

MEMORANDUM OF LAW

DATE: May 18, 1987

TO: Councilmember Judy McCarty
FROM: City Attorney
SUBJECT: Interim Development Control Ordinance

Your May 5, 1987 memorandum to City Attorney John Witt regarding the above-captioned matter has been referred to me for a reply. For ready reference, a copy of your memorandum and the attachment to which it refers are attached as Enclosure (1).

You ask several questions to which I will reply in the order they were posed.

Question 1

Attached to your memorandum is a copy of a draft legal analysis with respect to the issue of an interim development control ordinance which was prepared by and under the direction of Professor Freilich; and you ask whether we concur with the analysis and conclusions.

Answer 1

With some minor exceptions, we believe the analysis and conclusions are correct and are an accurate statement of the law in this regard.

Question 2

You ask for our opinion "as to the City's legal standing for adopting such an ordinance" and "what findings will you make?"

Answer 2

As pointed out and discussed in the draft memorandum by Professor Freilich, the City's "legal standing for adopting such an ordinance" stems from the State Constitution, the City Charter, State statutes and municipal ordinance and

assuming there are sufficient facts to support the findings which the City Council (not this office) must make with respect to urgency and the need for interim controls on development, we have no reservation about the City Council's authority to proceed along the lines which are being proposed. We should emphasize again, however that the justification for action must come from extrinsic evidence presented at the Council hearing on this matter which satisfies you and a sufficient number of your colleagues that interim emergency controls are warranted.

We are simply unable at this time to speculate on the prospect of litigation, its result or cost.

JOHN W. WITT, City Attorney

By

C. M. Fitzpatrick
Assistant City Attorney

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Enclosure (1)
ML-87-53