

**Office of  
The City Attorney  
City of San Diego**

**MEMORANDUM**

**DATE:** November 12, 2015

**TO:** Honorable Mayor and Members of the City Council

**FROM:** City Attorney

**SUBJECT:** Effect of a Local Emergency Declaration (Drainage Channels)

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The Committee on the Environment of the City Council has proposed declaring a local emergency in anticipation of El Niño weather conditions, with particular concern regarding sudden and unexpected flooding from the City's drainage channels affecting public health, safety, and welfare.<sup>1</sup>

A local governing body may declare an emergency when there is a condition of extreme peril or potential peril to the safety of persons and property and the condition is beyond the capability of a local jurisdiction to control effectively. Cal. Gov't Code § 8630, SDMC §51.0102. The governing body must review the need for continuing the local emergency at least once every 30 days until the governing body terminates the emergency. Cal. Gov't Code § 8630. For the duration of the emergency, the Mayor may issue rules and regulations on matters reasonably related to the protection of life and property affected by the emergency. These rules and regulations must be confirmed at the earliest practicable time by the City Council. SDMC §51.0106(a)(6)(A). When a local emergency is declared, the Mayor may also obtain vital supplies and equipment for the protection of life and property and may bind the City for the fair value thereof. SDMC §51.0106(a)(6)(B).

Even absent a declaration from the City Council, the Mayor has broad powers to maintain order in an emergency. The Mayor may take command of the police and may deputize or otherwise employ people as necessary for the purpose of protecting the City and its residents. San Diego Charter §§ 28, 265. The Mayor and authorized purchasing agents may also enter into emergency contracts for public works, goods, and services if necessary to safeguard life, health, or property without an emergency declaration. SDMC §§ 22.3016, 22.3108.

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<sup>1</sup> El Niño is an oceanic and atmospheric condition characterized by higher than normal ocean surface temperatures in the equatorial Pacific. These conditions significantly increase the likelihood of high levels of precipitation in Southern California.

When a declared local state of emergency results in abnormal market disruptions for a period of 30 days following the emergency declaration, it becomes unlawful for any person to sell certain enumerated goods and services for a price of more than 10 percent above the price previously charged for those goods or services unless the seller can prove the price increases are directly attributable to increased costs. SDMC § 51.0204. Violations of this section are a misdemeanor punishable by up to six months' imprisonment and up to one thousand dollars in fines. *Id.*

Furthermore, a declaration of local emergency enables the City to obtain funding under the California Disaster Assistance Act if the State Director of Emergency Services concurs with the emergency declaration, and a local state of emergency also immunizes the City and its employees from liability for performing or failing to perform discretionary functions. Cal. Gov't Code §§ 8631, 8655, 8685.2.

Although emergency declarations confer certain powers and immunities on local officials, an emergency declaration is not determinative, and courts independently weigh whether a true emergency exists and whether local actions, taken to protect life or property during an emergency, are a proper exercise of the police power. See *Thousand Trails, Inc. v. California Reclamation Dist. No. 17*, 124 Cal. App. 4th 450, 464 (2004).

With respect to drainage channel clearing, under a local emergency declaration, a Mayor's emergency orders supersede local ordinances, so the Mayor may be able to waive permitting requirements in the Municipal Code if necessary to expedite emergency channel clearing.<sup>2</sup> See *Verreos v. City & Cnty. of San Francisco*, 63 Cal. App. 3d 86, 98 (1976). Note, however that Mayoral orders made under an emergency declaration do not supersede state or federal laws. See *Castaic Lake Water Agency v. City of Santa Clarita*, 41 Cal. App. 4th 1257 (1995). Typically, the City must conduct an environmental analysis under CEQA before dredging a channel. California Public Resources Code §§ 21000–21177. State and federal water quality laws also require a dredging permit and a water quality certification prior to dredging. 33 U.S.C. §§ 1251–1388, Cal. Water Code § 13160.

The Governor may declare a state of emergency of his own accord, or he may do so at the request of a local government's chief executive. Cal. Gov't Code § 8625. When the Governor declares a state of emergency, he has the power to suspend state regulatory statutes, such as CEQA, if he determines that strict compliance would in any way prevent, hinder, or delay the mitigation of the effects of the emergency. Cal. Gov't Code § 8571. The Governor may also request that the President declare a state of emergency. 42 U.S.C.A. § 5170.

Absent a gubernatorial emergency declaration, channel clearing must comply with CEQA and with state and federal water quality laws. These laws contain special exceptions for "specific actions necessary to prevent or mitigate an emergency." Cal. Pub. Res. Code § 21080. These exceptions are effective regardless of whether a state or local emergency is declared if certain

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<sup>2</sup> However, the San Diego Municipal Code already contains provisions allowing the Mayor to authorize emergency permits if needed to protect public safety or property, so an emergency order is not necessary to allow channel clearing under Municipal Code section 143.0126.

Honorable Mayor and Members of the City Council

November 12, 2015

Page 3

stringent criteria are met. The City's ability to meet these stringent criteria is separate and apart from a local declaration of emergency. This Office is preparing a separate memorandum regarding the applicability of the CEQA emergency exemption to channel clearing activities.

JAN I. GOLDSMITH, CITY ATTORNEY

By \_\_\_\_\_/s/\_\_\_\_\_  
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MS-2015-23