

MEMORANDUM OF LAW

DATE: September 15, 1987

TO: Bill Wolf, Emergency Management Coordinator
FROM: City Attorney
SUBJECT: Emergency Powers

At the August 25, 1987 planning meeting of the Office of Emergency Management Earthquake Exercise staff, you requested a broad outline of the legal issues that may come into play in the hypothetical situation of a major earthquake occurring when the City Council is not in session. You wanted to know what powers and responsibilities each City official would have. You also wanted to know what City liabilities may be in certain situations; i.e., if evacuation were or were not advised for a certain area if aftershocks were to be expected.

In the case of a City emergency menacing life and property, the City Charter at section 28 empowers the City Manager to use all the forces of City Departments to maintain general security. The City Manager shall also have the power to deputize and employ persons considered necessary to protect the City and its residents. Sections 24 and 28 also state, however, that the City Council may authorize the Mayor to take command of the police, maintain order and enforce the law.

Chapter V, article 1 of the San Diego Municipal Code addresses public emergency procedures. Section 51.0103 creates a Disaster Council. Section 51.0105 names the City Manager as the Director of Emergency Services and specifies there shall be an Assistant Director named by the City Manager. Section 51.0106 delineates the powers and duties of the Director and Assistant Director. The City Manager, as Director, is empowered to request the City Council to proclaim the existence of a "local emergency" if Council is in session, or to issue such proclamation if Council is not in session, and such proclamation shall be ratified by Council within seven (7) days.

Section 51.0106(a)(6) lists the powers of the City Manager as Director of Emergency Services which include issuance of regulations, obtainment of supplies and equipment and requiring emergency services of any City employee. Further, the City Manager is empowered to request the Governor to proclaim a "state of emergency" when local resources are inadequate to cope with the emergency.

Government Code section 8558 defines degrees of emergencies. Subsection (c) defines "local emergency" as the duly proclaimed

existence of conditions of disaster or peril to the safety of persons or property within a particular county, city and county or city. These emergency sections specifically include earthquake warnings and earthquakes in the emergency definition.

Regarding government liability in emergency situations, Government Code section 8655 et seq. holds public agencies and volunteers impressed into service immune from liabilities during state or local emergencies. Government Code section 955.1 specifically finds earthquake warnings to be a sufficient basis for declaration of state emergency with all the same immunity provisions applicable. This would be relevant in the case of warnings of aftershocks or additional quakes.

In this particular hypothetical exercise, if Council were not in session, the City Manager would be the Director of Emergency Services, with all the powers and responsibilities listed above. If he declared a state of emergency, the Council would have to ratify such declaration within seven (7) days in order for the declaration to have any further force or effect. Government agencies and volunteers would be immune from liabilities in accordance with the emergency immunity provisions cited above.

JOHN W. WITT, City Attorney

By

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