

ORDINANCE NUMBER O- 19306 (New Series)

ADOPTED ON JUL 27 2004

AN ORDINANCE SUBMITTING TO THE QUALIFIED VOTERS OF THE CITY OF SAN DIEGO AT THE MUNICIPAL ELECTION CONSOLIDATED WITH THE STATEWIDE GENERAL ELECTION TO BE HELD ON NOVEMBER 2, 2004, ONE PROPOSITION PERTAINING TO AUTHORIZATION TO SELL A PORTION OF MOUNT SOLEDAD NATURAL PARK TO A PRIVATE OWNER

WHEREAS, pursuant to San Diego Charter section 223, Article 11, section 3(b) of the California Constitution, and California Elections Code section 9255(a)(2), the City Council has authority to place Charter amendments on the ballot to be considered at a Municipal Election; and

WHEREAS, by Ordinance No. O- 19305, adopted on JUL 26 2004, 2004, the Council of the City of San Diego is calling a Municipal Election to be consolidated with the Statewide General Election on November 2, 2004, for the purpose of submitting to the qualified voters of the City one or more ballot propositions; and

WHEREAS, San Diego City Charter section 55 allows the City to remove parkland from dedicated park status and transfer that land to private ownership when authorized by two-thirds (2/3) of the qualified electors of the City voting at an election for such purpose; 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 Mount Soledad Natural Park necessary to maintain the property as a memorial, and also

authorized 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 the June 1992 voter authorization, the City sold approximately 222 square feet of land in the Mount Soledad Natural Park to the Mount Soledad Memorial Association; and

WHEREAS, in September of 1997, the United States District Court ruled that the sale of the Mount Soledad parcel to the Mount Soledad Memorial Association had certain constitutional infirmities and found fault with both the method of sale and the amount of land sold; and

WHEREAS, in June of 1998, the City solicited requests for proposals from private nonprofit corporations interested in purchasing .509 of an acre at the top of Mount Soledad for use as a war memorial site, and thereafter sold such portion to the Mount Soledad Memorial Association, as the high bidder, for \$106,000; and

WHEREAS, the Mount Soledad Memorial Association has built on the site at the top of Mount Soledad a world-class war memorial honoring military veterans which is comprised of granite walls with more than 1,500 plaques purchased by private citizens to honor more than 3,000 veterans; and

WHEREAS, on June 26, 2002, an *en banc* panel of the United States Court of Appeals for the Ninth Circuit held that the manner of sale was constitutionally infirm because it financially favored bidders who wished to preserve a cross located on the subject property and indicated that the 1998 sale to the Mount Soledad Memorial Association may be void; and

WHEREAS, the June 26, 2002, decision by the *en banc* panel of the United States Court of Appeals for the Ninth Circuit also indicated that language in the ballot materials associated with the 1992 ballot proposition may have given the appearance of a preference for a religion in

[CORRECTED PAGE 7/29/04]

contravention of the California Constitution's prohibitions against aiding or favoring religion;  
and

WHEREAS, in accordance with the June 26, 2002, decision by the *en banc* panel of the United States Court of Appeals for the Ninth Circuit, it is believed the sale of a portion of Mount Soledad Natural Park may be accomplished without constitutional infirmity; and

WHEREAS, due to the constitutional infirmity of the prior sale as identified by the Court and described above, the City believes that the prior sale is void and another vote of the electorate is legally required to undedicate the land and allow for another sale; and

WHEREAS, because the Mount Soledad Memorial Association and the plaintiff may not agree with the City that the prior sale is void and one or both may contest title issues in court, it is hereby acknowledged that any sale of the property, if authorized by the electorate, is contingent upon a resolution of the ownership issue and a return of title to the property to the City. However, because the next regularly scheduled municipal election is not until March 2006 and because it has been estimated that a special election would cost the City approximately two million dollars, it is in the citizens' best interest to take action on the dedicated status and sale of the Mount Soledad property at the election scheduled for November 2004 despite the uncertain status of the ownership of the property; NOW, THEREFORE,

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

Section 1. One proposition is hereby submitted to the qualified voters of the City at a Municipal Election to be held on November 2, 2004, to read as follows:

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**PROPOSITION**

**Mount Soledad Natural Park**

Shall the City be authorized to remove from dedicated park status and sell to the highest bidder a portion of Mount Soledad Natural Park, subject to a lease to the Mount Soledad Memorial Association to preserve and maintain the existing granite walls and plaques, and to transfer ownership of the cross to the new buyer who will determine whether to maintain, relocate, or remove the cross or to replace it with another appropriate monument?

**END OF PROPOSITION**

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Section 2. The proposition shall be presented and printed upon the ballot and submitted to the voters in the manner and form set out in Section 3 of this ordinance.

Section 3. On the ballot to be used at this Municipal Election, in addition to any other matters required by law, there shall be printed substantially the following:

[CORRECTED PAGE 7/28/04]

<p><b>PROPOSITION ____ . MOUNT SOLEDAD NATURAL PARK</b></p>	<p>YES</p>	
<p>Shall the City be authorized to remove from dedicated park status and sell to the highest bidder a portion of Mount Soledad Natural Park, subject to a lease to the Mount Soledad Memorial Association to preserve and maintain the existing granite walls and plaques, and to transfer ownership of the cross to the new buyer who will determine whether to maintain, relocate, or remove the cross or to replace it with another appropriate monument?</p>	<p>NO</p>	

Section 4. An appropriate mark placed in the voting square after the word “Yes” shall be counted in favor of the adoption of this proposition. An appropriate mark placed in the voting square after the word “No” shall be counted against the adoption of the proposition.

Section 5. Passage of this proposition requires the affirmative vote of two-thirds of those qualified electors voting on the matter at the Municipal Election.

Section 6. Passage of this proposition is an authorization for the City to sell property but does not require the dedicated parkland to be sold pursuant to adoption of the proposition. As noted above, any such sale, if authorized, is contingent upon a resolution of the ownership issues regarding the property as described above.

Section 7. The City Clerk shall cause this ordinance or a digest of this ordinance to be published once in the official newspaper following this ordinance’s adoption by the City Council.

[CORRECTED PAGE 7/29/04]

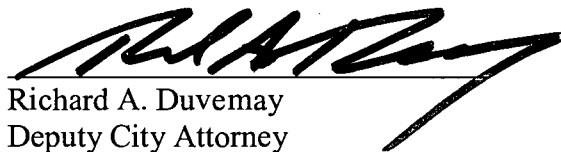
Section 8. A full reading of this ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the City Council and the public a day prior to its final passage.

Section 9. Pursuant to San Diego Municipal Code section 27.0402, this measure will be available for public examination for no fewer than ten calendar days prior to being submitted for printing in the sample ballot. During the examination period, any voter registered in the City may seek a writ of mandate or an injunction requiring any or all of the measure to be amended or deleted. The examination period will end on the day that is 75 days prior to the date set for the election. The Clerk shall post notice of the specific dates that the examination period will run.

Section 10. Pursuant to section 17 of the San Diego City Charter, this ordinance relating to elections shall take effect on JUL 27, 2004, which is the day of its introduction and passage.

APPROVED: CASEY GWINN, City Attorney

By

  
Richard A. Duvemay  
Deputy City Attorney

RD:LF:EC:jb:cs  
07/22/2004  
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Or.Dept: Mayor  
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