

DATE: August 18, 1988

TO: Robert P. Spaulding, Planning Director
FROM: City Attorney
SUBJECT: Applicability of City Regulations to School
District Properties

By memorandum dated June 20, 1988, you indicated concerns relating to reported plans of the San Diego Unified School District to locate portable buildings on school properties and lease them as day care centers, senior citizens centers and offices. You asked the following questions:

1. What "school purposes" are exempt from local zoning regulations?

2. Would it be legal to request a school district or its lessee to process a Conditional Use Permit if a portion of an operating school site is leased to a nonprofit organization to operate a day care center?

3. In the past, Conditional Use Permits were processed for closed school sites that were leased for alternative uses not allowed by the underlying zone. We expect this practice to continue. Do we still have that authority under Section 101.0510 of the Municipal Code?

Attached for your review is a copy of section 53090 et seq. of the Government Code of the State of California. You will note that pursuant to section 53091, a school district is required to comply with all applicable building and zoning ordinances of the city. Section 53091 requires as a prerequisite, however, that the city have a zoning ordinance which makes provision for the location of public schools and further requires that the city planning commission have adopted "a master plan" which we assume to mean a general plan which contains an element relating to the location of public schools.

In addition, you will see that section 53094 allows the governing board of a school district, by a two-thirds vote, to "render a city or county zoning ordinance inapplicable" to the proposed construction of classroom facilities. Therefore, it appears that local school districts are subject to the cities zoning and building ordinances under certain circumstances and conditions but that, as a practical matter, only nonclassroom school facilities can be effectively controlled by such local ordinances.

In view of the above answer to your first question, it appears clear that the City could, in fact, once it has a zoning ordinance which provides for the location of public schools and

the required "master plan," require lessees from the school districts of vacant or under-utilized school properties, to comply with the City's building and zoning ordinances.

JOHN W. WITT, City Attorney

By

Harold O. Valderhaug

Deputy City Attorney

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Attachment

ML-88-79