

FILED

JUN 20 2005

City of Palo Alto

Office of the City Attorney

KIRI TORRE
Chief Executive Officer/Clerk
Superior Court of CA County of Santa Clara
BY D. ALDYCKI DEPUTY

June 9, 2005

The Honorable Alden E. Danner
Presiding Judge - Santa Clara Superior Court
191 North First Street
San Jose, CA 95113

RE: Grand Jury Report Regarding Transfer of Dedicated
Parkland within the City of Palo Alto

Dear Judge Danner:

We have received a copy of the 2004-2005 Santa Clara County Grand Jury Final Report regarding the transfer of dedicated parkland in the City of Palo Alto. The City of Palo Alto agrees with all of the Recommendations listed by the Grand Jury. The City of Palo Alto agrees with two of the three Findings of the Grand Jury.

Pursuant to Penal Code section 933.05, the Mayor and City Council on behalf of the City of Palo Alto, responds to the findings and recommendations contained in the report as follows:

Finding 1: The City of Palo Alto Agrees with Finding 1.

Recommendation 1: The City of Palo Alto Agrees with Recommendation 1.

The City will create and enforce a written policy that any future agreements to share dedicated parklands with the Palo Alto Unified School District or any other public entity will explicitly specify the terms of use and conditions for access by the general public. Any agreements will include terms requiring the posting of any use and access restrictions at entrances to the shared parkland and park facilities.

RE: Grand Jury Report Regarding Transfer of Dedicated
Parkland within the City of Palo Alto

Finding 2: The City of Palo Alto Disagrees with Finding 2.

The minor exchange of equal amounts of land (including dedicated parklands), with the Palo Alto Unified School District approved by the adoption of an ordinance was expressly authorized by the Palo Alto City Charter. The Charter expressly adopts the 1965 language of Government Code section 38441, which provides that "[w]ithout a special election the legislative body may convey a minor portion of . . . a park in exchange for an equal or greater area or value of privately owned land contiguous to the park . . ." While the Grand Jury acknowledges the inclusion of this Government Code section in the City's Charter, its findings make no mention of this provision. This finding would appear to ignore all of the adopted Government Code sections incorporated in the City's Charter.

"A settled rule of statutory construction requires that we give effect and meaning to all parts of the law if possible and to avoid an interpretation that renders statutory language superfluous." Sampson v. Parking Service 2000.com, (2004) 117 Cal.App.4th 212, 226. "The courts will not presume that the [legislative body] in enacting a statute indulged in an idle act. The presumption is that they intended the statute to have some effect." Moore v. City Council of Maywood, (1966) 244 Cal.App.2d 892, 897. See also, Agnew v. State Board of Equalization, (1999) 21 Cal.4th 310, 330 (" . . . whenever possible, significance must be given to every word in pursuing the legislative purpose, and the court should avoid a construction that makes some words surplusage.") The Grand Jury's interpretation of the City's Charter fails to give meaning to multiple sections of the City Charter. Contrary to the Grand Jury's interpretation, the City's express adoption of the 1965 language of Government Code section 38441 as a part of the City's Charter must be presumed to have meaning.

The City Charter provides for the exchange of minor portions of dedicated parkland in exchange for an equal amount of land contiguous to the park. Here, approximately 8,045 square feet of parkland was exchanged for an equal amount of school property, at the same park in the same general location. The exchange of such a small amount of property was exactly the type of minor exchange contemplated by the City Charter provision

The Honorable Alden E. Danner

June 9, 2005

Page 3

RE: Grand Jury Report Regarding Transfer of Dedicated
Parkland within the City of Palo Alto

allowing the exchange of property without an election. The prior City Attorney approved of this approach and wrote a memo to the Council on the issue dated June 19, 2003, attached as Exhibit "1".

Recommendation 2: The City of Palo Alto Agrees with Recommendation 2.

The City will follow all Charter requirements for any transfer, disposal, abandonment or discontinuance of use of City parkland.

Finding 3: The City of Palo Alto Agrees with Finding 3.

Recommendation 3: The City of Palo Alto Agrees with Recommendation 3.

The City will ensure that any construction, reconstruction or development adjacent to dedicated City parkland is designed and implemented to conform to a certified site survey to prevent any future encroachments.

We appreciate the opportunity to respond to the Grand Jury Report. We respect the time, effort and analysis that were devoted by the Grand Jury to this issue. We look forward to implementing the recommendations and will do so diligently.

Sincerely,



Jim Burch
Mayor

GMB:sm
Attachment

REPORT



FROM CITY ATTORNEY

5

June 19, 2003

THE HONORABLE CITY COUNCIL
Palo Alto, California

RE: Ordinance of the Council of the City of Palo Alto
Authorizing the Exchange of Minor Portions of
Park Land for Contiguous Lands in Order to
Implement Article VIII of the Palo Alto City
Charter

Dear Members of the Council:

Attached please find an ordinance designed to implement the City Charter's incorporation by reference of state law governing the "elections and procedures" for park dedications. Specifically, the state law which has been attached as an appendix to the Charter since 1965, authorizes the City Council, without an election, to exchange minor portions of park land for "privately" held contiguous lands of equal or greater area or value. (See attached Charter, Art. VIII.)

I believe these procedural features were intended to be incorporated into the Charter. I have found no legislative history to the contrary. However, I believe it is important for the Council to indicate its interpretation of the Charter by enacting this implementing ordinance before moving ahead on any park exchange.

The motivation for this proposal is a staff-negotiated park land exchange to facilitate correction of the problem

THE HONORABLE CITY COUNCIL

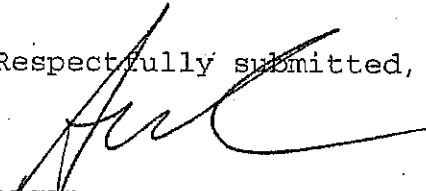
June 19, 2003

Page 2

RE: ORDINANCE OF THE COUNCIL OF THE CITY OF PALO ALTO
AUTHORIZING THE EXCHANGE OF MINOR PORTIONS OF
PARK LAND FOR CONTIGUOUS LANDS IN ORDER TO
IMPLEMENT ARTICLE VIII OF THE PALO ALTO CITY
CHARTER

created when the School District unlawfully (mistakenly) installed portable classrooms on a portion of Rinconada Park. I am advised by staff that PAUSD is prepared to offer an exchange of contiguous lands in order to avoid the burden of moving the portable classrooms.

Respectfully submitted,



ARIELLE PIERRE CALONNE
City Attorney

APC:sm

Attachments

cc: Board of Education - PAUSD

Mary Frances Callan, Superintendent, PAUSD

Bob Golton, Deputy Superintendant, Business Services, PAUSD

Article VIII.1 Parks²

(This Article amended by Stats. 1969, Ch. 223, 6-26-69)

All lands owned or controlled by the city which are or will be used for park, playground, recreation or conservation purposes shall be dedicated for such purposes by ordinance.³

No land heretofore or hereafter dedicated for such purposes shall be sold or otherwise disposed of, nor shall its use be abandoned or discontinued except pursuant to majority vote of the electorate. Any election and related procedures under Article VIII shall conform to the provisions set forth in general law as it existed January 1, 1965, except that the council may call such election by majority vote.

No substantial building, construction, reconstruction or development upon or with respect to any lands so dedicated shall be made except pursuant to ordinance subject to referendum.