MEMORANDUM OF LAW

DATE: March 5, 1997

NAME: Councilmember Valerie Stallings

FROM: City Attorney

SUBJECT: Effect of Referendum on Subsequently Adopted Ordinance

QUESTION PRESENTED

Was a 1991 ordinance placing the Planning Director under the direction of the City Manager legally precluded by a 1968 voter referendum defeating a similar ordinance?

SHORT ANSWER

No, the successful referendum on the 1968 ordinance did not preclude the City Council from adopting a similar ordinance in 1991, some twenty-three years later.

BACKGROUND

On March 19, 1968, the City Council approved Ordinance No. 9780. The ordinance placed the Planning Department in the administrative service of the City, responsible to the City Manager who was to appoint the Planning Director. On November 5, 1968, the measure was defeated by voter referendum. The ordinance and referendum are attached (Attachment 1).

On November 12, 1991, more than 23 years later, the City Council approved Ordinance No. O-17708, a copy of which is attached (Attachment 2)[1]. The 1991 ordinance placed the Planning Department under the direction of the City Manager, with responsibility for performing those duties and functions as assigned and directed by the City Manager. The Planning Director was designated administrative head of the department, subject to removal by the City Manager.

You have asked our opinion of the legality of the 1991 ordinance in light of the successful referendum on the 1968 ordinance.

ANALYSIS

The power of referendum is reserved to the people under the California Constitution. The Constitution leaves it to the legislature to provide the procedure for local referendum elections. A city charter may reserve greater referendum powers than those of the electors of general law cities. Myers v. City Council of Pismo Beach, 241 Cal. App. 2d 237 (1966).

San Diego, as a charter city, has adopted provisions governing the referendum process. However, the San Diego Municipal Code does not place any time restrictions on when an ordinance defeated by referendum could once again be considered by the City Council. Therefore, we turn to California law for guidance on the issue. Under California law, general law cities are subject to a one year time limit on introduction of an ordinance defeated due to a referendum. Where an ordinance is the subject of a referendum petition, Elections Code section 9241 provides:

> If the legislative body repeals the ordinance or submits the ordinance to the voters, and a majority of the voters voting on the ordinance do not vote in favor of it, the ordinance shall not again be enacted by the legislative body for a period of one year after the date of its repeal by the legislative body or disapproval by the voters.

This section applies where the subsequent ordinance is essentially identical to the previously adopted ordinance. Reagan v. Sausalito, 210 Cal. App. 2d 618 (1962). In this case, the provisions of the 1968 and 1991 ordinances appear to have had the same effect, i.e., placement of the Planning Director under City Manager control. Thus, under general law, for a period of one year from the time the ordinance was successfully defeated by referendum, the subsequent ordinance would have been precluded.

The 1991 ordinance placing the Planning Director under the direction of the City Manager was adopted some twenty-three years after the 1968 referendum, well beyond the one year time limit. Therefore, using state law as a guide, the 1991 ordinance adoption was not invalid because of the 1968 referendum. Moreover, the power of referendum remained available to the voters in 1991 when the subsequent ordinance was adopted. To our knowledge, no attempt was made at that time to defeat the measure.

CONCLUSION

The successful referendum on an ordinance adopted in 1968 did not preclude the City Council from adopting a similar ordinance in 1991 some twenty-three years later, nor did it render the 1991ordinance legally invalid.

CASEY GWINN, City Attorney

By
      Prescilla Dugard

Deputy City Attorney

PD:cdk:930(x043.2)
Attachments
ML-97-8
L:\DUGARD\MEMOS\PLANDIR.MEM