November 16, 1989

REPORT TO THE HONORABLE
MAYOR AND CITY COUNCIL
COUNCIL AGENDA ITEM NO. 332-B NOVEMBER 14, 1989 - MISSION VALLEY PLANNED DISTRICT ORDINANCE

The City Council at its meeting of November 14, 1989, after considerable discussion, took two actions with regard to agenda Item 332-B; introduction of an ordinance approving the Mission Valley Planned District.

The first action was a 5-0 vote to introduce the ordinance with modifications which had been submitted in writing by Councilmember Struiksma.

The second action, also by a 5-0 vote, purported to further amend the ordinance by "deleting the asterisks" from the numbers listed for Development Intensity District C in the table on page 15 of the draft Planned District Ordinance.

While the Planning Department and this office had raised concerns regarding the legality of taking such second action, we were not prepared to identify the total legal significance of merely "deleting the asterisks" relating to District C.

A subsequent meeting with Planning Department staff indicates that the effect of the second action would allow substantial increased development intensity in District C, an area north of Friars Road and west of Ulric Street, by deleting a requirement for the subtraction of hillside review areas from the traffic/development allocations in that area.

The City Council on November 14 was not in a legal position to take such action for the following two reasons:

1. The public notice distributed for the hearing stated that the development intensities in the Interim Ordinance would be maintained. Council's action relative to the HR areas would increase development intensities north of Friars Road, west of Ulric Street, which would be contrary to the information presented by the public notice.

2. The environmental review conducted for the Mission Valley Planned District Ordinance was based on the traffic/development intensities being maintained. The purported action increases the development intensities and, therefore, additional environmental

review is required by CEQA prior to any such action being considered.

In view of the above legal problems which would preclude the second action from being legally effective, the City Clerk has been notified that the correct action would be to docket the ordinance for adoption as amended by the written changes submitted by Councilmember Struiksma.

If the City Council wishes to include the amendment proposed by the second Council action relating to the area north of Friars Road and west of Ulric Street, the Council should direct the preparation of the necessary environmental review document together with a proper public notice of the proposed future action and have the item redocketed for Council action when said two legal steps have been accomplished.

As related information, we are informed that a proposed project in the area north of Friars Road and west of Ulric Street is scheduled for City Council review on Tuesday, November 21, and that that project has been properly noticed and environmental review has been completed. If the City Council, after its public hearing, determines to approve the project, it would be unnecessary to proceed with any additional Council action with regard to allowing increased development intensity in the area unless the Council wishes to allow such increased development intensity in the other areas of District C beyond the boundaries of the proposed project which will be reviewed on Tuesday, November 21.

Respectfully submitted,
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City Attorney

HOV:ps:600(x043.1)
RC-89-49