006 rent calculation. Utilizing this methodology would increase the annual rent projection by \$64,614 to \$1,621,792.

### Fiscal Year 2009 Projects Funded by Mission Bay Lease Revenue

The following list reflects projects that were allocated in Fiscal Year 2009. Expenditures or project status is not listed. Prior year funding allocations or project status is also not included.

#### **Mission Bay Park Improvement Fund Allocations for FY 2009**

22-965.0	Annual Allocation - Mission Bay Improvements	\$76,802
22-968.0	Mariner's Point Road Curbs and Parking Lot – Improvements	\$400,000
22-969.0	Mission Bay Park Drinking Fountains – Replacement	\$150,000
22-970.0	Mission Point/Bayside Walk Security Lighting – Upgrade	\$275,000
22-976.0	Sunset Point Parking Lot - Security Lighting	\$150,000
22-977.0	Vacation Isle North Cove Parking Lot - Security Lighting	\$150,000
22-978.0	Vacation Isle North Cove Road Improvements	\$150,000
22-979.0	Vacation Isle Northeast Parking Lot Security Lighting	\$150,000
22-980.0	West Bonita Cove Children's Play Area Upgrades	\$200,000
22-966.0	West Ski Island - Shoreline Stabilization	\$500,000
22-972.0	North Crown Point Gazebo Replacement	\$265,000
	<b>Total Mission Bay Improvement Fund</b>	<b>\$2,466,802</b>

#### **Regional Park Improvement Fund Allocations for FY 2009**

21-876.0	Balboa Park - Florida Canyon Evaluation and Repair of Broken Storm Drain **	\$1,000,000
21-877.0	Balboa Park - Marston Point Evaluation and Repair of Collapsed Storm Drain	\$50,000
27-875.0	Balboa Park - Morley Field Evaluation and Repair of Collapsed Storm Drain	\$50,000
21-870.0	Balboa Park - Myrtle Way Pergola	\$350,000
29-975.0	Crest Canyon Resource Management Plan *	\$75,000
29-974.0	Gonzalez Canyon Resource Management Plan *	\$200,000
29-966.0	Mission Trails Regional Park Cowles Mountain Trail Rehabilitation *	\$400,000
29-967.0	Mission Trails Regional Park Trail Realignment	\$300,000
29-909.0	Regional Park Improvements	\$41,803
	<b>Total Regional Park Improvement Fund</b>	<b>\$2,466,803</b>

\* The Park and Recreation Department requests that these projects remain funded.

\*\* Engineering and Capital Projects Department request that \$275,000 remain for the design of the project.

**ATTORNEY TO CLIENT  
CORRESPONDENCE**

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

**MEMORANDUM  
MS 59**

**(619) 533-5800**

**DATE:** April 30, 2008  
**TO:** Honorable Mayor and City Council  
**FROM:** City Attorney  
**SUBJECT:** Unsupervised Skate Parks

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**INTRODUCTION**

The Council has requested an opinion from the City Attorney regarding the legal implications of changing operations at City skate parks from staff-supervised to unsupervised activities.

**QUESTION PRESENTED**

Will the City expose itself to greater liability if it changes its operations at City skate parks from staff-supervised to unsupervised activities?

**SHORT ANSWER**

Yes. Without staff supervision, it will be difficult for the City's skate parks to come within the limited statutory protection allowed hazardous recreational activities under California statute. Lack of supervision will make it more difficult for the City to guard against or warn of dangerous conditions, and to limit activities to those that pose only the normal risks associated with the sport.

**BACKGROUND**

The Park and Recreation Department is considering changing its method of operation for its four skate parks (and for the two additional parks expected to open in the future). Currently, the skate parks are operated by City staff and are not open unless supervisory staff is on-site. Staff collects fees and liability waivers from participants. Staff also monitors skate park activities and enforces City rules and policies.

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Honorable Mayor and City Council

The Department is now considering operating some or all of the skate parks as unsupervised. The only staff present during operating hours (daytime) would be maintenance staff (accepting fees and issuing passes, processing waivers, and performing custodial duties). The parks would be closed and locked at night.

## ANALYSIS

### I. The City's Limited Liability to Participants in "Hazardous Recreational Activities"

The California Tort Claims Act, California Government Code sections 810-996.6 governs actions at law for civil liability against public entities and their officers and employees. A public entity is not generally liable for an injury except as otherwise provided by statute. Cal. Gov't Code § 815, *Iverson v. Muroc Unified School District*, 32 Cal. App. 4th 218, 227 (1995). A public entity may be held liable for a dangerous condition of its property that creates a "reasonably foreseeable risk," if the dangerous condition was created by the negligent act of an employee or the public entity had actual or constructive notice of the dangerous condition. Cal. Gov. Code § 835.

California Government Code section 831.7(a) provides specific immunity from liability for injuries suffered on public property when the injuries arise out of a "hazardous recreational activity," where the person "knew or reasonably should have known that the hazardous recreational activity created a substantial risk of injury."

The issue is whether the City is immune from liability under the terms of section 831.7 for injuries arising from skateboarding at City skate parks, and whether the City's immunity is affected by the skate parks being supervised or unsupervised. We conclude that depending on the particular facts, the City may be immune from liability under this section, but that eliminating supervision will lessen that immunity.

The first question is whether skateboarding constitutes a "hazardous recreational activity" for purposes of section 831.7. We conclude that it does.

Section 831.7(b) contains a two-pronged definition of "hazardous recreational activity". The first paragraph defines the term as "...a recreational activity which creates a substantial (as distinguished from a minor, trivial, or insignificant) risk of injury..." The second paragraph identifies certain activities that meet the definition (e.g., diving, animal riding, skiing). The two definitions are independent of one another. Although skateboarding is not specifically identified in the statute, caselaw has found, in effect, that skateboarding can be a hazardous recreational activity, depending on the circumstances. *Bartell v. Palos Verdes Peninsula Sch. Dist.*, 83 Cal. App. 3d 492 (1978)(12-year-old boy killed when he fell off his skateboard while playing a game similar to "crack the whip"); *Iverson, supra*, 81 Ops. Cal. Atty. Gen. 331 (1998). The public entity would have to prove in each case that the particular activity created a substantial risk of injury to the participant.

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However, even if skateboarding at a skate park is considered a hazardous recreational activity, the public entity would still have to rebut any allegations that it failed to guard against or warn of a known dangerous condition that was not reasonably assumed by the participant as inherently part of the activity. Cal. Gov. Code § 831.7(c)(1). Caselaw has interpreted the phrase “reasonably assumed” as based on an objective standard. *Perez v. Los Angeles*, 27 Cal. App. 4th 1380, 1386 (1994). The phrase takes into consideration the lower standard of care that is expected of children. *Id.* The question is whether a reasonable person, or reasonable child of a given age, would assume that the dangerous condition at issue was part of normal skate park activity.

Finally, the public entity’s liability would not be limited in cases where it failed to properly construct or maintain the structure, equipment, etc., causing the injury, or in cases of gross negligence by the public entity. Cal. Gov’t. Code § 831.7(c)(3) and (4).

Whether the City supervises skate parks or not would have no bearing on whether skateboarding is a hazardous recreational activity under section 831.7; however, lack of supervision will make it more difficult to guard against or warn of dangerous conditions not assumed to be part of the normal skate park activity -- such as violent games (e.g., “crack the whip”), extreme contests, or fighting.

## **II. The City’s Conditional Immunity for Operating a Skateboard Park**

In addition to the conditional immunity allowed for hazardous recreational activities discussed above, the Legislature has provided a special immunity for skateboard parks in Health and Safety Code section 115800. Under this section, skateboarding at skateboard parks operated by the City on City property will *automatically* be protected as a “hazardous recreational activity” under the immunity of Government Code section 831.7, if all of the three requirements of section 115800 are met: (1) the person skateboarding is 12 or older; (2) the activity was stunt, trick, or luge skateboarding; and (3) either the skate park requires the wearing of a helmet, elbow pads, and knee pads, or, with respect to a park run by a municipality that is not supervised on a regular basis, there is an ordinance requiring the wearing of a helmet, elbow pads, and knee pads, and posted signs to that effect.<sup>1</sup>

Given that the nature of skateboarding activities at City skate parks falls within the “stunt, trick or luge” definition, given that existing SDMC sections require protective gear and signage,<sup>2</sup> and,

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<sup>1</sup> Health and Safety Code section 115800 was amended in 2006 by SB 1179 (effective January 1, 2007). This bill extended the sunset provision by four years (from January 1, 2008 to January 1, 2012) and lowered the minimum age for skateboarders in public skateboard parks from 14 to 12 years of age.

<sup>2</sup> San Diego Municipal Code section 63.0107 requires skateboarders at City skate parks to wear helmets, elbow pads, and knee pads, and requires signs at City skate

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finally, assuming proper signage, skateboarding at City skate parks would fall under the conditional immunity of this section for skateboarders over 12 who are injured.

Changing the operation of skate parks to unsupervised will not significantly lessen the immunity conferred by this statute (it specifically covers unsupervised skate parks), so long as someone is present to check skateboarders' identification to ensure they are over twelve.

There is the argument that if the City provides supervision at its skate parks, it may expose itself to more liability if an injury is caused by negligent supervision. In order to be liable under this theory, the City's actions or inactions would have to be grossly negligent. Cal. Gov. Code section 831.7(c)(5). While this is a valid argument, we believe the City is better protected from liability by operating skate parks that are as safe as possible.

### **III. The Defense of Assumption of the Risk**

Finally, changing the operation of City skate parks to unsupervised may also lessen the protection offered by the doctrine of assumption of the risk and the legal effect of the Agreement and Release of Liability participants are required to sign. Assumption of the risk is the voluntary and knowing exposure of oneself to obvious dangers incident to certain activities. *See Morton v. Cal. Sports Car Club*, 163 Cal. App. 2d 685, 688 (1958). Skateboarders at City skate parks are sufficiently warned of the risks by common knowledge of the sport, and by the warnings contained in signage and in the Agreement and Release of Liability. *Neinstein v. L.A. Dodgers, Inc.*, 185 Cal. App. 3d 176, 184 (1986). However, the defense only covers normal risks inherent in the activity, not particular dangers of which participants would have no knowledge. *See Celli v. Sports Car Club of America*, 29 Cal. App. 3d 511, 522 (1972). Participants would presumably be aware of normal skateboarding tricks; however, they may not know of the dangers posed by extreme contests or games such as "crack the whip." Supervision could ensure that skate park activities would be restricted to those posing only the normal risks inherent in the sport.

Also, where negligent maintenance or supervision permits an unusually dangerous condition to continue, liability may arise. *See Hairston v. Studio Amusements, Ltd.*, 86 Cal. App. 2d 735, 739 (1948)(plaintiff fell while skating at defendant's roller skating rink, lay for several minutes without attention by guards, and was struck by a reckless patron skating backwards).

### **CONCLUSION**

The City will expose itself to greater liability if it changes operations at its skate parks to unsupervised. Although conditional, limited immunity is conferred under California Government Code section 831.7 for hazardous recreational activities and Health and Safety Code section

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parks indicating that skateboarders failing to wear helmets, elbow pads and knee pads are subject to citation.

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115800 for skateboard parks in particular, the City remains liable for failure to guard or warn against known dangerous conditions or other hazardous recreational activities not reasonably assumed by the participant as inherently a part of skate park activities. Without staff supervision, it will be difficult for the City's skate parks to come within the limited statutory protection of these California statutes. Further, by making it more difficult to limit the nature of the skate park activities to those that pose risks normally associated with the sport, eliminating supervision may restrict the applicability of the defense of assumption of the risk.

MICHAEL J. AGUIRRE, City Attorney

By \_\_\_\_\_  
Kimberly Ann Davies  
Deputy City Attorney

KAD:ca

cc: Andrea Tevlin, Independent Budget Analyst  
Stacey LoMedico, Director, Park & Recreation Department  
Karen Heumann, Assistant City Attorney  
Kathryn Burton, Managing City Attorney

ATTORNEY TO CLIENT  
CORRESPONDENCE

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JUL 2 2007

Park And Recreation Department  
Management Division

MEMORANDUM  
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**QUESTION PRESENTED**

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**SHORT ANSWER**

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**BACKGROUND**

The Park and Recreation Department is considering changing its method of operation for its four skate parks (and for the two additional parks expected to open in the future). Currently, the skate parks are operated by City staff and are not open unless supervisory staff is on-site. Staff collects fees and liability waivers from participants. Staff also monitors skate park activities and enforces City rules and policies.



June 18, 2007  
Stacey LoMedico, Park and Recreation Director  
Park and Recreation Department

The Department is now considering operating some or all of the skate parks as unsupervised. The only staff present during operating hours (daytime) would be maintenance staff (accepting fees and issuing passes, processing waivers, and performing custodial duties). The parks would be closed and locked at night.

## ANALYSIS

### I. The City's Limited Liability to Participants in "Hazardous Recreational Activities"

The California Tort Claims Act, California Government Code sections 810-996.6 governs actions at law for civil liability against public entities and their officers and employees. A public entity is not generally liable for an injury except as otherwise provided by statute. Cal. Gov't Code § 815, *Iverson v. Muroc Unified School District* (1995) 32 Cal.App. 4<sup>th</sup> 218, 227. A public entity may be held liable for a dangerous condition of its property that creates a "reasonably foreseeable risk," if the dangerous condition was created by the negligent act of an employee or the public entity had actual or constructive notice of the dangerous condition. Cal. Gov. Code § 845.

California Government Code section 831.7 provides specific immunity from liability for injuries suffered on public property when the injuries arise out of a "hazardous recreational activity," where the person "knew or reasonably should have known that the hazardous recreational activity created a substantial risk of injury."

The issue is whether the City is immune from liability under the terms of section 831.7 for injuries arising from skateboarding at City skate parks, and whether the City's immunity is affected by the skate parks being supervised or unsupervised. We conclude that depending on the particular facts, the City may be immune from liability under this section, but that eliminating supervision will lessen that immunity.

The first question is whether skateboarding constitutes a "hazardous recreational activity" for purposes of section 831.7. We conclude that it does.

Section 831.7(b) contains a two-pronged definition of "hazardous recreational activity". The first paragraph defines the term as "...a recreational activity which creates a substantial (as distinguished from a minor, trivial, or insignificant) risk of injury..." The second paragraph identifies certain activities that meet the definition (e.g., diving, animal riding, skiing). The two definitions are independent of one another. Although skateboarding is not specifically identified in the statute, caselaw has found, in effect, that skateboarding can be a hazardous recreational activity, depending on the circumstances. *Bartell v. Palos Verdes Peninsula Sch. Dist.* (1978) 83 Cal.App.3d 492 (12-year-old boy killed when he fell off his skateboard while playing a game similar to "crack the whip"); *Iverson, supra*, 81 Op. Atty. Gen. Cal. 331. The public entity would have to prove in each case that the particular activity created a substantial risk of injury to the participant.

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However, even if skateboarding at a skate park is considered a hazardous recreational activity, the public entity would still have to rebut any allegations that it failed to guard against or warn of a known dangerous condition that was not reasonably assumed by the participant as inherently part of the activity. Cal. Gov. Code § 831.7(c)(1). Caselaw has interpreted the phrase "reasonably assumed" as based on an objective standard. *Perez v. Los Angeles* (1994) 27 Cal.App.4th 1380, 1386. The phrase takes into consideration the lower standard of care that is expected of children. *Id.* The question is whether a reasonable person, or reasonable child of a given age, would assume that the dangerous condition at issue was part of normal skate park activity.

Finally, the public entity's liability would not be limited in cases where it failed to properly construct or maintain the structure, equipment, etc., causing the injury, or in cases of gross negligence by the public entity. Cal. Gov't. Code § 831.7(c)(3) and (4).

Whether the City supervises skate parks or not would have no bearing on whether skateboarding is a hazardous recreational activity under section 831.7; however, lack of supervision will make it more difficult to guard against or warn of dangerous conditions not assumed to be part of the normal skate park activity -- such as violent games (e.g., "crack the whip"), extreme contests, or fighting.

## II. The City's Conditional Immunity for Operating a Skateboard Park

In addition to the conditional immunity allowed for hazardous recreational activities discussed above, the Legislature has provided a special immunity for skateboard parks in Health and Safety Code section 115800. Under this section, skateboarding at skateboard parks operated by the City on City property will *automatically* be protected as a "hazardous recreational activity" under the immunity of Government Code section 831.7, if all of the three requirements of section 115800 are met: (1) the person skateboarding is 12 or older; (2) the activity was stunt, trick, or luge skateboarding; and (3) either the skate park requires the wearing of a helmet, elbow pads, and knee pads, or, with respect to a park run by a municipality that is not supervised on a regular basis, there is an ordinance requiring the wearing of a helmet, elbow pads, and knee pads, and posted signs to that effect.

Given that the nature of skateboarding activities at City skate parks falls within the "stunt, trick or luge" definition, given that existing SDMC sections require protective gear and signage,<sup>1</sup> and, finally, assuming proper signage, skateboarding at City skate parks would fall under the conditional immunity of this section for skateboarders over 12 who are injured.

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<sup>1</sup> San Diego Municipal Code section 63.0107 requires skateboarders at City skate parks to wear helmets, elbow pads, and knee pads, and requires signs at City skate parks indicating that skateboarders failing to wear helmets, elbow pads and knee pads are subject to citation.

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Changing the operation of skate parks to unsupervised will not significantly lessen the immunity conferred by this statute (it specifically covers unsupervised skate parks), so long as someone is present to check skateboarders' identification to ensure they are over twelve.

There is the argument that if the City provides supervision at its skate parks, it may expose itself to more liability if an injury is caused by negligent supervision. In order to be liable under this theory, the City's actions or inactions would have to be grossly negligent. Cal.Gov. Code section 831.7(c)(5). While this is a valid argument, we believe the City is better protected from liability by operating skate parks that are as safe as possible.

### **III. The Defense of Assumption of the Risk**

Finally, changing the operation of City skate parks to unsupervised may also lessen the protection offered by the doctrine of assumption of the risk and the legal effect of the Agreement and Release of Liability participants are required to sign. Assumption of the risk is the voluntary and knowing exposure of oneself to obvious dangers incident to certain activities. *See Morton v. Cal. Sports Car Club* (1958), 163 Cal.App.2d 685, 688. Skateboarders at City skate parks are sufficiently warned of the risks by common knowledge of the sport, and by the warnings contained in signage and in the Agreement and Release of Liability. *Neinstein v. L.A. Dodgers* (1986), 185 Cal.App.3d 176, 184. However, the defense only covers normal risks inherent in the activity, not particular dangers of which participants would have no knowledge. *See Celli v. Sports Car Club of America* (1972) 29 Cal.App.3d 511, 522. Participants would presumably be aware of normal skateboarding tricks; however, they may not know of the dangers posed by extreme contests or games such as "crack the whip." Supervision could ensure that skate park activities would be restricted to those posing only the normal risks inherent in the sport.

Also, where negligent maintenance or supervision permits an unusually dangerous condition to continue, liability may arise. *See Hairston v. Studio Amusements* (1948) 86 Cal.App.2d 735, 739 (plaintiff fell while skating at defendant's roller skating rink, lay for several minutes without attention by guards, and was struck by a reckless patron skating backwards).

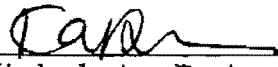
### **CONCLUSION**

The City will expose itself to greater liability if it changes operations at its skate parks to unsupervised. Although conditional, limited immunity is conferred under California Government Code section 831.7 for hazardous recreational activities and Health and Safety Code section 115800 for skateboard parks in particular, the City remains liable for failure to guard or warn against known dangerous conditions or other hazardous recreational activities not reasonably assumed by the participant as inherently a part of skate park activities. Without staff supervision, it will be difficult for the City's skate parks to come within the limited statutory protection of these California statutes. Further, by making it more difficult to limit the nature of the skate park

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activities to those that pose risks normally associated with the sport, eliminating supervision may restrict the applicability of the defense of assumption of the risk.

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