

RESOLUTION NUMBER R- 301484
DATE OF FINAL PASSAGE MAY 30 2006

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO ACCEPTING THE LITIGATION UPDATE AND REPORT AND DIRECTING THE CITY ATTORNEY TO FILE AN APPEAL AND SEEK A STAY IN THE MATTER OF *PHILIP K. PAULSON V. CITY OF SAN DIEGO*, UNITED STATES DISTRICT COURT CASE NO. 89CV820GT(POR) AND TO CONTINUE THE APPEAL IN THE MATTER OF *PHILIP K. PAULSON V. CHARLES ABDELNOUR, ET AL.*, SAN DIEGO SUPERIOR COURT CASE NO. GIC849667

WHEREAS, in 1913, private citizens erected redwood cross atop Mount Soledad; and

WHEREAS, the City of San Diego dedicated the area as a public park in 1916, which would later become known as the Mount Soledad Natural Park; and

WHEREAS, after the original redwood cross was destroyed by vandals and its wood-stucco replacement destroyed by high winds in 1952, private citizens again raised funds to construct a twenty-nine foot, concrete cross which stand in the Mount Soledad Natural Park (Mount Soledad Property) to this day; and

WHEREAS, the cross was dedicated as a tribute to veterans of both World Wars and the Korean War by the Mount Soledad Memorial Association in 1954; and

WHEREAS, in 1989, Philip Paulson filed suit against the City of San Diego alleging the presence of the cross on public property violated by the United States and California Constitutions in the matter of *Philip K. Paulson v. City of San Diego*, United States District Court Case No. 89cv00820-GT (POR); and

WHEREAS, the United States District Court held the presence of the cross on public property violated the No Preference Clause of the California Constitution which prohibits the

government from providing, or appearing to provide, preferential treatment to one religion over another, and issued a permanent injunction forbidding the permanent presence of the cross on public property in 1991; and

WHEREAS, the City of San Diego's attempts to comply with the District Court's injunction by selling the Mount Soledad Property were successfully challenged by Philip Paulson as impermissible acts as violations of the California Constitution; and

WHEREAS, on November 20, 2004, Congress adopted Bill No. 4818 (P.L. 108-447) which included a provision that, should the City of San Diego offer to donate the Mount Soledad Property to the federal government, the National Park Service was required to accept title to the property for the purpose of creating a national memorial honoring veterans of the United States Armed Forces; and

WHEREAS, on May 17, 2005, the San Diego City Council adopted Ordinance No. O-19378 placing Proposition A on the July 26, 2005, special municipal election for the City of San Diego; and

WHEREAS, Proposition A, if approved, would have authorized a transfer of the Mount Soledad Property to the federal government for a national memorial; and

WHEREAS, Proposition A passed, receiving approximately 76% of the vote; and

WHEREAS, on June 24, 2005, Philip Paulson initiated a pre-election challenge to Proposition A in the matter of *Philip K. Paulson v. Charles Abdelnour, et al.*, San Diego Superior Court Case No. GIC849667, arguing, among other things, that Proposition A was an unconstitutional attempt to preserve the cross; and

WHEREAS, on November 28, 2005, the San Diego Superior Court entered judgment against the City of San Diego in the matter of *Philip K. Paulson v. Charles Abdelnour, et al.*, San Diego Superior Court Case No. GIC 849667, the Superior Court finding both Ordinance No. O-19378 and Proposition A to be unconstitutional; and therefore, invalid and unenforceable; and

WHEREAS, on January 27, 2006, a Notice of Appeal was filed in the matter of *Philip K. Paulson v. Charles Abdelnour, et al.*, San Diego Superior Court Case No. GIC 849667, on behalf of the City of San Diego and the City Clerk to preserve the right to appeal; and

WHEREAS, on May 3, 2006, the United States District Court granted Philip Paulson's motion to enforce the 1991 injunction in the matter of *Philip K. Paulson v. City of San Diego*, United States District Court Case No. 89cv820GT(POR), and ordered that the City of San Diego comply with the injunction forbidding the permanent presence of the cross on public property within 90 days or be fined \$5,000 per day for each day the cross remains on City property after the 90 days have expired;

WHEREAS, on May 23, 2006, the City Attorney provided a litigation update and report to the Mayor and Council, in the matters of *Philip K. Paulson v. City of San Diego*, United States District Court Case No. 89cv820GT(POR); and, *Philip Paulson v. Charles Abdelnour, et al*, San Diego Superior Court Case No. GIC849667; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego that the litigation update and report to the Mayor and Council, in the matters of *Philip K. Paulson v. City of San Diego*, United States District Court Case No. 89cv820GT(POR); and, *Philip Paulson v. Charles Abdelnour, et al*, San Diego Superior Court Case No. GIC849667 on file in the office of the City Clerk as Document No. RR- 301484 is accepted.

BE IT FURTHER RESOLVED, that the City Attorney is directed to file an appeal and seek a stay in the matter of *Philip K. Paulson v. City of San Diego*, United States District Court Case No. 89cv820GT(POR) in the Ninth District Court of Appeal.

BE IT FURTHER RESOLVED, that the City Attorney is directed to continue the appeal in the matter of *Philip K. Paulson v. Charles Abdelnour, et al.*, San Diego Superior Court Case No. GIC849667.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By David J. Karlin
David J. Karlin
Deputy City Attorney

DJK:dmt
05/10/06
Or.Dept:Mayor
R-2006-971

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of ~~MAY 23 2006~~.

ELIZABETH S. MALAND
City Clerk

By Maureen E. Ketchum
Deputy City Clerk

Approved: 5-30-06
(date)

Jerry Sanders
JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor

Passed by the Council of The City of San Diego on MAY 23 2006, by the following vote:

Council Members	Yeas	Nays	Not Present	Ineligible
Scott Peters	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Kevin Faulconer	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Toni Atkins	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Anthony Young	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Brian Maienschein	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Donna Frye	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jim Madaffer	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Ben Hueso	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage MAY 30 2006

AUTHENTICATED BY:

(Seal)

JERRY SANDERS
Mayor of The City of San Diego, California.

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By *Mary Cepeda*, Deputy

Office of the City Clerk, San Diego, California
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