

(O-92-112)

ORDINANCE NUMBER O- 17745 (NEW SERIES)

ADOPTED ON FEB 24 1992

AN EMERGENCY ORDINANCE TO REMOVE A PORTION OF MT. SOLEDAD NATURAL PARK FROM DEDICATED PARK STATUS AND TRANSFERRING TITLE OF THE SAME PARCEL TO THE MT. SOLEDAD MEMORIAL ASSOCIATION

WHEREAS, San Diego City Charter section 17 provides for emergency ordinances that provide for the immediate preservation of public peace, property, health and safety; and

WHEREAS, the Mt. Soledad Memorial Cross, located in Mt. Soledad Natural Park, is a long-established war memorial and has also been designated as an historic landmark by the San Diego Historical Site Board; and

WHEREAS, The City of San Diego wishes to preserve all of its historic landmarks in accordance with applicable legal requirements; and

WHEREAS, in his December 3, 1991 Judgment, in the case of Paulson et al v. City of San Diego, the United States District Judge ruled that the Memorial Cross's location on public property violates the California Constitution; however, in the same opinion, the judge suggested that the constitutionality of the Memorial would be beyond question if it were located on private property; and

WHEREAS, the City wishes to take cognizance of the judge's remarks regarding the ownership of the land on which the Memorial is located; and

WHEREAS, the Mt. Soledad Memorial Association is a nonprofit corporation which built, owns and presently maintains the Memorial and is ready, willing and able to purchase the parcel of land described herein as Exhibit A; and agrees to preserve the land as open space for the benefit of the public; and

WHEREAS, Mt. Soledad Natural Park, originally Pueblo Lands, was dedicated as public park in 1916; and

WHEREAS, San Diego City Charter section 1 provides that the City may sell, lease, convey, exchange, manage and dispose of land as the interests of the City may require; section 2 specifies that the City's powers are subject only to the restrictions and limitations of the Charter; section 55 authorizes the City to change the use or purpose of dedicated park property with ratification by two-thirds (2/3) of the qualified electors of the City; section 219 provides for sale of Pueblo Lands by ordinance with later ratification by the voters; and

WHEREAS, the approximately fifteen by fifteen foot (15' x 15') parcel of land on which the Memorial is located has been appraised to determine fair market value as required by San Diego Municipal Code section 22.0902 (providing for the sale of City property when authorized by resolution); and

WHEREAS, the removal of the Mt. Soledad Memorial Cross prior to complete adjudication on the constitutionality of the Memorial in its present location would constitute waste of a designated historic landmark; and

WHEREAS, the cost of removal of the Memorial Cross prior to complete adjudication would involve the expenditure of City funds unnecessarily and in a manner violative of the City Charter, since all legal remedies for maintaining the Memorial would not have been exhausted; and

WHEREAS, the litigation that would likely result if the City were to remove, destroy or damage the Memorial, owned by the Mt. Soledad Memorial Association, would involve the expenditure of City funds unnecessarily and in a manner violative of the City Charter, since all legal remedies would not have been exhausted prior to such damage, destruction or removal; and

WHEREAS, the public outcry against removal of the Memorial has been extremely vocal and the Mayor of San Diego and City Councilmembers have been contacted repeatedly by constituents urging maintenance of the Memorial; and

WHEREAS, removal of a designated landmark without exhaustion of all legal remedies would denigrate the powers and authority of the City's Historical Site Board and create an unacceptable precedent; further, removal of a designated landmark in violation of the procedures promulgated by the Historical Site Board for removal of a designated landmark would constitute violation of relevant sections of the San Diego Municipal Code, the governing law of the City of San Diego; and

WHEREAS, citizens have publicly expressed through the media, and to the members of the Council, their intention to physically prevent removal of the Memorial, to the extent of placing their persons between any removal equipment and the Memorial itself, and bodily preventing any molestation of the Memorial; and

WHEREAS, the City Council hereby finds that, in fact, there is an emergency requiring immediate action by the Council to protect the public peace, property, health and safety by removing a portion of Mt. Soledad Natural Park from designated park status and selling and conveying that portion to the Mt. Soledad Memorial Association, a private nonprofit corporation; and

WHEREAS, the district court has set March 3, 1992 as the date by which the Memorial Cross must be removed; therefore, in the absence of an emergency ordinance the normal procedures for adoption of an ordinance could not be effectuated and hence, the Memorial would unnecessarily be destroyed; and

WHEREAS, the public benefits to be preserved by adoption of an emergency ordinance far outweigh any benefits to be derived from the normal ordinance processing procedure since the purpose of the normal thirty-day delay of the effective date of an ordinance is to allow for referendum; however, this matter has been placed on the June 3, 1992 ballot for approval; NOW, THEREFORE,

BE IT ORDAINED, by the Council of The City of San Diego, as follows:

Section 1.

(a) That, in order to preserve an historic war memorial and designated landmark, a portion of the property known as Mt. Soledad Natural Park, as more definitively described in Exhibit A, attached and incorporated herein by reference, is hereby removed from dedicated park status, and the City Manager is hereby authorized to

sell and convey said parcel to the Mt. Soledad Memorial Association for the sum of \$14,500, which has been appraised to be and which the City Council hereby accepts as the fair market value of the property, with ratification by two-thirds (2/3) of the qualified electors of the City, voting at an election for such purpose, a condition subsequent to the present transfer.

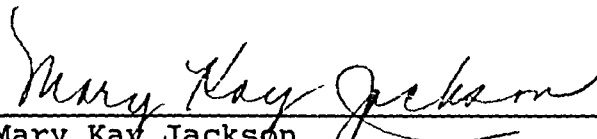
(b) That The City of San Diego may, at its discretion, pay a real estate broker's commission under the provisions of San Diego Municipal Code section 22.0905 for the sale of such real property; however, no broker's fee is involved in this transfer.

(c) That the property will be sold by negotiation to the Mt. Soledad Memorial Association since the Association built, presently owns and maintains the Memorial, and has agreed to purchase the referenced parcel.

(d) That in the event a court subsequently determines that the historic war memorial and designated landmark may legally stand on public property, the City may at any time repurchase said property for the original purchase price paid by the Mt. Soledad Memorial Association to The City of San Diego.

Section 2. This ordinance shall take effect immediately upon its passage and remain in effect until April 2, 1992.

APPROVED: JOHN W. WITT, City Attorney

By 
Mary Kay Jackson
Deputy City Attorney

MKJ:mb
02/24/92
Or. Dept: Pk. & Rec.
O-92-112
Form=o+t

0-17745

**LEGAL DESCRIPTION
MOUNT SOLEDAD CROSS**

ALL OF THAT PORTION OF LOT 1265 OF PUEBLO LANDS OF SAN DIEGO ACCORDING TO MISCELLANEOUS MAP NO. 36, FILED IN THE OFFICE OF THE COUNTY RECORDER OF SAN DIEGO COUNTY FEBRUARY 4, 1876, LYING WITHIN THE EXTERIOR LIMITS OF A SEVEN FOOT HIGH STEEL PICKET FENCE WHICH SURROUNDS THE MOUNT SOLEDAD CROSS AND IS MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE CENTER OF THE LARGE CONCRETE CROSS AS DESCRIBED AND LOCATED BY THE UNITED STATES DEPARTMENT OF COMMERCE COAST AND GEODETIC SURVEY IN 1955 AT LATITUDE 32°50'23.139" NORTH; LONGITUDE 117°14'37.699" WEST AND HAVING COORDINATES BASED UPON THE CALIFORNIA COORDINATE SYSTEM, ZONE 6, OF NORTH 246,354.68 AND EAST 1,694,745.98; THENCE SOUTH 62°14'14" WEST 10.82 FEET TO THE SOUTHWESTERLY CORNER OF A LINE WHICH FOLLOWS THE EXTERIOR LIMITS OF SAID STEEL PICKET FENCE, BEING ALSO THE TRUE POINT OF BEGINNING; THENCE ALONG SAID FENCE LINE, NORTH 16°37'17" EAST 14.90 FEET; THENCE SOUTH 73°41'25" EAST 14.90 FEET; THENCE SOUTH 16°37'17" WEST 14.90 FEET; THENCE NORTH 73°41'25" WEST 14.90 FEET TO THE TRUE POINT OF BEGINNING.

CONTAINING 222 SQUARE FEET, MORE OR LESS.



#1414A

FEB 24 1992

Passed and adopted by the Council of The City of San Diego on
by the following vote:

Council Members	Yeas	Nays	Not Present	Ineligible
Abbe Wolfsheimer	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ron Roberts	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
John Hartley	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
George Stevens	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Tom Behr	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Valerie Stallings	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Judy McCarty	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bob Filner	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Mayor Maureen O'Connor	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

AUTHENTICATED BY:

MAUREEN O'CONNOR
Mayor of The City of San Diego, California.

(Seal)

CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, California.

By *Mary Cepeda*, Deputy.

I HEREBY CERTIFY that the foregoing ordinance was passed on the day of its introduction, to wit, on
FEB 24 1992, said ordinance being of the kind and character
authorized for passage on its introduction by Section 16 of the Charter.

~~I FURTHER CERTIFY that the final reading of said ordinance was in full.~~

I FURTHER CERTIFY that the reading of said ordinance in full was dispensed with by a vote of not
less than a majority of the members elected to the Council, and that there was available for the con-
sideration of each member of the Council and the public prior to the day of its passage a written or printed
copy of said ordinance.

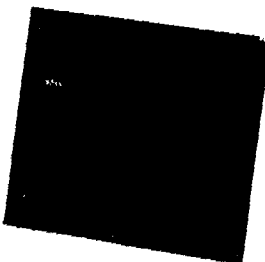
CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, California.

(Seal)

By *Mary Cepeda*, Deputy.

Office of the City Clerk, San Diego, California

Ordinance Number **0-17745** Adopted **FEB 24 1992**



RECEIVED
92 FEB 24 PM 12:00
CITY CLERKS OFFICE
SAN DIEGO, CA

4440

4440

CERTIFICATE OF PUBLICATION

RECEIVED
CITY CLERK'S OFFICE

92 MAR 11 AM 9:45

SAN DIEGO, CALIF.

CA

OFFICE OF THE CITY CLERK
CITY ADMIN. BLDG.
202 C ST., 2ND FLOOR
SAN DIEGO, CA 92101
ATTN: MARY CEPEDA

IN THE MATTER OF

NO.

AN EMERGENCY ORDINANCE TO REMOVE A PORTION...

ORDINANCE NUMBER O-17745 (NEW SERIES)
AN EMERGENCY ORDINANCE TO REMOVE A PORTION OF MT. SOLEDAD NATURAL PARK FROM DEDICATED PARK STATUS AND AUTHORIZING TRANSFER OF TITLE OF SAME TO THE MT. SOLEDAD MEMORIAL ASSOCIATION.
The emergency ordinance is enacted as a result of the United States District Court judgment in Paulson et al v. City of San Diego, which found the Mt. Soledad Memorial Cross, while located on public property, to be in violation of the California Constitution. Therefore, by this ordinance the City is removing an approximately 15' x 15' parcel of land on which the cross stands from dedicated park status and authorizing the City Manager to transfer ownership of the same parcel to the Mt. Soledad Memorial Association, the owner of the structure located thereon. An emergency ordinance is necessary because of the City's exposure to liability, potential waste of private property, public outcry, and potential danger to the public that could result from removal of the Memorial cross.
Pub. Mar. 9 244499

I, Corey Donahue, am a citizen of the United States and a resident of the county aforesaid; I am over the age of eighteen years, and not a party to or interested in the above-entitled matter. I am the principal clerk of the San Diego Daily Transcript, a newspaper of general circulation, printed and published daily, except Saturdays and Sundays, in the City of San Diego, County of San Diego and which newspaper has been adjudged a newspaper of general circulation by the Superior Court of the County of San Diego, State of California, under the date of January 23, 1909, Decree No. 14894; and the

ORDINANCE NUMBER O-17745 (NEW SERIES)

is a true and correct copy of which the annexed is a printed copy and was published in said newspaper on the following date(s), to wit:

MARCH 9

I certify under penalty of perjury that the foregoing is true and correct.

Dated at San Diego, California this 9TH day of MARCH, 19 92.

Corey Donahue

(Signature)

3 1/4" = 43.56