

## CITY OF SAN DIEGO

### Proposition K

(This proposition will appear on the ballot in the following form.)

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**PROP K** **MOUNT SOLEDAD NATURAL PARK** Shall the City be authorized to remove from dedicated park status and sell to the highest bidder a portion of Mount Soledad Natural Park, subject to a lease to the Mount Soledad Memorial Association to preserve and maintain the existing granite walls and plaques, and to transfer ownership of the cross to the new buyer who will determine whether to maintain, relocate, or remove the cross or to replace it with another appropriate monument?

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This proposition requires a two-thirds vote.

#### Mount Soledad Natural Park

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#### CITY ATTORNEY'S IMPARTIAL ANALYSIS

This proposition seeks renewed authorization for the City to sell a portion of Mount Soledad Natural Park to cure constitutional violations associated with the presence of a cross atop Mount Soledad.

The cross was constructed by the Mount Soledad Memorial Association [Association] and dedicated to military veterans in 1954. In 1991, the federal court ruled that the presence of the cross on public property violated the California Constitution. To cure the violation, the City sold a portion of parkland surrounding the cross to the Association. The City Charter requires that such a sale of parkland be authorized by a two-thirds vote of the electorate. The citizens of San Diego provided this authority in 1992 when 76% of the voters approved Proposition F, which authorized the City to sell a portion of Mount Soledad to maintain an historic war memorial.

The federal court subsequently found that the sale of the property to the Association violated provisions of the California Constitution prohibiting government support of religion. The City then conducted a second sale of parkland around the cross, this time by a competitive bid process. The Association was the highest bidder, and, after taking possession of the property, built a memorial composed of granite plaques honoring veterans. In a recent decision, the Ninth Circuit Court of Appeals ruled that the conduct of the second sale to the Association violated the California Constitution. The decision also indicated that the sale itself may be void and that constitutional issues associated with the previous passage of Proposition F in 1992 may invalidate the proposition. This proposition is intended to cure these problems.

If two-thirds of the electorate vote "YES" for this proposition, the City will be authorized, but not required, to resell by open, competitive bid process a portion of parkland around the cross atop Mount Soledad. If the City acts on this authority and conducts a third sale of Mount Soledad parkland, the City first would lease the property around the veterans' memorial to the Association and then sell a portion of parkland around the cross and the memorial to the highest bidder. The Association's lease would not include any rights to the cross. The highest bidder would own the property subject to the Association's lease and would be free to choose whether to maintain the cross, remove the cross, or replace the cross with another appropriate monument. "Appropriate monument" means a replacement monument that would conform to regulatory restrictions such as zoning code requirements and would be suitable for placement immediately adjacent to the Association's veterans' memorial.

If two-thirds of the electorate do not approve this proposition, the City may be required to remove or relocate the cross to private property at another location to comply with the 1991 federal injunction prohibiting the presence of the cross on city-owned land.

### **CITY MANAGER'S FISCAL ANALYSIS**

The fiscal impact of the passage of this measure is unknown at this time. If the measure passes, and the previous sale of land to the Mt. Soledad War Memorial Association is set aside, the City may have to reimburse the Association the previous purchase price of \$106,000. In addition, the City may have to compensate the Association in some amount for the cost of improvements at the site. These expenses may be offset by an undetermined amount of revenue generated by a new sale of the site, which will depend on future negotiations, and the size and market value of the parcel sold. If the prior sale to the Association is not set aside the fiscal impact is unknown.

## **ARGUMENT IN FAVOR OF PROPOSITION K**

For 50 years, the Mt. Soledad Cross has stood as a memorial to San Diego's military veterans. In 1992, in response to a federal court ruling, the city sold a portion of the site to the Mt. Soledad Memorial Association – a transaction that was approved by 76% of San Diego's voters. But earlier this year, a federal appeals court voided the sale, ruling that the city improperly gave preference to a buyer who promised to retain the Cross.

Today, the future of the memorial, and the will of San Diego's voters, is threatened by special interests trying to strip San Diego of its historical identity.

Proposition K offers a final resolution to the debate over ownership of this property by legally transferring it to a private party, and permanently removing any potential constitutional violations.

A YES vote on Prop. K means:

- San Diego voters decide for themselves the future of a monument of historical significance
- The walls and plaques of the Mt. Soledad Memorial Association will remain in place
- A competitive bid process for a portion of the parkland on top of Mt. Soledad that ensures no preference to any potential buyers of the property
- Permanent resolution of this costly 15-year legal battle by allowing the voters, not special interests, to decide how this land will be owned
- Because the proposed sale does not aid or endorse religion, a person purchasing the land at the public auction can decide to keep the cross, as part of the existing memorial, without violating the California or U.S. Constitutions

Please join San Diego's most respected civic leaders, military veterans, and clergy in supporting a lawful and fair resolution to the ownership of Mt. Soledad.

### **Prop. K Gives San Diego Voters The Right to Choose**

ROBERT B. ARNOLD  
Captain, USN (Retired), Ph.D.

RICHARD G. HANECAK  
Captain, USN (Retired)

JOHN F. STEEL M.D.  
Former Navy Fighter Pilot  
and Medical Officer

JAMES B. GILBERT  
Rev. (Senior Pastor Fairmount Baptist)

CHARLES S. LIMANDRI  
West Coast Regional Director  
Thomas More Law Center

## **ARGUMENT AGAINST PROPOSITION K**

Vote **NO** to preserve the Mt. Soledad cross and save our tax dollars!

This proposal puts the cross and Veterans Memorial which surrounds it in jeopardy. If passed, litigation against the City will continue at enormous cost to taxpayers.

In 1991, the court ruled the presence of the cross on Mt. Soledad was unconstitutional. Since then, the courts have repeatedly found the City's attempts to sell land under the cross unconstitutional, requiring the City to pay attorney's fees and costs.

Against the veterans' wishes, the City now seeks voter approval for another sale of our valuable parkland in a scheme more unconstitutional than the last two sales. If this proposal passes, the court will find this third sale unconstitutional and the City will again be required to pay fees and costs.

**IF THIS PROPOSAL PASSES, THE CROSS AND THE LAND UNDER THE VETERANS MEMORIAL WILL BE SOLD TO THE HIGHEST BIDDER. THAT BIDDER MAY CHOOSE TO DESTROY THE CROSS OR TO ERECT A MONUMENT IN ITS PLACE THAT IS NOT COMPATIBLE WITH THE VETERANS MEMORIAL.**

The highest bidder will own the land and could legally replace the cross at the center of the Veterans Memorial with a 30 foot tall monument to whatever it chooses, such as Scientology, Atheism or Buddha.

The Memorial Association, which built the cross and maintained it for over 50 years, has agreed to a settlement that ends 15 years of litigation by moving the cross approximately 1000 yards to a neighboring church thus preserving the cross and allowing a world class monument honoring all veterans to be erected in its place.

**Vote **NO** to save the cross from destruction!**

**Vote **NO** to save the integrity of the Veterans Memorial on Mt. Soledad!**

**Vote **NO** to end 15 years of litigation at taxpayers expense!**

WILLIAM J. KELLOGG, President  
Mt. Soledad Memorial Association, Inc.

TIMOTHY J. SMITH, Commander  
American Legion Post 275

WALDO JOE BRUNNER, Chairman  
United Veterans Council