MEMORANDUM OF LAW

DATE: February 19, 1988

TO: Maureen A. Stapleton, Deputy City Manager
FROM: City Attorney
SUBJECT: Legal Opinion - Restrooms

You recently asked whether The City of San Diego could validly enact an ordinance similar to an ordinance in effect in the City of Vista (copy attached) which purportedly mandates construction of public restrooms in gasoline service stations.

This office has reviewed the Vista ordinance and would offer you the following comments respecting the Vista regulatory scheme.

Restrooms are referenced in three (3) separate paragraphs of the Vista ordinance (pg. 6, Section 2706, paragraph 9; pg. 7, Section 2706, paragraph 14; pg. 10, Section 2707, paragraph 3(i)(2)). Other than these three paragraphs, the Vista ordinance is silent respecting restrooms. The Vista ordinance does not impose requirements respecting public access to restrooms, as for example, whether the restrooms may be locked or unlocked, whether the restrooms are only for the use of the facilities' customers, or whether the restrooms are required to be provided exclusively for the employees of the service station.

The City of San Diego already requires installation of restrooms in gasoline service stations as well as various other types of occupancies. Section 705 of the City's building code requires the installation of a water closet in each gasoline service station. Moreover, if the number of employees at any such service station exceeds four (4) and both sexes are employed at the station, separate toilet facilities are required to be installed. This language suggests, however, that the toilet facilities which are required to be installed at gasoline service stations are provided for the use of the facilities' employees rather than its customers because the requirements are based upon the number and the sex of the employees.

In our opinion, neither the Vista ordinance nor The City of San Diego's ordinance require the operators of gasoline service stations to make their restrooms available to their customers or to the general public.

You also asked whether The City of San Diego could validly enact an ordinance which would mandate that service station operators allow the public to use their restrooms even if they

are not paying customers.

The legal concepts which this question raises has been addressed in two recent cases. Although the factual situations in the cases are different than the situation described in your question, the legal theories upon which the courts based their decisions are applicable to your matter.

In Liberty v. California Coastal Commission, 113 Cal.App.3d 491 (1980), the California Coastal Commission attempted to impose a condition in a permit which would have required the permittee to dedicate its parking lot on private property to the public for free public parking use until 5:00 p.m. daily. The Court of Appeal stated that conditions imposed on the grant of land use applications are valid if they are reasonably conceived to fulfill public needs emanating from the landowner's proposed use. Where the conditions imposed are not related to the use being made of the property but are imposed because the entity conceives a means of shifting the burden of providing the cost of a public benefit to another not responsible for or only remotely or speculatively benefiting from it, there is an unreasonable exercise of the police power. (pp. 502 & 503.)

The court went on to hold in this case that the business sought to be developed and to serve this recreational area was likely to increase vehicular traffic. Meeting the need for adequate parking to accommodate that increase was, of course, appropriate, and a condition which imposed parking requirements for this use was certainly valid. However, to go beyond that and require the property owner to provide free parking for the public intending to use the beach and other privately owned restaurants in the area for which ample parking had not been provided was unfair. The court concluded that the Commission was attempting to disguise under the police power its actual exercise of the power of eminent domain. That it could not do. (pp. 503, 504.)

In Nollan v. California Coastal Commission, 107 S.C. 3141 (1987), the Supreme Court was requested to invalidate a condition of a coastal development permit. The condition required the Nollans to grant a public easement on their property, parallel to

the coastline between the mean high tide line and a seawall on their parcel. The practical effect of the condition was to allow members of the public on the beach to have physical access to a portion of the Nollan's beachfront property.

The Supreme Court held that if the State of California wanted an access easement across the Nollan's property that it would have to pay the Nollans for it because the State had failed to establish a nexus between the easement requirement and the end

advanced as the justification for the imposition of that condition. In other words, the State failed to establish that any impacts associated with the Nollan's construction project would be mitigated by the imposition of the lateral access easement.

In our view, the Liberty and Nollan holdings are applicable to your question as to whether The City of San Diego can require service station operators to allow the public to use their restrooms even if they are not paying customers.

The concept of requiring a gasoline service station operator to build restrooms and make them available to non-customers would be an attempt to condition an approval by requiring compliance with a condition which is unrelated to the impacts created by the development. Presumably, there is a shortage of public restrooms for the homeless but it is inconceivable how the construction or operation of a gasoline service station would impact this shortage in any manner. Or, as stated in Nollan, there would be no nexus between the usage of the restrooms and the end advanced as justification for the imposition of this condition.

In terms of the Liberty case, requiring a service station to make its restrooms available to the non-customer, general public, (i.e. requiring a private party to provide a benefit to the public in general) would be a shifting of the cost from the public sector to a private party who is not responsible for, or only remotely or speculatively benefiting from it, and as such would be an unreasonable exercise of the police power.

Thus, in answer to your question, in our opinion an ordinance which would require the restrooms in service stations to be made available to the non-customer, general public would be invalid.

JOHN W. WITT, City Attorney
By
Thomas F. Steinke
Deputy City Attorney

TFS:wk:279(x043.2)
Attachment
ML-88-15