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MEMORANDUM OF LAW

DATE: February 18, 2010

TO: Andrea Tevlin, Independent Budget Analyst

FROM: City Attorney

SUBJECT: Declaration of Fiscal Emergency in the City of San Diego

INTRODUCTION

During a recent meeting of the City Council's Budget and Finance Committee, a citizen's group designating itself as the Citizen's Fiscal Sustainability Task Force, presented a Report on the City of San Diego Fiscal Outlook [Task Force Report]. One of its recommended courses of action was that "The Mayor and the Council must have the political will to declare a Fiscal State of Emergency and immediately eliminate the Structural Deficit." Task Force Report at 9 (Dec. 11, 2009).

At the Committee and City Council meetings, other members of the public have also suggested the City declare a fiscal emergency to address fiscal issues the City faces in the current economic downturn. They suggest taking action like the California Governor's 2010 declaration of fiscal emergency; a May 2009 request by the Mayor of Los Angeles for the City Council to declare a fiscal emergency; and declaring a "local emergency" under the California Government Code. They suggest such declarations may permit the City to suspend all contracts, or protect the City from state raids on City monies.

Committee members have asked about the potential benefits or impacts of such proposals. You have requested advice from this Office as to whether the City Council may declare a fiscal state of emergency, and if so, whether such a declaration might achieve benefits, such as budgetary relief. The answer may assist the City Council as it evaluates various options to eliminate the City's structural budget deficit.

QUESTION PRESENTED

May the City Council declare a fiscal emergency and achieve budgetary relief from that process?

SHORT ANSWER

The City Council has the authority to declare emergencies. Whether its current fiscal situation constitutes an “emergency” under the laws is at best unclear. However, even if the City’s situation legally qualifies as an emergency under California laws, the benefits authorized do not provide long-term relief for budgetary deficits.

ANALYSIS

I. The City Council May Declare Emergencies Within the City.

We confirm the obvious at the outset– the City Council has the authority to issue all types of declarations by resolution under the San Diego Charter. San Diego Charter § 270(c). If the City Council desires to adopt a resolution declaring a fiscal emergency within the City, it has the authority to do so.

II. Emergencies the City May Declare.

Cities declare emergencies to take advantage of certain legal benefits provided by those declarations. We provide examples of certain emergencies a City may declare which are pertinent to this discussion. The list is not intended to be exclusive.

A. The Legal Definition of Emergency.

What is or is not a legal ‘emergency’ depends on the statutes involved and the benefits sought. An emergency may be specially defined by a statute or ordinance. If so, the legal meaning of that kind of emergency is limited by the statutory definition. *See e.g.* Cal. Gov’t Code § 8558(c), explained below.

If a statute does not define an emergency for its purposes, California law has long accepted a definition of the word to mean an “unforeseen situation calling for immediate action.” *Sonoma County Organization etc. Employees v. County of Sonoma*, 1 Cal. App. 4th 267, 276-277(1991), citing *San Christina Inv. Co. v. San Francisco*, 167 Cal. 762, 773 (1914) and other cases.

The *San Christina* case was one of two early and important cases interpreting San Francisco Charter language requiring a “great necessity or emergency” before tax levies could be increased beyond Charter limits. The court was not persuaded that an emergency existed for fiscal year 1910-1911 based on the 1906 earthquake. The court noted that not all projected uses for the money bore directly on relief for that emergency, and that mere hardship or inconvenience would not constitute an emergency. *San Christina*, 167 Cal. at 773.

The second case involved another San Francisco attempt to raise taxes, this time based on San Francisco's worsening fiscal situation for fiscal year 1914-1915. *Burr v. San Francisco*, 186 Cal. 508 (1921). San Francisco's fiscal situation had deteriorated due to lost tax revenues after the earthquake; increases in population; increased salaries and benefits for public employees; and increased state mandates. This attempt also found an unsympathetic audience in the *Burr* court. The "decrease in income" and "increase in necessary expenditures" was no emergency according to this court, but was "always to be expected in a growing community." *Id.* at 514, 515. To this court, the claimed emergency was simply a statement that the expenses of the city had exceeded existing revenues, requiring a tax increase. *Id.* at 516. The court was unwilling to call this an emergency, because it would make the tax levy limit "ineffectual and useless." It would permit the supervisors to "create a necessity by their own extravagance or by engaging in new municipal activities and enterprises, benevolent or otherwise . . ." *Id.* at 516.

A final legal determination of emergency will usually depend on the special circumstances of each case. Courts look at the urgency of the situation, the magnitude of the problem, and the substantial likelihood that serious harm will be experienced. The courts have held that "[e]mergency is not synonymous with expediency, convenience, or best interests . . . and it imports more . . . than merely a general public need Emergency comprehends a situation of grave character and serious moment." *Sonoma County*, 1 Cal. App. 4th at 277. (internal quotations and citations omitted)

We look next at how California statutes and court opinions define differing emergencies.

B. "Local Emergencies."

With earthquakes, fires, floods, and other natural disasters, Californians are familiar with the type of emergency defined by the California Government Code as "local emergencies." Cal. Gov't Code § 8558(c).¹ These emergencies encompass "conditions of disaster or of extreme peril to the safety of persons and property" or "or other conditions, . . . which are or are likely to be beyond the control of the services, personnel, equipment, and facilities of that political subdivision and require the combined forces of other political subdivisions to combat . . ." *Ibid.*

¹ Cal. Gov't Code § 8558(c) provides: "(c) 'Local emergency' means the duly proclaimed existence of conditions of disaster or of extreme peril to the safety of persons and property within the territorial limits of a county, city and county, or city, caused by such conditions as air pollution, fire, flood, storm, epidemic, riot, drought, sudden and severe energy shortage, plant or animal infestation or disease, the Governor's warning of an earthquake or volcanic prediction, or an earthquake, or other conditions, other than conditions resulting from a labor controversy, which are or are likely to be beyond the control of the services, personnel, equipment, and facilities of that political subdivision and require the combined forces of other political subdivisions to combat, or with respect to regulated energy utilities, a sudden and severe energy shortage requires extraordinary measures beyond the authority vested in the California Public Utilities Commission."

A declaration of such a “local emergency” triggers certain specific but temporary benefits for a city, specified by state and local laws. For example, benefits may include the authorization of extraordinary police powers to protect life and property; activation of pre-established emergency rules related to contracting and mutual aid agreements; and providing limited immunity for a public agency’s emergency actions. *See* Cal. Gov’t Code §§ 8630, 8631 and 8634. The San Diego Charter and Municipal Code contemplate various roles for City Officers in the event of public emergencies related to natural disasters. *See e.g.* San Diego Charter §§ 28 and 265(b); SDMC §§ 51.0101 through 51.0111.

Conditions other than natural disasters may also qualify as local emergencies. *See* Cal. Gov’t Code § 8558(b); *California Correctional Peace Officers Association v. Schwarzenegger*, 163 Cal. App. 4th 802 (2008) [prison overcrowding state of emergency].² But the conditions must meet the three criteria for an emergency under the statute, namely, extreme peril to persons or property, which is likely to be beyond the control of the city, and to require the combined forces of other political subdivisions to combat. We think it unlikely that the City’s current budgetary issues would qualify as an “emergency” under this statute. Even so, the temporary and specific benefits granted a city during such an emergency under the statute are not relief designed to aid a city addressing a structural budgetary deficit.

C. Debt Limitation Emergencies.

Local governments have access to other state statutory and constitutional provisions relating to emergencies. For example, the California constitution imposes certain debt limitations upon local governments. Cal. Const. art. XIII B, § 1. It also permits those governments to temporarily exceed the limitation under certain circumstances “in the event of an emergency.” Cal. Const. art. XIII B, § 3(c).³ The constitution does not define what constitutes such an emergency, so we look to the general definitions provided earlier.

In 1982, the State Attorney General distilled a definition for the “emergency” contemplated in section 3(c) of article XIII B in part from the two older cases discussed above—*San Christina*, 167 Cal. 762, and *Burr* 186 Cal. 508.

“The term ‘emergency’ as used in section 3(c) refers to an extraordinary occurrence or combination of circumstances that was unforeseen and unexpected at the time a governmental entity adopted its budget for the fiscal year in which it occurs and which requires immediate and sudden action of a drastic but temporary

² Cal. Gov’t Code §§ 8558(b) and (c) are essentially identical in their requirements.

³ Art. XIII B, section 3 provides: “The appropriations limit for any fiscal year pursuant to Sec. 1 shall be adjusted as follows: . . . (c) (1) In the event an emergency is declared by the legislative body of an entity of government, the appropriations limit of the affected entity of government may be exceeded provided that the appropriations limits in the following three years are reduced accordingly to prevent an aggregate increase in appropriations resulting from the emergency. . . .”

nature. The responsive action it engenders must relate to its redress and not be intertwined with addressing other matters, must be undertaken shortly after the events involved occur, and must not be continuous. *While an emergency may stem from other than natural causes, the inability to or difficulty in carrying out normal governmental operations voluntarily undertaken, because of financial straits, does not constitute an emergency within the meaning of section 3(c).*"

65 Ops. Cal. Atty. Gen. 151, 159 (1982) (emphasis added).

Once again, it seems unlikely that San Diego's on-going budgetary issues would qualify as an emergency under this constitutional provision. They appear to fit squarely within the exception. Moreover, the benefit offered does not provide relief for a structural budgetary deficit. The relief is temporary and limited. The constitution permits a local government to exceed these limits only if "the appropriations limits in the following three years are reduced accordingly" Cal. Const. art. XIII B, § 3(c)(1).

D. Emergencies under the Meyers-Milias-Brown Act.

The Meyers-Milias-Brown Act (MMBA) also permits governing bodies to adopt rules in cases of emergency, temporarily delaying application of its meet and confer requirements. Cal. Gov't Code § 3504.5(b). This statute also does not define what constitutes an emergency, so the general rules apply. *Sonoma County*, 1 Cal. App. 4th at 276. To invoke the emergency provisions of the MMBA, the situation must have significant urgency, and carry with it a substantial likelihood that serious harm will be experienced, as for example, would an imminent and substantial threat to public health or safety. *Id.* at 277. However, the courts still except from these emergencies, situations involving merely expediency, convenience, best interests, or a general public need. *Id.*

More recent courts have given deference to a municipality's emergency declarations, than did earlier courts, reviewing them under an abuse of discretion standard. *See San Francisco Fire Fighters v. San Francisco*, 38 Cal. App. 4th 653, 669 (2006). However, it remains unclear whether San Diego's budgetary situation would qualify the City for the benefits offered under this provision of the MMBA. And even if it did, the benefits do not provide relief for long-term budgetary deficits. The MMBA still requires the governing body to "provide notice and opportunity to meet at the earliest practicable time" *after* adopting the emergency rule. Cal. Gov't. Code § 3504.5(b).

III. Other State and Local Emergency Provisions.

There are other state laws and city ordinances involving emergencies. As suggested by the public, article IV, section 10(f), of the California Constitution authorizes the Governor to declare a fiscal emergency; to propose legislation to address it; and to require a special session of the legislature to adopt at least some legislation to address the emergency. It also precludes the Legislature from adjourning, or acting on other bills if they do not act within 45 days of the

Governor's declaration. However, this state constitutional provision applies only to the Governor and State Legislature and is not directly available to municipalities.

The City of Los Angeles has adopted an ordinance that permits a reduction in City employees' work hours, if the City Council declares a fiscal emergency by resolution. Los Angeles Admin. Code § 4.117(b).⁴ The Los Angeles ordinance also has no direct application to the City of San Diego.

However, the San Diego Charter could be amended to provide a local process similar to that provided in article IV, section 10(f) of the California Constitution. The City could also adopt a similar ordinance to that seen in Los Angeles, so long as it first complied with the MMBA.

IV. Local Emergency Provisions Do not Abrogate Contracts or Affect State Actions.

It is important to note that declarations of emergencies do not allow California cities to unilaterally suspend or forgive their contractual indebtedness. State or local efforts to relieve a municipality of its contractual debt would likely run afoul of the Contracts Clause of the United States Constitution. U.S. Const. art. I, § 10.

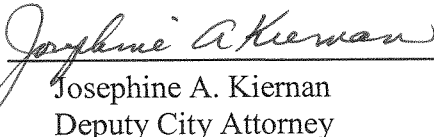
Declarations by municipalities of local emergencies also have no legal affect on the state's authority to "borrow" local tax revenues to fund the state budget. That requires the Governor to proclaim a severe fiscal hardship and two thirds of both houses of the State Legislature to enact appropriate legislation. The process is controlled by the California Constitution. *See* Cal. Const. art XIII, § 25.5.

⁴ Section 4.117 provides in pertinent part: "Notwithstanding Section 4.108(a) of the Los Angeles Administrative Code: . . . ¶(b) Whenever the appointing authority, in order to meet the varying needs of the different City agencies, reduces the number of a full-time employee's biweekly regular hours to a different number of hours as may be established by the appointing authority pursuant to the City's adoption of a resolution declaring a fiscal emergency; an employee whose biweekly regular hours are reduced as authorized in this section shall be credited with all the rights and benefits as though he/she worked 80 hours in the payroll period. Compensation received under the circumstances herein provided shall be considered full compensation for all employees participating in such hour reduction."

CONCLUSION

The City Council has the authority to issue all types of declarations by resolution under the San Diego Charter, including those declaring a fiscal emergency. At best it is unclear whether the City's long-term budgetary situation would legally qualify as an emergency under the statutes or constitutional provisions discussed in this memo. But, regardless, the relief permitted under California laws is specific, limited, temporary, and not designed to address structural budgetary deficits the City may have. In addition, such declarations do not permit abrogation of a city's contractual debt, nor do they foreclose state action to borrow city tax revenues.

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By 
Josephine A. Kiernan
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JAK:als
cc: Mayor
Members of the City Council
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