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MEMORANDUM

TO: Angela Calvillo, Clerk of the Board of Supervisors
FROM: Manu Pradhan, Deputy City Attorney 
DATE: September 12, 2018
RE: Transfers of Park Property at Margaret Hayward Playground (File No. 180886)

QUESTION PRESENTED

May the Board by Supervisors set aside additional park property in Margaret Hayward Playground by ordinance for the construction of an expanded emergency command center?

SHORT ANSWER

Yes. The general rule in the City Charter that prohibits the disposition of park property without voter approval does not apply here because of the unique history of this site. As we explain below, provisions of the 1898 Charter allowing the Board of Supervisors to set aside by ordinance land that is within the Margaret Hayward Playground has survived under the 1932 and the 1996 Charters.

BACKGROUND

In 1855 as part of the Van Ness Ordinance, the Board of Supervisors set aside the Margaret Hayward Playground, part of Jefferson Square, as a park. The City continued to dedicate Jefferson Square solely to park purposes until the voters adopted Section 6a, Article XIV, of the 1898 Charter. Section 6a allowed the Board of Supervisors to set aside by ordinance property in the park for a central station as follows:

The Board of Supervisors shall have the power and authority to select and set aside by ordinance, in that certain square or park known a Jefferson Square, bounded on the north by Eddy Street, on the south by Golden Gate Avenue, on the east by Gough Street, and on the west by Laguna Street, a suitable and convenient site upon which may be erected by competent authority a central station for the fire alarm and police telegraph and telephone systems, said station when erected to be under the control and management of the joint commission of the Department of Electricity, and said joint commission shall have power and authority, when said station is erected, to maintain across said square or park the necessary conduits, wires and lines leading to said station.

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Under the authority conferred by this section, the Board of Supervisors set aside land in Margaret Hayward Playground for a central alarm station in 1914. The City constructed the station on this site. In a published public opinion in 1963 this office concluded that the Board of Supervisors continued to have the authority to set aside land for the purposes set forth in Section 6a of the 1898 Charter but that the authority was limited to those purposes and did not include a Fire Department headquarters.

In a 1986 published opinion (Opinion No. 86-01, attached) this office advised that the Board had the power under Section 6a of the 1898 Charter to set aside additional property in Margaret Hayward Playground by ordinance to build an emergency services and communications center. Section 6a had authorized the Board of Supervisors to set aside land for this purpose by ordinance, and the Board had adopted such ordinances multiple times since 1898. Section 6a did not expressly appear in the 1932 Charter as recodified in 1971 (the then-current Charter). But under Section 11.102, all existing powers and duties of the City continued in effect "except as otherwise provided in this charter." Despite codifying a general rule against the sale or abandonment of park property without voter approval, the 1932 Charter did not specifically provide otherwise with respect to Section 6a or Jefferson Square, and courts often construe charter provisions in favor of the exercise of municipal power absent an express limitation. Accordingly in 1986 the Board continued to have the power over Jefferson Square that the 1898 Charter vested in it.

After 1986, the City adopted two more ordinances setting aside property in the Margaret Hayward Playground for emergency command center purposes. *See* Ordinance No. 7-88 and Ordinance No. 157-91.

In 1996, the voters approved the current Charter. Then in 2000 the Board of Supervisors adopted Ordinance No. 171-00, setting aside additional property in the Margaret Hayward Playground for the existing Combined Emergency Communications Center ("CECC") at 1011 Turk Street. The CECC is the headquarters for the Department of Emergency Management ("DEM"). The Recreation and Park Department continues to manage the rest of the Playground for recreational purposes.

The Recreation and Park Department has prepared an ordinance for introduction on September 18, 2018 (File No. 180886) that would transfer additional portions of the Margaret Hayward Playground to DEM, to expand the CECC. This memorandum addresses whether the Board of Supervisors may effect this transfer by adopting an ordinance, or if the transfer would require voter approval.

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DISCUSSION

The reasoning of the 1986 opinion still applies. The 1932 Charter preserved the Board's authority with respect to Jefferson Square, which includes the Margaret Hayward Playground, and the current Charter is no different. At Section 18.104 it states: "[a]ll offices, agencies and departments of the City and County then in existence under the Charter of 1932 shall continue to perform their functions, exercise their authority and fulfill their responsibilities, as they existed immediately before this Charter's becoming operative." Under Section 18.104, local laws in place before 1996 were repealed "only to the extent they are inconsistent with the provisions of this Charter." Like the 1932 Charter before it, the current Charter requires voter approval only as a general rule and does not specifically address Jefferson Square. And the Board's set-aside of land for the CECC in 2000 serves as precedent for this interpretation of the current Charter. Thus, a court is very likely to conclude that the Board of Supervisors still has the authority to set aside land in the Margaret Hayward Playground by ordinance as provided in Section 6a of the 1898 Charter.

CONCLUSION

The Board of Supervisors may set aside park property in the Margaret Hayward Playground for an expanded CECC by ordinance.



George Agnost,
City Attorney

January 10, 1986

OPINION NO. 86-01

Subject: Authority of Board of Supervisors to Set Aside
Additional Property in Jefferson Square for the
Construction of an Emergency Services Center.

Requested by: Philip S. Day, Jr., Director
Office of the Mayor
Emergency Services

Prepared by: Burk E. Delventnal
Mara E. Rosales
Deputy City Attorneys

QUESTION PRESENTED

May the Board of Supervisors by ordinance set aside additional property in Jefferson Square for the construction of an emergency services center?

CONCLUSION

Yes.

INTRODUCTION

You have advised this office that Mayor Feinstein has requested from you and other City officials a proposal for a site to house the City's emergency services and communications center. The emergency services center would be used on a daily basis by the Mayor's Office of Emergency Services and would serve as the central communications command post for City officials in the event of a City-wide emergency or disaster.

Presently, the Emergency Services Center has some space in the Central Fire Alarm Station located on Turk Street in San Francisco. You are interested in expanding the existing facility on Turk Street by constructing an emergency services communications center at the back of the Central Fire Alarm Station which would extend to the existing fence line. (See attached drawing.)

HISTORICAL BACKGROUND

The Central Fire Alarm Station abuts the Margaret Hayward Playground and is located in Jefferson Square. The Central Fire Alarm Station has a communication tower on one side of the building and is separated from the playground by a wire fence. The area between the station and the fence line is cemented and is used by the Fire Department as a small parking lot. The land known as Jefferson Square is under the jurisdiction of the Recreation and Park Commission and is subject to the provisions of the Charter strictly limiting the use of public park property for non-park purposes.

The existing Central Fire Alarm Station is located upon land which was originally set aside by the Board of Supervisors for park purposes by the Van Ness Ordinance in 1855. The land continued to be dedicated for park purposes until the adoption of Section 6a of Article XIV of the 1898 Charter which provides:

The Board of Supervisors shall have the power and authority to select and set aside by ordinance, in that certain square or park known as Jefferson Square, bounded on the north by Eddy Street, on the south by Golden Gate Avenue, on the east by Gough Street, and on the west by Laguna Street, a suitable and convenient site upon which may be erected by competent authority a central station for the fire alarm and police telegraph and telephone systems, said station when erected to be under the control and management of the joint commission of the Department of Electricity, and said joint commission shall have power and authority, when said station is erected, to maintain across said square or park the necessary conduits, wires and lines leading to said station.

Pursuant to this Charter section the Board of Supervisors enacted several ordinances in 1914 which selected and set aside the present site for the erection of a central station for the fire alarm and police telegraph and telephone systems. (Ordinance No. 2732, May 7, 1914, Ordinance No. 2749, May 11, 1914.) Sometime thereafter, but before 1949, the City built two steel antennae in Jefferson Square on each side of the Central Fire Alarm Station. These antennae apparently facilitate the communication center's functions. However, these antennae were constructed on park property. A fence was erected on park property to bring these antennae within the curtilage of the Central Fire Alarm Station facility. There is no record that the Board of Supervisors took any action to enlarge the area or set aside additional property for facilities for the fire alarm and police telegraph and telephone systems.

ANALYSIS

Section 6a of Article XIV of the 1898 Charter was carried forward and became Section 6a of Article XIV of the 1929 Charter. By adopting Article XIV, Section 6a, the people empowered the Board of Supervisors to set aside in Jefferson Square Park, ". . . a suitable and convenient site upon which may be erected by competent authority a central station for the fire alarm and police telegraph and telephone systems, . . ." When the 1932 Charter was adopted, the specific language of Article XIV 6a of the 1929 Charter was not carried forward. However, the drafters of that Charter made separate provisions for the continuity of powers. Section 11.101 of the Charter provides in relevant part,

The powers or duties vested in city and county officers, boards or commissions by law or under the charter superseded by this [1932] charter shall be exercised, continued and carried out by their successors or by other city and county officers, boards or commissions, consistent with the provisions of this charter.

And Section 11.102 of the 1932 Charter provides,

All functions of the city and county and the powers and duties of officers and employees charged with the performance thereof, as these shall have been apportioned among departments and offices, and institutions, utilities, bureaus or other subdivisions thereof, existing at the time this [1932] charter shall go into effect, shall continue to be the functions of such departments and offices and employees assigned thereto, except as in, or under authority of, this charter otherwise specifically provided...

The powers and duties of the departments and offices which by this charter are established or continued as departments or offices under elective officers, boards or commissions or the chief administrative officer, as such powers and duties exist at the time this charter shall go into effect, shall be continued as powers and duties of each such department or office, except as otherwise provided in this charter.

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As noted above, under the charter in effect preceding the adoption of the 1932 Charter, the Board of Supervisors was empowered to set aside an area in Jefferson Square Park as a site for the Central Station housing the fire alarm and police telegraph and telephone systems.

This is a power that is vested in the successor Board of Supervisors consistent with the provisions of the Charter (See Charter Section 11.101). And since the Charter does not "otherwise specifically" provide with regard to the power to set aside space in Jefferson Square for a fire alarm, police telegraph and telephone systems, the Board of Supervisors would continue to have such power. (See Charter Section 11.102.)

Hence, pursuant to Article XI, Sections 11.101 and 11.102 of the 1932 Charter, the Board of Supervisors, in the absence of an intervening inconsistent law, continues to have the power vested in it by Section 6a of Article XIV of the 1898 and 1929 Charters, to set aside lands in Jefferson Square Park for the purpose of constructing a central station for fire alarm and police telegraph and telephone systems.

This conclusion comports with traditional rules of statutory construction relative to charter provisions which instruct that a construction in favor of the exercise of municipal power is preferred in the absence of an express limitation or one necessarily implied in the City Charter. (See Methodist Hospital of Sacramento v. Saylor (1971) 5 Cal.3d 685; Collins v. Reily (1944) 24 Cal.2d 912.) And it is well settled that any limitation or restraint on the exercise of the municipal affairs powers is not favored. (City of Grass Valley v. Walkinshaw (1949) 34 Cal.2d 595, 599.)

Unquestionably, the subject of providing a communications system necessary to protect the public safety is a municipal concern. (Cal. Const. Art. XI, Section 7) Thus, even without explicit authority in the Charter to construct an emergency services center, the Board of Supervisors can certainly enact legislation addressing the need for a central emergency services center to facilitate responsive efforts in the City during a major emergency. The next question, that concerns us, however, is what is the scope of the Board of Supervisors' authority to place such a facility on Jefferson Square park land.

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In City Attorney Opinion 63-32 this office was asked whether the San Francisco Fire Department could construct its headquarters at the site of the Central Fire Alarm Station. We opined that

. . . [t]he authority conferred by Section 6a of the Charter on the Board of Supervisors to divert park lands in Jefferson Square was restricted to the use of the site as a central station for the fire alarm and police telegraph and telephone systems.

The adoption of Section 6a did not constitute a general abandonment of park property for general city use. Rather the Charter granted the Board of Supervisors a limited authority "to select and set aside" a portion of Jefferson Square for a specified and particular purpose.

Based on our interpretation of the Charter we advised the Fire Commission that its headquarters could not be constructed on the site occupied by the Central Fire Alarm Station since such a use of the property went beyond what the voters contemplated when they approved the use of Jefferson Square for a central station for fire alarm and police telegraph and telephone systems.

The question before us, therefore, is what did the people intend when they adopted 6a of Article XIV of the 1898 Charter and brought it forward and placed it in the 1929 Charter.

A study of the literature commenting on the purpose of the Central Fire Alarm Station during 1914 to 1931 indicates that the people, in approving the use of Jefferson Square for the construction of a central fire alarm station, sought to improve the City and County's capacity to respond generally to emergencies. The Central Fire Alarm Station was therefore built and equipped as a communications center primarily to assist the police and fire departments to respond to emergencies. (Pacific Municipalities, March 1931, p. 125; Police and Peace Officers' Journal, April 1931, pp. 15, 30-31; The Municipal Record, July 1931, pp. 20-21.) The Central Fire Alarm Station facilities allowed police and fire departments to provide essential services to the citizens of San Francisco in times of peril to property and possible loss of life. (Ibid.) In other words, the voters intended that the Board of Supervisors have the authority to set aside property in Jefferson Square to erect an emergency response system and facilities. Indeed, the terms "fire alarm" and police "telegraph and telephone systems" by definition concern generally the ability to transmit or communicate information. By using these concepts, the people evidently were interested in the communications capacity of our emergency response agencies.

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The erection of an emergency communications center as proposed falls within the scope of the limited grant of authority to the Board of Supervisors. The proposed emergency services communications center serves the same basic purpose as that contemplated by the people in 1898 except on a greater scale. In the event of a City-wide disaster or emergency affecting all or a large sector of the community, the communications center will permit City officials, i.e., the Mayor, Fire Chief, Police Chief and others, to coordinate their responsive efforts in attending to a City-wide emergency. In our complicated modern day society we have enhanced resources and capabilities to react effectively to everyday emergencies such as fires, accidents and perilous situations throughout the City. However, the City has a need for a central location from which to coordinate assistance and promote communication amongst emergency City agencies on a City-wide basis in the event of a major disaster or calamity in order to provide for the general public safety. The people have empowered the Board of Supervisors to address these types of concerns by providing for a site.

Another question to address is whether there is any inconsistent intervening Charter provision limiting the Board of Supervisors' authority to set aside additional property for the construction of a City emergency communications center.

Charter Section 7.403, added to the Charter in 1949, governs, among other things, the sale, lease or use of park land. Section 7.403 (a) provides in relevant part:

Notwithstanding any other provisions of this charter, whenever lands which are or shall be used or intended for use for parks or squares are no longer needed for park or recreational purposes, such lands may be sold or otherwise disposed of, or their use for park purposes may be abandoned or discontinued; . . . provided . . . that the general laws of the State of California authorizing municipal corporations to abandon or to discontinue the use of land for park purposes, authorizing the sale or other disposition of such land, and providing procedures therefor and for matters relating thereto, shall be applicable to the City and County of San Francisco and to all lands held or used by it for park purposes and shall govern and control exclusively in respect thereto.

Section 7.403 (b) states in pertinent part:

[T]he recreation and park commission shall not lease any part of the lands under its control nor permit the building or maintenance or use of any structure on any park, square, avenue or ground, except for recreation purposes, and each letting or permit shall be subject to approval of the board of supervisors by ordinance.

Jefferson Square is park property. Park property no longer needed for park purposes may be used for non-park purposes provided the procedure set forth in Government Code Sections 38440 *et seq.* is observed as required by Charter Section 7.403 (a). (See City Attorney Opinions 62-28 and 63-32.) As to Charter Section 7.403 (b), this office has opined that the restrictions in that section against "lease" or "permit" of park property for other than recreational uses is applicable to uses by third parties and not the City. (See Opinion No. 81-6, p. 9, Feb. 12, 1981.)

Considering, however, that a construction in favor of the exercise of municipal power is preferred, Section 7.403 (a) and (b) should not be interpreted as containing implied limitations upon the Board of Supervisors' power derived from its predecessors by virtue of Charter Sections 11.102 and 11.103. This conclusion is supported by the terms of Section 11.102, "unless otherwise specifically provided." The general rules relating to park property must not be deemed to affect the power of the Board of Supervisors contained in the 1898 Charter. In order for that power to have been eliminated the voters would have to address the repeal of that power in very express terms. There being no express limitation in the Charter, the Board of Supervisors continues to possess limited, specific authority to set aside additional park property in Jefferson Square.

CONCLUSION

The Board of Supervisors may, by ordinance, provide for the construction of buildings and structures in Jefferson Square to serve as central communication stations to facilitate the efforts of the police and fire departments (and other City emergency response agencies) to effectively respond to City-wide

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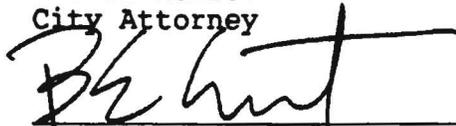
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emergencies, including the emergency services center you have proposed.

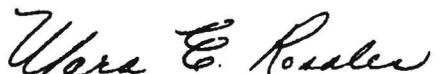
You are so advised.

Very truly yours,

GEORGE AGNOST
City Attorney

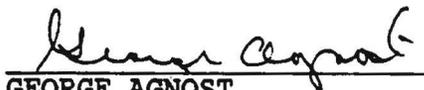


BURK E. DELVENTHAL
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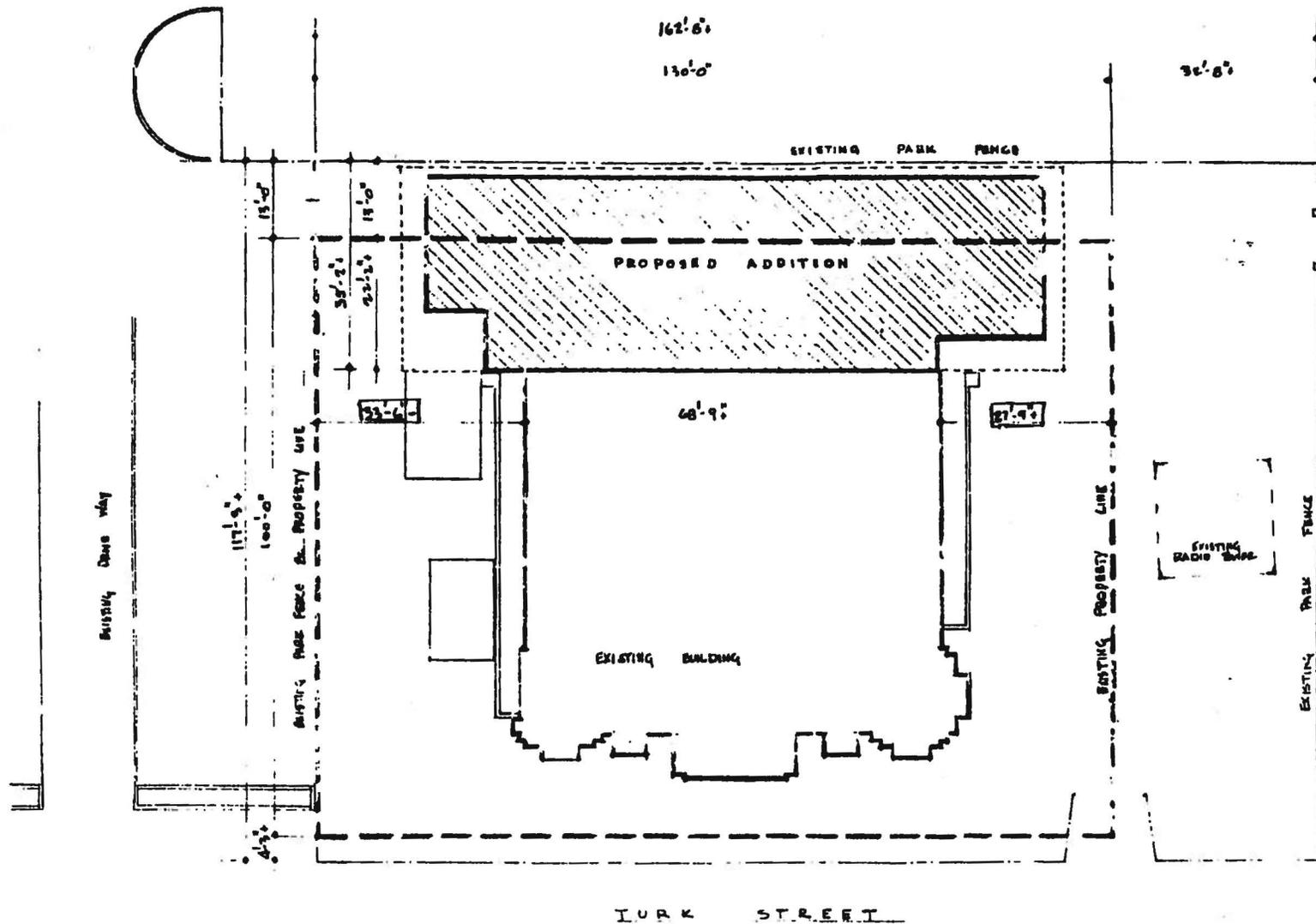


MARA E. ROSALES
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