

The City Attorney
City of San Diego
MEMORANDUM
236-6220

DATE: January 12, 1988

TO: Sharren Carr, Zoning Administrator
FROM: City Attorney
SUBJECT: Alleged Zoning Violation at 3981 Mission Blvd.

INTRODUCTION

Pursuant to a route slip from the Mayor's Office via Citizen's Assistance, this office reviewed an alleged zoning violation at the above address. It appears that a Mr. Steve Anderson operates a retail T-shirt business in the Mission Beach area and has been issued Notices of Violation from zoning inspectors for displaying merchandise outdoors, i.e., on tables resting on the private property of the building from which he is leasing. Mr. Anderson and his attorney have questioned the Municipal Code section cited, SDMC . 103.0528.1 and the Mayor's Office has asked the City Attorney for a legal interpretation of this issue. (Please refer to copies of attached letter and route slip.)

ANALYSIS

After reviewing Section 103.0528 of the Municipal Code as it relates to the displaying of merchandise on the exterior of business establishments in the Mission Beach area (Visitor Commercial Subdistrict), it is the position of this office that if the Planning and Zoning Departments seek to prohibit the outside display of merchandise by business establishments in the Mission Beach area, then Section 103.0528 must be amended to specifically prohibit this activity. Without this amendment there is no legal mechanism to prohibit such displays. The purpose of developmental regulations such as Section 103.0528 et seq. is to serve as a limitation or restriction on the activity or permitted use in the specified zone or geographical area. Therefore, this section should specifically state what limitations or restrictions businesses in the area face. A provision therefore must be enacted by the City which specifically states that the outdoor display of merchandise is not allowed in the VC-N zone before the Planning Department can prohibit this activity. This approach would also be consistent with other Planned Districts. Developmental regulations contained in the Municipal Code are viewed and treated differently than those sections which regulate

what uses are permitted in a particular zone. In those sections which regulate uses, those uses which are not specifically listed in the Municipal Code as permissible uses are not legally allowed. As a developmental regulation is in itself considered to be restriction or limitation on a use, it should be specifically listed in the Municipal Code.

If the restriction of the outdoor display of merchandise is desired in the Mission Beach area, then Section 103.0528 must be amended to add such a prohibition. Until this amendment is enacted, it is the recommendation of this office not to issue further notices of violation.

If you have any questions on this issue or wish to discuss this matter, please feel free to call.

JOHN W. WITT, City Attorney

By

Diane Contreras

Deputy City Attorney

DC:lja:639

cc Fred Conrad

Bill Roberts, Sr. Planner Code Enforcement
MS-88-4