

MEMORANDUM OF LAW

DATE: January 8, 1996

TO: Councilmember Valerie Stallings, District 6

FROM: City Attorney

SUBJECT: Alley Between Chicago Street and Denver Street

In your memorandum of November 20, 1995, you asked for our advice and opinion on the problems with improving or closing this alley. The issues relating to this alley are complex. We know that resolution of the closure problem has been a long standing concern of your district. Our answers are in the order presented.

1. If the alley is paved by the City of San Diego and someone falls on the concrete, who is liable?

The City would generally be the party defending an action brought for a "slip and fall" type of case. Obviously the City would use all of its defenses such as design immunity and the claims statute. What the community is probably concerned with is, whether they would somehow increase their liability with a paved alley. The answer to that question is no, they would not be liable for a City owned and maintained improvement.

2. If the alley remains unpaved and the neighbors sign a maintenance agreement with the City and hire a contractor to maintain the alley and clean-up the silt run off, would the neighbors be liable if anyone trips and falls on the debris?

If the City were to form a maintenance district or prepare some sort of cooperative maintenance agreement the agreement with the contractor for the maintenance would normally have a provision for indemnification and liability insurance. The contractor, not the neighbors, would therefore be considered the responsible party for responding to and defending against claims.

3. Could the neighbors legally control access to the alley by installing a gate at the entrance or any other control measure?

The use of a gate or a control booth on a public right of way to control access to the public would not generally be proper. So long as the alley is public, all of the public can use it. An exception is where such gate or gates are needed to alleviate a serious crime problem as verified by law enforcement records. Vehicle Code section 21101.4.

4. If the neighbors were to find that Ms. Pauline Alvarez applied for a garage permit after they submitted their application for a

street vacation, which included a petition with her support and signature, would neighbors have a legal recourse against Ms. Alvarez?

This questions would be best answered by an attorney representing the neighbors. The City Attorney cannot provide legal advice to the neighborhood regarding that "private" issue.

5. If the City Council decides that this street vacation/abandonment meets the criteria of Council Policy 600-15, what other legislation is necessary before a vacation could take place?

The Council Policy 600-15 findings are essentially the same as Streets and Highways Code section 8324(b). If the Council can make the findings that the alley is not needed, the alley can be vacated. Ms. Alvarez will probably raise the issue that the alley is needed for access. It provides the only public access to her garage. Where cities have vacated streets or alleys needed for access by private owners, the courts have generally required compensation to be paid to such owners. *Beals v. City of Los Angeles*, 23 Cal. 2d 381 (1943); *Bacich v. Bd of Control*, 23 Cal. 2d 343 (1943).

JOHN W. WITT, City Attorney

By

John K. Riess

Senior Deputy City Attorney

JKR:pev:221:(x043.2)

ML-96-1