

May 21, 1987

REPORT TO THE HONORABLE  
MAYOR AND CITY COUNCIL  
DEVELOPMENT AGREEMENTS

As you are aware, several development agreements are coming before the City Council for approval. In light of your authorization of a reevaluation of the City's Growth Management Program and the preparation of an update to the Progress Guide and General Plan, several of your offices have requested our advice regarding potential impacts of development agreements generally on any possible interim development control.

The following information is offered to advise you in your determinations on these matters. This information is based on an initial overview of applicable State law. By way of background, a development agreement is a contract between a developer and the City. It, in essence, allows a builder to acquire by contract the equivalent of a vested right at an early stage of the project. A right, once vested, is not subject to defeat by subsequent action and is entitled to protection by law. It cannot be interfered with by retrospective laws. Such agreements benefit both parties. Developer's uncertainty over whether they will be able to complete a large-scale project is reduced; and the City benefits from increase planning efficiency and financial assistance from developers in providing for public facilities.

Research shows little case law on the enforceability of development agreements. One recent California Superior Court Case, *Davidon Homes v. City of Pleasant Hill (Contra Costa County)*, has held that an initiative imposing a retroactive freeze on rezonings that increase density may not be applied to nullify a vested right to develop in accordance with a vesting tentative map. This case, being at the Superior Court level does not present binding precedent, but it suggests by analogy that an approved development agreement would also be outside any future interim ordinance restricting or modifying growth. Presently, we do not know whether the case will be appealed.

The City Council, at this point, may act on development agreements with the understanding that the vesting aspect of development agreements may result in these agreements being exempt and outside the purview of any interim development control. Additionally, the City Council must continue to follow the mandate of the applicable City ordinance.

The City Council, in approving a development agreement, must find that the agreement is consistent with the adopted Progress Guide and General Plan for the City of San Diego, applicable specific plans and relevant City policies.

San Diego Municipal Code Section 105.0103.

We will continue to research this area of the law and will keep you informed of any subsequent changes.

Respectfully submitted,

JOHN W. WITT

City Attorney

JWW:JSG:ta:600.2(x043.1)

RC-87-17