

MEMORANDUM OF LAW

DATE: January 11, 1993

TO: Councilmember Valerie Stallings

FROM: City Attorney

SUBJECT: "Ex Parte" Contact Issues Arising from Request for Meeting with Opponents of CUP Amendment

This is in response to your memorandum of December 23, 1992, to City Attorney John Witt. You ask for legal advice about whether to meet with either side on an anticipated appeal to the City Council about an amendment to an existing Conditional Use Permit ("CUP"). You have already received a request for a meeting from a representative of the opponents to the CUP amendment.

Essentially, your memorandum raises questions about the legal guidelines governing "ex parte" contacts by decisionmakers, such as yourself as Councilmember, in "quasi-judicial" matters. For purposes of this memorandum an "ex parte" contact is a communication between a councilmember and a third party regarding certain land use projects (e.g., a proponent or opponent) outside the formal hearing process, such as this CUP amendment.

In June 1990 several attorneys in the City Attorney's office analyzed "ex parte" contact issues in depth and the City Attorney issued a lengthy legal opinion discussing their results. In lieu of reciting the law of "ex parte" contacts, I attach a copy of that opinion to this memorandum (Opinion No. 90-2, June 15, 1990). On the same date, in a Report to the Mayor and Council, the City Attorney issued guidelines on "ex parte" communications for Councilmembers. I also attach a copy of that report to this memorandum.

Attached to those guidelines is a list of land use proceedings that the City Attorney finds are "quasi-judicial" in nature. Those include Conditional Use Permits and amendments thereto (San Diego Municipal Code section 101.0510).

Since the current question pertains to a possible appeal of an amendment to an existing CUP, any hearing before the City Council should follow procedures designed to protect the "quasi-judicial" decision Council will make. The prudent course of action therefore would be for Councilmembers to avoid any contact

with either the opponent or proponent of the proposed CUP amendment outside of the formal hearing process. Although any "ex parte" contact on the CUP amendment would not be unlawful per se, avoiding these types of contacts would better protect individual Councilmembers and the City from potential liability.

JOHN W. WITT, City Attorney

By

Cristie C. McGuire

Deputy City Attorney

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Attachments - 2

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