

MEMORANDUM OF LAW

DATE: July 14, 1993

TO: Jennifer Champa, Planning Department

FROM: City Attorney

SUBJECT: General Plan Amendment

You have requested our opinion whether The City of San Diego ("City") is required by Government Code section 65358(b) to limit the number of amendments made to the mandatory elements of the general plan to no more than four each calendar year. After researching this issue, we have concluded that this section does not apply to charter cities. However, we recommend that if the City decides to deviate from the limitation provided by Government Code section 65358(b), that it do so only to a very limited degree.

Government Code section 65358(b) provides in part that: "No mandatory element of a general plan shall be amended more frequently than four times during any calendar year." The rationale behind this provision is to promote public participation in the amendment process. Government Code section 65033 provides that each local agency concerned in the planning process involve the public through public hearings, informative meetings, publicity and other means available.

Karlson v. City of

Camarillo, 100 Cal. App. 3d 789, 808 (1980). The court in Karlson reasoned that this is accomplished by limiting the number of times each year amendments could be considered. By keeping the number of appearances down, the burden occasioned by too frequent addressing of problems is reduced. See also, 66 Op. Att'y Gen. 258, 262 (1983).

Moreover, the court in Leshar Communications, Inc. v. City of Walnut Creek, 52 Cal. 3d 531, 541 (1990), reasoned that unrestricted amendments to the general plan would undermine its use as a planning device and "destroy the general plan as a tool for the comprehensive development of the community as a whole."

However, charter cities are provided, by the state constitution, with the power to "make and enforce within its limits all local, police, sanitary and other ordinances and

regulations as long as such matters are not in conflict with general laws." Cal. Const., art. XI, Section 7. Therefore, a charter city has "police powers" over its municipal affairs, including land use matters subject only to constitutional limitations and matters of statewide concern. Associated Home Builders etc., Inc. v. City of Livermore, 18 Cal. 3d 582 (1976). The state Zoning Law (Government Code section 65100 et seq.) does not generally apply to charter cities, except for a few provisions that expressly apply to charter cities.

Government Code section 65700 specifies that the provisions of Chapter 3 of Title 7 (which includes Section 65358) shall not apply to a charter city; "except that charter cities shall adopt general plans in any case and such plans shall be adopted by resolution of the legislative body of the city . . . and such plans shall contain the mandatory elements." Emphasis added. Consequently, the provision which limits the number of amendments that can be made to the mandatory elements of the general plan to four times each year does not apply to charter cities.

However, Government Code section 65700 should not be the only consideration when deciding on the number of amendments to make to the general plan each calendar year. It is important to note that the court in Karlson determined that limiting the number of amendments that can be made to the mandatory elements of the general plan encourages public participation in the amendment process. The court in Leshner stressed that the ability to make unrestricted amendments to the general plan undermines its use as a planning device. Arguably, the validity of the general plan could be called into question if frequent unrestricted amendments are made. Therefore, the City should exercise caution whenever it makes more than four amendments to the mandatory elements of the general plan in one calendar year.

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By

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