

MEMORANDUM OF LAW

DATE: January 30, 1990

TO: Maureen Stapleton, Deputy City Manager
FROM: City Attorney
SUBJECT: City Power of Eminent Domain - Sports Arena and
Related Parking Lot - Transfer to Private
Operator

In connection with consideration of the possibility of constructing a new sports arena in the downtown area, a question has arisen as to whether the City has the power to condemn property for such a purpose. In addition, a further question has been posed as to whether, if the City acquires property for such a purpose through use of its eminent domain powers, the City may thereafter lease or convey the property to a private party for the construction and operation of a sports arena and related parking facilities.

With regard to whether the City may acquire property for a sports arena by eminent domain, section 1240.010 of the California Code of Civil Procedure specifies as follows:

Section 1240.010. Exercise of power for
public use

The power of eminent domain may be exercised to acquire property only for a public use. Where the Legislature provides by statute that a use, purpose, object, or function is one for which the power of eminent domain may be exercised, such action is deemed to be a declaration by the Legislature that such use, purpose, object, or function is a public use.

Section 37501 of the California Government Code specifies:

Section 37501. Acquisition of land, etc.,
authorized

A city may acquire, by condemnation or otherwise, the necessary land and construct and maintain a public assembly or convention hall upon it, and may incur indebtedness for such purpose pursuant to this article.

Section 54061 of the Government Code provides:

Section 54061. Local agency authorized to
acquire, etc., parking
facilities in connection with

stadium or coliseum

A local agency may acquire necessary real and personal property to construct, equip, operate, and maintain parking facilities in connection with any stadium or coliseum maintained by it.

Section 25351 of the California Government Code relating to counties specifies in part:

Section 25351. Public buildings

The board may construct, lease, build, rebuild, furnish, refurbish, or repair buildings for a . . . stadium, coliseum, sports arena, or sports pavilion or other building for holding sports events, athletic contests, contests of skill, exhibition, spectacles and other public meetings, and such other public buildings as are necessary to carry out the work of the county government.

. . .

Based upon the above statutory authority it appears clear that a City may acquire property for a sports stadium or sports arena and may also acquire property for parking facilities needed to service such stadium or arena through the exercise of power of eminent domain.

Section 1240.120 of the Code of Civil Procedure provides:

Section 1240.120. Property necessary to carry out principal purposes; Acquisition with intent to sell or otherwise dispose of property

(a) Subject to any other statute relating to the acquisition of property, any person authorized to acquire property for a

particular use by eminent domain may exercise the power of eminent domain to acquire property necessary to carry out and make effective the principal purpose involved including but not limited to property to be used for the protection or preservation of the attractiveness, safety, and usefulness of the project.

(b) Subject to any applicable procedures governing the disposition of property, a person may acquire property under subdivision

(a) with the intent to sell, lease, exchange, or otherwise dispose of the property, or an interest therein, subject to such reservations or restrictions as are necessary to protect or preserve the attractiveness, safety, and usefulness of the project.

In the case of *City of Oakland v. Oakland Raiders*, 32 Cal.3d 60 183 Cal.Rptr. 673 646 P.2d 835 (1982), the court held that Code of Civil Procedure section 1240.120 authorizes the retransfer of condemned property, and, "so long as adequate controls are imposed upon any retransfer of the condemned property, there is no reason why the 'public purpose' which justifies a taking may not be so served and protected. We envision that the adequacies of any such controls can only be determined within the factual context of a specific retransfer agreement."

In summary, California statutes allow a City to acquire property for a sports arena and related parking through the use of the power of eminent domain. In addition, both the statutes and case law support the validity of a transfer of property so acquired to a private developer so long as adequate provisions are placed in any document of conveyance to guarantee the development and use of the property for the purpose for which the property was acquired.

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By

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cc M.L. Groarke
Mark Sullivan