

DATE: January 24, 1986  
TO: Councilmember Abbe Wolfsheimer  
FROM: City Attorney  
SUBJECT: Appeals From the Board of Zoning Appeals  
("BZA")

Your memorandum of January 22, 1986 to the members of the City Council regarding the above-captioned matter recommends that the City Council change its policy and no longer hear appeals from the decision of the BZA.

A change of policy along these lines is a matter which is entirely within the prerogative of the local legislative body and our participation would be limited to drafting amendments to the Municipal Code which would accomplish these changes if duly directed by the City Council.

We must point out to you, however, that we respectfully disagree with your assertion that such a policy change is mandated by law.

First of all, as to Federal law, we have been unable to locate any currently effective Federal statute or regulation which "empowered" the States of the United States to establish zoning adjustment boards. If you can provide us with a precise statutory reference we will, of course, be pleased to review it and comment accordingly. Absent a specific statutory citation, we fail to see any Federal question arising.

Secondly, as to State law, we believe the zoning statutes of the State of California, as codified in Chapter 4, Division 1, Title 7 of the California Government Code (section 65800, et seq.) make it abundantly clear that they are not intended to apply to a chartered city, unless adopted specifically by city charter or ordinance. California Government section 65803 provides: "The provisions of this chapter (Chapter 4) do not apply to a chartered city, except to the extent that the same may be adopted by charter or ordinance of the city." Of course the

City has done neither. What the City has done to date is chart its own course in this area, which, in our view, the law allows us to do.

Your memorandum indicates an "interpretation" of California law has applied the State zoning law to charter cities. You furnish no citation. We are unaware of any such case which relates to the matter at hand.

Please understand that these comments are not intended as a criticism of your proposal as a policy matter. As to that

aspect, we take no position other than to advise both you and the Council that under the law, as we see it, the Council may revise the policy as you suggest, modify it if it chooses or continue to hear appeals under certain conditions as at present.

JOHN W. WITT, City Attorney

By

C. M. Fitzpatrick

Assistant City Attorney

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