

MEMORANDUM OF LAW

DATE: October 30, 1985

TO: George Loveland, Park and Recreation Director

FROM: City Attorney

SUBJECT: Park Fees Ordinance for Twenty-six Community  
Planning Areas

The 1472 form requesting an amendment to Chapter X, Article 2, Division 4 of the San Diego Municipal Code is returned for further analysis and consideration.

The difficulty perceived in the proposed legislation is that it appears to create a special tax to finance general park and recreation activities and operations, rather than creating an assessment for park facilities acquisition and development. This is because the proposed fee is uniform and, in effect, is rendered city-wide in its application. It is unrelated to any particular district and an identified project or park deficit within that district. It lacks the indicia of an assessment for

property related benefits that would survive a "Proposition 13" attack. (See Cal.Const. Art. XIII A.)

It is recommended that the following additional considerations be addressed before undertaking legislative enactment.

1. That park and recreation capital deficits be identified and costed-out, on an individual community plan area basis, based on the difference between funds already generated by San Diego Municipal Code sections 96.0403 and 102.0406.06, and current needs;
2. That precise fees relative to each community plan area deficit be established or projected;
3. That the funds be specifically restricted to capital outlay and improvement projects and park acquisition rather than being expended for "park and recreation projects," the latter of which could include general administrative costs.

Each of these steps may improve the judicial survivability of an increased fee for a designated area. Several areas could be combined if a common deficit is identified. Otherwise, they should be kept as separate as is feasible to preserve the assessment concept. It is noted that the existing fees of \$100 and \$75 established in San Diego Municipal Code sections 96.0403

and 102.0406.06 are not presently affected by Proposition 13, whereas any increases would be suspect absent an assessment approach tailored to the particular planning area.

As a procedural matter, it is also noted that one existing provision of San Diego Municipal Code section 102.0406.06 refers to section 102.0804; section 102.0804 was however repealed by Ordinance O-12066 N.S. of May 11, 1977. Some harmonization of the applicable sections seems appropriate during review of this subject.

JOHN W. WITT, City Attorney

By

Rudolf Hradecky

Deputy City Attorney

RH:ls:645(x043.2)

ML-85-72