

April 6, 1993  
REPORT TO THE COMMITTEE  
ON PUBLIC FACILITIES AND RECREATION  
WAIVER OF WATER AND SEWER FEES

By memorandum of law dated March 12, 1993 (copy attached), the Committee was advised that because of the San Diego City Charter, bond covenants and state law, sewer and water capacity fees could not be waived nor reduced unless done so uniformly to apply to similar classes of service. Because of the problems faced by a coin laundry operator, you asked that we explore various solutions.

Meeting with the Water Utilities Department internally and privately with Mr. Scott Himmelstein, the owner's consultant, a variety of proposals have been explored. While the factual specifics are best left to the City Manager to explain, proposals to extend payments over a course of years or to amend Municipal Code section 64.0406 to allow "variances" on stated conditions are not legally viable. To permit payment over a course of years without market rate interest runs afoul of San Diego Charter section 93 as an improper extension of credit to one individual. Similarly vesting authority in the City Manager to grant variances of capacity charges to individuals or businesses violates Charter section 53 and bond covenants against any free or reduced service and state law requiring a uniform application of capacity charges.

The option of administrative transfer of capacity rights, which is legally viable, was explored. However, the individual seeking the Committee's assistance does not own or possess any capacity rights to transfer. While we are understanding of the problem posed by lessees relocating a business, all businesses must be treated the same and waiver of fees or "variance" for one simply places the burden on others. Such a transfer of the burden is prohibited by Charter, bond and state law restrictions.

Respectfully submitted,  
JOHN W. WITT  
City Attorney

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