

MEMORANDUM OF LAW

DATE: November 4, 1986

TO: Councilmember Abbe Wolfsheimer  
FROM: City Attorney  
SUBJECT: Pump Station 64

You recently inquired about the effect of the anticipated extension of time necessary to complete the addition of pumps to Pump Station 64 on the ordinance limiting the issuance of building permits requiring sewer hookups in the event any of the recited conditions occur.

Ordinance No. 16694 referenced in your memorandum was the emergency version of the limitation ordinance which has been replaced by Ordinance No. 16695 which mirrors the language of the conditions but contains a different enactment clause. You correctly note that subsections (a) and (c) could separately or jointly trigger the ban on building permits.

As to subsection (a) which requires adherence to a schedule of work, the anticipated delay has no present effect for two basic reasons. First it is anticipatory with the schedule contemplating a May 31, 1987 event. Hence there is no present event that would trigger a ban. But secondly and more importantly subsection (a) refers to a failure to accomplish or complete the work as scheduled. Inherent in the term "failure" is a deficiency of effort, planning or diligence. Manifestly from the unanticipated nature of the delay, a reasonable person could not conclude there has been any deficiency of effort, planning or diligence. Hence where modifications of the schedule are supported by facts showing due diligence as articulated in Manager's Report No. 86-493, we find no substantive "failure to accomplish ... the work as scheduled ...."

As to subsection (c) which triggers a ban when there is a failure to conform to the requirements of the Regional Water Quality Control Board, the anticipated delay has already been discussed with the staff of the Board and an extension is being calendared before the Board. You will note that subsection (c)

is phrased in the conjunctive requiring a failure to conform and the failure is confirmed by the Board. Assuming the Board approves the time extension, the two conditions would not arise as the extension would be inconsistent with confirming a failure to conform with the original schedule.

We trust this answers your inquiry. At the present state of the Manager's efforts, we see no activation of the four (4)

triggering mechanisms of a sewer ban as articulated in Ordinance  
16695.

JOHN W. WITT, City Attorney

By

Ted Bromfield

Chief Deputy City Attorney

TB:js:428(x043.2)

cc City Manager

Armand Campillo,

Water Utilities Director

ML-86-127