

Dear Del Rey Oaks Mayor, Council and City Manager,
1/18/21

Work Memorial Park is a special tract of land that includes the special Arroyo Del Rey, vanishing wetlands, valuable open space and even recreational facilities. It also provides the first glimpse of Del Rey Oaks that a visitor might have upon entering our city from the northwest, complete with a welcome sign sitting atop the park greeting all that may enter our lovely little city. Sadly, many residents today are unaware that this treasured parcel was gifted to the City back in 1953 by the Work Family and the Saucito Land Company. This generous gift did not come without conditions, however, and upon electing to receive this land the City agreed to be bound by the deed restrictions that accompanied the gift. The restrictions required that the land be used for “park, school and other municipal purposes.” The one municipal exception provided was that the City could, at the discretion of council, use a portion of the land for a church.¹ On December 28, 1953 that the City Council unanimously passed a resolution accepting this generous gift and thereby agreeing that Del Rey Oaks would be bound by the deed restrictions imposed in the deed.²

Very soon thereafter the city apparently dedicated this gifted land as the municipal park and officially named it Work Memorial Park³. From as far back as the late 1960’s Del Rey Oaks used part of this land as a golf practice/driving range.⁴ A few years later the city added tennis courts to this recreational park area. The City of Del Rey Oaks has always seemed to value the importance of recreation, as is evidenced by the proportionally large amount of land dedicated to parks and open space and the surprising number of recreational facilities throughout this otherwise small town. Still today, the importance that the City places on recreation for residents is confirmed by the enumerated municipal ordinance that *requires*

¹ It appears that the city subsequently agreed to allow a portion of the land to be used as a church considering the location of the Church of the Oaks that appears to be within the original granted parcel.

² Extensive research has yet to uncover any subsequent modification to these deed restrictions that would allow a garden and landscape supply center.

³ The date and details regarding this designation are vague but the land has regularly been described by city leaders and in city documents as Work Memorial Park even long before the 2012 dates and City Manager Dawson acknowledged at the 2/25/2014 City Council meeting that the land was zoned as a park.

⁴ According to John Gaglioti at the November 12, 2014 meeting that park had been used as a recreational driving range since as early as the 1960’s or 1970’s. (comment starts at 1:31 of video of meeting, specific reference 1:33)

the mayor to appoint a Special Committee of Recreation and Parks.⁵ Providing recreational opportunities to a city's residents is a long accepted municipal obligation, much like providing public works, police and fire services and as early as the late 19th century golf has been included in the recreational activities offered by cities.⁶

Municipalities throughout the state often contract with vendors to operate sports facilities and complexes such as ball fields, golf courses and tennis courts, allowing vendors to profit from their service by charging fees for the services they provide and for the use of the facilities they manage. These arrangements by municipalities do not diminish nor eliminate the municipal recreational purpose the facility provides.⁷ Del Rey Oaks, limited in size should be applauded for creatively providing a driving range where its size limited providing a full golf course instead. The early DRO residents obviously valued recreation and considered it an important aspect of municipal life here. One only need to see the driving range, tennis courts, ball courts, ball fields, open picnic areas and playground within our geographically small city that have been a part of this City from near its beginning. For over 30 years the golf range served the city by using this land to fulfill the municipal purpose of providing affordable recreation for local residents.⁸ While golf may no longer enjoy the same popularity as it once did here in Del Rey Oaks, this reduced popularity does not justify converting an area previously committed for recreational purposes into one for a private commercial enterprise in violation of the deed restrictions despite the fact that a private vendor previously charged a fee for using the golf range. An alternate recreational use (which may simply be allowing the wetlands to serve as an observation area similar to the Frog Pond) must be found for this parcel consistent with the Work Memorial Park's dedicated park purpose or a suitable municipal purpose should be identified in the alternative.

Unfortunately, at the time of the original hearings for the Garden Center project many residents, planning commissioners and council members were misled to believe that because

⁵ Del Rey Oaks Municipal Ordinance 2.04.108 - The mayor shall appoint special committees which shall consist of a public safety committee of three members, recreation and parks committee of three members, public works committee of three members and a financial committee of three members.

⁶ Kirsch, George B. "Municipal Golf Courses in the United States: 1895 to 1930." *Journal of Sport History*, vol. 32, no. 1, 2005, pp. 23-44. *JSTOR*, www.jstor.org/stable/43610079. Accessed 29 Dec. 2020.

⁷ CA Gov. Code Section 50402 (a) A city, county, or city and county owning property or leasing property which is devoted to park, amusement, or recreational purposes may make a charge for use or services provided therein in the amount as may be provided by resolution by the governing body. No charge shall be imposed which exceeds the cost of the service provided. To the extent feasible, charges for similar uses or services imposed by a governing body pursuant to this section shall be uniform throughout its area of jurisdiction.

⁸ Apparently the city recognized the need for this type of recreational activity and was less concerned about maximizing revenue and more concerned about the commitments made since it was only collecting approximately \$800 beginning in 1980s from the vendor that operated the range.

a private vendor had once charged a fee to use the golf range the land was somehow converted into something that no longer required the City to honor the deed restrictions, making the restrictions null and void and allowing the City to convert this dedicated park land into a private commercial enterprise provided they could identify some “benefit” to the City and its residents. The City leaders suggested that revenue is a legitimate City need and anything that might assist with this need was consequently a municipal purpose that benefited the City and its residents. While not only is there no legal basis for these arguments and conclusions, the City also simply ignored the various State regulations that govern the conversion of dedicated park land, whether the land was donated or not. The City’s argument is flawed on many grounds and this Council should take the actions now that are necessary to undo the egregious mistakes our City has made concerning Work Memorial Park. Allowing the Garden Center to exist as it currently does violates: the deed restrictions; state laws regarding how to convert dedicated park land, the City’s General Plan; zoning laws (without any forthcoming evidence to demonstrate that this park land was properly and publicly rezoned to C-1-V as was presented to the residents); other various municipal ordinances; the terms and conditions of the Conditional Use Permit approved in November 2014 and 2015; and the actual terms of the lease signed in January 2015.

The zoning that would have otherwise allowed this parcel to be used as a garden and landscape supply business was repeatedly challenged during the original hearings on the Conditional Use Permit for this project. The parcel was presented to the residents and planning commissioners as having been rezoned as a park with a C-1-V zoning overlay. However, a review of past records and minutes of meetings of the City have not uncovered any lawful rezoning of this dedicated park space and to date no such rezoning records have been provided by the City.

Unfortunately, our City’s commitments to the donors of this land and sense of obligation to the residents concerning this dedicated park land seemed to begin to change around 2012. As the 30 year lease for the golf range neared its end the city leaders through City Manager Dawson, along with a few local business people, began searching for more profitable uses of this gifted land and offered the rationale that the City needed to maximize the use of this land to generate greater revenue for the city.⁹

The arguments advanced at the time (and still being advanced by some today) was that the City’s need for revenue trumps other City obligations and that revenue-generation is a legally

⁹ City Manager Dawson reports in his Manager Report at the May 2012 City Council Meeting that he had Denise Duffy and Associates looking into what could be done with the 13 acre Work Memorial Park Parcel.

valid “municipal purpose” based on some legal research done by some “unknown” previous City official.¹⁰ They also argued that Work Memorial Park, being city-owned the land, may be utilized however the majority of the council may designate, provided it is claimed at the time of designation that the use will be “beneficial to the public.”¹¹ Such an argument, while convenient, ignores the distinction that the California legislature and the courts have made regarding the types and manner of acquisition for city-owned property. California Government Code Section 37111.1 seems to be on point in this matter:

When a legislative body deems it necessary that land purchased in fee for any municipal purpose and subsequently dedicated by use for park purposes should be used for other municipal purposes, it may adopt an ordinance by four-fifths vote, after giving notice and conducting a public hearing, declaring the necessity and providing that such lands can be used for other municipal purposes provided that (a) an equal or greater amount of city property has also been acquired with the previous three years and has been dedicated and has been developed, or will within a reasonable period of time be developed, for similar park purposes and (b) the proposed use of the park land conforms to the city’s general plan.

This Section shall not be applicable to land dedicated for park purposes by a donor or acquired by eminent domain procedures for park purposes or acquired by funds obtained from bonds voted for park purposes.

This procedure is an alternative procedure to any other procedure contained in the law. California Government Code Section 37111.1.

A review of the planning commission and city council meetings regarding the conversion of Work Memorial Park into a commercial enterprise project that allowed the garden and landscape supply business has revealed no evidence that California Government Code Section 37111.1, or any of the provisions that regulate park land or land donated to a city, was complied with in this instance. In fact, when questioned about the legality of converting the use of Work Memorial Park at the November Planning Commission meeting City Manager Dawson presented that “municipal purposes” includes financial benefit based on a legal opinion by some previous City leader.¹² The City Attorney at the time attempted to buttress this argument by suggesting that the California legislature had recently enacted new laws

¹⁰ Comments by City Manager Dawson at the November 2014 Planning Commission meeting when asked by residents about the deed restrictions and zoning concerns. (video on City Website)

¹¹ The 10 year lease approved by the city council in 2015 for the Garden Center was careful to include the buzz word “beneficial to the public” language as if this somehow magically satisfied the restrictions of the deed and State law: “WHEREAS, the City Council finds and determines that this Lease and the use of a portion of the Work Memorial Park pursuant to this Lease for Del Rey Oaks Garden Center is beneficial to the public.”

¹² While this opinion or documents related to this legal opinion have been formally requested, they have not been produced and the City is unaware of the existence of such document or opinion.

that allow counties to dispose of or convert parkland for various purposes, including for financial concerns, and so by analogy our city could do the same with this parkland.¹³ California Government Code 25515, the statute referred to by the City Attorney at the time, applies specifically to counties, yet she proclaimed that a city, by analogy, has the same ability to dispose of their public land for a private commercial enterprise as a county. This line of legal reasoning is faulty and provided misdirection for our City when deciding how to proceed. Where the State has separate statutes that regulate both counties and cities, as Californian does, and the legislature adds a statute that applies only to counties with no similar added statute for cities the courts consider this clear evidence that the legislation is only intended to apply to counties and any argument that the county statute should be applied by analogy is legally misplaced. Had the legislature intended for such legislation to apply to cities it could have and it would have simply added similar language to the statute that regulates cities in this regard.

I am hopeful that you will each carefully consider my remarks above and conduct any additional research needed to be satisfied that the City is acting legally and in the most ethically sound manner. Despite the decisions made by previous leaders, this Council must make decisions that are consistent with the deed restrictions, the federal, state and local laws, the Conditional Use Permits and the lease itself, and make decisions that demonstrate that the City is prepared to honor its commitments to the donors of this land and to the residents that rely on the integrity of our government. Failure to act appropriately now can have long lasting consequences for our City and now is the perfect time to correct mistakes previously made. I ask the City Council to grant the appeal filed by Alice Green and to reverse the Planning Commission's approval of the requested modifications to the Conditional Use Permits of the Garden Center, including the encroachments that have occurred, the fencing and the day and hour modifications. I further request that the City enforce the existing provisions of the original Lease and require that the tenant to fully comply with our existing municipal ordinances and other laws. I also request that the City Manager require that Tenant (Garden Center) remove the "haul road" pursuant to the terms of the Encroachment Permit dated 7/25/17 and signed by City Manager Dino Pick and that the condition of the wetlands be restored to the condition they were in prior to any road being constructed or to a condition deemed more suitable for such wetland area by and independent party. I also believe that the City should notify the Tenant (Garden Center) that it has no present intention of renewing the lease when the term expires and then work with

¹³ Arguments made by the City Attorney and City Manager at the November 2014 Planning Commission meeting. To date no documents to support these arguments have been provided despite formal Public Record Requests having been made of the City for these very items.

the Tenant to find alternative arrangements for his business and its location sooner rather than later. The various violations of the lease and local ordinances need immediate correction, including the removal of the numerous concrete bins that surround the garden center in violation of the Conditional Use Permit and CEQA, the removal of all asphalt covering in the leased area and the removal of all machine equipment next to the outbuilding next the Arroyo Del Rey.

Your attention to this issue is greatly appreciated and I thank you in advance for the careful consideration that each of you will be providing this important City matter.

Sincerely,

Ken Rutherford, DRO resident