

MEMORANDUM OF LAW

DATE: February 16, 1989

TO: Jack Krasovich, Deputy Director,
Park and Recreation Department

FROM: City Attorney

SUBJECT: Commercial Filming in Presidio Park

This responds to your memorandum concerning the complaint of Dr. Fadem about commercial filming activities at Presidio Park. He cited instances involving filming for scenes in a television show, a motion picture, and an automobile advertisement for television or magazine. He further complains that the streets were being obstructed by uniformed guards during such filming.

Your question is whether filming activity in Presidio Park is impermissible. It is unclear from Dr. Fadem's letter whether the filmmaking activity occurred on the public streets or the park site itself, or both. If the former (where the park is merely a backdrop), we do not view this as a matter involving the use of park property. If the latter, then the question is whether this is a type of use which is inconsistent with the uses of a "public park."

As part of our analysis, we reviewed photostats of some of the deeds for Presidio Park from the grantors. The deeds merely stated that the property is to be used for a "public park." The City accepted the property by ordinance and dedicated it for "public park purposes." We are not aware of any other instrument which prohibits the use of the park for "commercial uses," as intimated in Dr. Fadem's letter.

We are attaching a copy of a memorandum of law dated February 11, 1986 which reviewed various permissible uses for public parks. Dedication of land as a public park pursuant to City of San Diego Charter section 55 connotes utilization consistent with parameters outlined in the attached memorandum of law. When such uses are not consistent, they must be approved by a vote of two-thirds of the electorate.

We first note that neither the deeds, the ordinance of dedication nor City Charter section 55 address the term "commercial uses" of which Dr. Fadem complains. His reference to "commercial uses" appears to be a phrase that he coined.

By way of understanding his objections, we attach a letter dated September 10, 1987 in which he had previously complained about "commercial uses" within Presidio Park relating to catered weddings and picnics. He considered those to be a commercial use

because the caterers are running a business in the park land in providing a service to wedding parties. We therefore construe this as a term Dr. Fadem chose rather than as a limitation upon the uses of the park sites. Construing it thus, we may respond that "commercial uses" are not prohibited in dedicated park lands.

San Diego Municipal Code sections 63.02.13 and 63.02.14 prohibit, respectively, the sale or offer for sale of goods, wares or merchandise, or the practice of a trade, occupation, business or profession in the parks without the permission of the City Manager. It may also be noted from the attached memorandum of law that uses of park lands which are commercial in nature are permissible park and recreation purposes because of the services thereby provided to the using recreational public.

Catered weddings or picnics occupy the same status as non-catered weddings from the viewpoint of their recreational value, even though a fee is charged for providing the food, beverage and related catering service. All this means is that the City Manager is entitled to require the caterers to apply for a permit to do business within the park and pay a fee or percentage of revenues for such services. This is a park management issue, however, within the jurisdiction of the City Manager.

Charter cities have also been allowed to authorize temporary activity on dedicated park land that is not normally consistent with the concepts set forth in the attached memorandum of law. See *Simons v. City of Los Angeles*, 63 Cal.App.3d 455, 468 (1976), which held that a police training facility in Griffith Park was consistent with park and recreational uses of dedicated park land. This case proceeded under the theory that the activity at the police training facility did not constitute a diversion from park purposes, was consistent with the recreational characteristics of the park, and did not constitute an interference with the enjoyment of the park by the rest of the public in general.

However, *Simons* involved a change to the City Charter which had authorized a transfer of the particular site to the Department of Public Works from the Park Board. The court reasoned that even if some prior approval of the Park Board was necessary,

the resulting use was not inconsistent with park and recreation purposes, and therefore would have been permissible, the lack of authorization notwithstanding.

The activities described in Dr. Fadem's complaints do not

appear to be prohibited within any fair reading of the attached memorandum of law. As we view it, control of the park land is under the jurisdiction of the City Manager and the Director of Parks and Recreation. Obviously, a permitted use for catered weddings and picnics would seem to be consistent with a recreational purpose, and is certainly not inconsistent with general public recreational uses.

With respect to the filming activity, however, a large part of the question may depend upon the extent to which the filmmaking activity interferes with the use of the park sites by the general public, rather than whether it is, per se, impermissible. You should determine the extent to which the uniformed guards interfere with public access. If substantial, then changes should be made. Otherwise, we note that filmmaking activities have been consistently allowed in other areas of the park. Indeed, one particular value of Presidio Park is its aesthetic image and pleasant vistas. So long as the activity can arguably contribute to the use and enjoyment of the park by others, we are not prepared to state that such use would be impermissible as a park and recreation purpose, even were it "commercial" in nature. As noted earlier, commercial activities (restaurants, hotels) are permissible.

We suggest that you review the permit process and determine whether a more finite regulation should be required of permit applicants who use caterers to supplement their recreational use of the park. Likewise, you should review the permit process for filming activities. However, we do not view such uses to be inconsistent with park uses and hence impermissible.

JOHN W. WITT, City Attorney

By

Rudolf Hradecky
Deputy City Attorney

RH:mb:263.3
Attachments
cc Hal Valderhaug
ML-89-16