

April 16, 1992  
REPORT TO THE HONORABLE  
MAYOR AND CITY COUNCIL

TEMPORARY WORKERS CAMPS ORDINANCE

During your discussions of the Temporary Workers Camps Ordinance on March 30, 1992, several issues were raised regarding the legal validity of this proposed amendment to the Conditional Use Permit (CUP) process. You requested us to give our opinion on the relationship of this proposed "temporary" land use procedure and Proposition A.

After careful review of this issue, my staff and I have concluded this proposed amendment to the CUP ordinance does not violate Proposition A. Please be advised, however, that this question of consistency with Proposition A is one of first impression. Moreover, little guidance can be found in case law and settled legal principles as to what constitutes "temporary." In our opinion, sound legal arguments can be advanced in support of this ordinance, should it become the subject of a future court challenge on the grounds of Proposition A.

Definition of Temporary

Courts have defined temporary in a variety of legal contexts, for example, in contractual disputes, workers compensation and insurance coverage. Black's Law Dictionary defines temporary as, "that which is to last for a limited time only, as distinguished from that which is perpetual, or indefinite, in its duration. Opposite of permanent." Black's Law Dictionary 1312 (6th ed. 1990). The only consistent theme found in these definitions is that temporary is an antonym of permanent.

Questions were raised whether this ordinance's initial time limit of five years, plus the potential of two three-year extensions, is sufficient to be considered a "temporary use" consistent with the interim designation of future urbanizing. "'Temporary' is a word of much elasticity and considerable indefiniteness. It has no fixed meaning in the sense that it designates any fixed period of time." *State Farm Mutual Auto. Ins. Co. v. Johnston*, 9 Cal. 3d 270, 273 (1973) (citations omitted). Thus, no standards exist as to whether the time frames specified in this ordinance satisfy the legal definition of temporary. It will vary from case to case. Although we cannot predict whether a court as a matter of law will find this use temporary, we can conclude that establishing an absolute limit does make the ordinance more consistent with the interim nature of the future urbanizing designation. Moreover, the shorter the duration, the more defensible

the proposal.

#### Consistency with Future Urbanizing Designation

As part of the City's growth management strategy, the future urbanizing designation was designed to act as an interim "urban reserve." These areas were set aside to prevent premature urban development of a permanent nature, conserve open space and protect natural resources and environmentally sensitive areas. Designation as future urbanizing was not intended to prohibit all development, but permit only those uses which were consistent with these goals and objectives. Temporary Workers Camps are not permanent or irrevocable, but interim by the very terms of this proposed ordinance.

Based on our review and evaluation, this proposed amendment is consistent with the objectives of the future urbanizing designation in a number of facets:

(1) Limited Duration of the CUP: Unlike most of the CUP's granted by the City pursuant to San Diego Municipal Code section 101.0510, this ordinance sets a maximum time limit of eleven years per location or site. As explained above, the original CUP is issued for a period of five years with two potential renewals not to exceed three years each. Renewals would be permitted, however, only if the CUP operator could clearly demonstrate to the satisfaction of the Planning Director or City Council that:

(a) Operation of the camp was and is consistent with the terms and conditions of the initial CUP; and

(b) Conditions continue to exist that create a need for this type of temporary shelter; and

(c) Circumstances of the surrounding area remain relatively unchanged such that camp operations can continue to comply with the provisions of the CUP ordinance.

Should new development occur on the fringe of the future urbanizing during the initial period or during any of the possible extensions, the ordinance does authorize the Planning Director to determine whether or not this new development conflicts with the existing CUP. If it does, the ordinance provides for the removal of the camp. These limitations on the duration and renewal of any prospective workers camp are consistent with the goals and objectives of the future urbanizing designation by not allowing permanent development.

(2) Temporary Characteristics of Camp Facilities: By its very definition of "Temporary Workers Camps" this ordinance limits consideration to only those projects which involve single story, demountable structures. Each project must also comply with the Planning Department's Development Regulations for Temporary Camps. These regulations are designed to maintain the existing rural character of the camps consistent with the interim nature of the future urbanizing designation.

Workers camps are also consistent with the traditional uses

permitted in the underlying Agricultural zone and would not encourage premature growth. Virtually all of the future urbanizing area is located within the Agricultural zone. San Diego Municipal Code section 101.0404 permits the construction of one accessory building for the lodging of five or more agricultural employees. This use is similar in nature to the pending camp proposal which permits temporary lodging for both wage earning agricultural workers and day laborers. Therefore, this ordinance would limit approved projects to only those that will maintain the rural character consistent with the underlying Agricultural zone and the future urbanizing's notion of an urban reserve. No traditional urban development could be approved under these proposed CUP regulations.

(3) Environmental Protections: Construction of shelter per the terms of the proposed CUP amendment would help facilitate the relocation of occupants that currently reside in unsanitary makeshift camps. A temporary workers camp would provide "transitional" shelter and minimize the deleterious impacts upon the health and safety of the occupants and general public as well as limit the existing environmental degradation in makeshift camps. Therefore, this ordinance would help facilitate the future urbanizing's goal of preserving natural resources. As an additional safeguard, each site specific proposal would need to comply with applicable environmental review regulations and procedures. Moreover, when the CUP expires or is revoked, the ordinance requires restoration.

#### Conclusion

As explained during the first reading, this amendment merely allows the Council to consider the issuance of CUP's for workers camps in certain portions of the future urbanizing area. It does not involve any site specific projects. Although no details of a specific project are before us, we can conclude that sufficient safeguards are present both in this enabling ordinance and the required environmental review procedures and reports to protect the interim nature of the future urbanizing designation, and thus, make it consistent with the terms of Proposition A.

Respectfully submitted,  
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