



# San Diego City Attorney Jan I. Goldsmith

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## NEWS RELEASE

**FOR IMMEDIATE RELEASE: May 28, 2015**

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### **Plaza de Panama Project in Balboa Park Can Proceed** *Appellate court reverses ruling that delayed plan to improve parking, circulation*

A state appellate court today overturned a ruling by Superior Court Judge Timothy Taylor that has delayed the Plaza de Panama Project in Balboa Park for more than two years. The ruling clears the way for the City to proceed, if it wants, with plans to improve parking and traffic circulation in the park and to add new pedestrian-friendly plazas and gardens.

The Plaza de Panama Project won unanimous approval from the city Planning Commission and was approved by the City Council on a 7-1 vote in 2012. However, a lawsuit to stop the project was filed by the opposition group Save Our Heritage Organisation, which had supported a rival plan involving a network of hillside roadways and tunnels in the park.

The case was heard by Judge Taylor, who agreed with SOHO that the project could not go forward because the existing Plaza de Panama parking lot and roadways (which the project would replace with pedestrian plazas) constituted a “reasonable beneficial use” of Balboa Park’s historic core.

The ruling stemmed from a City ordinance making it illegal to approve a project that impacts a historic resource (in this case, Balboa Park) unless the City determines that the property being altered (in this case, the Plaza de Panama and adjacent areas) has “no reasonable beneficial use” other than the project.

The City argued that projected traffic congestion in the heart of Balboa Park was not a “reasonable beneficial use.” SOHO argued that a parking lot was a “reasonable beneficial use” for a plaza at the center of one of America’s great urban parks. Judge Taylor agreed with SOHO.

The appellate court heard the case on May 12 and agreed with the City. Its decision is attached.

In reversing Taylor, the appellate court embraced the arguments made by the City and the Committee in the first trial. It found that the City ordinance should not be interpreted to mean that there couldn’t be any benefit whatsoever in an existing use, but rather that the existing use must be “reasonable” as well.

The appellate court stated that the City had, in fact, identified a “core rationale” that addressed the question of what was reasonable for the park. That rationale was that denial of the project would mean existing traffic congestion and pedestrian-vehicle conflicts would continue to burden the park and its users, and would prevent the City from reclaiming those areas for people instead of cars. The court affirmed the City’s decision that these existing uses are not reasonable.

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The appellate court said its ruling “accords with the admonition that courts should endeavor to give statutes a commonsense interpretation.”

“The contrary interpretation – that a project must be rejected if there is anyone who could posit a conceivable beneficial use of the property without the project – would set a nearly insurmountable bar,” the appellate court wrote.

City Attorney Jan Goldsmith argued the City’s position before Judge Taylor, and Scott Williams of the law firm Seltzer Caplan McMahon Vitek argued on behalf of the Plaza de Panama Committee before Taylor and the Fourth Appellate District Court of Appeal.

Goldsmith said the ruling means that the project could still be revived despite the unnecessary loss of two years’ time if that is what the Mayor and the City Council want to do.

**“The fact that we were right on the law all along vindicates the City’s legal position, but may prove to be a hollow victory if this project is lost due to the two year delay arising from the lower court’s ruling,”** City Attorney Jan Goldsmith said. **“However, if San Diego still wants this project to go forward, it still has that opportunity.”**

Williams said the appellate court correctly identified the best public use for the Plaza de Panama

“The Court of Appeal affirmed the City’s decision that the best use of the core of Balboa Park is parkland devoted to pedestrians and free of cars,” Williams said. “The Court has cleared the way for a magnificent project to reclaim acres of parkland in the City’s most precious public space and at the same time eliminate intractable traffic congestion and increase available parking. This is a victory for the entire City of San Diego.”

Links to media coverage of Judge Taylor’s original decision can be found here:

<http://www.voiceofsandiego.org/balboa-park/judge-plaza-de-panama-approval-violates-city-law/>

<http://www.voiceofsandiego.org/balboa-park/judge-strikes-down-plaza-de-panama-approval/>

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