

MEMORANDUM OF LAW

DATE: October 19, 1992

TO: Jack Krasovich, Deputy Director
Park and Recreation Department/Central Division

FROM: City Attorney

SUBJECT: Use of Gas Tax Funds for Planting/Replacement of
Trees in Street Right-of-Way

By means of a September 24, 1992 memorandum, you outlined the budgetary appropriations for the maintenance of trees utilizing Gas Tax funds. Since you did not receive Gas Tax funds before Fiscal Year 1992, you ask whether planting and replacement of trees in the street right-of-way is a legal use of the funds. We confirm that such use of Gas Tax funds is indeed legal as articulated below.

Proposition 111, the Traffic Congestion Relief and Spending Limitation Act of 1990, amended Article XIII B of the California Constitution. One of its provisions served to increase the then-existing state excise tax on motor vehicle fuels from 9 cents per gallon to 14 cents per gallon while adding a yearly increase of 1 cent per gallon from 1991 to 1994. As a result, Proposition 111 is popularly known as and will be referred to in this Memorandum of Law as "the Gas Tax."

The Central Division of the City's Parks and Recreation Department received revenue from the Gas Tax for the first time in Fiscal Year 1992. The Department used Gas Tax revenue to trim and remove trees from street rights-of-way and to pulverize the stumps of these removed trees.

The Department removes approximately 800 trees each year for reasons including disease and damage to public improvements. However, the Department rarely has planted replacement trees. When it has replaced trees, the Department has used funds from other sources, not Gas Tax revenues.

The Department's Central Division has been allocated \$624,000 in Gas Tax revenue for Fiscal Year 1993. Concerned about the diminishing number of street trees, the City Council has asked the Department to replace trees that have been removed. The Department seeks to use \$80,000 to \$100,000 of its allocation of Gas Tax revenue to replace 80 to 100 trees.

Authority for allocating Gas Tax revenue is codified in two places. Article XIX, Section 1 of the California Constitution provides in pertinent part that revenues imposed by the state on motor vehicle fuels shall be used for "the research, planning, construction, improvement, maintenance, and operation of public streets and highways . . . including the mitigation of their environmental effects . . ." Article XIX, Section 1(a), Cal. Const. emphasis added. Section 2101 of the Street and Highways Code provides for allocation of such funds for those identical uses.

Because the construction and statutory descriptions of allowable uses are general, the California State Comptroller has promulgated guidelines for spending Gas Tax revenue. (See "Guidelines Relating to Gas Tax Expenditures," attached.) According to the Guidelines, allowable expenditures of Gas Tax revenues are for "street or road purposes" only. (Guidelines, p. 9.) The Guidelines state that "installation or addition to landscape treatment, such as sod, shrubs, trees, irrigation, etc." is an example of permissible street and road construction. (Guidelines, p. 6.) Moreover, the Guidelines state that "re-placement of top soil, sod, shrubs, trees, irrigation facilities, etc. on street and roadside" is an example of permissible street or road maintenance. (Guidelines, p. 7.) Hence the Guidelines confirm the plain language of the constitutional and statutory provisions that landscaping efforts, particularly the planting and replacement of trees, are an integral part of "improvement" and "maintenance" of public streets as well as a significant "mitigation of environmental effects." One could hardly envision a stronger mitigation of the environmental effects of streets than the addition and replacement of trees, both for their contribution to the air and visual aesthetics.

CONCLUSION

Both from the plain language of the Constitution and statutory provisions, confirmed by the attached Guidelines, the Park and Recreation Department may legally use Gas Tax funds to plant and replace trees in the street right-of-way.

JOHN W. WITT, City Attorney

By

Ted Bromfield

Chief Deputy City Attorney

TB:lc:111.2(x043.2)

Attachment: Guidelines

cc Darlene Morrow-Truver w/o att.

Carol Banks w/o att.

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