

DATE: June 6, 1990

TO: Councilmember Ron Roberts

FROM: City Attorney

SUBJECT: Financing for Park and Open Space Maintenance

By memorandum dated March 27, 1990, copy attached, you asked the following three questions:

1. How can the Open Space Park Facilities District be used to finance ongoing park and open space maintenance?
2. Is it possible to use funds from a bond based on the district to create a revolving fund for maintenance? For example, to set aside a portion of the bond and use the proceeds for maintenance.
3. If the Council determines instead to use the existing Landscape, Lighting and Maintenance district to fund park and open space maintenance, would a vote of the city be required?

In response to the first question, we have discussed this matter to some extent with Ken Jones and Bill Madison of Jones Hall Hill and White, which firm, as you know, has been designated as bond counsel in connection with the potential new bond issue for open space and park land acquisition. Mr. Jones indicated that he feels the present San Diego Open Space Park Facilities District No. 1 was set up as a city-wide district under terms broad enough to allow the potential for the assessment to be levied on all properties in the district for open space and park maintenance. Since no bond would be involved in such an annual assessment, no election would be required.

Attached for reference is a letter dated December 20, 1989, from Mr. Kenneth Jones of Jones Hall Hill and White. In the letter Mr. Jones explains that, with the revisions proposed to the open space district ordinance in connection with a potential new bond issue, the City Council could levy an annual assessment

for maintenance of the open space areas shown for potential acquisition in connection with the issuance of the Proposition C open space bonds. Such an assessment could be established without a requirement for individual mailings to all the property owners in the City. If the City Council wishes to levy an assessment for maintenance of park and open space properties beyond those shown for acquisition in connection with the original formation of the district, individual notices would have to be sent to all of the property owners in the City in connection with the public hearing involving such proposed assessment.

In answer to your second question, tax exempt bonds may not be used to create revolving funds for maintenance. Tax exempt bonds can only be sold to finance facilities under circumstances where the bond proceeds are planned to be totally expended within three years following the date of the bond sale.

In answer to your third question, the City could utilize the provisions of the Landscaping and Lighting Act of 1972 or the City's present Maintenance District Procedural Ordinances to establish a City-wide assessment district. No vote of the electorate would be required for such an action. The City's Engineering and Development Department is presently reviewing the potential establishment of such a City-wide district and has provided this office with the attached documents which explain how a similar district was established in 1989 in the city of Oakland.

If a new City-wide district were to be established, in order to qualify as an assessment it would be necessary to establish the amount of the special benefit received by each property in the assessment district. You will note from the Oakland engineer's report that the amount of the assessment was spread based upon various factors including the type of use of various parcels together with the density of development on various parcels.

In summary, it appears that the existing San Diego Open Space Park Facilities District No. 1 could be utilized for the creation of an assessment for maintenance of properties shown on the map of potential open space acquisitions which map was part of the Proposition C documents. Such a process would require already drafted modifications to the City's procedural ordinance. In addition, if it is proposed that an assessment be levied for maintenance of properties other than those open space parcels shown for potential acquisition in connection with the establishment of the district, individual notices would be

required to be mailed to all the property owners in the City in connection with the public hearing for the levying of such an assessment. It is not legally allowable to sell tax exempt bonds for the purpose of creating a revolving fund for maintenance of parks and open space. Finally, a new City-wide district for open space and park maintenance could be created, however, it appears that the creation of such a new City-wide district would probably be somewhat more complex than establishing a maintenance function for the existing Open Space Park Facilities District No. 1.

JOHN W. WITT, City Attorney

By

Harold O. Valderhaug

Deputy City Attorney

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Attachments 3
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