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CITY OF SAN DIEGO
MEMORANDUM

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JAN - 8 2002

COUNCILMEMBER DONNA FRYE

FILE NO: TR 258,747/T-0778

DATE: January 4, 2002

TO: Councilmember Donna Frye, City Council District Six

FROM: D. Cruz Gonzalez, Director, Transportation Department

SUBJECT: Plastic Anti-Drag Racing Strips on Morena Boulevard

This is in response to your December 13, 2001 memorandum requesting that plastic anti-drag racing strips be re-installed on Morena Boulevard.

Street division has experimented with different types of adhesives/epoxies to try to keep the anti-drag racing strips on the pavement, but have not been successful. We do not recommend that the anti-drag racing strips be installed on Morena Boulevard until an acceptable method of installation is found.

The Police Department can be very effective in.reducing drag racing by providing periodic enforcement.

D. Cruz Gonzalez

RR:lm

cc: George I. Loveland, Senior Deputy City Manager
Allen Holden, Jr., Deputy Director, Traffic Engineering Division
Capt. Fred Moeller, Police Department, Traffic Division
Mona Favorite-Hill, Sr. PIO, Street Division
Tracking Systems Coordinator, City Manager's Office

AIM #01-0571

OFFICE OF
THE CITY ATTORNEY
CITY OF SAN DIEGO

RECEIVED

MEMORANDUM

533-5800

DATE: March 7, 2002

TO: Councilmember Donna Frye

FROM: City Attorney

SUBJECT: Clairemont Mesa Height Limit

ISSUE

Whether the City Council has the authority to grant an exception to the Clairemont Mesa 30 foot height limit for a structure exceeding 3 stories.

SHORT ANSWER

The City Council does have the authority to grant an exception to the Clairemont Mesa 30 foot height limit for a structure exceeding 3 stories, provided all of the findings in Land Development Code sections 126.0504(a) and (j) can be made.

DISCUSSION

Land Development Code section 132.1305 establishes the height limit in the Clairemont Mesa Height Limit Overlay Zone. Section 132.1305(a) provides that the maximum structure height is 30 feet, except as provided in the sections (b) and (c). Section 132.1305(b) provides that in certain defined areas, known as Villamar and Buena Vista Gardens Blocks 2 through 5 and a portion of Block 6, a structure may not exceed three stories in height nor exceed a height of 40 feet. Section 132.1305(c) provides that previously conforming structures are exempt from the height limit, as long as the height of the structure is not increased.

An exception to the Clairemont Mesa 30 foot height limit may be granted by the City Council by Process Five with a Site Development Permit provided the findings in sections

126.0504(a) and (j) are satisfied. Land Development Code § 132.1306. The findings in section 126.0504(a) for approval of a Site Development Permit are: (1) The proposed development will not adversely affect the applicable land use plan; (2) the proposed development will not be detrimental to the public health, safety and welfare; and (3) the proposed development will comply with all applicable regulations of the Land Development Code.

The supplemental findings in Land Development Code section 126.0504(j), which must also be satisfied, are: (1) The granting of an exception will not significantly interfere with public views from western Clairemont Mesa to Mission Bay and the Pacific Ocean; and (2) The granting of an exception is appropriate because there are existing structures over 30 feet in height and the proposed development will be compatible with surrounding one, two and three-story structures; or the granting of an exception is appropriate because there are topographic constraints peculiar to the land; or the granting of the exception is needed to permit roofline and façade variations, accents, tower elements, and other similar elements and the elements will not increase the floor area ratio of the structure.

In determining the meaning of an ordinance, "it is a prime rule of construction that the legislative intent underlying a statute must be ascertained from its language; if the language is clear there can be no room for interpretation and effect must be given to its plain meaning." *City and County of San Francisco v. Superior Court*, 130 Cal. App. 3d 481, 483 (1982). The Legislature is presumed to have meant what it said, and the plain meaning of the language governs. *Quakenbush v. Mission Insurance Co.*, 46 Cal. App. 4th 458, 466 (1996). Courts will give effect to the plain meaning of the words chosen by a legislative body, and not seek possible alternative meanings in the absence of ambiguity. *Calderone v. Post*, 134 Cal. App. 3d 1008, 1012 (1982).

The plain language of section 132.0305(a) limits the height of structures in the Clairemont Mesa Height Overlay Zone to 30 feet. That section does not expressly limit the height to 3 stories. The regulations further set a height limit of 40 feet and limit the number of stories, but only within certain specified areas in Clairemont Mesa. If the City Council had intended the 30 foot height limit to also be a 3 story height limit, it could have been expressly stated in the text of the ordinance as was done for specified areas of Clairemont Mesa. Because it was not, principles of statutory construction dictate the conclusion that the 3 story height limit is only applicable where expressly applied.

Moreover, the plain language of section 132.1306 expressly gives the City Council authority to make exceptions to the 30 foot height limit provided the required findings can be made. While the findings for a Site Development Permit indicate that the number of stories is a factor that should be considered by the City Council, the findings for an exception to the height limit do not expressly limit structures to 3 stories. Therefore, in deciding whether to grant an exception to the 30 foot height limit, the City Council may consider whether the number of stories makes them unable to make any of the required findings, including whether the number

of stories adversely affects the community plan or other applicable land use plan. If, however, the City Council can make all of the findings they may approve the Site Development Permit even if the structure exceeds 3 stories.

CONCLUSION

The City Council has the authority to grant an exception to the Clairemont Mesa 30 foot height limit for a structure exceeding 3 stories only if all of the findings in Land Development Code sections 126.0504(a) and (j) are satisfied.

CASEY GWINN, City Attorney

By

Kristin Schenone
Deputy City Attorney

KS:mm