February 7, 1992

REPORT TO THE HONORABLE
MAYOR AND CITY COUNCIL

PROPOSED AMENDMENTS TO CHARTER SECTION 55 - DEDICATED PARK LAND

Attached as Attachment A is a draft of proposed changes to Charter Section 55.

Issue No. 1

Paragraph 1 of the draft proposes to add the phrase "open space" to the existing list of types of parks and public facilities. This office has no legal problem with the proposed addition and sees no practical problem if the proposed language is approved by the voters.

Issue No. 2

Paragraph 2 of the draft strikes the words "or later ratified." This office sees no legal or practical problem with such proposed change, with the possible exception of issues arising from the current legal controversy over the Mt. Soledad cross. That matter will perhaps be resolved by the electorate's vote on the Mt. Soledad matter in June.

Issue No. 3

Paragraph 2 of the draft also proposes the addition of the following language:

> A public facility shall only be deemed to be for park purposes if it is visitor serving and in direct support of recreational, cultural and educational use of the park in which such facility is located. The scale of the facility must be to service those using the park.

The proposed language raises various legal and practical problems. The charter already requires that all improvements to dedicated park land be for public park and recreation purposes. The sentence "The scale of the facility must be to service those using the park" is somewhat ambiguous. We know of no existing facility in any public park which is not of the appropriate "scale" to service those using the facility. The addition of such language to the charter could result in a variety of future legal challenges by anyone claiming that the "scale" of a proposed or existing facility is improper.

Regional parks often have facilities which cater to visitors from a broad geographical area. Example are, the San Diego Zoo and the museums in Balboa Park, and Sea World and the hotels and recreation areas in Mission Bay Park. Until such facilities are built they are not needed to

service existing park users. Once built, however, the "scale" is necessary to accommodate visitors.

The Belmont Park facilities are perhaps the most criticized facilities constructed in a public park in recent history. However, utilizing the proposed language, it would be difficult to argue that the "scale" of the Belmont Park facilities is inappropriate "to service those using the park."

Likewise, the recent improvements to accommodate visitors' access around Sail Bay could be argued by the local residents to be inappropriate in "scale."

The term "public facility" could also include underground utility lines through dedicated parks. In some circumstances, substantial public funds have been saved by allowing underground utilities to be installed through parks under conditions where such utilities will not adversely affect public park use. Such facilities often are larger in "scale" than is necessary to service only the park. The proposed language would, therefore, create potential legal conflicts without providing any specific benefit to the City.

Even discounting the substantial time and public expense involved in litigation, we submit that the City Council can best determine what public facilities are appropriate in dedicated public parks rather than leaving such determinations to various court judges.

If examples of what the City Council or the public considers inappropriate construction in public parks are provided to us, we can draft suggested language to appropriately control future similar developments.

Issue No. 4

The third paragraph of the attached draft proposes the addition to Charter Section 55 of the following language:

> Council shall annually review an inventory of all real property which has heretofore or which may hereafter be set aside without the formality of an ordinance or statute dedicating such lands for park or recreation purposes unless such dedication is deemed contrary to the public interest.

It is suggested that the proposed language be clarified to read as follows:

> The City Council shall annually review the inventory of all real property owned in fee by the City which has been set aside or designated by City Council action for park and recreation purposes without being formally dedicated by ordinance to such purposes. Following such annual review the

> City Council shall officially dedicate any such previously undedicated land for park and recreation purposes unless such dedication is deemed contrary to the public interest. The decision of the City Council shall be final and conclusive. This provision shall not apply to lands owned by the City's Water Utility.

With the above modifications this office does not see any legal problem with the proposed addition.

Issue No. 5

The last proposed change to Charter Section 55 is the deletion of the following language:

> Whenever the City Manager recommends it, and the City Council finds that the public interest demands it, the City Council may, without a vote of the people, authorize the opening and maintenance of streets and highways over, through and across City fee-owned land which has heretofore or hereafter been formally dedicated in perpetuity by ordinance of statute for park, recreation and cemetery purposes.

The above language was added to the City Charter in 1953 in order to allow for the relocation of Park Boulevard through Balboa Park. We do not have any legal problem with deletion of the language. We are informed by the City Manager that, as a practical matter, deletion of this language would have required a two-thirds vote on several projects accomplished in recent years (Attachment B) and could be required on a significant number of projects proposed for future construction (Attachment C). (Attachment C involves many parcels yet to be officially dedicated to park purposes.)

In many cases the cost of the election would have constituted a large part and, in some instances, exceeded the cost of the road improvements. Therefore, if a change is to be made, it is recommended that the City Council consider revising the existing language to read as follows:

> Whenever the City Manager recommends it, and the City Council finds that the public interest demands it, the City Council may by a two-thirds vote of the Council, without a vote of the people, authorize the realignment or widening of existing streets and highways through dedicated park land to protect the public health or safety, or if such actions

> are needed primarily to service the needs of visitors to the park. A two-thirds vote of the electorate shall, however, be required to authorize the dedication and construction of any new public road or street through dedicated public parks except where such new road or street is found by the Council, after a public hearing, to be needed primarily to service the needs of visitors to the park. This finding shall require a two-thirds vote of the Council.

At the council meeting of February 3, 1992, Councilmember Wolfsheimer asked whether the deletion of the above language would adversely affect access through the San Dieguito Regional Park and State Route 56. Large portions of the proposed San Dieguito Regional Park remain in private ownership or are owned by the City's Water Utility. To our knowledge no portion of the proposed park has yet been officially dedicated to park and recreation use. Therefore, at present and until such dedication, the City Council will be allowed to set aside roads and approve highway improvements, including granting right-of-way for State Route 56, through the property in accordance with applicable legal requirements, which do not include a vote of the electorate. If portions of San Dieguito Regional Park owned by the City are officially dedicated to park use it will be necessary, if the amendment is enacted, to exclude from park dedication all of the major streets and accessways through the park prior to such official dedication to park use or, in the alternative, obtain a two-thirds vote of the electorate for such roads subsequent to park dedication.

As a related matter, we understand that the present intention is that land acquired for San Dieguito Regional Park be acquired in the name of and owned by the Regional Park Joint Powers Authority. If such event occurs, since the property will not be owned in fee by the City, the City will not be able to officially dedicate the property by ordinance to park and recreation use. Therefore the voting requirements of Section 55 of the Charter would not be applicable to such property.

Summary

In summary:

> (1) Adding the phrase "open space" to the first paragraph of Charter Section 55 as proposed would not cause legal problems.
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> (2) We see no legal problem arising from the deletion of the phrase "or later ratified" from paragraph 2 of the charter section.
>
> (3) The proposed new language

requiring public facilities to be of appropriate "scale" would, in our opinion, cause substantial future legal problems.

(4) The proposed language requiring an annual review of lands subject to park dedication does not create any significant legal concern. However, we suggest that the language be modified as indicated above.

(5) The deletion of existing language authorizing the Council to establish roads through parks would not cause significant legal problems. However, various practical problems could arise from such deletion as noted above, and the alternative language shown above could be substituted to help minimize such practical problems.

Respectfully submitted,
JOHN W. WITT
City Attorney

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Attachments 3
RC-92-8