

December 20, 1990

REPORT TO THE HONORABLE

MAYOR AND CITY COUNCIL

AN AMENDMENT OF THE SUBDIVISION REGULATIONS TO CONFORM SAN DIEGO MUNICIPAL CODE SECTION 102.0201 WITH THE PROVISIONS OF CALIFORNIA GOVERNMENT CODE SECTION 66474.2 RELATING TO THE REGULATIONS TO BE UTILIZED IN THE TENTATIVE MAP REVIEW PROCESS

Pursuant to directions given by the City Council in closed session on October 29, 1990, this office has prepared an ordinance amending San Diego Municipal Code section 102.0201 to make the provisions of that section consistent with California Government Code section 66474.2.

As part of the growth management program, various provisions of the Municipal Code were added or amended in early 1988. Included in the amendments were revisions of the subdivision regulations including the addition of a provision to Municipal Code section 102.0201, fourth paragraph, which provides "The tentative map and site plan shall comply with all ordinances, policies and standards in effect at the time of approval of the map . . . ." (Emphasis added.)

It has been brought to our attention that this quoted language is inconsistent with the provisions of California Government Code section 66474.2(a) which states "in determining whether to approve or disapprove an application for a tentative map, the local agency shall apply only those ordinances, policies and standards in effect at the date the local agency has determined that the application is complete pursuant to Section 65943 of the Government Code." (Emphasis added.) Based on the provisions of the San Diego Municipal Code, ordinances, policies and standards enacted after a tentative map was accepted as complete have been applied to tentative map applications, notwithstanding the provisions of California Government Code section 66474.2(a).

The City of San Diego has the authority to "make and enforce all ordinances and regulations in respect to municipal affairs, subject only to restrictions and limitations provided in . . . its charter and in respect to other matters . . . it shall be subject to general laws." (Cal. Const. art. XI, section 5(a) (emphasis

added).)

Article XI, section 7, of the California Constitution provides: "A county or city may make and enforce within its limits all local, police, sanitary, and other ordinances and regulations not in conflict with general laws." (Emphasis added.)

The Subdivision Map Act is a general law of the State of California. Due to the comprehensive nature of the Subdivision Map Act, it has preempted the field of subdivision regulations and has precluded local regulation except as specifically provided in the Act. The City may enact ordinances relating to the design and improvement of subdivisions (Cal. Gov't Code section 66421). However, the issue raised in the present situation does not relate to design and improvement but relates to the approval process concerning which the Act is detailed and explicit.

In order to maintain consistency between the provisions of the San Diego Municipal Code and the Subdivision Map Act, it is our recommendation that the proposed amendment be adopted.

Respectfully submitted,  
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