



CITY COUNCIL AGENDA REPORT

City of Anaheim OFFICE OF THE CITY ATTORNEY

DATE: NOVEMBER 15, 2022
FROM: OFFICE OF THE CITY ATTORNEY
SUBJECT: MICKEY AND FRIENDS PARKING STRUCTURE

ATTACHMENT (Y/N): YES **ITEM # 34**

RECOMMENDATION:

Receive an informational item regarding the Mickey and Friends Parking Structure and whether the change of title from the City to the Disney company following the bonds being paid off could be considered a gift of public funds.

BACKGROUND:

At the October 25, 2022 Council meeting, Councilmember Moreno agendized a discussion of the Disney parking structure and whether the change of title from the City to Disney following the bonds being paid off could be considered a gift of public funds. Following is a legal analysis of that question.

1. “Gift of Public Funds” Legal Basis

Article XVI, section 6 of the California Constitution reads, in relevant part, as follows:

The Legislature shall have no power to give or to lend, or to authorize the giving or lending, of the credit of the State, or of any county, city and county, city, township or other political corporation or subdivision of the State now existing, or that may be hereafter established, in aid of or to any person, association, or corporation, whether municipal or otherwise, or to pledge the credit thereof, in any manner whatever, for the payment of the liabilities of any individual, association, municipal or other corporation whatever; nor shall it have power to make any gift or authorize the making of any gift, of any public money or thing of value to any individual, municipal or other corporation whatever; . . .

Violations of this provisions are generally referred to as prohibited “gifts of public funds.”

Examples of expenditures that courts have found to be improper gifts of public funds include: an arbitrator’s award of \$70 million above what the state’s maximum exposure could be as established by a prior trial court decision;¹ payments by a county to a water district as a condition of sewer service where the county was exempt from property taxes

¹ *Jordan v. Dept. of Motor Vehicles* (2002) 100 Cal.App.4th 431.

and special assessments;² expenditures authorized by a state official to promote the passage of a bond measure;³ payments to settle a claim where there is no arguable liability, such as a claim that is barred by the statute of limitations;⁴ and public expenditures that are driven by personal motives or moral obligations, such as to convey compassion or sympathy.⁵

However, it is well established that the gift of public funds prohibition does not preclude expenditures and disbursements for public purposes, even though private persons are benefited therefrom.⁶ The determination of whether money is spent for a “public purpose” is primarily a matter for legislative body, whose discretion will not be disturbed by the courts so long as that determination has a reasonable basis.⁷

For example, in 2001, the California Supreme Court ruled that the retroactive application of a new law that eliminated a “fixed and vested” tax liability arising from certain transactions was not a gift of public funds in that the law’s public purpose was “to provide certainty to business taxpayers” and “improve the business climate in California.”⁸ Furthermore, the legislatures do not violate Article XVI, section 6 by issuing revenue bonds to fund a privately owned development that would clear blight and replace it with residential and commercial buildings.⁹

2. 1996 Bond Transaction

In 1996, the City and the Walt Disney Company entered into a complicated transaction for financing and constructing public improvements within the Anaheim Resort Area. As part of this deal, the Anaheim Public Financing Authority (“Authority”) issued a series of Lease Revenue Bonds in February 1997. The proceeds of the 1997 Bonds were used to finance the acquisition and construction of certain public improvements, including improvements to the Anaheim Convention Center, various electrical, public safety, landscaping, storm drain, park and recreation, and street improvements, and certain public parking facilities.

As part of this transaction, the City is obligated to revert possession of the parking facilities constructed with the bond funds (Mickey and Friends Parking Structure) to Disney pursuant to paragraph 6.1 of the October 8, 1996 Infrastructure and Parking Finance Agreement (“Finance Agreement”). The Finance Agreement required Disney to be responsible for all costs of operating the parking facilities, and entitled Disney to retain all net operating income after payment of operating expenses. The Finance Agreement also required Disney to share parking space for Convention Center use.

² *County of Riverside v. Idyllwild County Water Dist.* (1978) 84 Cal App 3d 655.

³ *Stanson v. Mott* (1976) 17 Cal.3d 206.

⁴ *Page v. Mira Costa Community College Dist.* (2009) 180 Cal.App.4th 471.

⁵ *Veterans’ Welfare Board v. Riley* (1922) 189 Cal.159.

⁶ *Redevelopment Agency of the City of San Pablo v. Shepard* (1977) 75 Cal.App.3d 453.

⁷ *White v. State of California* (2001) 88 Cal.App.4th 298.

⁸ *Preston v. State Bd. of Equalization* (2001) 25 Cal.4th 197.

⁹ *Redevelopment Agency of the City of San Pablo v. Shepard* (1977) 75 Cal.App.3d 453.

The Finance Agreement as well as the September 30, 1996 staff memo (“1996 Staff Memo”) summarizing the entire transaction, are attached to this report.

DISCUSSION:

It would be difficult to make a strong legal argument that the reversion of the Mickey and Friends Parking Structure to Disney upon payment of the bonds amounts to a gift of public funds considering that it was part of a deal struck to accomplish a wide variety of documented public purposes.

As stated in the 1996 Staff Report, the purpose of the transaction was to (1) secure funds to be applied to the basic resort program, Convention Center expansion, the Resort Area revitalization, and secure the City’s position as a premier destination resort in a highly competitive market which is key to the City’s overall economy, (2) enhance revenues to the general fund for City-wide use, and (3) protect the City from risk.

In addition, the Council adopted a Statement of Overriding Considerations in connection with the Development Agreement’s environmental clearance process, all of which would enhance the argument that the deal resulting in the reversion of ownership of the parking structure to Disney was not a gift of public funds. Among those overriding considerations were (1) increased revenues for the City, County and State, (2) preserving key industries of statewide importance, (3) provision of jobs for area residents, (4) increased economic opportunity for existing businesses, and (5) visual enhancement and revitalization. Other public purpose considerations are referenced in the Statement of Overriding Considerations, attached hereto.

In light of the documented public purposes found by the Council for the overall transaction, and the legal standard in which courts defer to the elected body to make those types of legislative findings, it is unlikely that the parking structure reversion would have been deemed a gift of public funds had it been challenged.

IMPACT ON BUDGET:

This discussion item will have no impact on the budget.

Respectfully submitted,

Robert Fabela
City Attorney

Attachments:

1. Infrastructure and Parking Finance Agreement dated October 8, 1996
2. Memorandum dated September 30, 1996 from the Office of the City Manager to the City Council
3. Statement of Overriding Considerations adopted by Resolution Nos. 93R-107 and 96R-176