

**Office of
The City Attorney
City of San Diego**

**MEMORANDUM
MS 59**

(619) 533-5800

DATE: December 21, 2006

TO: Members of the Park and Recreation Board

FROM: City Attorney

SUBJECT: Clarification on City Attorney Memorandum Regarding Ontario Avenue and Fox Canyon Expenditures

It is our understanding that some confusion may have arisen from the City Attorney's memorandum of November 30, 2006 regarding the expenditure of Special Park Fees in relation to the proposed Fox Canyon Park and Ontario Avenue.

Pursuant to Municipal Code Section 96.0404, Special Park Fees are only permitted to be used for the purchase and improvement of Park and Recreation facilities. Special Park Fees may be used on the design and construction of a road provided there is an appropriate connection to the park purposes. For example, Special Park Fees may be used for a road if the purpose of the road is to provide access to the park, or access to planned parking for the park, or in order to accommodate additional demand on the road system expected to be generated by the park.

In any circumstance, the use of the Special Park Fees for road design or construction may only be in proportion to the additional need generated by the park.

If there is no relationship between a road and a park, meaning the road does not serve as a means of access to the park or address the generation of additional traffic expected to be caused by the park, then the use of such funds would be inappropriate.

With respect to the expenditure of approximately \$165,000 in Special Park Fees on the proposed Ontario Avenue extension, to the degree that these funds were not spent for the purposes enumerated above, then the City Attorney believes that the expenditures were inappropriate.

The City Attorney's office has not been able to fully conclude its inquiry into the expenditure of Special Park Fees because we have not been provided with the all the relevant facts regarding these expenditures that would be necessary to make such a determination.

December 21, 2006

Page 2

In light of this fact, absent further justification for these expenditures, the use of any of these funds for the purposes of a road remains questionable. In such a situation, the proper approach would be to refund all money, unless and until a proportional share can be demonstrated.

Should the Park & Recreation Department wish to consult with the City Attorney on an analysis of the expenditures, our Office is willing to be of assistance. To the degree we are unable to determine the level of appropriate expenditures versus inappropriate expenditures on the road portion of the project, it would be the City Attorney's recommendation that the full \$165,000 in Special Park Fees be reimbursed for reinvestment in another Mid City Park project.

MICHAEL J. AGUIRRE, City Attorney

By

Alex W. Sachs
Deputy City Attorney

AWS:mm

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