

July 21, 1993
REPORT TO THE HONORABLE
MAYOR AND CITY COUNCIL

LINDA VISTA INTERIM ORDINANCE

Background

The Linda Vista Interim Ordinance was adopted by the City Council on October 24, 1988 (O-17167 New Series). The Linda Vista Interim Ordinance provided that it would stay in effect until the amendments to the Linda Vista Community Plan and the necessary implementing ordinances were adopted. As of this date, the amendments to the Linda Vista Community Plan have not been completed.

At the June 17, 1993, Planning Commission meeting, a question arose concerning the validity of the ordinance. At the July 8, 1993, Planning Commission meeting, the City Attorney discussed the enforceability of the Linda Vista Interim Ordinance and recommended that it be repealed. The Planning Commission voted unanimously to recommend that the ordinance be repealed and a "permanent" ordinance be adopted in its place. The City Council has requested that this office report on the status of the Linda Vista Interim Ordinance.

Enforceability of the Linda Vista Interim Ordinance

An argument has been made that the Linda Vista Interim Ordinance was enacted pursuant to San Diego Municipal Code section 101.0203.1 and automatically expired one year later by operation of law. If the court found the ordinance was adopted pursuant to Municipal Code section 101.0203.1, it is likely the court would rule it expired October 24, 1989.

The City can argue that the Linda Vista Interim Ordinance was adopted pursuant to its general police powers, not Municipal Code section 101.0203.1. Court cases have held that a charter city has the right to regulate its municipal affairs and an ordinance enacted pursuant to general police powers will be sustained unless it goes beyond the powers of the city and violates the constitutional rights of its citizens. 45 Cal. Jur. 3d Municipalities Section 200 (1978). The California Supreme Court has affirmed a charter city's ability to enforce interim ordinances as a valid exercise of the city's general police power. *Miller v. Board of Public Works*, 195 Cal. 477, 497

(1925). Since it takes considerable time to adopt a permanent zoning plan, an interim zoning ordinance is valid to maintain the status quo. *Id.*

However, an interim ordinance, adopted pursuant to general police powers, is valid only for a reasonable period of time. *First English Evangelical Lutheran Church v. County of Los Angeles*, 210 Cal. App. 3d 1353, 1373 (1989), cert. denied, 493 U.S. 1056 (1990). The courts have not defined the outer boundary of a reasonable period of time. In *First English*, the court found two and one-half years reasonable. *Id.* at 1373. In another case, three years was considered reasonable. *Metro Realty v. County of Eldorado*, 222 Cal. App. 2d 508, 511. In *Miller*, the interim ordinance appeared to be in place for almost three and one-half years. *Miller*, 195 Cal. at 482.

Since the courts have not settled on an outer boundary, reasonableness will depend on the specific circumstances of each case. The Linda Vista Interim Ordinance has been enforced for almost five years. Arguably, five years may be beyond the scope of reasonableness.

Conclusion

The City Attorney recommends the Council repeal the Linda Vista Interim Ordinance as soon as possible. First, it is not certain the courts will find that the Linda Vista Interim Ordinance was adopted pursuant to the City's general police powers. Second, even if the courts find the ordinance was adopted pursuant to general police powers, it is only enforceable for a reasonable period of time. The Linda Vista Interim Ordinance has been enforced for almost five years. Arguably, five years is reaching the outer boundary of reasonableness.

To satisfy the needs of the Linda Vista community, one option available to the Council could be to enact a new "permanent" ordinance containing the same provisions as the Linda Vista Interim Ordinance. According to Charter section 17, this new ordinance could take effect thirty days after passage.

Respectfully submitted,

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