

MEMORANDUM OF LAW

DATE: February 11, 1986

TO: George Loveland, Director, Park and
Recreation Department, via Assistant City
Manager

FROM: City Attorney

SUBJECT: Proposed Use of a Portion of Balboa Park by The
Combined Health Agencies Drive (CHAD)

The attached letter dated October 25, 1985, from CHAD renews its request that it be considered as a potential user of a portion of the Balboa Park property to be returned to the City by the United States Navy.

As you know, in response to an earlier similar request by CHAD, this office concluded that CHAD's use, if similar to a hospital use, would not be a valid park use and that CHAD could not, therefore, be considered as a potential future user of the park property.

The attached letter clarifies CHAD's proposed use and explains that the use would not be in the nature of a hospital use but instead would be to use the property to "assist local patients and their families through a variety of free supportive services which advise the patient of services available."

There are 15 agencies which make up CHAD all of which are involved in the various medical fields. The October 25 letter explains, for example, that the "Heart Association provides free literature, films and diet consultation by a registered dietician, as well as speakers for schools, businesses, and community groups." The letter explains that "this is the type of service provided by all of the agencies, not the actual 'laying on of hands'."

A review of the descriptions of the services provided by the fifteen members of CHAD indicates that most of the groups do indeed provide counseling, literature, information and referral services in addition to other services.

As stated in previous memoranda, the general rule for park use is that parks must be utilized solely and exclusively for park and recreation and related support activities. For example, the courts have defined "park" as indicated below and found that the uses listed below are appropriate uses of a dedicated public park:

1. A "park" is a piece of ground acquired by city or

town for ornament and as a place for resort of public for recreation and amusement. *McAluthlin v. City and County of Denver*, 280 P.2d 1103, 1106, 131 Colo. 222.

2. A "park" is a pleasure ground maintained at state expense and set apart for recreation of public to promote its health and enjoyment, and which all persons are invited to enter and to enjoy attractions and scenery thereof. *Mitchell v. State*, 85 N.Y.S.2d 80, 88, 193 Misc. 507.

3. A "park" is a pleasure ground set apart for recreation of the public, to promote its health and enjoyment. It need not and should not be a mere field or open space, but monuments and buildings of architectural pretension which attract the eye and divert the mind of the visitor, floral and horticultural displays, zoological gardens, playing grounds, and even restaurants and rest houses and many other common incidents of a pleasure ground contribute to the use and enjoyment of the "park." *Aquamsi Land Co. v. City of Cape Girardeau*, 142 S.W.2d 332, 335, 346 Mo. 524.

4. A park is a place to be kept open and ornamented for public uses, which may include anything conducing to the public pleasure, amusement, recreation, or health. *Rowzee v. Pierce*, 23 So. 307, 309, 75 Miss. 846, 40 L.R.A. 402, 65 Am.St.Rep. 625.

5. Though "park" primarily involves the idea of open air and space, occupation of park in part by monuments, statues, museums, and other agencies contributing to aesthetic enjoyment is not perversion of lands from "park purposes." *In re Central Parkway, City of Schenectady*, 251, N.Y.S. 577, 580, 140 Misc. 727.

The following uses of parks have been upheld:

1. Baseball and football fields;
2. Buildings adapted to public speaking, theatrical and musical entertainments, dances and indoor athletics;
3. A hall to accommodate banquets and exhibits of various kinds;
4. Municipal golf course;
5. Open space;
6. Monuments, statues, museums and other agencies contributing to aesthetic enjoyment;
7. Open air auditorium;
8. Merry-go-round and a picture arcade;
9. Parking facilities to accommodate park visitors;
10. Tourist camp;
11. Theater, dancing hall or other place of public amusement;

12. Swimming pool;
13. Playground;
14. Racetrack;
15. Garden area;
16. Tennis courts;
17. Zoo;
18. Library
19. Reservoirs;
20. Skating rinks;
21. Stadia;
22. Camp grounds and cabins;
23. Hotels to accommodate visitors;
24. Trailer camps;
25. Restaurants;
26. Fairs;
27. Public horticultural library and information service.

See Words and Phrases, Permanent Edition, Vol. 31 "Park;" 59 Am Jur 2d, Pardon and Parole, Sec. 16 through 34; McQuillin Mun.Corp. (3d Ed), Vol. 10, 28.50 thru 28.54.

Conversely, the courts have found that the following uses are not proper uses of dedicated public parks:

1. Schools;
2. Streets not necessary to service park needs;
3. Civic Center building;
4. Courthouse;
5. Storage for municipal vehicles and equipment;
6. Permanent housing;
7. University parking;
8. Art institute (Illinois);
9. Bell tower building (New Jersey);
10. Military barracks and hospital;
11. Advertising signs;
12. Radio broadcasting station;
13. Railroads.

See Words and Phrases, Permanent Edition, Vol. 31 "Park;" 59 Am Jur 2d, Pardon and Parole, Sec. 16 through 34; McQuillin Mun.Corp. (3d Ed), Vol. 10, 28.50 thru 28.54.

Also, in a case decided by the courts in New York, it was held that a portion of a park may not be leased for "an exhibit designed to advance the knowledge of the public in methods of lessening the number of casualties and avoiding the causes of physical suffering and premature death." *Williams v. Gallatin*, 229 N.Y. 248, 128 N.E. 121 (1920).

In that case, the court, in reviewing a proposed ten-year lease of the Arsenal Building in New York's Central Park,

discussed the difference between a lease for a long period of years and "a mere temporary show of things of passing interest." The court further stated: "Monuments and buildings of architectural pretension which attract the eye and divert the mind of the visitor, floral and horticultural displays, zoological gardens, playing grounds, and even restaurants and rest houses, and many other common incidents of a pleasure ground, contribute to the use and enjoyment of the park."

The court concluded: "To promote the safety of mankind and to advance the knowledge of the people in methods of lessening the number of casualties and avoiding the causes of physical suffering and premature death is the purpose of the Safety Institute of America; to provide means of innocent recreation and refreshment for the weary mind and body is the purpose of the system of public parks. The relation of the two purposes is at best remote. No reproach is cast upon the humanitarian aims of the Safety Institute when we say that it must find another place in which to bring them to the attention of the public."

Applying the above discussion to our fact situation, while temporary exhibits by CHAD would perhaps be legal, it does not appear that CHAD's long term use would be an allowable utilization of a dedicated public park. While CHAD's activities certainly serve a public purpose and are a valuable asset to the community, a long term lease for the provision of health information to the public does simply not seem to fall within any of the purposes which the public generally associates with parks or which have been held proper park uses by the courts.

JOHN W. WITT, City Attorney

By

Harold O. Valderhaug

Deputy City Attorney

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Attachment

ML-86-15