MEMORANDUM OF LAW

DATE: March 11, 1988

TO: Skip Berend, Relocation Officer, Property Department

FROM: City Attorney

SUBJECT: Relocation Assistance - Eligibility of Tenants and Lessees on Property Acquired by City

By memorandum dated December 2, 1987, you explained a fact situation wherein the City acquired certain properties in the Tia Juana River Valley for the purpose of resolving litigation. The owners of the property had sued for damages against the City as a result of losses allegedly caused as a result of sewage from Mexico inundating portions of their property.

You indicated that there are preexisting tenants on the property acquired by the City and you asked whether the City is obligated "to provide relocation assistance, advisory and monetary benefits under current State/Federal legislation, to such tenants and/or owners of the property." Your memorandum specified that the tenants are not being asked to move and will remain on site as tenants of the City.

A review of the state law indicates that a commercial tenant is not entitled to relocation benefits when the lease under which such tenant occupies property terminates by its own terms, rather than as a result of public acquisition. Peter Kiewit Sons' Co. v. Richmond Redevelopment Agency, 178 Cal.App.3d 435, 223 Cal.Rptr. 728 (1986). A summary of that case is attached for your review. Similarly, in the case of Baiza v. Southgate Recreation & Park Dist., 59 Cal.App.3d 669, 130 Cal.Rptr. 836 (3d Dist. 1976), it was held that where a tenant vacates a premises after failing to pay rent, such tenant is not entitled to receive benefits under the state relocation assistance statute, since the tenant was displaced as a result of his breach of the lease and not as a result of the acquisition of property by a municipality. In that case, the City had acquired the property for park purposes but had notified the tenant that he could remain on the premises as a month-to-month tenant. The

tenant vacated the premises after failing to pay rent and after receiving a notice to either pay rent or quit.

Likewise, in the case of Stephens v. Perry, 134 Cal.App.3d 748, 184 Cal.Rptr. 701 (2d Dist. 1982) the court held that residents of a mobilehome park located on land leased from a municipal district were not entitled to relocation benefits upon

the expiration of the lease since their displacement did not occur as a result of the acquisition of the property by a public entity for public use. This case will apply specifically to the De Anza mobilehome park as well as the Linda Vista and Rancho Del Rio mobilehome parks which are built on property leased from the City.

Again, in the case of Shephard v. Department of Community Corrections, 293, Or. 191, 646 P.2d 1322 (1982), an Oregon case, the court held that month-to-month tenants of residential property whose tenancies were terminated by the landlord so that the property could be leased to a city were not required to move as a result of the acquisition of real property and were, therefore, not entitled to receive relocation benefits. In that case, the court determined that the move was caused by a termination of the tenancies by the landlord rather than as a result of an acquisition by the city.

Similarly, in another Oregon case, Ackerley Communications, Inc. v. Mt. Hood Community College, 51 Or.App. 801, 627 P.2d 487, pet.den. 291 Or. 309, 634 P.2d 1346 (1981), the court held that a billboard company which leased property which was acquired during the leasehold term by a public entity was not entitled to relocation assistance when the lease expired, again, on the basis that the removal of the sign was not required as a result of acquisition but was the result of expiration of a lease.

Finally, in the Pennsylvania case of Hindsley v. Lower Merion, 25 Pa.Cmwlth. 455, 360 A.2d 297 (1976), the court considered a situation where a city purchased property and thereupon entered into a lease agreement with the presently-existing occupants. The court held that, upon the expiration and nonrenewal of the lease, the lessees were not entitled to relocation benefits. The case of the Appeal of Radio Broadcasting Co., 55 Pa.Cmwlth. 147, 423 A.2d 444, cert.den. 454 U.S. 941, 70 L.Ed. 2d 249, 102 S.Ct. 477, reh.den. 454 U.S. 1117, 70 L.Ed. 2d 655, 102 S.Ct. 692 (1980), resulted in a similar conclusion by the Pennsylvania courts.

One additional California case should be noted. In McKeon v. Hastings College of Law, 185 Cal.App.3d 877, 230 Cal.Rptr. 176

(1986), the court considered a fact situation where a public agency acquired and demolished several residential hotels and apartment buildings but failed to provide adequate alternative housing for the displaced residents. The lower court found that 410 of the 821 people who had moved from the properties had done so because of the acquisition but that only 35 had been adequately relocated, leaving a required balance of 375 replacement alternative housing units needed. The appeal court

held that the plaintiffs in that case had not proved an entitlement to comparable replacement housing since there was no showing "that any actually displaced former tenants wanted, needed, would occupy, or were even likely to occupy, any of the 375 replacement units." Without proof that the former tenants would actually occupy replacement units, the court determined that such replacement units would probably benefit the public at large and indicated that that was not the purpose of the Relocation Act.

In those circumstances where federal monies are involved in the acquisition of properties, the provisions of 42 United States Code Section 4601 et seq. would apply.

The definition of "displaced person" in the Federal Act is substantially the same as the definition of "displaced person" in the State Relocation Act (Government Code Section 7260 et seq.) In the case of Alexander v. United States Dept. of Housing & Development, 441 U.S. 39, 60 L.Ed. 2d 28, 99 S.Ct. 1572 (1979), the United States Supreme Court ruled that the definition of "displaced person" in the Federal Act is only applicable in fact situations where relocation of persons "results directly from actual or contemplated property acquisition" and that persons directed to vacate cannot obtain relocation assistance unless the acquiring agency intended at the time of acquisition to use the property acquired for a public project.

In the case of Lake Park Home Owners' Asso. v. United States Dept. of Housing & Urban Development, 443 F.Supp.6 (SD Ohio 1976), the court held that where certain property was owned by a state for fifty-seven years and by a city for nine years before any federal funding for a city park project occurred, the city's refusal to renew leases for lessees which maintained cottages on the property did not constitute an "acquisition" and that the tenants were not entitled to relocation benefits.

Also, in the case of Jones v. United States Dept. of Housing & Urban Development (HUD), 390 F.Supp.579 (ED La 1974), the court held that the Federal Relocation Act does not require payment of benefits to persons displaced as a result of sale of public land

to a private developer, but only to persons who must be relocated because construction of new federal projects required existing structures to be removed.

In view of the above court decisions it appears clear that if and when the tenants on the Tia Juana River Valley site move voluntarily or subsequent to the expiration of leases, such tenants will not be entitled to relocation assistance. Any new leases to such tenants should specify that fact.

JOHN W. WITT, City Attorney

By
Harold O. Valderhaug
Deputy City Attorney

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Attachment
cc Jim Spotts
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