

May 20, 1997

REPORT TO THE COMMITTEE
ON LAND USE AND HOUSING

LEGAL REQUIREMENTS FOR CONSISTENCY BETWEEN ZONING REGULATIONS
AND THE PROGRESS GUIDE & GENERAL PLAN

In the course of adoption proceedings for the City's proposed Land Development Code, it has been suggested that the City should adopt a requirement for consistency between the City's zoning regulations and its Progress Guide & General Plan (the "General Plan"). The General Plan is defined by the City to include the various community plans adopted by the City.

The purpose of this report is to provide the Committee with the City Attorney's analysis and recommendations on this issue as it reviews the proposed Land Development Code for adoption.

Legal Requirements

Under state law, a general law city's zoning ordinances must be consistent with the city's adopted general plan. This requirement is commonly referred to as a "vertical consistency" requirement. A zoning ordinance is considered consistent with the general plan if the local agency has adopted a legally adequate general plan and if "the various land uses authorized by the ordinance are compatible with the objectives, policies, general land uses, and programs specified in such plan." (Cal. Gov't Code 65860(a).)

The City of San Diego, as a charter city, is exempt from the requirement that zoning ordinances be consistent with the general plan, unless the City requires such consistency by its charter or by ordinance. This exemption is acknowledged both by state statute and case law. (See Cal. Gov't Code 65803, 65860(d); Garat v. City of Riverside, 2 Cal. App. 4th 259 (1991).) To date, the City has not adopted a vertical consistency requirement.

Although the City is exempt from any State mandated vertical consistency requirement, there are other State mandated consistency requirements which charter cities are required to follow. The City's General Plan must be internally consistent. Regulations and land use plans implementing the City's Local Coastal Program must be consistent with the California Coastal Act. Pursuant to the Subdivision Map Act, approved tentative maps must be consistent with the general plan and any applicable specific plan. Lastly, adopted Airport Land Use Plans must be consistent with the General Plan.

City Attorney Recommendations

As indicated, the general law city “vertical consistency” requirement does not apply to the City of San Diego, unless the City adopts the requirement by ordinance or by charter. We do not recommend adopting mandatory vertical consistency at this time. Neither the current Municipal Code, nor the Land Development Code, as currently drafted, could meet such a consistency requirement.

The City of San Diego has approximately 40 approved community plans. These plans are incorporated into and form part of the City's General Plan. Many of these plans are drafted in regulatory detail with differing community goals and standards. If the City mandated vertical consistency between its zoning regulations and the existing community plans, the detailed provisions of all of the community plans would require the creation of individual zoning ordinances for these 40 communities. Alternatively, the City would need to suspend most community plans until they can be updated so that the regulations are consistent. If the City adopted the State consistency requirement in the Land Development Code without concurrently suspending community plans, many of the zoning regulations in the proposed code could be deemed invalid.

While we do not believe mandating vertical consistency in the Land Development Code at this time is legally feasible, the City may, as a matter of policy, choose to adopt such a requirement in the future. Before the City adopts a vertical consistency requirement, the City Attorney’s office should review the issue thoroughly to determine the actions necessary to successfully implement such a requirement, and to determine the changes, if any, that would be necessary in the various community plans.

Respectfully submitted,

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