

MEMORANDUM OF LAW

DATE: May 1, 1987

TO: Robert Epler, SANDER Project Director
FROM: City Attorney
SUBJECT: City Manager's Authority to Commit Solid Waste
to Specific Facilities

By memorandum dated April 23, 1987 you requested our opinion regarding the legal authority of the City Manager to commit and direct municipal solid waste to specific disposal facilities. It is understood that your request was prompted by a requirement that Signal Energy Systems, the applicant before the California Energy Commission, furnish either a signed agreement with the City or an opinion from this office opining that the City Manager does have the authority to direct the municipal waste stream as he alluded to in a letter dated November 7, 1986.

It is our opinion that the City Manager's letter of November 7, 1986, copy attached, correctly states his legal authority to direct the municipal waste stream. The second paragraph of that letter is a concise statement of the law relating to such authority.

Attached to this memorandum is a copy of Ordinance No. O-16816 (New Series) adopted February 23, 1987 which amends section 66.0117 of the San Diego Municipal Code, among others. The revisions adopted in Ordinance No. O-16816 principally substituted the term "City Manager" for the term "City Treasurer" as the official issuing refuse permits. However, the amendment to section 66.0117 further underscored the Manager's authority to direct the waste stream. Because of its brevity, section 66.0117 is quoted in its entirety:

SEC. 66.0117 RULES AND REGULATIONS

The collection, transportation and disposal of refuse within the City of San Diego is under the supervision of the Manager who shall have the power to promulgate rules and regulations regulating such collection, transportation and disposal, including but not limited to:

- (a) Collection routes and scheduling and designation of disposal sites and any limitations thereon;
- (b) Service standards and pickup locations; and

(c) Handling of hazardous materials.

A copy of said rules and regulations and all amendments thereto shall be sent by registered or certified mail, postage prepaid, to all affected licensees addressed to their last place of business. To the extent not otherwise provided by law, it shall be unlawful for a licensee to collect, transport or dispose of refuse contrary to any regulation, order, permit or requirement promulgated by the City Manager. (Emphasis added.)

We note that section 66.0117 was originally adopted by Ordinance No. O-11074 (New Series) on May 31, 1973, and the recent revision merely underscored the fact that the City Manager's authority extends to the designation of disposal site facilities.

Your attention is further invited to section 66.0107, as revised, which provides, in pertinent part, that "No person shall collect, transport, or dispose of refuse within the City of San Diego without a current, unrevoked license issued by the City Manager."

It seems clear that the City Manager has absolute control and authority over refuse within the City of San Diego. This is further provided for under section 66.0123 of the San Diego Municipal Code which reads as follows:

SEC. 66.0123 REFUSE COLLECTION

(a) As used in this People's Ordinance:

(i) "Refuse" means waste material of any nature or description generated within the City limits, excluding hazardous or toxic chemicals, wastes, materials or substances as defined now or hereafter by federal or state law or regulation;

(ii) "Residential Refuse" means refuse, as defined herein, normally generated from a Residential Facility and which is placed at the curb line of public streets at designated times in approved containers;

(iii) "Nonresidential Refuse" means all refuse that is not Residential Refuse, as defined herein;

(iv) "Residential Facility" means a single family or multi-family residential

structure used and occupied for Nontransient Occupancy;

(v) "Nontransient Occupancy" means occupancy through ownership, lease or rental for periods of one month or more.

(vi) "Small business enterprise" means a commercial establishment providing sales and services to the public and licensed or taxed by the City.

(b) No person shall collect, transport or dispose of any refuse except as provided herein.

(c) The City Council shall by ordinance regulate and control the collection, transportation and disposal of all refuse provided that:

(i) Residential Refuse shall be collected, transported and disposed of by the City at least once each week and there shall be no City fee imposed or charged for this service by City forces;

(ii) The City shall not collect Nonresidential Refuse, except that Nonresidential Refuse from a small business enterprise may be collected by City Forces if authorized by the City Council and limited to once a week service in an amount no greater than one hundred fifty percent (150%) of the refuse generated by an average City residential dwelling unit. There shall be no City fee imposed or charged for this service by City Forces;

(iii) The City shall not enter upon any private property to collect any refuse except in the case of public emergency or pursuant to a hold harmless agreement in effect as of the date of adoption of this ordinance;

(iv) Fees established by ordinance of the City Council for disposal of Nonresidential Refuse shall not exceed the full ascertainable cost to the City for such disposal.

(d) Pursuant to the ordinance duly adopted by the City Council, the City Manager may then duly promulgate such rules and regulations as

are appropriate to provide for the collection,
transportation and disposal of refuse.

We are attaching a copy of the existing text of Chapter VI, Article 6 in its entirety, a copy of Ordinance No. O-16816 which amends that Article and which, as of yet, has not been printed into Code form, and a copy of Proposition "C" which was adopted on November 4, 1986 by vote of the People of San Diego, amending section 66.0123, pursuant to Ordinance No. O-16692 adopted July 29, 1986.

On the basis of these sections of the San Diego Municipal Code and the recent case of City of Fresno v. Pinedale County Water District, 184 Cal.App.3d 840, 229 Cal.Rptr. 275, (1986), petition for review denied October 29, 1986, it is abundantly clear that the disposal of municipal waste is under the City

Manager's authority. To this extent, the representations made in the City Manager's letter of November 7, 1986 are within his legal authority.

JOHN W. WITT, City Attorney

By

Rudolf Hradecky

Deputy City Attorney

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Attachments

ML-87-46