

February 29, 1988

REPORT TO THE COMMITTEE ON PUBLIC SERVICES AND SAFETY
USE OF NAVAL HOSPITAL BUILDING NO.36 IN BALBOA PARK AS TEMPORARY
BOOKING AND HOLDING FACILITY - AGENDA OF MARCH 2, 1988

By memorandum dated February 18, 1988, copy attached, Deputy Mayor Gloria McColl indicated that the matter of the potential use of Building 36 in Balboa Park as a temporary booking and holding facility would be on your docket of March 2, 1988. She asked for this office to prepare a report on such potential use.

Attached for your information is the memorandum prepared for the County Grand Jury in October 1987. The voluminous attachments have not been included in your package but are available at your request.

You will note that the conclusion in the October 19 memorandum is that a jail or similar facility is not a legal use of dedicated public park property. You will also note that, in some circumstances, dedicated public park land has been used for nonpark purposes in emergency situations. The "emergency" situations which have been upheld by the courts for nonpark use of park land include the use of San Francisco parks for temporary housing after the 1906 earthquake, and also include the use of a portion of Griffith Park in Los Angeles for use for temporary housing purposes to alleviate an extreme housing shortage in that area following World War II. There is no case law addressing the specific issue of the use of park lands for jail purposes in an "emergency" situation.

However, a review of past court decisions indicates that if there are factual circumstances establishing a bona fide emergency situation with regard to the lack of facilities available for jail and related purposes, and if the facts indicate that the only facilities available to alleviate the emergency situation are located in a dedicated park, and if the facts further indicate that the nonpark use of the park facilities would be strictly temporary, then such nonpark use of park buildings could be supported in a court of law.

On the other hand, and as noted in the October 19, 1987, memorandum, "if all of the facts taken together merely indicate that a significant problem (as opposed to emergency) exists, it would appear difficult or impossible from a legal standpoint to justify utilizing a portion of Balboa Park for jail purposes."

Respectfully submitted,

JOHN W. WITT
City Attorney

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Attachments 2

RC-88-10