MEMORANDUM

TO: CITY COUNCIL

FROM: CITY ATTORNEY

SUBJECT: MT. SAC PARKING STRUCTURE

DATE: SEPTEMBER 24, 2014

SUBJECT: The purpose of this memorandum is to inform you of a significant development in the Mt. Sac parking structure situation. When the parking structure proposal was first seen by City staff, there was no opposition, and no one expected that a problem would result. As one Timberline resident opined after the initial meeting with residents, "The City is already committed." The residents' challenges were focused on lack of notice by Mt. Sac and on the definition of "classroom facility". Staff was directed to revisit the project.

ISSUE: The 2008 Mt. Sac bond issue was conducted under the provisions of 'Proposition 39', enacted in 2000, which allows passage of a schools bond issue by 55% of the vote for specifically identified projects. Mt. Sac interpreted this as a "Project List representing the authorized projects for which Bond funds would be allowed to be spent."[1] Last year Division One of the Fourth District Court of Appeal in San Diego issued an opinion in a taxpayers' suit involving the San Diego Unified School District.[2] The State Supreme Court denied review, which in laymen's terms can be regarded as an approval. It has three elements of concern to Walnut. First, the decision holds that a project upon which bond money is to be spent must be specifically described if it seeks passage by 55% of voter approval[3] rather than two thirds. Second, the exemption from a City's zoning code can result in "a project requiring compliance with CEQA", and finally, in strength of the school's position, the consideration of "classroom facilities" is broadened to "educational facilities".

BACKGROUND: Mt. Sac's 2008 75-word ballot statement summary is in general terms, limited in specifics to "construct, equip buildings/sites/facilities." The Mt. Sac bond measure language was to issue $353,000,000 of bonds to "repair, acquire, construct, equip buildings/sites/facilities" . . . . "in developing the scope of projects to be funded, as outlined in the

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[1] Mt. Sac Resolution No. 08-01.

[2] Taxpayers for Accountable School Spending v. San Diego Unified School District, 215 Cal. App.4th 1013, hereinafter ("Taxpayers").

[3] Mt. Sac's Resolution No. 08-01, July 23, 2008, recites, "This proposed election would be conducted under the provisions of Proposition 39, and this requires 55% voter approval to win."

Mt. San Antonio College 2008 Master Plan, incorporated herein and as shall be amended from time to time."[4] The "Project List" attached does not list the parking structure, nor does it refer to the color schematic that reportedly depicts a parking structure at the present indicated location. Its description is limited to "upgrade streets, intersections, and parking capacity to improve traffic flow and prevent traffic congestion." A later study does describe the structure, but this is problematic, having been done after the vote.

PROJECT DESCRIPTION: In Taxpayers, the Court held that the use of the term "field lighting" could not be interpreted as provided for 'stadium lighting' at one of the "12 listed high schools". Specific holdings on this issue include:

> ""(3) Bonded indebtedness incurred by a school district . . . for the construction, reconstruction, rehabilitation, or replacement of school facilities, including the furnishing and equipping of school facilities, or the acquisition or lease of real property for school facilities, approved by 55 percent of the voters of the district . . . voting on the proposition on or after the effective date of the measure adding this paragraph. *This paragraph shall apply only if the proposition approved by the voters and resulting in the bonded indebtedness includes all of the following accountability requirements*:
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> "(A) A requirement that the proceeds from the sale of the bonds be used only for the purposes specified in Article XIII A, Section 1(b)(3), and not for any other purpose, including teacher and administrator salaries and other school operating expenses.
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> "(B) *A list of the specific school facilities projects to be funded* and certification that the school district board . . . has evaluated safety, class size reduction, and information technology needs in developing that list." (Pages 1024, 1025, emphasis in original.)
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> "We italicized above Proposition S's relevant, and ultimately dispositive, language. In support of its position that field lighting is specifically listed and authorized by Proposition S, District relies solely on the words "field lighting" contained in the last paragraph of Part Two. However, contrary to District's apparent assertion, those words do not stand alone as an independently listed project for Hoover and all other school sites. Rather, the words "field lighting" must be read in the context of all the language of Proposition S and, in particular, Part Two. District does not assert, and could not reasonably assert, there is any provision in Part One that could reasonably be interpreted as including, either expressly or implicitly, new stadium lighting for Hoover." (Pages 1028, 1029.)

Finally,

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[4] "Outlined", not "depicted".

"We conclude Proposition S does not authorize the use of bond funds to pay for new field lighting for Hoover's football stadium or for other high schools' stadiums for which Proposition S did not specifically list field lighting as part of their projects." (Pages 1030, 1031.)

CEQA COMPLIANCE: An Environmental Impact Report was prepared by Mt. Sac, and apparently was not challenged at any part of its procedure. But a Government Code §53044 resolution, which needs to be furnished to the City within 10 days of its' adoption in order to render our ordinance inapplicable, does not appear in our records according to our Planning Department. If not it could still be adopted, but it needed to be considered in the Environmental Impact Report. In Taxpayers, it was contended that mere adoption of the exemption was a "project". The contention was rejected,

"By exempting those proposed projects from City's zoning and land use laws, the Board *did not commit* District to a *definite* course of action regarding any of the those projects. Instead, the exemption resolution was merely one prerequisite to completion of the proposed projects should District take affirmative action actually committing itself to a definite course of action regarding any or all of those projects. By adopting the exemption resolution, the Board did not commit District to any of the 12 proposed projects or foreclose alternatives to those projects." (Page 1064, emphasis in original.)

But after considering parking impacts,

"[W]henever vehicles are driven or parked, they naturally must have some impact on the physical environment. The fact that a vehicle's impact may be only temporary (e.g., only so long as the vehicle remains parked) does not preclude it from having a physical impact on the environment around it. Therefore, as a general rule, we believe CEQA considers a project's impact on parking of vehicles to be a physical impact that could constitute a significant effect on the environment. (Page 1051.)

and,

"The Guidelines define "[s]ignificant effect on the environment" as "a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance. An economic or social change by itself shall not be considered a significant effect on the environment. A social or economic change related to a physical change may be considered in determining whether the physical change is significant." (Guidelines, § 15382, italics added.) [17] If a project causes a direct or indirect adverse change in a physical condition in an area, any social impact on humans related to that physical change may be considered by a lead agency in determining whether the physical change is "significant" under CEQA. (Guidelines, §§ 15360 [significant effects may be either direct or indirect],

15064, subd. (e) ["If the physical change causes adverse economic or social effects on people, those adverse effects may be used as a factor in determining whether the physical change is significant."]; see also Pub. Resources Code, § 21065 [defining a "project" as an activity that may cause "either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment"].) The Guidelines define the "environment" as "the physical conditions which exist within the area which will be affected by a proposed project . . . [and] includes both natural and man-made conditions." (Guidelines, § 15360; see Pub. Resources Code, § 21060.5.)" (Pages 1052, 1053.)

Then,

"Because there is substantial evidence to support a fair argument that the Project may have a significant effect on parking, an EIR is required for the Project. (*Mejia, supra*, 130 Cal.App.4th at p. 342.) The trial court erred by concluding otherwise." (Page 1054.)

The exemption, whether already established, or is to be established, should be considered in the Environmental Impact Report. As stated in Taxpayers,

"*Zoning*. Taxpayers asserts District wrongly claimed in the Initial Study that the Project was exempt from City's zoning and land use laws and therefore no discussion or consideration of the Project's inconsistency with those laws was required. As noted above, the Board did not act to exempt the Project from City's zoning and land use laws until May 10, 2011. Therefore, the Initial Study's claim on January 11, 2011, that the Project was exempt from City's zoning and land use laws was not correct. However, because the Board subsequently acted to exempt the Project and because we reverse and remand this matter for preparation of an EIR for the Project, this issue is moot and we need not address it further." (Pages 1055, 1056, emphasis added.)

CLASSROOM FACILITIES: The applicable code section, Government Code §53094, provides for an exemption from City codes for "classroom facilities". Taxpayers holds that the exemption is not so limited, and that the Legislature intended "educational facilities" as a test. Its' holding is:

"[W]e conclude the distinction between classroom facilities and nonclassroom facilities under Government Code section 53094 turns on whether the proposed use of the facilities is directly for or related to educational purposes (i.e., the property is "directly used for or related to student instruction")." (Page1062, citing the Santa Cruz case as authority.[5])

[5] City of Santa Cruz v. Santa Cruz School Bd. Of Education, 210 Cal. App.3d 1.

CONCLUSION: It is the writer's opinion that if challenged, the parking structure as presently planned cannot be financed by 2008 bond proceeds. The term "expand parking capacity" would not act to permit a 5-story structure. The City and Mt. Sac should work together to arrive at a solution that does not significantly impact one group of residents.