

## MEMORANDUM OF LAW

**DATE:** October 21, 1997

**TO:** Councilmember Barbara Warden, Council District 5

**FROM:** Kelly J. Salt, Deputy City Attorney

**SUBJECT:** Transfer of Administration of Landscape Contracts for the Carmel Mountain Ranch Landscape Maintenance District to the Carmel Mountain Ranch Residential Community Association

### **Question Presented**

You asked our office to review whether the City may transfer the administration of landscape contracts for the Carmel Mountain Ranch Landscape Maintenance District (the “Carmel Mountain Ranch District”) from the City to the Carmel Mountain Ranch Residential Community Association (the “Association”).

### **Short Answer**

The City may transfer the administration of landscape contracts for the Carmel Mountain Ranch District to the Association if:

1. the Association is a non-profit corporation; and,
2. the City receives written documentation from property owners representing at least two-thirds of the parcel area of the Carmel Mountain Ranch District indicating they support the transfer of the administration of the contracts from the City to the Association; and
3. the City Council approves the transfer.

### **Analysis**

Generally, the preparation of plans and specifications, the award of contracts for landscape maintenance, and the administration of such contracts for landscape maintenance districts are undertaken by the City on behalf of landscape maintenance districts. San Diego Municipal Code 65.0209.5 recognizes that in certain instances assesses of landscape maintenance districts want to have control of this process.

Section 65.0209.5(12) provides that the City Council may recognize a non-profit corporation representing the owners of at least two-thirds of the parcel area in an assessment district as a proper agent for administering landscape maintenance contracts. In order for a non-profit corporation to take over the administration of landscape maintenance contracts in a district, the corporation must submit to the City Council written documentation that property owners representing at least two-thirds of the parcel area in the district support the corporation taking over the administration of the contracts. San Diego Municipal Code 65.0209.5(12).

If a non-profit corporation presents such documentation, the City Council may, at its sole discretion, contract with the non-profit corporation to administer the landscape maintenance contracts for the district. If the City Council contracts with the non-profit corporation to administer the contracts, then the non-profit corporation must agree to hold the City free and harmless from any damages and shall maintain a comprehensive public liability insurance policy satisfactory to the City Manager and the City Attorney. San Diego Municipal Code 65.0209.5(13). Pursuant to the contract with the City, the administration of the landscape contract shall include on-site inspections of the district to ensure that the landscape services are being provided. Inspections of the district are a prerequisite to the City paying for any work done by the landscape contractor for the district. Id.

The Association is a residential homeowners' association located in the Carmel Mountain Ranch District. The Association has expressed an interest in assuming the responsibility of administering landscape contracts for the Carmel Mountain Ranch District and has asked what measures must be undertaken for the transfer of that responsibility to occur.

Following the general guidelines discussed above, in order for the Association to take over the administration of the contracts, the Association must be a non-profit corporation. Assuming the Association is a non-profit corporation, it must present written documentation from property owners representing at least two-thirds of the parcel area of the Carmel Mountain Ranch District indicating they support the transfer of the administration of the landscape maintenance contracts from the City to the Association. Upon the presentation of this documentation, the City Council may make a determination of whether it is in the best interests of the assesses in the Carmel Mountain Ranch District to transfer the contract administration to the Association.

In the event the City Council agrees to allow the Association to assume the responsibility for the administration, the Association must be willing to hold the City free and harmless from any damages and maintain liability insurance sufficient to satisfy the City Manager and the City Attorney. Moreover, it must agree to conduct ongoing inspections of the district to ensure the landscaping is being maintained in accordance with the contracts.

## **Conclusion**

As outlined above, if the three requirements of the Municipal Code are met, the administration of landscape contracts for the Carmel Mountain Ranch District may be transferred to the Association. If there is any additional information you need regarding this matter, please do not hesitate to contact me.

CASEY GWINN, City Attorney

By

Kelly J. Salt  
Deputy City Attorney

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