

(O-92-113)

ORDINANCE NUMBER O- 17750 (NEW SERIES)

ADOPTED ON MAR 16 1992

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

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; agrees to preserve the land as open space for the benefit of the public; and

WHEREAS, Mt. Soledad Natural Park was originally Pueblo Lands, and was dedicated as a 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; and 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 as required by San Diego Municipal Code section 22.0902 (providing for the sale of City property when authorized by resolution); NOW, THEREFORE, 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 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 and be in force thirty days after its adoption.

APPROVED: JOHN W. WITT, City Attorney

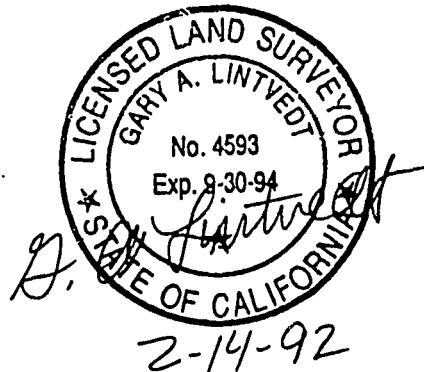
By Mary Kay Jackson
Mary Kay Jackson
Deputy City Attorney

MKJ:mb
02/24/92
Or.Dept:Pk.&Rec.
0-92-113
Form=o+t

**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.



E X H I B I T A

0- 17750

#154

MAR 16 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 checked="" type="checkbox"/> | <input type="checkbox"/> | <input 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: *Shirley Olin*, Deputy.

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on **FEB 24 1992**, and on **MAR 16 1992**

~~I FURTHER CERTIFY that said ordinance was read in full prior to its final passage.~~

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 consideration of each member of the Council and the public prior to the day of its passage a written or printed copy of said ordinance.

(Seal)

CHARLES G. ABDELNOUR
City Clerk of The City of San Diego, California.
By: *Shirley Olin*, Deputy.

| | |
|---|--------------|
| Office of the City Clerk, San Diego, California | |
| Ordinance Number..... | Adopted..... |
| 0- 17750 | MAR 16 1992 |

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(Seal)

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

By: *[Signature]*, Deputy.

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|---|---|
| Office of the City Clerk, San Diego, California | |
| Ordinance Number | 0-17750 Adopted MAR 16 1992 |

RECEIVED
92 FEB 24 PM 12:00
CITY CLERK'S OFFICE
SAN DIEGO, CA

FEB 24 1992

FEB 17 1992

FEB 17 1992