

## **MEMORANDUM OF LAW**

**DATE:** June 25, 2002

**TO:** Marcia Samuels, Director  
Neighborhood Code Compliance Department

**FROM:** City Attorney

**SUBJECT:** Lease of Private Property to a Charter School

## **QUESTIONS PRESENTED**

1. May the City enforce local building and zoning ordinances against a charter school that is leasing private property from a church?
2. Does the lease of a portion of private property by a church to a charter school constitute a subdivision under the Subdivision Map Act?

## **SHORT ANSWER**

1. Yes. Although state law gives charter schools operational independence, they remain part of the statewide public school system. As such, they are subject to the same local building and zoning ordinances that apply to public school districts.
2. Yes. Because the lease does not involve commercial, industrial, or residential property, it creates a subdivision of land and triggers the requirements of the Subdivision Map Act. However, since charter schools are public entities, leases to these bodies do not require maps under the Subdivision Map Act.

## **BACKGROUND**

In 1977, the City of San Diego [City] issued a Conditional Use Permit [CUP] to Bayview Baptist Church [Church] to operate a church and related facilities at 6126 Benson Avenue. The

City amended the Church's CUP in 1985 to allow construction of a multi-purpose building and christian education classrooms. In 2000, the Church leased part of its property to Nubia Leadership Academy [Nubia] for the operation of a charter grade school. Nubia placed four commercial coaches on the property for use as classrooms.

## **DISCUSSION**

### **I. Applicability of Local Building and Zoning Ordinances to Charter Schools**

#### **A. Charter Schools Act of 1992**

The Charter Schools Act of 1992 [Act] governs charter schools in California. Cal. Ed. Code 47600 et seq. The purpose of the Act was to improve pupil learning and increase accountability while allowing charter schools to experiment with innovative teaching methods. Cal. Ed. Code 47601. Under the Act, charter schools must comply with the provisions in their charters, but are generally exempt from the laws governing school districts. Cal. Ed. Code 47610. Despite this, charter schools remain under the jurisdiction of the public school system and the exclusive control of the officers of the public schools. Cal Ed. Code 47615. While the Legislature intended the Act "loosen the apron strings of bureaucracy," they did not intend to remove charter schools from the common system of public schools. *Wilson v. State Board of Education*, 75 Cal. App. 4<sup>th</sup> 1125, 1137 (1999). Consequently, although charter schools may have operational independence, they remain under the exclusive control of the officers of the public school system. *Id.* at 1139.

#### **B. Local Building and Zoning Ordinances**

Local agencies, including school districts, must comply with the building and zoning ordinances of the city or county in which they are situated. Cal. Gov't Code 53091. However, zoning ordinances are not applicable to school districts "unless the zoning ordinance makes provision for the location of public schools and unless the city or county has adopted a general plan." Cal. Gov't Code 53094(b). Further, if zoning ordinances do apply, school districts may exempt themselves by a two-thirds vote of their governing boards if the proposed use is for classroom facilities. Cal. Gov't Code 53094. In other words, "a school district must abide by local zoning ordinances unless it chooses to exercise its right of exemption." *City of Santa Clara v. Santa Clara Unified School District*, 22 Cal. App. 3d 152, 158 (1971).

Because charter schools fall within the control of school districts, they must also comply with local building and zoning ordinances. To interpret otherwise would allow charter schools to operate independent of local land use laws while requiring both private and traditional public schools to comply. Such reasoning is not consistent with statutory or case law, nor with the overriding public health and safety concerns that justify local building and zoning ordinances in the first place.

Consequently, Nubia must comply with City zoning ordinances unless it exempts itself by a two-thirds vote of its governing board. Nubia must also follow City building regulations despite the fact that state law preempts conflicting local building and construction standards for

commercial coaches. Cal. Health & Safety Code 18015. Because Nubia is a non-profit entity and uses its coaches as classrooms, state regulations for either “commercial” or “special purpose commercial” coaches do not apply. Cal. Health & Safety Code 18001.8, 18012.5. Therefore, state law does not preempt the City from applying its building ordinances to Nubia.

## **II. Leases Under the Subdivision Map Act**

The California Subdivision Map Act [Act] vests cities with the power to regulate and control the design and improvement of subdivisions within their boundaries. Cal. Gov’t Code 66411. As a result, whether a city may regulate private property under the Act largely depends on whether a property owner’s action creates a subdivision of land. The Act defines “subdivision” as a “division, by any subdivider, of any unit or units of improved or unimproved land, or any portion thereof...for the purpose of sale, lease or financing, whether immediate or future.” Cal. Gov’t Code 66424. However, the Act expressly exempts certain leases, including leases of “apartments, offices, stores, or similar space within apartment buildings, industrial buildings, commercial buildings, mobile home parks, or trailer parks.” Cal. Gov’t Code 66412(a).

Here, Nubia leased a portion of the Church’s property for the operation of a charter grade school. Under the Act, this lease created a subdivision of the Church’s property. Because the lease does not involve commercial, industrial or residential property, it does not fall under the Act’s exemptions. Therefore, the resulting subdivision of the Church’s property may trigger the requirements of the Act.

However, while the lease creates a subdivision under the Act, the Church may not have to comply with the Act’s mapping requirements. The Act does not require parcel maps for “land conveyed to or from a governmental agency, public entity, [or] public utility,” unless there is a showing that a “public policy necessitates a parcel map.” Cal. Gov’t Code 66428(a)(2). This exemption covers conveyances of fee interests, easements or leasehold interests. *Id.* Since charter schools remain part of the common public school system, leases to or from such schools do not require parcel maps absent the showing of a public policy. Consequently, the Church’s lease to Nubia may not trigger mapping requirements, although other requirements under the Act, such as dedications and improvements, may still apply.

## **CONCLUSION**

Although charter schools have operational autonomy from school districts, they remain part of the statewide school system and are subject to local building and zoning ordinances. As a result, Nubia must comply with City building regulations, and also with City zoning ordinances unless it exempts itself by a two-thirds vote of its governing body.

Further, a lease of private property results in a subdivision of land under the Subdivision Map Act unless the Act specifically exempts it. Exemptions exist for leases of commercial, industrial, and some residential property. Because the Church’s lease to Nubia did not involve these types of property, it resulted in a subdivision of land, consequently triggering the requirements of the Act. However, since charter schools are public entities, the lease to Nubia

does not require a subdivision map under the Act. Other requirements under the Act may still apply to the transaction.

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By

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