

MEMORANDUM OF LAW

DATE: July 17, 1989

TO: Councilmember Abbe Wolfsheimer

FROM: City Attorney

SUBJECT: Workers Congregating in Rancho Penasquitos

Reference is made to your memorandum of June 19, 1989, requesting comment on Mr. Jim Endicott's suggestion on the enactment of "vagrancy laws" to prevent the gathering on the streets of Rancho Penasquitos of workers seeking employment. Mr. Endicott complains that his daughter "must pass by a dozen or so people just standing around waiting for employment."

Vagrancy laws are generally directed at a person's status, condition or mode of living. 77 Am. Jur. 2d, Vagrancy, section 5. The United States Supreme Court has held statutes or ordinances which declare a person to be a vagrant if he loiters, wanders, or roams about, to be void on grounds that such statutes are too vague to meet constitutional requirements. *Smith v. State*, 405 U.S. 172, 31 L. Ed. 2d 111 (1972); *Papachristou v. Jacksonville*, 405 U.S. 156, 31 L. Ed. 110 (1972). The court in the *Papachristou* case found the ordinance in question void for vagueness, both in the sense that it failed to give a person of ordinary intelligence fair notice that his contemplated conduct was forbidden by the ordinance, and because it encouraged arbitrary and erratic arrests and convictions.

While a statute making it a crime merely to be idle, or merely to be loitering or the like, would be constitutionally defective, such defect can be cured if the statute requires the presence of other factors to sustain a conviction for vagrancy. 77 Am. Jur. 2d, Vagrancy, section 6. An example of a statute with such other factors is California Penal Code section 653g aimed at loitering about any school or public place which children normally attend or congregate. "Loiter" under this section means to delay, linger or idle about such school or public place without lawful business for being present. No such factors are present in the factual scenario presented where workers are congregating for the lawful purpose of seeking

employment. Legislation to prohibit such conduct would not meet constitutional muster.

It is hoped that the foregoing is sufficient for your purposes.

JOHN W. WITT, City Attorney

By

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Deputy City Attorney

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