

MEMORANDUM OF LAW

DATE: December 31, 1985

TO: Richard L. Hays, Deputy Director, Refuse
Collection Division

FROM: City Attorney

SUBJECT: Applicability of Proposition "F" Collection
Guidelines to Commercial Office Buildings and
Hotels/Motels

Your memorandum of November 18, 1985 requested this office's advice on the application of Proposition "F" fees and limits to refuse collected from commercial office buildings and from hotels and motels that rent on a daily/weekly/monthly basis. It is our conclusion that the Proposition "F" limits apply to the office building as a single commercial entity rather than to each tenant, and that hotels and motels with a transient business clientele are "commerical" rather than "residential" refuse generators. For collection purposes, if the motel or hotel rents

rooms on a "daily/weekly/monthly" basis, it is transient; if it rents out rooms on a "monthly" basis only it should be treated as a residential generator. Our analysis follows.

The first issue concerns refuse collection service to commercial office buildings with tenants. You asked whether the Proposition "F" limit is to be limited to the building as a single commercial entity, or whether the limit is to be based on the number of tenants occupying the building. It is our conclusion that an office building is a single commercial entity, and thus the six-container limit applies to the entire refuse load generated by that establishment, rather than by each tenant.

This conclusion is based on an interpretation of Proposition "F," which is codified as section 14 of San Diego Municipal Code section 66.0123. The pertinent parts are summarized below:

The City Council may, by ordinance, establish fees for the disposal of commercial wastes and industrial wastes generated in the City. . . .

Such rules and regulations shall include limitations on the quantities of commercial wastes . . . collected, with the City in no event collecting from any single commercial or

industrial enterprise waste in an amount greater than one hundred fifty percent (150%) of the waste generated by an average City residential dwelling unit. (Emphasis added.)

This section further defines commercial wastes to include "all types of solid and semi-solid waste material generated by stores, offices, hotels, motels and other commercial activities required under the provisions of the Municipal Code to pay a license tax, with the exception of all non-transient residential dwellings." This must be taken in context with the first two sentences of Proposition "F," which read:

Notwithstanding any of the provisions of this People's Ordinance to the contrary, the City Council may by ordinance, establish rules and regulations for the collection, transportation and disposal of City refuse in the City of San Diego in order to protect the health and safety of the residents of the City and to ensure the provision of efficient and effective waste management services. Such rules and regulations shall not include any fees for the collection, transportation or disposal of residential waste generated within

the City of San Diego.

There is no judicial interpretation of Proposition "F," nor is there any legal interpretation related to refuse collection that would be of assistance. However, while the plain reading of the "Peoples Ordinance" (San Diego Municipal Code section 66.0123, subsections 1-13) is to ensure residential refuse collection, the purpose of Proposition "F" (section 14) is to limit the amount of refuse collected from nonresidential sources at taxpayers' expense. It is well established in law that any statute or ordinance must be construed in such fashion as to render it fair, reasonable and harmonious with its manifest purpose. See 58 Cal.Jur. 3d, Statutes, sections 98, 104. Thus, this distinction can be used as the measure of the amount to be collected from a commercial source before collection fees or limits apply.

An office building is a commercial enterprise which provides office space and custodial and utility services to its tenants as a contractual duty under a business lease. The source of the refuse generated should therefore be considered the office building at the point of collection rather than each of the individual tenants. Any other construction would be contrary to a limitation based on an average residential unit of

admeasurement for collection purposes, thus defeating the apparent intent of the legislation, which is to limit the amount to be collected.

Your second question concerns the application of Proposition "F" to hotels and motels that rent out at daily, weekly or monthly rates. This depends on whether these are considered transient or non-transient. Section 14a of San Diego Municipal Code section 66.0123 provides as follows:

"Commercial wastes" include all types of solid and semi-solid waste materials generated by stores, offices, hotels, motels, and other commercial activities required under the provisions of the Municipal Code to pay a license tax, with the exception of all non-transient residential dwellings.

Under San Diego Municipal Code section 31.0305, a business license tax is imposed on all motels and hotels with six or more apartments or rental units. Proposition "F" does not however define "transient" or "non-transient." Black's Law Dictionary (5th Ed.) defines "transient," when used as an adjective, as of temporary or of short duration, without specifying a time.

The provisions of San Diego Municipal Code, sections 35.0102 and 35.0103 pertaining to the transient occupancy tax, may serve

to define a transient facility. Hotel and motel facilities, as defined therein, which rent out rooms for "less than one month" must collect a tax from a "transient occupant." Room rental on a "daily" or "weekly" basis is subject to the transient occupancy tax for a transient facility. Conversely, a hotel or motel that exclusively rents rooms for occupancy on a "month-to-month" basis, or "monthly," would not be a facility to which the transient occupancy tax applies, and, by implication, would not be a "transient" facility.

Support for this is found in the Civil Code. Occupancies on a month-to-month basis are recognized by Civil Code section 1943 as conferring leasehold rights that do not apply to persons occupying rooms on a daily or weekly basis. Civil Code section 1940 specifically provides that the protection of the Civil Code governing the hire of real property does not apply to "transient occupancy" in a hotel or motel that is subject to a transient occupancy tax, or to an occupancy of less than 7 days.

Therefore, we conclude that any hotel or motel that advertises or provides daily or weekly rates should be classified as a transient residential facility to which commercial fees and limits under San Diego Municipal Code section 66.0123 may be applied. This would also include hotels and motels that

advertise "daily/weekly/monthly" rates. It would exclude only those that advertise or provide exclusively monthly or longer rates and terms. It is noted that where the hotel/motel advertises its rates as "daily/weekly/monthly," it may still be classified as a transient facility for Proposition "F" purposes, even if all the rooms are actually rented on a month-to-month basis and thus exempt from the transient occupancy tax. This is because the transient status definition applies to the nature of the use rather than its actual use, unlike the transient occupancy tax. Under this set of definitions, probably all motels and most hotels with six or more rooms or units will be considered commercial activities for collection purposes.

Please contact the undersigned, if I can be of further assistance.

JOHN W. WITT, City Attorney

By

Rudolf Hradecky

Deputy City Attorney

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