

MEMORANDUM OF LAW

DATE: February 27, 1987

TO: Councilwoman Celia Ballesteros  
FROM: City Attorney  
SUBJECT: Use of Naval Hospital Buildings as a Transient  
Residence/Job Training Facility

On January 26, 1987, a request was made to the City Council that that it allow the use of one or more former Naval Hospital buildings in Balboa Park to be used as a housing and job skills center for the homeless. By memorandum dated January 27, 1987, you requested our comments as to the legality of using a portion of Balboa Park for such use.

As a general rule, dedicated public park land may not be used for permanent housing for private individuals since such a use is not a park and recreation use. Similarly, it would appear that a "job skills center" would also not constitute a park and recreation use. The matter of what is or what is not a park and recreation use is not the subject of any Charter or statutory provision. The courts over the years have determined the question of whether a use is a proper park use on a case by case basis. As a result there have been somewhat differing definitions of what is and what is not a proper park use in various states at various times. However, having read a number of cases involving the question of park use, it is our conclusion that a "job skills center" would not be found to be a legal park use. Please see the attached memorandum of law which provides a list of specific uses which have been found to be proper and improper uses of dedicated public park land.

With regard to housing for the homeless, while permanent housing for the (previously) homeless could not be allowed without a two-thirds vote of the electorate, Charter Section 55 "emergency" temporary housing would, under certain conditions, be allowable. In the case of Griffith v. City of Los Angeles, 78 Cal.App.2d 796 (1947), the court held that under the "emergency" situation which existed in 1946, which resulted from lack of housing facilities for veterans and families of servicemen,

temporary housing facilities could be established in a portion of Griffith Park in Los Angeles to provide temporary housing for its homeless citizens.

The Griffith decision also relied on the fact the State Legislature, in 1946, adopted Acts specifically providing for the acquisition of temporary emergency housing facilities for

veterans and families of servicemen, appropriated \$10 million for that purpose, and authorized cities to use park and recreation property for the purpose of erecting temporary and emergency housing facilities for the above purpose. One of the 1946 emergency measures specified as follows:

Due to the extreme shortage in housing in this State it is imperative that temporary and emergency housing facilities for veterans be erected with the greatest of dispatch and as quickly as possible to alleviate the hardship and suffering now common in this State. Public park and recreation property of local agencies furnish one of the best and most accessible sites for such temporary and emergency housing facilities and many local agencies have either commenced to utilize such property or con-template doing so within the immediate future. To eliminate all question concerning the power of such local agencies to so utilize such public park and recreation property it is necessary that their power to do so may be affirmatively stated by legislative enactment and it is therefore necessary that this act take effect immediately.

The fact situation in that case involved "tens of thousands of returned veterans and their families, as well as countless others in Los Angeles County," who were described as "practically homeless." The court compared the situation to an earlier situation in Kansas where a court upheld "the temporary maintenance of a pesthouse in a public park on the occasion of a threatened smallpox epidemic" and the situation which occurred after the 1906 San Francisco earthquake "when the homes of some 200,000 of her citizens were destroyed" and when "17 camps were established in public squares or parks, in which more than 18,000 people were housed."

Therefore, it is our conclusion that in the event of a true emergency the City Council has the authority to authorize the use of portions of City parks for temporary housing for homeless persons. While it is not the function of this office to determine exactly what constitutes an "emergency," it would seem

that, if the City anticipates a life threatening situation, the City could perhaps make requisite findings that an emergency exists and allow park or other public buildings to be utilized by the homeless during such a situation.

However, as stated above, the general proposition to allow a long term use of Balboa Park buildings for housing for the otherwise homeless, could not be allowed since that is not a

proper use of a dedicated public park.

JOHN W. WITT, City Attorney

By

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Deputy City Attorney

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Attachment

ML-87-18