

December 14, 1998

REPORT TO THE HONORABLE
MAYOR AND CITY COUNCIL

HOFFMASTER V. CITY OF SAN DIEGO

INTRODUCTION

We are pleased to inform you of a favorable ruling by the Superior Court denying Petitioners' Motion for Sanctions in *Hoffmaster v. City of San Diego*. As part of its decision, the Superior Court found that the Housing Element of the Progress Guide and General Plan, as amended on November 25, 1997, fully complies with all relevant provisions of state law. Accordingly, the decision terminates this lawsuit.

FACTS

Petitioners initiated this case on November 18, 1994, when they filed suit complaining that the Housing Element had not been timely revised and failed to include sufficient planning for the homeless. On December 23, 1994, the trial court found that the City had failed to adopt a statutorily mandated Housing Element and ordered compliance within 120 days of its ruling.

On March 21, 1995, the City Council adopted a Housing Element update. Petitioners challenged the revised Housing Element on the ground that it violated nine sections of the State Planning and Zoning Law. On October 10, 1995, the trial court concluded that the revised Housing Element violated one of these sections, finding that the Housing Element neither identified adequate sites for emergency or transitional housing nor contained an action program to make those sites available as required by Government Code section 65583(c)(1). The trial court rejected Petitioners' other challenges to the Housing Element.

On January 30, 1996, the City Council amended the Housing Element a second time. The amended Housing Element contained maps showing all vacant and infill/redevelopment land within the City's boundaries and generally declared that this entire supply of land could be used as sites for emergency shelters or transitional housing. The amended Housing Element also included a goal of providing a total of 60,000 annual inclement weather bed nights during the period covered by the Housing Element. In addition, the amended Housing Element set an objective of adding roughly 1,400 permanent shelter beds.

Petitioners once again challenged the Housing Element, this time claiming that it still failed to identify adequate sites that could be used for emergency shelters and transitional housing. On April 18, 1996, the trial court issued its final judgment concluding the City had not

complied with Government Code section 65583(c)(1), because the City identified over 3,400 homeless residents whose needs would remain unmet during the period covered by the Housing Element. The City appealed this decision.

THE COURT OF APPEAL'S DECISION

On June 17, 1997, the Court of Appeal affirmed the trial court's ruling. However, the Court of Appeal clearly disagreed with the reasoning of the trial court. The Court of Appeal rejected the notion that the City's five-year action program in the Housing Element must be designed to fulfill the entire housing needs of the homeless population. Instead, the five-year action program must be designed to meet the City's goal of creating roughly 1,400 new permanent shelter beds by the end of 1998. In addition, the court held that sufficient sites must be identified to meet the goal of providing 60,000 annual seasonal bed-nights.

Furthermore, the Court of Appeal held that the City was not required to establish geographic zones where homeless shelters could be located by right. According to the court, the "City must identify sites which will be made 'available' through its action plan; it does not require the City to designate geographic zones where shelter for the homeless may be built as a matter of right without a CUP, or for that matter, without complying with the underlying zoning of the area."

However, the court concluded that the Housing Element was still deficient. The court noted that the CUP requirement, which imposes a one-quarter mile separation requirement on virtually all residential care facilities, substantially constrains the siting of emergency shelters and meaningful transitional housing.

The court also defined the term "adequate site" as it is used in Government Code section 65583(c)(1). It held that an adequate site is one that is consistent with the General Plan designation and site zoning. In addition, the court noted that sites should be located within reasonable access to public agencies and transportation services and should not require unusually high site development costs. Such sites must be officially designated in the Housing Element. Although the City is not required to repeal the CUP ordinance, the court found that the Housing Element must detail how, when, and where the CUP restrictions can be mitigated to promote emergency and transitional housing.

THE AMENDED HOUSING ELEMENT

On November 25, 1997, the City Council adopted an amended Housing Element, as required by the Court of Appeal's decision. The amendment identifies specific zoning districts that are suitable for use as emergency shelters and transitional housing. The amendment also calls for regulatory changes for homeless facilities. In particular, the amended Housing Element states that the City will eliminate the one-quarter mile separation requirement. The amended Housing Element also encourages the City to expedite the processing of CUP applications for homeless facilities.

An amendment to the CUP ordinance implementing the new Housing Element policies

was approved by the City Council on September 29, 1998. This CUP amendment removes the one quarter mile separation requirement and eliminates the Planning Commission's review of CUP applications for homeless facilities. If the amendment is approved, these CUP applications will be heard directly by the City Council.

Petitioners recently filed a motion in the trial court seeking to sanction the City for failing to comply with the Court of Appeal's decision. Petitioners argued that the City had failed to adequately identify sites for potential use as emergency shelters. Petitioners also claimed that the CUP process for homeless facilities still contained overly restrictive features, including unnecessary parking requirements and occupancy limits.

THE TRIAL COURT'S DECISION

On November 25, 1998, Superior Court Judge Wayne Peterson issued a final ruling in this case in favor of the City. The court concluded that the zones identified in the amended Housing Element contained adequate sites that could be used for emergency shelters and transitional housing. The court also rejected Petitioners' remaining challenges to the City's permit process for homeless shelters. We do not expect Petitioners to appeal this ruling.

This case was brought by a group of volunteer attorneys led by Timothy Cohelan. The City's defense was handled by Assistant City Attorney Anita Noone and Deputy City Attorney John P. Mullen.

Respectfully submitted,

CASEY GWINN
City Attorney

JPM:kat:Civ/FILE NO.(043.1)
RC-98-21