

February 28, 1994
REPORT TO THE HONORABLE
MAYOR AND CITY COUNCIL

PROPOSED ORDINANCE CALLING ELECTION FOR
JUNE 7, 1994 FOR TWO BALLOT PROPOSITIONS

Pursuant to your direction, we have prepared a proposed Ordinance, Number O-94-76, which calls for a special election to be held on June 7, 1994 to consider two ballot propositions, a proposed Charter amendment concerning the filling of Council vacancies and a proposed amendment to the Progress Guide and General Plan of the City imposing conditions on future development and providing for a change in designation from future urbanizing to planned urbanizing in the North City Future Urbanizing Area in the City of San Diego. This report concerns the proposed amendment to the Progress Guide and General Plan.

We have drafted the ordinance to mirror as closely as possible the precise provisions contained in the "Proposal" as it was sent to us on February 18, 1994. We did this even though some issues about the "Proposal" have arisen.

For example,

- a) The absence of a well-defined description of the property being affected by the proposed change in designation. This may give rise to disputes over precise boundaries which a well-defined description could have avoided.
- b) The definition of "development" in this proposal is especially critical because the term is used throughout to qualify and limit the actions of the City. "Development" is defined in the proposal as meaning "the issuance of a building permit." Ordinarily, the issuance of a building permit is a ministerial act occurring at the last stage of the planning and permitting process. This may leave an ambiguity as to whether property owners and developers are entitled to apply for and obtain, prior to approval of a subarea plan, the various other discretionary permits and agreements which ordinarily precede issuance of a building permit such as: rezonings, tentative maps, subdivision

maps or development agreements. Moreover, the definition of development in the proposal raises questions about its consistency with the use of that term in the framework plan.

- c) Section 9 of the proposal states that no development (issuance of building permits) shall be approved unless the development is consistent with an adopted subarea plan. Building permits are ordinarily issued ministerially by the City's Building Official. The proposal does not specify who should make the determination that the project is "consistent" with the subarea plan. It is not clear whether that determination is to be made by the Building Official or the City Council.
- d) It is our view that, irrespective of the number of residential units provided for in Section 6 (pg. 13), the City's right under the police power to protect the public health and safety, could, under appropriate conditions, allow the City Council to reduce or otherwise modify those limits.
- e) The proposed severability clause, Section 15 (pg. 18), provides that the phase shift survives notwithstanding a successful challenge to any or all of the other proposed amendments. Although we believe that the clause legally may remain as written, it should be noted that if a successful constitutional challenge is made to any of these other provisions, such as the school financing plan, the public facilities requirements, or the residential density requirements, the phase shift still occurs.

Summary

In our current view, none of the provisions in the proposed ballot language can be said to be invalid on their face. Questions are raised, however, if one or more of them is held to be invalid as applied to a particular subarea or project.

Respectfully submitted,

JOHN W. WITT

City Attorney

CMF:CCM:RAD:js:(043.1)

RC-94-13