

# Introduction to Land Use Law



# Police Power

- The County'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 w/o just compensation

# General Plan

- GP is the land use “constitution”
- Required by state law since 1971
- Oriented toward the long term
- Established 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, regulation 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, property, strict application of zoning requirements would deprive the property of privileges enjoying by others in vicinity with 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 ordinance (Santa Clara Ord. Code Div. C12)
- General rule: Cannot sell or lease any portion of a parcel without having a local jurisdiction approve a subdivision map



# Map Act Exemptions

- Exceptions to Map Act requirements include:
  - Renting offices, apartments, stores, ect. Within buildings
  - Lot line adjustments involving  $\leq 4$  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 (ex. Endangered species, water quality, air 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 (ex. GP amendments, ordinance amendments, use permit approvals, subdivisions approvals) Very few exemptions.
- Purpose: To inform the public and agency decision makers about a project's environmental effects before a decisions is made, and to avoid or mitigate impact to the extent feasible

