

MEMORANDUM OF LAW

DATE: June 9, 1986

TO: Deputy Mayor and City Council  
FROM: City Attorney  
SUBJECT: Dedication of Property for Park Use Subject to  
Future Acquisition of the Property

The City owns certain property in the north City area which it proposes to exchange for certain property in that area owned by Genstar, contingent upon the occurrence of several future events. The City Council asked whether it is legally feasible for the City Council to at this time adopt an ordinance dedicating the property proposed to be acquired by the City to park purposes.

City Charter Section 55 specifies that "All real property owned in fee by the City . . . formerly dedicated in perpetuity by ordinance of the Council . . . for park . . . purposes shall not be used for any park . . . purposes without such changed use . . . having been first authorized . . . by a vote of two-thirds of the qualified electors . . . of the City . . ." Emphasis added.

Since the property in question is not presently owned in fee by the City, the question, therefore, is: Can the City Council dedicate the property to park purposes contingent upon the proposed future acquisition of the property?

The City entered into an agreement with Genstar Development, Inc. (Genstar) in 1985 pursuant to which the City agreed to exchange approximately 162 acres of City-owned land located adjacent to Penasquitos Canyon for approximately 288 acres of land owned by Genstar with an additional approximately \$1 million coming to the City which represents the difference in value between the two parcels. The 1985 agreement contains a number of conditions precedent which must occur prior to the exchange becoming effective. The agreement anticipates the satisfaction of the conditions precedent by December 1, 1986, but provides for an extension of up to six months beyond that date.

Several of the conditions precedent involve future discretionary actions by the City, including an amendment to the General Plan and the Sorrento Hills Community Plan, a rezoning, a planned industrial development permit and a tentative subdivision map.

In view of the significant discretionary actions yet to take place prior to the City potentially acquiring the Genstar

property, it does not appear legally appropriate to attempt to dedicate the property to park purposes at this time.

While any such ordinance could provide that it would only become effective if and when the City acquires a fee interest in the property, a Council action to dedicate the property at this time could lead to allegations that the City has predetermined the matters of the discretionary issues which have yet to come before the City Council. In other words, dedicating the property at this time could imply that the City Council will not be objective and fair in listening and making decisions based upon testimony to be given at future public hearings in connection with the City's discretionary actions. Therefore, it is recommended that the City Council not proceed with dedication of the Genstar parcel unless and until it actually acquires the fee interest in the property.

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By

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