



SAN MATEO-FOSTER CITY SCHOOL DISTRICT

MEMORANDUM

Date: August 31, 2009

To: Foster City Councilmembers
Jim Hardy
Kristi Chappelle

From: Pendery Clark

RE: Letter from County Counsel

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Attached is a letter from San Mateo County Council in response to legal issues raised by the August 24, 2009 memorandum from Jean B. Savaree, City Attorney for Foster City, to the City Council. We wanted to be sure that you have the opportunity to read this letter prior to the meeting this evening.

If you have any questions, please do not hesitate to give me a call.

COUNTY COUNSEL

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Please respond to: (650) 363-4456

August 28, 2009

Pendery Clark, Ed.D., Superintendent
SAN MATEO – FOSTER CITY SCHOOL DISTRICT
1170 Chess Drive
Foster City, CA 94404

Re: New Foster City School Site Selection Issues

Dear Dr. Clark:

You have asked us to advise you regarding the legal issues raised by the August 24, 2009 memorandum from Jean B. Savaree, City Attorney for Foster City, to the City Council regarding potential cooperation between the District and the City for the development of additional enrollment capacity in Foster City. The issues presented are varied, but we understand time is of the essence. You have therefore asked us to focus our analysis on whether the District may agree or validly disagree with the section of the memorandum specifically relating to the potential redevelopment of a portion of Boothbay Park as a school site. Thus, please allow this letter to advise you of several salient points of disagreement with that portion of the memorandum. This letter is not intended to be a comprehensive statement for or against all of the other points raised by the memorandum, which may require further correspondence to address as needed.

First, Ms. Savaree advises her client that provisions of the California Constitution present an impediment to a donation of land by the City to the District on the ground that such a donation would be an impermissible gift of public funds. We are familiar with those prohibitions, and we disagree with the conclusion. A school district is considered to be "a political subdivision of the State" within the meaning of Article XVI, not a "municipal corporation." *See Martin v. Santa Clara Unified School Dist.*, 102 Cal. App. 4th 241, 253 (2002). It is therefore amongst the prohibited *donors* of public funds under the applicable

constitutional language, but not amongst the prohibited *donees*. A donation of land is an illegal gift of public funds when directed to “any individual, association, municipal or other corporation whatever . . .” in violation of Article XVI, § 6. The school district is none of those — it is a political subdivision of the state. Thus, if the City were to donate land to the District, it would be equivalent to the City donating land to the State of California, which is not a transaction prohibited by Article XVI of the California Constitution. The memorandum’s statement that the state constitution prohibits gifts to “another public or private entity” is incorrect, because the constitutional language permits donations to public entities that are political subdivisions of the state, such as the District. Article XVI itself is not an impediment to a donation of land by the City to the District.

Second, Ms. Savaree advises her client that Cal. Gov’t Code § 37111.1 precludes the sale or donation of Boothbay Park to the District because that statute requires a city to do certain things prior to changing the use of dedicated park land from its use as a park to “other municipal purposes.” She concludes that a school is not a “municipal purpose” within the meaning of the statute, and also that the statute would require the city to acquire and dedicate an equal amount of other city property to park use in the prior three years. We have analyzed Cal. Gov’t Code § 37111.1 and believe it does not apply to this set of facts, for several reasons.

The first reason is that Section 37111.1 is a procedure that is only triggered when a city proposes to change a use of land from park to “other municipal purposes.” Ms. Savaree’s conclusion that a school is not a “municipal purpose” (which we believe is correct) compels the conclusion that the statute does not apply, because the city would not be converting the park land from one municipal purpose to another municipal purpose — it would be converting the park land from a municipal purpose (a park) to a non-municipal purpose (a school). Thus, by its own terms, the statute would not apply in this situation.

The second reason is that the statute by its terms talks about a city changing a use of its land from one municipal purpose to another municipal purpose, not the sale of property. If anything, this statute presents a *restriction on what Foster City is allowed to use park land for*, not a restriction on to whom it can sell the land. The procedures for a city to sell or otherwise dispose of land are provided by an entirely different set of statutes (*see, e.g., Cal. Gov’t Code §§ 37350; 37421*). There are no cases interpreting Section 37111.1 that compel a conclusion that the Legislature intended the section to restrict the *sale* of city land that is presently designated as a park. Significantly, the memorandum leaves off the last sentence of the statute: “This procedure is an alternative procedure to any other procedures contained in the law.” This bolsters our view that the statute was not intended to limit the City’s discretion to sell land provided in Cal. Gov’t Code § 37350, requiring only that a disposition of land be “for the common benefit.” In short, this section does not prohibit what is proposed here. The City could choose instead to follow Cal. Gov’t Code § 37350 or Cal. Gov’t Code § 37421, which allows it to sell any city property with very little or no restriction other than a finding that the disposition is for “the common benefit” or for “the public interest or convenience” respectively.

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The third reason Section 37111.1 is not an impediment to the repurposing of a portion of Boothbay Park's 11.21 acres to school use is that Section 37111.1, even if it applied, does not preclude the City from taking immediate action to acquire additional parkland in order to satisfy its terms in a future anticipated transaction with the District. In other words, even if Section 37111.1 applied on its terms (and it does not), the City could make arrangements to acquire replacement acreage elsewhere in the City and dedicate them for park use as soon as possible, which would free the City to comply with Section 37111.1's procedural requirements in anticipation of a transaction with the District. Section 37111.1 does not require that the replacement acreage be "up and running" as a park prior to redesignating the park to "other municipal purposes"; rather, the statute expressly contemplates that a repurposing of a park may occur so long as the replacement property will be redeveloped as a park "within a reasonable period of time . . ." Cal. Gov't Code § 37111.1. The memorandum assumes that the City has not explored, and will not explore, the acquisition of replacement parkland to enable the repurposing of some amount of Boothbay Park's acreage, as if its failure to do so were already an irrevocable *fait accompli*. Not so — the City is free to comply with Section 37111.1 as it desires, even though by our analysis it does not apply on its terms.

Third, the City could justify the conversion of the Boothbay property to a use as a school pursuant to Cal. Gov't Code § 37111, allowing parks to be used for "construction of public buildings or creation of a civic center." The term "other public buildings" is not limited by the statutory language to buildings necessarily belonging to the City itself. A public school is a public building, and its construction on park land is therefore arguably authorized by Section 37111. Moreover, the other portion of the same statute also authorizes a school site, because a school is a "civic center" as a matter of California law. *See* Cal. Educ. Code § 38131(a) ("There is a civic center at each and every public school facility and grounds within the state . . .")

Our analysis of these issues is evolving, but given the research we have done in the limited time available, it appears that the City Council of Foster City has several available options that would permit it to either donate or sell a portion of the Boothbay Park property at its discretion. I remain at your disposal to answer questions regarding the above.

Very truly yours,

MICHAEL P. MURPHY, COUNTY COUNSEL

By: 
TIMOTHY FOX, Deputy

MPM:TF