

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

AN EMERGENCY ORDINANCE TO MAKE IMMEDIATELY EFFECTIVE IN THE COASTAL ZONE THE PROVISIONS OF ORDINANCE NO. O-17748 (NEW SERIES) RELATING TO CORRECTIONAL PLACEMENT CENTERS AND AN AMENDMENT TO ORDINANCE NO. O-17748 (NEW SERIES) TO DELETE THE PROVISION OF THAT ORDINANCE WHICH MAKES THE ORDINANCE EFFECTIVE IN THE COASTAL ZONE THIRTY DAYS AFTER THE CALIFORNIA COASTAL COMMISSION CERTIFIES THAT ORDINANCE AS AN AMENDMENT OF THE LOCAL COASTAL PROGRAM.

We have prepared an emergency ordinance pursuant to your directions given on March 16, 1992. We have approved this ordinance as to form only and do not represent to you that we are satisfied that such an ordinance is legally enforceable for two reasons.

1. The ordinance has been prepared based on the provisions of City of San Diego Charter section 17. This section authorizes the City Council to adopt, as an emergency measure, an ordinance to provide for the immediate preservation of the public peace, property, health or safety. Based on the information available to us, we have recited in the preamble to the ordinance the facts which are intended to support the finding that an emergency exists that necessitates the adoption of the ordinance. However, Charter section 17 also provides that "no situation shall be declared an emergency by the Council except as defined in this section, and it is the intention of this Charter that compliance with such definition shall be strictly construed by the Courts." We are concerned that the basis for finding an emergency exists may not be sufficient to preclude an attack on the ordinance. However, the determination that an emergency exists rests solely with the City Council but such determination may be subjected to scrutiny under the quoted provisions of Charter section 17.

Charter section 17 has been used as the basis for the emergency ordinance because the emergency ordinance provisions of the planning and zoning regulations (Municipal Code sections

101.0203.1 and 101.0205.2) are, by their terms, not applicable to the present situation.

Municipal Code section 101.0203.1 provides that a temporary interim zoning emergency ordinance may be adopted "pending the study and recommendations of zoning restrictions in an area of land within the City." This section is available for use when the land in question is annexed to the City and a permanent zoning pattern is under study.

Municipal Code section 101.0205.2 is available for use when "the City Council initiates a change of zone." This section provides that the City Council is authorized to "adopt an ordinance providing that no development inconsistent with the provisions of the most restrictive zone under consideration shall take place pending a determination by the City Council of the proposed change of zone."

2. By its terms the emergency ordinance makes applicable in the Coastal Zone the provisions of Ordinance No. O-17748 (New Series) before the California Coastal Commission certifies that ordinance as an amendment to the Local Coastal Program. The Coastal Act (Public Resources Code section 30514) requires that a Local Coastal Program, including the implementing ordinances and any amendments, be submitted to the Coastal Commission for certification. The Coastal Act contains no authorization for the enactment of an ordinance, as an emergency measure without Coastal Commission certification. While the Coastal Act does provide for the issuance of some permits without following the usual procedures (Public Resources Code section 30611) in certain emergency situations, it does not specifically authorize the City to amend the land use regulations applicable within the Coastal Zone to permit an activity not presently allowed. Because the Coastal Act does not authorize the City to allow land uses except when certified by the California Coastal Commission, we are concerned that the emergency ordinance may be attacked on the grounds that it violates the California Coastal Act.

In addition to the emergency ordinance, we have prepared an amendment to Ordinance No. O-17748 (New Series) which amends Section 3 of that ordinance by eliminating the provision that makes that ordinance effective in the Coastal Zone thirty days after the California Coastal Commission certifies that ordinance as an amendment to the Local Coastal Program. The thirty day provision is not required by the Coastal Act, it is included to provide City staff with time to receive documentation from the Coastal Commission and notify the affected departments of the action taken. Because there is only one application pending within the Coastal Zone, the thirty day period is not necessary. If the City Council introduces the amendment to Ordinance No. O-17748, it will

become effective in early June which will coincide closely with the date of action by the Coastal Commission and the provisions of that ordinance will be available for use at that time without waiting an additional thirty days. We recommend introduction of this amendment regardless of the action taken on the emergency ordinance by the City Council.

Respectfully submitted,
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City Attorney

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