

MEMORANDUM OF LAW

DATE: May 23, 1989

TO: Susan C. Hamilton, Deputy Director, Special
Projects, Water Utilities Department
FROM: City Attorney
SUBJECT: Availability of Eastgate Technology Park

By means of a recent memorandum you asked for a priority review of what, if any, restrictions were placed on the use of the above referenced parcel by reason of a 1979 public vote on certain Pueblo Lands.

We understand Eastgate Technology Park to be located within portions of the four (4) Pueblo parcels depicted on Document No. 766676, which is the plat map attached to Ordinance No. 12685 (attached hereto). The significance of Pueblo Lands, among other matters, is that they may not be sold without an authorized vote of the people nor leased beyond a fifteen (15) year period. San Diego City Charter, section 219. Hence Ordinance No. 12685 was placed on the September 18, 1979 ballot to permit leases and sales of the referenced Pueblo Lots for the noted purposes in accordance with the Charter.

Proposition B to authorize the sale or lease of the referenced Pueblo Lots was put on the ballot in the following form:

Proposition B. Ratification of
Ordinance No. 12685 (New Series)
Shall Ordinance No. 12685 (New Series) entitled "AN ORDINANCE AUTH-ORIZING THE LEASE OR SALE OF CERTAIN PORTIONS OF PUEBLO LOTS 1316, 1317, 1318, 1321, 1351, 1353 AND 1355 OF THE PUEBLO LANDS OF SAN DIEGO, PRO-VIDED THAT ALL PROCEEDS FROM SUCH LEASES OR SALES BE UTILIZED TO FINANCE POLICE SUBSTATIONS AND OTHER PERMANENT IMPROVEMENTS FOR POLICE PURPOSES" adopted by this Council of The City of San Diego be ratified? YES NO

On September 18, 1979 it was ratified by a vote of 79,985 in favor, 60,097 opposed, thereby approving Ordinance No. 12685. As you will note from the substance of Ordinance No. 12685, it (a) authorizes the sale or lease of the noted Pueblo Lots, (b) restricts the sale or lease to limited purposes noted in

Section 2, and (c) earmarks the proceeds from same to the Capital Outlay Fund for police purposes.

Hence Ordinance No. 12685 authorizes, with restrictions, the alienation of these lands but does not restrict their use by the City itself. The whole purpose of Charter section 219, and therefore the ratifying ordinance, is to require voter authorization to sell or lease to an outside party. Neither Section 219 nor the ratifying ordinance pose any restrictions on the use of the land when it is not sold or leased to an outside party. Hence, city use of a city Pueblo land for a city wastewater treatment plant is perfectly proper and unaffected by the vote of September 18, 1979.

Moreover, existing zoning restrictions do not pose a barrier to municipal use of the land as a treatment facility. For as we have long maintained, the City is not subject to its own land use regulations in the construction and operation of City facilities. *Kubach Co. v. McGuire*, 199 Cal. 215 (1926); Opinion of the San Diego City Attorney dated March 14, 1950; Opinion of the San Diego City Attorney dated August 25, 1988.

In summary, neither the September 18, 1979 ratification of Ordinance No. 12685 nor existing zoning restrictions prohibit the use of the Eastgate site as a wastewater treatment plant.

JOHN W. WITT, City Attorney

By

Ted Bromfield

Deputy City Attorney

TB:mb:757:712.3.1:(x043.2)

Attachments

ML-89-50