

Introduction to Land Use Law

- Police Power
 - The Country's fundamental source of regulatory power – to protect the public health, safety and welfare
 - Broadly interpreted by courts (aesthetics, neighborhood character)
- Limits on Police Power
 - Preemption by state or federal law
 - Local regulation not allowed where expressly preempted by state/federal law or in direct conflict
 - State and federal constitutional limits
 - Free speech
 - Religious freedom
 - Due process
 - “taking” of private property without just compensation
- General Plan
 - The GP is the land use “construction”
 - Required by state law since 1971
 - Oriented toward the long term
 - Establishes County's fundamental land use goals, policies and implementation measures
- General Plan Elements
 - There are 7 required GP elements:
 - Land use
 - Circulation (transportation)
 - Housing
 - Conservation
 - Open space
 - Noise
 - Safety (seismic, geology, flood, fire)
- General Plan Consistency
 - All County land use policies, regulations and decisions must be consistent with the General Plan
- Zoning Ordinances
 - Divide land into zoning “districts”
 - Describe what types of uses are allowed in each district (agriculture, residential, commercial, industrial)
 - Usually allow certain uses by right, and others with certain permits/approvals
 - Contain more detailed regulations for development (height, setbacks, FAR)
- Zoning Consistency
 - Zoning must be consistent with the General Plan
 - Example: if GP designates certain land “open space,” zoning cannot allow industrial use
- Zoning Exemptions

- Need a *variance* for any zoning exemptions
- Variances are tough to get; County must find that, due to special circumstances applicable to the property, strict application of zoning requirements would deprive the property of privileges enjoyed by others in vicinity with the same zoning
- Variances cannot be used to allow additional uses/activities
- Subdivisions
 - Governed by state law (Subdivision Map Act, Gov. Code § 66410 *et seq.*) and local ordinances (Santa Clara Ord. Code Div. C12)
 - *General rule*: Cannot sell or lease any portion of a parcel without having the local jurisdiction approve a subdivision map
- Map Act Exemptions
 - Exceptions to Map Act requirements include:
 - Renting offices, apartments, stores, etc. within buildings
 - Lot line adjustments involving ≤ 4 lots if lots would comply with General Plan
 - Mineral, oil and gas leases
 - Agricultural leases (crops, livestock)
- Other Permitting Considerations
 - California Environmental Quality Act (“CEQA”) compliance
 - Compliance with other environmental laws (e.g., endangered species, water quality, air quality, wetlands)
 - Williamson Act contract restrictions
- CEQA – (Pub. Res. Code § 21000 *et seq.*)
 - Applies to all discretionary actions/approvals of a public agency (e.g., GP amendments, ordinance amendments, use permit approvals, subdivision approvals). Very few exemptions.
 - *Purpose*: To inform the public and agency decision makers about a project’s environmental effects before a decision is made, and to avoid or mitigate impacts to the extent feasible.