The City Attorney

City of San Diego

MEMORANDUM

236-6220

DATE: December 17, 1985

TO: Dennis Turner, Senior Planner, Planning

Department

FROM: City Attorney

SUBJECT: Noticing Requirements for Zoning Administrator

Actions

By memorandum you requested our advice regarding certain noticing

provisions of the San Diego Municipal Code that relate to
condi-
tional use permits. Your memorandum indicates that the current

planning division in developing a draft ordinance which would,

among other things, consolidate San Diego Municipal Code Sections

101.0503, 101.0506 and 101.0507 pertaining to the administration

of conditional use permits by the Zoning Administrator, the

Planning Commission and the City Council into a revised section.

It is your intent to reference the required hearing notice
proce-

dures in the rewritten section to those contained in San Diego Municipal Code Section 101.0220, entitled, "Procedure for Planned Development/Special Permit Noticing."

With regard to this proposed ordinance, your specific question was "Would sufficient legal noticing be achieved for hearings on the Zoning Administrator conditional use permits if noticing includes only the 300-foot mailed notices, even though noticing requirements for the Planning Commission and the City Council conditional use permit hearings would retain both the 300-foot mailed notices and newspaper publication?"

Constitutional "due process" requirements will be satisfied by the proposed City ordinance relating to variances, conditional use permits, and reconstruction permits where the City Council and Planning Commission hearings require more extensive noticing procedures than actions by the Zoning Administrator.

As you are aware, chartered cities are not bound by the noticing provisions of the California Government Code, but are guided by a constitutional "due process" standard. Cal. Gov. Code Sections 65803 and 65804. "Due process" requires notice, in the zoning context, that is "reasonably calculated to afford affected

persons the realistic opportunity to protect their interests."
Horn v. County of Ventura, 24 Cal.3d 605, 607 (1979). Even prior to Horn, the Supreme Court made clear that notice is required to property owners when their property rights are substantially affected. Scott v. City of Indian Wells, 6 Cal.3d 541, 548-549 (1972).

In the past, the City has sought to adhere, at least generally, with the noticing requirements of the California Government Code though particular provisions have been tailored to the City's own needs. The Zoning Administrator has been given power to decide certain zoning issues through notice and hearing processes inde-
pendent of the City Council. Cal. Gov. Code Section 65901. Implicit in this grant of power is the understanding that those variances or use permits issued by the Zoning Administrator relate to matters of lesser gravity than those reserved for the Planning Commission or City Council. See Stoddard v. Edelman, 4 Cal.App.3d 544 (1970); San Diego Municipal Code Sections 101.0503A, 101.0506A and 101.0507A.

Where the law concludes, explicitly or implicitly, that adjacent property owners are less impacted by some decisions than by others, the level of "due process" required can also vary accordingly. Beaudreau v. Superior Court, 14 Cal.3d 448, 458

(1975). ("Due process" as a flexible concept which varies in relation to the weight of the interests involved.) The City Council made the determination in adopting San Diego Municipal Code Section 101.0220 that newspaper publication and mailing to property owners within 300 feet of the proposed project should be required. No case law has determined whether this is required, but a common-sense application of "due process" principles would lead to a conclusion that where an entire community is affected by a project, the entire community should receive notice.

In the context of actions by the Zoning Administrator, the City has made the determination that less noticing is permissible. San Diego Municipal Code Sections 101.0502 and 101.0503. It should be noted, however, that the 300-foot mailing notice is probably far more notice than minimal "due process" standards would require. It is difficult to conceive of a conditional use permit or a variance where a property owner further than 300 feet away, indeed perhaps even closer, could claim to be adversely affected by any challenged decision by the Zoning Administrator.

In sum, the placing of the various noticing requirements under a single statute appears viable and a variation in noticing stan-
dards is permissible. Given the foregoing discussion, and the differentiation between the powers of the City Council, the Planning Commission, and the Zoning Administrator, differing

noticing standards should raise no constitutional problems.

If you have any further questions, please feel free to contact me.

JOHN W. WITT, City Attorney

By

Janis Sammartino Gardner

Deputy City Attorney

JSG:CG:ta:630

cc Casey Gwinn

MS-85-8