

Lompoc City Council
Lompoc Redevelopment Agency
Agenda Item



City Council Meeting Date: January 5, 2010

TO: Honorable Mayor and City Council Members/
Honorable Chair and Agency Board Members

FROM: Laurel M. Barcelona, City Administrator/Executive Director
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Joseph W. Pannone, City Attorney/General Counsel

SUBJECT: Legal and Policy Considerations Regarding Volunteer Efforts to Construct
a Public Park at 119 South H Street

RECOMMENDATION

That the City Council/Agency Board review Staff's report and consider for selection Option B.

Options:

- A. Reduce the scale of the project to a specified dollar amount, redesign the project to include specified elements, retain the project as solely a City project and direct staff to proceed; or
- B. Reduce the scale of the project to a specified dollar amount, redesign the project to include specified elements, establish a volunteer component for the project, retain the remainder as a City project and direct staff to proceed; or
- C. Table further work on the project until other time specified by Council; or
- D. Provide other direction.

BACKGROUND

For many years, the City Council, Redevelopment Agency Board and community members have desired to have a public park and related building constructed and

installed at 119 South "H" Street to help eliminate blight in the area, revitalize the downtown area and enhance the quality of life in the area and community as a whole. At the Council/Agency meeting of November 3, 2009, the Council/Board reviewed the proposed design and cost of that "Pocket Park" project. At that meeting, some community members suggested such a project would be best completed by a private non-profit organization through qualified community volunteers. In response, the Council/Board directed Staff to outline for Council/Board discussion and consideration the feasibility of establishing a community volunteer effort to construct a public park at 119 South "H" Street.

DISCUSSION

In brief, there likely is a legal path to set up a program for such a volunteer effort. Ultimately, it would be a policy determination whether such an effort would be appropriate and in the best interests of the public for this important project. Staff has outlined below initial legal steps and considerations as well as several policy considerations.

Initial Legal Steps:

1. Determine the nature (*i.e.*, non-profit, corporate or other status), standing (*i.e.*, active, licensed), insurability and financial capabilities (*i.e.*, review existing budget and previous financial reports) of the legal entity proposing to enter into the contract with the City.
2. After step one is satisfactorily completed, enter into a memorandum of understanding with that entity to negotiate the scope of work, schedule of performance, funding program and each party's responsibilities for construction and maintenance of the park.
3. After step two is satisfactorily completed, enter into a design and construction agreement with that entity.

Legal Considerations:

- Can the proposed construction project be completed by volunteers without public bidding?
 - Yes, if no public moneys are spent on the project.
- Can a portion of the project be completed by volunteers without public bidding?
 - Yes, as long as the portions of the project to be completed by volunteers can be sufficiently segregated and not dependent on the other portions.

- How will the qualifications of those performing the work be determined and guaranteed?
 - The responsibility could fall to the private entity, the City/Agency or a combination of the two.
 - Depending on the level of the City/Agency's involvement in those determinations, the project may be required to be publicly bid in any event.
- Must the City/Agency enter into a contract with the private entity for this project?
 - The City/Agency should enter into a contract for several reasons:
 - to grant the private entity authority to enter on and perform work on public property,
 - to ensure all the parties understand the design, scope, timing and parameters of the project, and
 - to establish a process for possible modifications to be made to the approved design.
- Must the City/Agency pay State prevailing wages for the work provided by volunteers?
 - No, volunteer labor is expressly excluded from the prevailing wage requirements.
- Must the City/Agency require the private entity coordinating the volunteer effort to provide bonding for the work?
 - As we understand, the proposal is for the work to be done by volunteers and for the materials to be donated. Therefore, there is no guaranteed price the City/Agency is to pay for the work or obligation for the City/Agency to pay any of the costs for the labor and materials. Based on that, there is no legal obligation for the City/Agency to require the private entity to provide a performance bond to ensure completion of the project for a set contract price nor a labor or materials bond to ensure payment to those providing such work.
- Must the City/Agency require liability insurance from the private entity?
 - Yes, it is likely the City and Agency are obligated by their own insurers to obtain that coverage. In addition, since the project would be built on City/Agency owned-property, those bodies' fiduciary duty to the public would require that coverage. Because of that same duty, the City/Agency should also require the private entity to indemnify the City/Agency and each of their boards, commissions, officers, officials, employees, and

representatives from any liability that may arise due to that private entity's or any of its officer's, employee's, representative's or contractor's, activities pursuant to this project.

- Must the City/Agency ensure licensed and qualified individuals perform the work?
 - Yes, due to the roles as a local governmental agency and owner of property and their fiduciary duties to the public, the City/Agency should be sure those performing work for this project are duly licensed and qualified to perform the work needed.

Several Policy Considerations:

- What is the likelihood of the commencement of the project being delayed?
- What is the likelihood of the project being commenced and not completed?
- What is the likelihood of changes being needed during the project?
- What is the likelihood of errors being made during construction?
- How will the qualifications of those performing the work be determined and guaranteed?
- Should the City/Agency allow a private entity to construct this important public project?
- What warranties will be provided for the work performed?
- How will changes to the design or scope of the project be handled, reviewed and approved?
- Should the City/Agency hire and/or provide a project manager for this project?
- If some work is performed by volunteers and some performed by contractors under direct contract with and paid for by the City/Agency, then what protections will be in place to avoid the contractors from claiming others working on the job caused any problems that may arise?

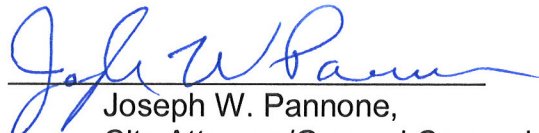
CONCLUSION

After the Council/Board discusses and considers the legal and policy implications regarding volunteer efforts to construct a public park at 119 South "H" Street, Staff recommends the Council/Board consider selection of Option B as the favored option, or provide alternative direction. Should the Council/Board select Option B, the park project would be retained as a City/Agency project; however, the project would include a community volunteer component, established through implementing the three initial legal steps outlined in this report. Staff would then return at a future Council/Board

meeting, recommending for approval a reduced scale of the park project to a specified dollar amount, redesign of the project, and establishment of a volunteer component for the project.

Respectfully Submitted,

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City Administrator/Executive Director



Joseph W. Pannone,
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Attachment: Minutes of November 3, 2009 Council Workshop (pgs. 1-3)