

MEMORANDUM OF LAW

DATE: January 5, 1987

TO: Councilwoman Judy McCarty  
FROM: City Attorney  
SUBJECT: Necessity of Offering Appraised Fair Market Value in Connection with City Acquisitions of Real Property

By memorandum dated October 8, 1986, you indicated that the State Legislative Counsel opined earlier this year that the City of San Diego is not required to pay appraised value for property it acquires but may negotiate with an owner for a lower price. See Attachment 1. You also indicated that you understood that this office felt that Government Code Section 7267.2 requires that the City offer the full appraised value when acquiring property. Your memorandum requested an opinion as to whether the City must pay full fair market value based upon an appraisal when acquiring property and specifically you asked for clarification on the following points:

1. Is this statute binding on charter cities, such as San Diego?
2. This statute is in a Chapter of the Code on "Relocation Assistance." If it is binding on charter cities, does this statute pertain to all purchases of land, or only those not involving relocation of a person or personal property?
3. Section 7274 and, to a lesser extent, Section 7270 of that same Chapter appear to negate any effects of violating Section 7267.2. What is the significance of these other two sections?

In order to understand the purpose of Section 7267.2, it is necessary to review the provisions of Sections 7267 and 7267.1. Section 7267 provides as follows:

In order to encourage and expedite the acquisition of real property by agreements with owners, to avoid litigation and relieve congestion in the courts, to assure consistent treatment for owners in the public programs, and to promote public confidence in public land acquisition practices, public entities shall, to the greatest extent practicable, be guided by the provisions of Sections 7267.1 to 7267.7, inclusive, except that the provisions of subdivision (b) of Section 7267.1 and Section 7267.2 shall not apply to the acquisition of any easement, right-of-way, covenant, or other

nonpossessory interest in real property to be acquired for the construction, reconstruction, alteration, enlargement, maintenance, renewal, repair, or replacement of subsurface sewers, waterlines or appurtenances, drains, septic tanks, or storm water drains.

You will note that the stated purpose of Sections 7267.1 to 7267.7 is not only to avoid litigation but "to ensure consistent treatment for owners in the public program, and to promote public confidence in public land acquisition practices."

Section 7267.1 provides as follows:

(a) The public entity shall make every reasonable effort to acquire expeditiously real property by negotiation.

(b) Real property shall be appraised before the initiation of negotiations, and the owner, or his designated representative, shall be given an opportunity to accompany the appraiser during his inspection of the property.

This office has, in the past, encouraged the City's Property Department to comply with the provisions of Section 7267 et seq. "to the greatest extent practicable" as specified in Section 7267.

A copy of the full text of Section 7267.2, as amended in 1985, is attached as Attachment 2 for reference. You will note that significant amendments have recently been incorporated into the section which provide as follows:

...

(b) Notwithstanding subdivision (a), a public entity may make an offer to the owner or owners of record to acquire real property for less than an amount which it believes to be just compensation therefor if (1) the real property is offered for sale by the owner at a specified price less than

the amount the public entity believes to be just compensation therefor, (2) the public entity offers a price which is equal to the specified price for which the property is being offered by the landowner, and (3) no federal funds are involved in the acquisition, construction, or project development.

(c) As used in subdivision (b), "offered for sale" means any of the following:

(1) Directly offered by the landowner to the public entity for a specified price in advance of negotiations by the public entity.

(2) Offered for sale to the general public at an advertised or published, specified price set no more than six months prior to and still available at the time the public entity initiates contact with the landowner regarding the

public entity's possible acquisition of the property.

As you know, Section 7267.2 is a part of Chapter 16 of Division 7 of Title 1 of the State Government Code, which chapter deals basically with relocation assistance and requires relocation payments when any person or business is displaced from property as a result of the property being acquired by a public entity. The term "public entity," as defined in Section 7260 includes "the state, the Regents of the University of California, a county, city, city and county, district, public authority, public agency, and any other political subdivision or public corporation in the state when acquiring real property, or any interest therein, in any city or county for public use."

In answer to your first question, there has been no reported judicial decision with regard to whether or not the above language and, therefore, the entire Relocation Assistance Act applies to charter cities. However, the above language, while not specifically mentioning "charter" cities, specifically indicates that it includes all public agencies in the State, including the State. The chapter provides a comprehensive process for compensating persons for costs incurred in relocating from property acquired by public entities. In our opinion, the section was intended to apply to charter cities.

In answer to your second question, please see Attachment 3 which is a memorandum prepared by a legal intern in this office on the subject. You will note, that the legal intern concluded that Section 7267.2 applies only to developed property from which a person or a business will be forced to relocate in connection

with the acquisition of the property for public purposes. We concur generally in the conclusions of the intern. However, it should be noted that the California Code in *People v. Zivelonghi*, 183 Cal.App.3d 187 (July 1986), which apparently dealt principally with unimproved, uninhabited property, cited Section 1250.410 of the California Code of Civil Procedure which section deals with compensation and attorneys' fees in condemnation cases and states in part:

In determining the amount of such litigation expenses, (and whether or not the City must pay the attorneys' fees for the property owner) the court shall consider the offer required to be made by the plaintiff pursuant to Section 7267.2 of the Government Code and any other written offers and demands filed and served prior to or during the trial.

Therefore, it is imperative in any case involving future potential acquisition by eminent domain, that the provisions of Section 7267.2 be followed even with regard to unimproved property.

With regard to your third question, Section 7270, copy attached as Attachment 4, applies only to properties involving condemnation proceedings as of September 6, 1969 and would not, therefore, affect the City's present activities. As to Section 7274 which reads as follows:

Sections 7267 to 7267.7, inclusive, create no rights or liabilities and shall not affect the validity of any property acquisitions by purchase or condemnation.

It is our conclusion that that section is intended to make it clear that properties acquired by purchase or condemnation by a City shall be owned in fee once the acquisition is complete regardless of whether the City has complied with the provisions of Sections 7267 to 7267.7. The section does not, however, indicate that individuals entitled to the rights created by those sections may not seek injunctive relief or money damages by filing claims within the statutory period in the event a City does not comply with said sections.

As a related matter, since the City holds all public monies in trust to be used for public purposes, it is our opinion that any time the City proposes to utilize public monies for the acquisition of real property, the City must ascertain that it is not paying more than fair market value for the property. In order to make such determination of value prior to expending the public's funds it is necessary, as a practical matter, to obtain

either a staff appraisal or an appraisal by an independent appraiser. The fact that the City is not obligated to offer the full appraised value in certain circumstances does not obviate the necessity for the appraisal itself.

In conclusion, the Relocation Assistance Act and specifically the provisions of 7267.2 apply to a charter city such as San Diego. Section 7267.2, however, is applicable only to developed property where relocation assistance is required. Section 7267.2 also allows the City to acquire developed properties by offering less than full appraised fair market value under certain specified circumstances. (See Attachment 2.) In dealing with unimproved property the City may negotiate or offer less than appraised fair market value. However, if condemnation is contemplated, the provisions of Section 7267.2 should be followed even if the property is unimproved. All proposed real property acquisitions with public funds must be supported by a staff or independent fee appraisal to assure that the City does not pay more than fair market value for property.

JOHN W. WITT, City Attorney

By

Harold O. Valderhaug

Deputy City Attorney

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Attachments 4

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