

#35.65

8/3/70

Memorandum 70-85

Subject: Study 36.35 - Condemnation (Disposition of Existing Statutes--Code of Civil Procedure Section 1238.1)

Section 1238.1 of the Code of Civil Procedure was enacted in 1945 to authorize cities and cities and counties to condemn property for off-street public parking. Attached is a background study relating to Section 1238.1 prepared by the staff.

The staff believes that Section 1238.1 can be repealed and that nothing is needed to replace it. Other statutes provide adequate authority to condemn for off-street public parking. Exhibit I (attached) has been prepared for inclusion in the Tentative Comprehensive Statute.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

EXHIBIT I

CODE OF CIVIL PROCEDURE § 1238.1

Staff recommendation

Code of Civil Procedure Section 1238.1 (repealed)

Sec. . Section 1238.1 of the Code of Civil Procedure is repealed.

~~1238.1.---Subject-to-the-provisions-of-this-title,-the-right-of eminent-domain-may-be-exercised-in-behalf-of-the-following-public-uses:~~

~~1.---Off-street-parking---Off-street-meter-vehicle-parking-places, including-property-necessary-or-convenient-for-ingress-thereto-or-egress-therefrom,-established-by-any-city-or-city-and-county-for-public-use.~~

Comment. Section 1238.1, which applied only to cities and to the City and County of San Francisco, has been repealed as unnecessary. Cities are authorized to acquire property for parking facilities by numerous other statutes. Some of these authorizations contain express powers of condemnation. E.g., Govt. Code § 54031; Sts. & Hwys. Code § 4090 (a) (b) (off-street parking authorizations); Govt. Code § 54341 (off-street revenue-producing parking); Sts. & Hwys. Code § 31506 (d) (off-street vehicle parking districts); Sts. & Hwys. Code § 35106 (j) (off-street parking districts); Sts. & Hwys. Code § 32802 (b) (off-street parking authorities). Other statutes merely provide for acquisition of the necessary property. E.g., Govt. Code § 37353(a) (off-street parking); Govt. Code § 54061 (off-street stadium-coliseum parking); Sts. & Hwys. Code § 36000 (a) (off-street business area parking

facilities). However, Section 37350.5 of the Government Code has been added to provide: "The legislative body of any city may condemn any property necessary to carry out any of the powers or functions of the city." Cf. City of Anaheim v. Michel, 259 Cal. App.2d 835, 66 Cal. Rptr. 543 (1968). Thus, retention of Section 1238.1 would add nothing to the condemnation authority given cities by other statutes.

THE DECLARED PUBLIC USES

Off-Street Public Parking

In response to the growing importance of off-street parking as a municipal problem, the Legislature from 1941 to 1951 passed a series of acts enabling municipalities, and in some cases counties, to acquire land for off-street public parking facilities.¹ Early in this period, cities experienced difficulty in establishing these facilities,² and in 1945 Section 1238.1 of the Code of Civil Procedure was enacted authorizing cities and counties to condemn property for off-street public parking.³ The right of condemnation may constitutionally be exercised for purposes of off-street public parking⁴ provided control over rates charged is retained in the event the condemned property is leased to a private party for developing and operating the parking facility.⁵

Cities

As of 1968, cities are authorized to acquire property for parking facilities by ten different statutes. Some of these authorizations contain express powers of condemnation⁶ and some simply provide for acquisition of the necessary property.⁷ Section 1238.1 of the Code of Civil Procedure grants the right to condemn for parking purposes to cities by reference to those statutes⁸ granting them the power to "acquire" land for parking purposes. Under all but one⁹ of these statutory authorizations, the city legislative body institutes the action and takes title to any property condemned. Under the Parking Law of 1949, the city indirectly exercises the power to condemn for parking purposes¹⁰ through a parking authority which acts in its own name.

Counties

Under Code of Civil Procedure Section 1238.1, counties¹¹
are not authorized to condemn for off-street public parking.
However, six statutes confer this power on counties independently¹²
of Code of Civil Procedure Section 1238.1. Two additional
statutes authorize counties to "acquire," but not to condemn,¹³
property for parking purposes.

Other Public Agencies

California Resort Districts are authorized to acquire property
for parking purposes, but there is no express authorization to
condemn.¹⁴ Condemnation for parking purposes is granted to the
Department of General Services,¹⁵ the San Francisco World Trade
Center Authority,¹⁶ the Mount San Jacinto Winter Park Authority,¹⁷
and the Solvang Municipal Improvement District.¹⁸ The condemnation
power of these agencies is independent of Code of Civil
Procedure Section 1238.1.

THE DECLARED PUBLIC USES
OFF-STREET PUBLIC PARKING
FOOTNOTES

1. Revenue Bond Act of 1941, Cal. Stats. 1941, Ch. 965, § 1, p. 2852, now Govt. Code §§ 54300-54700; Vehicle Parking District Law of 1943, Cal. Stats. 1943, Ch. 971, § 55, p. 2876, now Sts. & Hwys. Code §§ 31500-31933; Parking Law of 1949, Cal. Stats. 1949, Ch. 1503, § 1, p. 2658, now Sts. & Hwys. Code §§ 32500-33552; Municipal Parking Revenue Bond Act of 1951, Cal. Stats. 1951, Ch. 463, § 9, p. 1557, Sts. & Hwys. Code §§ 33800-34859, repealed by Cal. Stats. 1963, Ch. 703, § 1, p. 1711, with § 2 providing that the repeal "shall not be construed to deprive any person or public agency of any substantial right which would have existed . . . had such repeal not been effected"; Parking District Law of 1951, Cal. Stats. 1951, Ch. 1707, § 1, p. 3919, now Sts. & Hwys. Code §§ 35100-35708.
2. Off-Street Parking in California Cities under State Enabling Legislation, 1957, Report of the Senate Interim Committee on Parking, 3 Appendix to Journal of the Senate, California, Regular Session 1957.
3. Cal. Stats. 1945, Ch. 649, § 1, p. 1305. Code Civ. Proc. § 1238.1 now provides:

Subject to the provisions of this title, the right of eminent domain may be exercised in behalf of the following public uses: (1) Off-Street Parking. Off-street motor vehicle parking places, including property necessary or convenient for ingress thereto or egress therefrom, established by any city or city and county for public use.
4. City of Menlo Park v. Artino, 151 Cal. App.2d 261, 311 P.2d 135 (1957).

5. City and County of San Francisco v. Ross, 44 Cal.2d 52, 270 P.2d 488 (1954).
6. Cal. Govt. Code § 54031; Cal. Sts. & Hwys. Code §§ 4090(a), 4090(b), 33956 (off-street parking authorizations); Cal. Govt. Code § 54341 (off-street revenue-producing parking); Cal. Sts. & Hwys. Code § 31506(d)(off-street vehicle parking districts); Cal. Sts. & Hwys. Code § 35108(j)(off-street parking districts); Cal. Sts. & Hwys. Code § 32802(b)(off-street parking authorities).
7. Cal. Govt. Code § 37353(a)(off-street parking); Cal. Govt. Code § 54061 (off-street stadium-coliseum parking); Cal. Sts. & Hwys. Code § 36000(a)(off-street business area parking facilities).
8. Notes 4 and 5, supra.
9. Cal. Stats. 1949, Ch. 1503, § 1, p. 2658, as amended Cal. Sts. & Hwys. Code §§ 32500-33552.
10. Cal. Sts. & Hwys. Code § 32667.
11. Only "cities and counties" are granted the power of eminent domain by Cal. Code Civ. Proc. § 1238.1.
12. Cal. Govt. Code §§ 54031, 54341 (revenue-producing parking); Cal. Sts. & Hwys. Code §§ 4090(a), 4090(b), 31506(d)(vehicle parking districts), 32802(b)(parking authorities), 33956.
13. Cal. Govt. Code §§ 25351.3, 54061.
14. Cal. Pub. Res. Code § 13070.
15. Cal. Govt. Code § 14678 (parking for state officers and employees).
16. Cal. Govt. Code §§ 8345.2, 8345.3.
17. Cal. Stats. 1945, Ch. 1040, §§ 4.3, 4.4.
18. Cal. Stats. 1951, Ch. 1635 (as amended Cal. Stats. 1965, Ch. 240), § 115; Cal. Sts. & Hwys. Code § 35108(j).