

August 5, 1991

REPORT TO THE HONORABLE
MAYOR AND CITY COUNCIL

LEGALITY OF ORDINANCE ON SAME SUBJECT MATTER AS
ORDINANCE SUBJECT TO SUCCESSFUL REFERENDUM PETITION

At the June 10, 1991, Council meeting, the City Council asked the City Attorney to report to the Council on the legality of adopting an ordinance on the same topic as one that had been subject to a successful referendum petition and subsequently repealed by the Council. The issue arose during Council discussion of Emergency Ordinance No. O-17655 (N.S.), which amended San Diego Municipal Code ("SDMC") section 56.54 limiting alcohol consumption at certain City parks and beaches.

The issue raised at the June 10, 1991, Council meeting was discussed in the City Attorney's Report to the Committee on Public Facilities and Recreation ("PF&R"), on May 21, 1991, copy attached (see especially pages 2 and 3). As pointed out in that report, although future Council action regarding the same subject matter as the referended ordinance would not be totally prohibited by election laws or the state constitution, whatever action is taken must be done in good faith and must result in "essentially different" legislation from that which was successfully referended. *Reagan v. City of Sausalito*, 210 Cal. App. 2d 618 (1962). *Accord, Bornstein v. Petrillo*, 370 N.Y.S.2d 631 (1975). See also, *City of Mequon v. Lake Estates Co.*, 52 Wis. 2d 765, 190 N.W.2d 912 (1971).

The ordinance that was successfully referended (Ordinance No. O-17609 (N.S.)) and subsequently repealed had adopted a new Municipal Code section (56.57) and imposed a 24-hour ban on alcohol consumption in many areas of the City. We would therefore recommend that whatever the City Council adopts to regulate alcohol consumption at City parks and beaches be substantially less than a 24-hour ban in the same areas.

We hasten to point out that the City has had longstanding regulations that impose a time limit on alcohol consumption or even a 24-hour ban on alcohol consumption in certain areas of the City (SDMC sections 56.29, 56.29.1 and 56.54).

in order to

comply with the above-cited standard set by case law.

We recommend specifically that further action by the City Council establish time limits for alcohol consumption, rather than establish a total ban in the same geographic areas that were subject to the 24-hour ban that was repealed. Our office believes that Emergency Ordinance No. O-17655 adopted on June 10, 1991, meets the "essentially different" test

set forth in the Sausalito case. We also believe that the "due course" ordinance introduced on July 1, 1991 (City Attorney No. O-91-183 Rev. 1), as well as the ordinance prepared in response to Council direction of June 10 incorporating Councilmember Filner's comments (City Attorney Ordinance No. O-92-27) meets this test.

Respectfully submitted,
JOHN W. WITT
City Attorney

CCM:jrl:011(043.1)
Attachments
RC-91-39