MEMORANDUM OF LAW

DATE: October 21, 1993

TO: The City of San Diego Human Relations Commission

FROM: City Attorney

SUBJECT: Social Services Logan Heights District Office

INTRODUCTION

On September 22, 1993, Commissioner Brian Bennett and local resident Connie Zuniga provided the City of San Diego Human Relations Commission ("Commission") with a report on the problems associated with the large volume of clients visiting the Social Services Logan Heights District Office located at 2509 Imperial Avenue ("District Office"). (A copy of the County of San Diego Staff Report to the Board of Supervisors, dated August 24, 1993, ("Staff Report") is attached.) The Commission requested that the City Attorney's Office determine whether these problems could be resolved by the aggressive enforcement of our zoning regulations. In addition, the Commission asked whether the California Environmental Quality Act ("CEQA") applied to county projects.

BACKGROUND

The District Office, operated by the County of San Diego, provides a number of social services to the community. However, there has been a long history of problems associated with the operation of the District Office. It is our understanding that the large volume of clients that visit the District Office each day causes loitering and crime problems in the neighborhood. (See pages 2 and 4 of the Staff Report.) In addition, a contributing factor to the problems in the area is the availability of alcohol near the District Office. (See page 6 of the Staff Report.)

The Neighborhood Code Compliance Department has determined that, when the District Office was first established, the property was zoned "M-1." In 1987 the City adopted the Southeast Planned District Ordinance (San Diego Municipal Code section 103.1701 et seq.) which now covers this piece of property. The current zone designation is "CSR" and "I-2". The prior "M-1" zone, as well as the current zone, allows "Business and Professional Office" uses as a matter of right. This includes

such uses as the District Office.

ANALYSIS

I. Applicability of City's Zoning regulations.

It is our opinion that the problems associated with the excessive number of people being seen at the District Office can not be resolved by the City's zoning ordinances. It is well established that counties are immune from complying with a city's zoning ordinances.

The courts have consistently held that counties are exempt from a city's zoning regulations. Town of Atherton v. Superior Court, 159 Cal. App. 2d 417 (1958). See also Government Code section 53090; 40 Ops. Cal. Atty. Gen. 243 (1962) and County of Los Angeles v. City of Los Angeles, 212 Cal. App. 2d 160 (1963).

In Town of Atherton the court held that a city could not, through zoning, control the location of public schools. Town of Atherton at 428. Similarly, the court in County of Los Angeles held that counties are not obligated to obey city ordinances concerning the construction of their buildings within city limits. County of Los Angeles at 166.

The court reasoned that the county is a political subdivision of the state and performs many of the state's functions. Consequently, cities cannot interfere with or hamper the county in the performance of such functions. The court states that although problems could arise, such as a county erecting a jail facility in a neighborhood zoned for residential use, it is up to the Legislature to resolve such problems when the need arises. Id. at 167.

The Attorney General has also opined that counties are exempt from a city's building and zoning ordinances when they are acting in a governmental capacity. The Attorney General concluded that the Legislature intended that counties should be left free to work out their problems without giving the power of veto over the activities to the cities. 40 Ops. Cal. Atty. Gen. at 244.

The County of San Diego does not have to comply with the City's zoning ordinances. The District Office is carrying out a function of the state by dispersing welfare payments along with other similar social services. This type of activity cannot be regulated or hampered by the City's zoning ordinances.

II. Applicability of CEQA

A question was also raised at the September 22, 1993, Commission meeting regarding the applicability of CEQA to county projects. CEQA does require that counties prepare and certify the completion of an environmental impact report on any project that they propose to carry out or approve which may have a significant effect on the environment. Public Resources Code sections 21100 and 21151. The court in Inyo County v. Yorty, 32

Cal. App. 3d 795 (1973), explains that a local agency is required to prepare an environmental impact report when (1) it is carrying out a "project," and (2) the project may have a significant effect on the environment.

The court reasoned that, through the EIR process, local agencies may have the opportunity to review and comment on a project in which they have no direct regulatory authority but may suffer most from the impact of such project. Id. at 811.

In order to determine whether an environmental document was required for the District Office or may be required for any future action concerning this site, an extensive amount of investigation would need to be conducted. In particular we would need to be provided with the following information: Whether a notice of approval was filed concerning the District Office; whether any current action is proposed by the County of San Diego concerning this site; the nature of prior actions taken by the County of San Diego concerning this site; and the date the District Office was first located at this address. Our office would then be able to provide further legal analysis concerning this issue.

CONCLUSION

The types of problems caused by the large number of people being serviced at the District Office may be better solved by police involvement. Moreover, we suggest that the City continue to work with the County of San Diego in reaching a solution to these problems. Perhaps as a means to facilitate a compromise, the services of the Environmental Mediation Program may be utilized.F

The Environmental Mediation Program was first created, in 1989, to resolve disputes between City code enforcement departments and property owners. This program has evolved to now handle disputes that involve municipal governmental issues. Finally, the City is always capable of regulating, through police enforcement, the activities that surround the District Office.

JOHN W. WITT, City Attorney
By
Ann Y. Moore
Deputy City Attorney

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Attachment
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