

MEMORANDUM OF LAW

DATE: March 27, 1992

TO: Deputy Mayor Ron Roberts

FROM: City Attorney

SUBJECT: Charter Section 55 - Requirement that Dedicated Park Land  
be Used Only for Park and Recreation Uses

The City Council recently discussed proposed changes to Charter Section 55. Section 55 provides that land which is owned in fee by the City and dedicated by ordinance to park and recreation use cannot be used for other purposes without the approval of a two-thirds vote of the electorate.

One of the proposed changes to the Charter section involved language intended to clarify the Charter to specify that no buildings can be placed in parks except those buildings and facilities which are appropriate in scale to service the needs of the park users. I indicated that including the concept of "scale" could cause substantial legal problems, since any decision regarding scale would be necessarily subjective and could be challenged. I further indicated that the Charter presently prohibits any nonpark use of dedicated park land.

The actual existing language specifies as follows:

All real property owned in fee by the  
City . . . dedicated . . . by ordinance . . .  
for park, and recreation . . . purposes  
shall not be used for any but park, and  
recreation . . . purposes without such  
changed use or purpose having been . . .  
authorized . . . by a vote of two-thirds of  
the qualified electors . . . .

The one exception presently contained in Section 55 to the above rule is the provision which allows the City Council to establish streets through dedicated park land without a vote of the electorate.

In addition, this office has, for a number of years, included a provision in the standard ordinance dedicating park lands to allow the City to establish underground utilities in such parks under circumstances where such underground utilities will not interfere in any way with public park use.

Attached is a memorandum of law written in 1986 which provides a more complete discussion of what the courts have found to be park uses and what the courts have held to not be legal park uses. It is noted that the courts are not always consistent from time to time and state to state as to what constitutes a proper park use.

It is suggested that the City Council carefully consider any proposal to limit, by charter, the uses to which a dedicated park may be put. Any such limitation could eventually require an expensive and time-consuming election to approve what would otherwise be a legal park use.

At some point, any such restriction could result in voters throughout the City disapproving a proposed use of a neighborhood or community park. Determinations with regard to appropriate uses of such parks may arguably best be made by the Council after hearing the comments of the local residents who will be the users of such community and neighborhood parks.

JOHN W. WITT, City Attorney

By

Harold O. Valderhaug

Deputy City Attorney

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Attachment

cc Honorable Mayor and

City Council

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