

Date of Meeting: October 8-9-10, 1958
Date of Memo: October 3, 1958

Memorandum No. 7

Subject: Study #16 - Planning Procedure

Attached are two items relating to this study:

- (1) Letter dated September 15, 1958 from Hon. Roy A. Gustafson.
- (2) Mimeographed copy of certain pertinent Government Code sections.

You will recall that you are also to bring with you Memorandum No. 8 for the SEPTEMBER meeting, which was sent to you prior to that meeting.

Respectfully submitted,

John R. McDonough, Jr.
Executive Secretary

DISTRICT ATTORNEY

Ventura County

Ventura, California

September 15, 1958

Mr. John R. McDonough, Jr.
Executive Secretary
California Law Revision Commission
School of Law
Stanford, California

Dear John:

I have just read the study regarding proposed revisions of the laws relating to the adoption and administration of zoning ordinances and of master and precise plans by cities and counties not having planning commissions. I believe the proposed revisions will fill gaps in the existing laws. However, I have several comments and criticisms to make with respect to proposed amendments contained in the subsection entitled "Adoption of Zoning Ordinances;" pages 2 through 6.

In the proposed amendments of sections 65803 and 65804 of the Government Code (all section references are to the Government Code) the words "except as otherwise provided in this article" now contained in those sections are omitted. These sections impose hearing procedures which must be followed in adopting zoning ordinances and amendments to zoning ordinances. The words refer to sections designating situations when the mandatory hearing procedures need not be followed. Without this clause it would appear that no zoning ordinance or amendment to a zoning ordinance is valid unless such hearings have been held. Thus, the temporary interim zoning ordinance provisions of section 65806 would be superfluous or, in any event, there would be some confusion as to the validity of a temporary interim zoning ordinance. If the clause is to be omitted from each section, then I believe it would be appropriate to obviate this conflict by adding the following words to section 65806 and to proposed section 65806.5: "Notwithstanding anything in this article to the contrary, [if . . .]."

The proposed section 65806.5 authorizes temporary interim zoning ordinances in situations wherein temporary interim zoning ordinances are not presently authorized by section 65806. Paragraph (a) of the proposed section authorizes temporary interim zoning ordinances when new territory has been annexed to a city, whereas this situation is not covered in section 65806. The proposed section also permits the adoption of temporary interim

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zoning ordinances in situations where the legislative body plans to hold a public hearing in connection with the adoption of a new zoning ordinance or an amendment or an addition to an existing zoning ordinance, whereas section 65806 does not authorize temporary interim zoning ordinances where the planning commission or the department of planning "plans to hold a public hearing" in connection with the same type of zoning ordinances. Paragraph (b) of the proposed section is comparable to part of the language in section 65806. However, it appears that some words contained in section 65806 were omitted in drafting the proposed paragraph (b). The paragraph should read: "The legislative body is conducting or intends to conduct studies within a reasonable time for the purpose of the adoption of a new zoning ordinance or of amendments or additions to an existing zoning ordinance." (Underscored words added.)

The last unlettered paragraph in the proposed section 65806.5 is unnecessary because the suggested introductory clause, "notwithstanding anything in this article to the contrary," implicitly states that the mandatory hearing procedures are inapplicable in the adoption of temporary interim zoning ordinances. However, if the paragraph is to be inserted out of an abundance of caution, then the same paragraph should also appear in section 65806.

There seems to be some uncertainty at present regarding the effective date of a temporary interim zoning ordinance. The words "urgency measure" in section 65806 indicate that the Legislature intended temporary interim zoning ordinances to become effective immediately upon their adoption. However, I have been unable to find any case where the opinion contained a statement that a temporary interim zoning ordinance adopted pursuant to this section became effective when adopted. It could be said that the section merely authorizes adoption of zoning ordinances without the necessity of the planning commission and board of supervisors holding prior hearings, but that such ordinances are not effective until 30 days after passage. (Elections Code, § 1651.) On the other hand, if the section was not intended by the Legislature to authorize the adoption of zoning ordinances which will take effect immediately upon adoption, then the section should be amended to authorize the adoption of such ordinances. The purpose of a temporary interim zoning ordinance is to prevent parties seeking to evade the operation of contemplated zoning ordinances from entering upon a course of construction or property use which might progress so far as to defeat in whole or in part the contemplated zoning. If such an "urgency measure" is not effective immediately upon its adoption, then it will be easily possible for the contemplated zoning plan to be defeated by the commencement of construction and changes in property uses during the 30-day period before the ordinance is effective. Accordingly, I suggest that the words "to become effective immediately" be added after the words "urgency measure" in section 65806 and the proposed section 65806.5.

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Section 65806 and proposed section 65806.5 would read as follows if my suggestions are accepted:

§ 65806. Notwithstanding anything in this article to the contrary, if if the planning commission, or the department of planning, in good faith, is conducting or intends to conduct studies within a reasonable time for the purpose of, or is holding or plans to hold a hearing for the purpose of, or has held a hearing and has recommended to the legislative body, the adoption of any zoning ordinance or amendment or addition thereto, or in the event that new territory has been or may be annexed to a city, the legislative body to protect the public safety, health and welfare, may adopt, as an urgency measure to take effect immediately, a temporary interim zoning ordinance prohibiting such and any other uses which may be in conflict with such said zoning ordinance.

§ 65806.5. Notwithstanding anything in this article to the contrary, whenever the legislative body of a city or county which does not have a planning commission or department, in good faith, is conducting or intends to conduct studies within a reasonable time for the purpose of, or has held or is holding or plans to hold a hearing for the purpose of, the adoption of any zoning ordinance or amendment or addition thereto, or whenever new territory has been or may be annexed to a city which does not have a planning commission or department, the legislative body to protect the public safety, health and welfare, may adopt, as an urgency measure to take effect immediately, a temporary interim zoning ordinance prohibiting such and any other uses which may be in conflict with said zoning ordinance.

It will not be necessary to amend section 1651 of the Elections Code if the words "to take effect immediately" are inserted. Paragraph (b) of this section provides that an ordinance "specifically required by this code or by any other law to take immediate effect" shall take effect immediately.

Sincerely yours,

S/ Roy
ROY A. GUSTAFSON

JCB:mc