MEMORANDUM OF LAW

DATE: September 3, 1986

TO: Director, Park and Recreation Department
FROM: City Attorney
SUBJECT: Balboa Park - Naval Hospital Property - Use for Olympic Training Facilities

By memorandum dated August 14, 1986, you indicated that a tentative proposal had been made by interested parties to utilize the Balboa Park property being converted from Naval Hospital back to public park use for year-round permanent olympic training facilities including dormitories for athletes and administrative offices. Your memorandum further stated that if such facilities were constructed portions of them would probably not be accessible to the general public and that other portions of the facilities would only be accessible to the public during certain hours. You also indicated that a fee would probably be proposed for admission to the facilities at certain times. You asked whether an olympic training center with the above characteristics would qualify as a legal use of dedicated park land.

Athletic training facilities, generally speaking, would appear to be an appropriate use of a portion of a large dedicated park. In fact, various athletic training facilities already exist in Balboa Park in the form of various running, swimming, and indoor and outdoor court improvements. If a small portion of the proposed facilities were used for offices to house maintenance and administrative staff, such use would further qualify as a valid park use if such facilities were truly necessary and in the nature of "caretaker" buildings. Also the imposition of a fee is not contrary to park purposes as is evidenced by fees charged at numerous other facilities in Balboa Park and other City parks such as Mission Bay Park. In addition, the fact that park facilities are only open during certain hours, does not invalidate such facilities as a legal park use, as again is exemplified by numerous other Balboa Park and Mission Bay Park facilities.

One area of substantial concern with regard to the olympic training facilities would be a proposal to permanently close off portions of the site from public use. However, if the portions closed to public use were necessarily closed in order to have a properly functioning park use on the larger remainder portion of the facility, even a permanent closure to public use may be

justified. Take, for example, the San Diego Zoo which has significant areas which are closed off from public use in connection with the proper containment of the various animals. Any such closure, however, must be merely incidental, and related to and necessary to the proper functioning of a valid park facility. It would obviously not be an allowable park use to simply fence off a substantial portion of the Balboa Park property for exclusive use for the training of olympic athletes and thereby exclude the general public from use of the dedicated public park land.

The most difficult legal aspect of the olympic training facilities proposal is the portion dealing with "dormitories" for the athletes. As a general rule, permanent housing is not a legal use of a dedicated public park. On the other hand, transient housing, i.e., hotels, has been held a valid park use if such housing was determined to be necessary to properly accommodate the visitors to a large park. Harter v. San Jose, 141 Cal.659, 75 P344.

The proposed athletes' housing would appear to fall somewhere between permanent housing and transient housing. There is a significant chance that a court would find that year-round housing for athletes would not be a valid use of dedicated park land. There are, to our knowledge, no cases directly on point. It is the understanding of this office that a significant portion of the site would be devoted to long-term housing for up to several hundred athletes. If this is in fact the case, this office must conclude, in the absence of some court decision to the contrary, that such a use would not be a legal use of the Balboa Park property.

JOHN W. WITT, City Attorney
By
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Deputy City Attorney

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