

DATE: March 13, 1986  
TO: Councilwoman Judy McCarty  
FROM: City Attorney  
SUBJECT: City Obligation to Provide Housing for the  
Homeless

By memorandum dated January 28, 1986, you indicated that it is your understanding that several cities and counties in the United States have been sued for not providing sufficient housing for their homeless. Your memorandum indicated your concern about the problem of homelessness and asked:

1. What are the legal responsibilities of the City of San Diego in providing for the homeless?
2. Is the recently discussed Housing Element adequate under the State guidelines in its response to homelessness?
3. What have been the results in the other lawsuits?

In answer to your first question, there is no Federal or State regulation requiring cities to actually provide homes to "homeless" persons and families. While there is a substantial amount of concern for the plight of homeless persons and families at the Federal, State and local level, and while there are Federal and State programs supporting the provision of housing for the homeless, there are no laws mandating cities, utilizing the funds of local taxpayers, to provide housing for the homeless.

With regard to your second question, Section 65583 of the California Government Code specifies the required contents of the Housing Element for each city's General Plan. Section 65583(a)(6) was amended effective September 30, 1984, to require in each Housing Element an "Analysis of any special housing needs, such as those of the handicapped, elderly, large families, farm workers, families with female heads of household, and families and persons in need of emergency shelter." (Underlined portion added in 1984.)

A proposed new Housing Element, which is scheduled for Council review later this month, contains the required analysis of emergency shelter needs. The Government Code provisions relating to the review and revision of Housing Elements require that the City of San Diego review and revise, as necessary, its Housing Element by July 1985. We are now past the deadline so it is important that the Council act expeditiously in reviewing and revising, as necessary, the Housing Element.

Nothing in the law relating to Housing Elements requires that

a city expend its general funds for the purpose of furnishing housing to those who are without adequate housing. In fact, Section 65589 specifies in part:

(a) Nothing in this article shall require a city . . .

to do any of the following:

(1) Expend local revenues for the construction of housing, housing subsidies, or land acquisition.

. . .

On the other hand, there is nothing in the law to preclude the expenditure of City funds to provide housing for the needy. In fact, Section 93 of the City's Charter provides that "the credit of the City shall not be given or loaned to or in aid of any individual, association or corporation; except that suitable provision may be made for the aid and support of the poor." Emphasis ours.

With regard to your third question, we are not aware of any lawsuits in the United States which have involved a determination that cities or counties have some legal obligation to expend general city or county funds for the purpose of providing housing for the homeless. There are, however, a number of cases, most of them from East Coast states, which have prohibited cities and counties from engaging in a practice called "exclusionary zoning." Those cases involve situations where cities or counties exercise zoning powers in such a way as to preclude the construction of small homes or apartments on small lots within city or county boundaries. The City of San Diego has, of course, not engaged in such activities. Furthermore, some states, including California, have enacted legislation in effect requiring cities to allow the construction of low and moderate income housing. In California, for example, Government Code Section 65915 et seq., created in 1979, requires local officials to grant a twenty-five percent density bonus or similar incentive to developers who set aside at least one-fourth of their housing for low or moderate income people.

In San Diego the Housing Authority has administered Federally funded programs providing housing for the needy for many years. In the past six years, the Housing Commission has significantly expanded the programs in which the City and its Housing Authority are involved to provide additional, and maintain existing, housing opportunities for low and moderate income persons and families through the utilization of Federal and State grants and loans. Also the City has conveyed a number of City surplus properties to the Housing Authority under various terms and conditions for the purpose of providing sites and funds for housing for low and moderate income persons and families.

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By

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