

(O-99-47)

ORDINANCE NUMBER O- 18586 (NEW SERIES)

ADOPTED ON SEP 29 1998

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO AUTHORIZING THE CITY MANAGER TO SELL .509 ACRES AT THE TOP OF MT. SOLEDAD FOR USE BY A PRIVATE NONPROFIT CORPORATION AS A WAR MEMORIAL SITE.

WHEREAS, in 1993, the United States Court of Appeals for the Ninth Circuit affirmed a ruling of the United States District Court that the permanent presence of a Latin cross in a public park at the top of Mt. Soledad was unconstitutional; and

WHEREAS, the United States Supreme Court declined to review the decision of the Ninth Circuit and both the trial court and the Court of Appeals indicated the City had the option of either removing the cross or selling the property upon which it stands; and

WHEREAS, in the June 1992 primary election, the voters of the City of San Diego, by a majority of 76 percent, authorized the removal from dedicated park status of that portion of the Mt. Soledad Natural Park necessary to maintain the property as a war memorial, and the transfer of the same parcel by the City to a private nonprofit corporation for not less than fair market value; and

WHEREAS, pursuant to that voter authorization, the City sold approximately 222 square feet of land immediately beneath the cross to the Mt. Soledad Memorial Association, a civic organization which has maintained the cross since the 1950s; and

WHEREAS, in September 1997, the United States District Court ruled that the sale of this parcel to the Memorial Association did not cure the constitutional infirmities identified in the

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court's initial ruling, finding fault with both the method of sale and the small amount of land involved; and

WHEREAS, in response to the court's ruling, the City Council directed the City Attorney and the City Manager to sell a parcel of land using a method of sale similar to what was done in San Francisco in connection with the sale of the Mt. Davidson cross site; and

WHEREAS, in June 1998, the City solicited requests for proposals from private nonprofit corporations interested in purchasing .509 of an acre at the top of Mt. Soledad for use as a war memorial site. There were approximately forty requests for copies of the invitation for proposals — from as far away as Texas, Illinois, and Minnesota. Five proposals were submitted, all just prior to the July 31, 1998, 9:00 a.m., deadline; and

WHEREAS, the invitation indicated that proposals would be evaluated based on 1) bid on the sale price, 2) financial capability, 3) expertise regarding the proposed use, and 4) the use proposed — without regard to whether or not such proposal includes the retention or maintenance of a cross as the war memorial; NOW, THEREFORE,


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

Section 1. That after careful consideration of the five proposals and consideration of the testimony, exhibits and facts as presented at the public hearing, all hereby incorporated by reference into this ordinance to form the record supporting this decision, the Council authorizes the City Manager to sell a .509 acre parcel at the top of Mt. Soledad to Mt. Soledad Memorial Assoc. for the purpose of maintaining a war memorial site.

Section 2. That a full reading of this ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the City Council and the public a day prior to its final passage.

Section 3. This ordinance shall not become effective until the thirtieth day following the date of its adoption.

APPROVED: CASEY GWINN, City Attorney

By 

Richard A. Duvernay
Deputy City Attorney

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