

OFFICE OF  
**THE CITY ATTORNEY**  
CITY OF SAN DIEGO

1200 THIRD AVENUE, SUITE 1620  
SAN DIEGO, CALIFORNIA 92101-4178  
TELEPHONE (619) 236-6220  
FAX (619) 236-7215

**Michael J. Aguirre**  
CITY ATTORNEY

January 14, 2008

REPORT TO THE HONORABLE  
MAYOR AND CITY COUNCIL

CHARTER AMENDMENTS PROPOSED BY THE CHARTER REVIEW  
COMMITTEE FINAL REPORT DATED OCTOBER 4, 2007

**INTRODUCTION**

This report highlights legal issues for the City Council to consider in its discussion of the 11 recommendations of the Charter Review Committee [Committee] for the 2008 ballot.<sup>1</sup> This Office attended many of the Committee's meetings and provided general legal guidance on matters that raised significant legal problems. However, the decision was made to postpone a detailed and thorough analysis of any proposed Charter amendment language until after the Council decided which measures it intended to place on the ballot. This decision was necessary due to the broad range of issues reviewed by the Committee's three subcommittees in a relatively short time period and the uncertainty as to whether the amendments would be approved by the full Committee and Council.

The Council should consider the following matters as it reviews the Committee's recommended Charter amendments:

(1) The legal requirement that ballot measures submitted to voters must comply with the Separate Vote (Single Subject) Rule. *See* City Attorney's Report to the Rules Committee (November 2, 2007).

(2) The timing of some of the proposed Charter amendments is interdependent upon the passage of others. For example, if voters fail to approve a measure making "permanent" the Mayor-Council form of government, other provisions would not make legal sense as currently phrased. The Council may wish to consider deliberate sequencing of proposals for voter review.

(3) The phrasing of some proposed amendments is vague or conflicts with other Charter provisions not considered by the Committee; some sections may be legally unnecessary; and some fail to address necessary matters.

---

<sup>1</sup> This report does not address the 17 items reviewed by the Committee for later ballots or for which no changes were recommended.

## DISCUSSION

The Committee's report separates the proposed amendments into three categories: (1) interim strong mayor and legislative tightening; (2) financial reform and the Kroll report; and (3) duties of elected officials. This report follows the same format.

### INTERIM STRONG MAYOR AND LEGISLATIVE TIGHTENING

#### 1. Sunset Clause Revision for the Mayor-Council Form of Government

Charter section 255 currently provides that the Mayor-Council form of government will be in effect for five years, until December 31, 2010, at which point it will be "automatically repealed and removed from the Charter." The Committee proposes the following change:

##### **Section 255: Operative Date; Future Action by Voters**

This Article shall remain in effect until December 31, 2014, at which time it *shall become permanent* unless voters have approved a ballot measure to extend, shorten or repeal the effective period of this Article. (emphasis added.)

The Committee Report states that this provision "extends the trial period" of Charter Article XV. Committee Report at 8, 11 and 46. This is inaccurate. By removing the sunset provision, the trial period will cease to exist. This amendment would make the Mayor-Council form of government as "permanent" as any other Charter provisions, unless the City Council or the voters pro-actively initiate future ballot measures to change the Article. If the Council chooses to submit the Committee's recommendation to the voters, the measure as presented must not be misleading or false. *See*, Cal. Elect. Code § 9295, *Martinez v. Superior Court*, 142 Cal. App. 4th 1245, 1248 (2006). In that regard, the ballot materials must more accurately reflect that the change does not extend the trial period but makes "permanent" the Mayor-Council form of government.

#### 2. Increased Votes for Veto Override

Charter sections 285 (Enactment Over Veto) and 290 (Council Consideration of Salary Ordinance and Budget; Special Veto Power) currently require the City Council to reconsider any ordinance or resolution the Mayor has vetoed. The City Council may overrule the veto with the same number of votes it took to enact the legislation. These Charter sections fall within Article XV, and will sunset with it at the end of 2010 unless the voters determine otherwise.

*Number of Votes to Override Mayoral Veto.* The Committee proposes amendments to Charter sections 285 and 290 to increase the number of votes required to override a mayoral veto to "two-thirds" of the Council or, if a two-thirds vote is required for passage, then the veto override requires one vote more than the number of votes required to pass the ordinance or

resolution. The report and text of the proposed changes refer to this as a “two-thirds” Council majority. Committee Report pp. 8, 12-13 and 47.

If the Council decides to submit the Committee’s recommendation, it may only do so if it accurately describes the ballot measure. With a continuing eight-member City Council, the Independent Budget Analyst [IBA] calculates the percentage of Council votes necessary to override a veto as *three-fourths* for regular ordinances and resolutions and, in certain matters it, *could surpass 85%*, far greater than an actual two-thirds vote. If the Council desires this to be placed before voters, it must provide a more accurate description of the actual percentages involved.

The increased veto override provisions may be sufficiently related to the permanency of the Mayor-Council form of government to be placed together on the same ballot measure without violating the separate vote rule. However, if the permanency of Article XV is not submitted to the voters with this veto override provision, the Council should assess the need to submit it to the voters before the end of the trial period in 2010. If the Council declines to place permanency of the Mayor-Council form of government on the ballot, the proposed changes to section 285 and 290 should be submitted separately from other recommended changes (except as noted below) to comply with the Separate Vote Rule.

*Reference to the Balanced Budget Requirement.* The Committee’s amendment to section 290(b)(2)(B) also includes the following change: “In voting to override the actions of the Mayor, the Council may adopt either an amount it had previously approved or an amount in between the amount originally approved by the Council and the amount approved by the Mayor, subject to the balanced budget requirements set forth in section ~~74~~69.” Charter section 71 (Preparation and Passage of Annual Appropriation Ordinance) does not specifically require a balanced budget. As noted in the Committee Report, balanced budget requirements are referred to or implied in various other sections of the Charter, including Charter section 69. *See* Committee Report, p. 19. Accordingly, the reference to Charter section 69 is more appropriate.

The Committee Report also suggests section 69 (Fiscal Year and Manager’s Estimate) be amended to include a more specific balanced budget requirement. Report pp. 9 and 60-61. The proposed changes to section 69 may or may not be submitted to the voters, or accepted by the voters. Established accounting principles require the City budget to be balanced, as may other state laws. If this amendment is to be submitted to the voters, a better practice may be to use a more generic phrase, as an example, “. . . and the amount approved by the Mayor, subject to ~~the~~ balanced budget requirements ~~set forth in section 69~~.”

### **3. Eleven-Member City Council**

Section 270(a) (The Council) currently provides that the Council is composed of eight members. Section 255(b) provides that the people “reserve the right . . . to consider increasing the number of Council districts to *nine* at the time of the next City Council district

reapportionment which follows the national decennial census in 2010.” (emphasis added.) Section 270 is found in Article XV, and will sunset if and when the article does.

The Committee proposal would amend *only* Charter section 270 as follows: “(a) The Council shall be composed of ~~eight~~eleven councilmembers elected by district, and shall be the legislative body of the City. . . . ¶ (j) The City shall be redistricted, as soon as practicable, to establish the additional districts required by this section. Such redistricting process shall follow the terms prescribed by Charter sections 5 and 5.1.” Committee Report, pp. 8, 14 and 49.

The Committee’s recommendation for an odd number of Council districts is prompted in part by the desire to avoid Council tie votes during the operative period of Article XV. However, mandating that the redistricting process for the increased number of districts follow Charter section 5 is problematic. Section 5 *requires* the process to occur *after* the next Decennial Census (2010), and to be completed within nine months of the receipt of the census results. Although the redistricting process for eleven districts might be completed by the end of December, that date coincides with the sunset provisions of Article XV. If Article XV sunsets, so will section 270 and the authorization for eleven districts. The Charter would then revert to its previous requirement of eight Council districts, with the Mayor again a member of the City Council, creating an odd number of votes (9).

If Article XV and section 270 do not sunset, and there is a need to increase the number of Council districts, it is also unclear whether the Committee’s proposed change to section 270 would legally accomplish this, at least without corresponding changes to other Charter provisions. For example, the following Charter sections could be impacted: section 4 (refers to eight districts); section 5.1 (requires redistricting based on eight districts by numbers 1 to 8); section 10 (lists individual districts and dates for elections); section 12 (provides dates for each district’s elections); and section 270(c) (states the number of Council votes needed for a majority). Any serious attempt to increase the number of City Council districts should include corresponding changes to other interrelated Charter sections.

It is theoretically possible under the Separate Vote Rule that this change could be submitted to voters in one measure with other proposed changes to Article XV. However, as indicated above, it is unlikely this single change would actually accomplish this goal. We recommend any increase in the number of City Council districts be considered separately by the voters after the Mayor-Council form of government has been made permanent, and incorporate corresponding changes to related Charter sections.

#### **4. Independent Budget Analyst**

This measure would amend Section 270 (The Council), subdivision (f), to clarify that the Office of the Independent Budget Analyst is authorized under the Charter to act as a budgetary and policy analyst for the City Council. Committee Report, pp. 8, 15 and 50. The Council provided this authorization when it established the Office by ordinance and codified the

provisions in the San Diego Municipal Code. SDMC §§ 22.2301 - 22.2306. Whether the Committee's proposed change to section 270(f) could be combined with other measures, or must be submitted separately to the voters, will depend on whether other matters related to the Mayor-Council form of government are also submitted to the voters.

## **FINANCIAL REFORM AND THE KROLL REPORT**

The Committee's proposals in recommendations 5 (Chief Financial Officer), 6 (Audit Committee) and 7 (City Auditor) separate the City's accounting and internal auditing functions, both functions currently handled by the Office of Auditor and Comptroller (Section 39). Under these proposals, the accounting function would be served by a new Chief Financial Officer. The CFO would have supervisory powers over the Treasurer and certain other financial and accounting functions. The internal auditing function would be handled by a new City Auditor, an office supervised and directed by a new City Audit Committee. We address legal aspects of each recommendation separately. However, the general changes suggested in these recommendations do appear reasonably germane to each other and could be presented together in one measure for voter approval.<sup>2</sup>

### **5. Chief Financial Officer**

Recommendation 5 proposes amendments to Charter sections 39, 45, 117, and 265, briefly summarized as follows:

Section 39 (City Auditor and Comptroller) changes the title of the Auditor and Comptroller to the Chief Financial Officer [CFO]; provides that Office with oversight over treasury and other city fiscal functions; and provides that it assume other duties previously required of the Auditor and Comptroller.

Section 45 (City Treasurer) removes City Council confirmation authority for the appointment of the City Treasurer, whether by the Mayor or City Manager (if Article XV sunsets).

Section 117 (Unclassified and Classified Services) replaces the City Budget Officer with the Chief Financial Officer in the listing of unclassified positions in the service of the City.

Section 265 (b)(10) (The Mayor) makes the corresponding title change to permit the Mayor to appoint the CFO for the duration of Article XV. Committee Report, pp. 8, 15-16 and 51-54.

---

<sup>2</sup> The City Attorney has proposed the City Auditor and Comptroller be changed to an elected office with specified duties and responsibilities, and without a separation of the functions of the two offices, or creation of an Audit Committee.

The Committee's proposed amendments to section 39 raise the following issues:

- The proposed section 39 provides in part, "He or she shall perform the duties imposed upon City ~~Auditors and Comptrollers~~ Chief Financial Officers by the laws of the State of California . . . ." This language is unclear. By using a title that may not be used in certain laws of California, the proposed change could fail to impose on this City's Chief Financial officer duties imposed on other municipal fiscal officers. We suggest replacement of the title with a more generic phrase such as: He or she shall perform the duties imposed upon chief municipal fiscal officers ~~City Auditors and Comptrollers~~ by the laws of the State of California . . . ."
- Proposed section 39 includes a new phrase: "The authority, power and responsibilities conferred upon the Auditor and Comptroller by this Charter shall be transferred to, assumed, and carried out by the Chief Financial Officer." This is paraphrased from section 260(b), which gave the broad powers previously exercised by the City Manager to the Mayor under Article XV. It will transfer the accounting duties and investigatory authority held by the Auditor and Comptroller under Charter sections 70, 71, 71a, 72, 73, 74, 75, 77, 80, 83, 84, 86, 87, 88, 89, 110, 112, 126, 144 to the CFO. The Council may wish to consider providing investigatory authority like that found in Charter section 82 to the proposed new City Auditor, the office charged with auditing the CFO and all other City Departments.
- Proposed section 39 provides that the CFO "shall also be responsible for oversight of the City's financial management, treasury, risk management and debt management functions." This language could be problematic because it may conflict with similar "oversight responsibility" provided to the new Audit Committee in proposed section 39.1. *See* Item 6, below.

## **6. Audit Committee**

The Committee's proposal adds new section 39.1 (Audit Committee) to the Charter to create a five-member Audit Committee and to establish its authority and duties. Three members of the public would serve four-year terms and be appointed by the City Council from a pool of candidates who meet certain requirements, as recommended by a "screening committee."<sup>3</sup> The remaining two members of the Audit Committee would be City Councilmembers appointed by the Council, one whom would chair of the committee. The Committee would direct and review the work of the City Auditor, recommend the salary of the City Auditor, and recommend the budget for the office to the City Council. The Committee would also recommend to the Council the retention of the City's outside auditor, and the auditor's removal if appropriate. It would resolve all disputes between City management and the outside auditor related to the City's

---

<sup>3</sup> The six-member screening committee is composed of four designated public officers and two "outside financial experts."

financial reports, reporting the disputes to the Council. Additional duties would be established by ordinance.<sup>4</sup> Committee Report, pp. 8-9, 16-17 and 55-56.

If the City Council desires to submit the Committee's recommendation for ballot review, it should be aware that much of the section is vague and raises many unanswered questions. For example, the "screening committee" is tasked with creating a pool of nominees from which the Council appoints the three public members. This results in the screening committee sharing the appointment authority with the City Council. *See Gillespie v. San Francisco Public Library Comm'n*, 67 Cal. App. 4th 1163, 1173 (1998). Yet, there is no mention how the two "outside financial experts" of the screening committee are to be selected. Also, are the experts serving on the screening committee eligible to be in the pool of candidates? Should the Council member of the screening committee also be a member of the Audit Committee, or should those Council Committee members be excluded from serving on the screening committee? Should the section establish staggered terms for the initial terms of the public members to ensure continuity, such as terms of two, three and four years? Should the section set a minimum number of pool members from which the Council selects the three public members? Absent such minimum, the screening committee could send a pool of only three candidates, resulting in the screening committee, rather than the Council, controlling the appointment process.

Proposed section 39.1 also provides: "The Audit Committee shall have oversight responsibility regarding the City's *accounting*, auditing, internal controls and *any other financial or business practices* required by this Charter or City ordinance." (emphasis added.) This language appears overly broad and may conflict in part with the CFO's oversight responsibilities established under proposed section 39.<sup>5</sup> We suggest modifying the language as follows: "The Audit Committee shall have oversight responsibility regarding the City's ~~accounting~~, auditing, internal controls and *any other financial or business practices* required of this Committee by this Charter ~~or City ordinance~~."

Last, section 39.1 provides, "This section shall not be subject to the provisions of section 11.1."<sup>6</sup> However, as proposed, the Committee only "recommends" the Auditor's salary and budget. It does not *set* that salary. There appears to be no legal necessity to exempt section 39.1 provisions from section 11.1 limitations. Accordingly, this sentence may be deleted.

---

<sup>4</sup> The creation of this committee by Charter amendment alleviates certain concerns expressed in City Att'y Report No. 2006-25 (Sept. 1, 2006) at pages 4-5.

<sup>5</sup> To the extent this language was intended to provide *access* to all City records and departments to facilitate an audit function, that authority is provided in section 39.2 directly to the City Auditor, who is tasked with this function.

<sup>6</sup> Section 11.1 in part precludes the City Council from delegating its legislative authority to raise or spend money (including setting salaries).

## 7. City Auditor

The Committee's proposal adds new section 39.2 (Office of the City Auditor) to the Charter to establish the office of City Auditor, and amends section 111 (Audit of Accounts of Officers). Under section 39.2, the City Auditor would be appointed for a term of ten years by the City Manager in consultation with the Audit Committee. The City Auditor would report and be accountable to the Audit Committee. The Audit Committee may remove the Auditor with a four-fifths vote, subject to appeal to the City Council. This section also provides the Auditor with access to the records of all City departments, offices and agencies. The changes to section 111 clarify that certain former responsibilities of the Auditor and Comptroller are to be transferred to the City Auditor, namely those that annually audit the accounts of City Departments, and that investigate and audit the accounts of City officers who die, resign or are removed. The section 111 changes also permit the Audit Committee to audit the accounts of the City Auditor upon his or her death, removal or resignation. Committee Report, pp. 9, 17-18, 57-59.

If the Council elects to submit the Committee's proposed sections to the voters for approval, it may wish to consider providing the City Auditor with similar investigatory authority to that provided to the CFO. This could mirror language found in Charter section 82 (Examination and Investigation of Claims by the Auditor and Comptroller). Section 82 authorizes the Auditor and Comptroller to: "investigate a claim and for that purpose may summon before him any officer, agent or employee of the City, any claimant or other person, and examine him upon oath or affirmation relative thereto . . ." Proposed section 39.2 gives the City Auditor access to all City records and requires City Officers, agents and employees to "cooperate" (presumably with the City Auditor). It does not provide separate authority to the City Auditor to actually investigate, a function ordinarily assumed by a City Auditor.

The Council could accomplish this by adding such authority to section 39.2, and inserting a missing phrase as follows:

The City Auditor shall have access to, and authority to examine any and all records, documents, systems and files of the City and/or other property of any City department, office or agency, whether created by the Charter or otherwise. It is the duty of any officer, employee or agent of the City having control of such records to permit access to, and examination thereof, upon the request of the City Auditor or his or her authorized representative. It is also the duty of any such officer, employee or agent to fully cooperate with the City Auditor, and to make full disclosure of all pertinent information. The City Auditor may investigate any material claim of financial fraud, waste or impropriety within any City Department and for that purpose may summon any officer, agent or employee of the City, any claimant or other person, and examine him or her upon oath or affirmation relative thereto.



In addition, the Council may wish to consider deleting or revising other language in these sections that is legally irrelevant. For example, proposed section 39.2, related to the City Auditor, provides at the end of the first paragraph: “Nothing herein prevents the Council or the Audit Committee from meeting in closed session to discuss matters that are required by law to be discussed in closed session pursuant to State law.” Presumably this sentence refers to provisions of the Ralph M. Brown Act. The Act’s provisions have long been held to be matters of statewide concern, making them applicable to all City entities that meet the Act’s requirements, regardless whether it is expressly incorporated by local laws. *San Diego Union v. City Council*, 146 Cal. App. 3d 947, 958 (1983). It is unclear why this provision is incorporated into the section that creates the office of City Auditor. Generally speaking, the Act’s provisions would not apply to meetings the City Auditor holds. However, they would apply to meetings of the Audit Committee, created by Charter section 39.1. Moreover, it is misleading to suggest the Act *requires* closed sessions. The Act *permits* closed sessions under certain limited circumstances. We recommend deletion of this sentence from proposed section 39.2 before it is submitted to the voters.

Sections 39.2 and 111, like section 39.1, each also provide: “This section shall not be subject to the provisions of section 11.1.” The proposed sections do not appear to involve setting compensation, enacting legislation, or setting City policy. Thus, they need not be exempted from section 11.1. We also recommend deletion of this sentence from these sections.

## **8. Balanced Budget**

The Committee proposes that Charter section 69 (Fiscal Year and Manager’s Estimate) be amended to expressly provide the City adopt a balanced budget. It defines a balanced budget to mean “there is available funding from all sources sufficient to cover projected expenditures for said fiscal year.” It adds a new paragraph to section 69, requiring the City Manager to monitor the budget during the year and to provide the City Council with proposed revisions to the budget, setting a 60-day timeline for the City Council to adopt the revisions. It requires the City budget to be posted in electronic media on the internet. Committee Report, pp. 9, 18-19, 60-61.

We raise the following issues:

- If this proposed change is to be submitted to the voters, this Office recommends it be submitted as a separate measure for voter determination from any of the other proposed changes pursuant to the Separate Vote Rule. *See* City Att’y Report No. 2007-17 (Nov. 2, 2007). The subject matter of this change does not appear “reasonably germane” to other Committee-proposed changes.
- The proposed language of the full new paragraph in the section is ambiguous and could be problematic without clarification. The full new paragraph added to section 69 provides in part: “No longer than 60 days from the date of submittal by the City Manager of said revised budget, the City Council shall adopt the proposed revisions or offer alternative

revisions to ensure the budget is balanced.” The word “shall” implies the Council *must* accept the revisions proposed by the Manager and may only “offer” proposed alternatives. It does not expressly provide the City Council with the authority to *adopt* its offered alternatives. If the Council wishes to forward this proposal to the voters it may wish to consider the following corrective language: “. . . the City Council shall adopt the proposed revisions or ~~offer its~~ alternative revisions that to ensure the budget is balanced.”

- It is unclear whether the proposed new paragraph was intended to apply to every proposed modification of the budget, or only to major budget revisions that might impact a number of departments, such as a mid-year adjustment. Because the section uses words such as “revisions to the budget” and “revised budget,” we assume the intent of this new paragraph is to encompass significant budget revisions arising out of insufficient funding for the City’s operations.
- The use of the word “budget” in the proposed new paragraph also implies the proposed revisions would be subject to the “back and forth” provisions of the special veto process described in Charter section 290(b), for so long as Article XV is effective.
- Last, the final new sentence of section 69 requires the “budget” to be posted electronically. It is not clear whether revisions to the budget must also be posted electronically. If desired, the following phrase could be added to the last sentence as follows: “The City shall post copies of the budget and any revisions on appropriate electronic media, such as the internet, to allow the public full access to the document.”

## DUTIES OF ELECTED OFFICIALS

### 9. Managed Competition

Section 117(c) was added to the City Charter by passage of Proposition C at a special election in November 2006. It permits the City to contract with independent vendors to provide certain City services now performed by classified employees, a process called “Managed Competition.” In October 2006, the Mayor and City Council adopted a resolution of intent that City services provided by members of the public safety retirement system (police, fire, and lifeguard) would not be subject to Managed Competition, if Proposition C was passed by the voters. The resolution directed the City Attorney to incorporate language providing this protection in any implementing ordinances should the measure pass. *See* R-301949 (Oct. 9, 2006). After it passed, the Council adopted an implementing ordinance (O-19566, January 9, 2007) providing in part that “Police Officers, Fire Fighters and Lifeguards who participate in the Safety Retirement System will not be subject to Managed Competition.” SDMC §22.3702(b).

The Committee proposes Charter section 117 be amended to add a new subsection (d) that would help ensure services provided by City safety employees are not subject to the Managed Competition process. The proposed subsection mirrors Municipal Code section

22.3702(b) and provides: “(d) Police officers, firefighters and lifeguards who participate in the Safety Retirement System shall not be subject to Managed Competition.” Committee Report, pp. 9, 19-20 and 62-63.

The Council may wish to consider the following:

- The “safety” employees are currently protected under the San Diego Municipal Code. There is no legal need to seek a Charter change.
- The subject of this proposal is unrelated to the sunset of Article XV and may be presented to the voters at any election. However, its subject matter is not “reasonably germane” to any of the other proposed Committee changes. Accordingly, if presented to the voters, it must be as a separate proposition as required by the Separate Vote rule.
- This Office needs to further review whether this proposal would be subject to a “meet and confer” requirement.

#### **10. Modification of Section 40**

Existing Charter section 40 (City Attorney) sets forth the duties and responsibilities of the City Attorney. The Committee report proposes that section 40 be completely rewritten. The arguments made to support the proposal are in the Committee’s report at pages 20-21. A strong minority of the Committee objected.<sup>7</sup> *See*, minority report at Appendix III, pp. 6-7. *See also* Committee Report, pp. 9 and 64-69.

The Committee contends that the language in Charter section 40 is ambiguous. This contention is curious in light of the fact that the section has been in effect for decades without questions or concerns about the wording. Moreover, the proposed language is ambiguous in many respects. For example, what precisely *are* the “matters over which the Charter gives the Mayor responsibility,” especially if the Mayor-Council form of government ceases to exist?

One of the most serious legal concerns is that the amendment presupposes that Article XV has been made permanent, by incorporating language implying the Mayor has powers separate from the City Council, and has veto power over Council actions. For example, the new subsections on “Control of Litigation” and “Settlement of Litigation” provide the following: “. . . In the course of litigation, client decisions, including a decision to initiate litigation, shall be made by the *Mayor or* the Council in accordance with this section . . .”; “The *Mayor* shall make client decisions in litigation involving matters over which the Charter gives the Mayor responsibility;” “The *Mayor* and Council shall establish by ordinance a process for the approval or rejection of settlement involving money damages;” and “The Council shall have the authority to approve or reject settlement of litigation that does not involve only the payment or receipt of

---

<sup>7</sup> The vote was 9 in favor and 5 against, with one Committee member absent.

money, *subject to veto of the Mayor, and Council override of the Mayor's veto*, as provided under this Charter.” (emphasis added.) But, the permanency of Article XV has yet to be decided. If Article XV sunsets, these changes would make no legal sense with a Mayor acting only as part of the City Council.

Finally, this subject is not “reasonably germane” to any of the other proposed Committee changes. Accordingly, if presented to the voters, it would need to be presented as a separate proposition as required by the Separate Vote rule.

## **11. Salary Setting for Elected Officials**

The Charter currently provides that the salaries for Councilmembers and Mayor be set by ordinance of the City Council, requiring the Council to vote on its own salaries after consideration of the recommendation of a 7-member Salary Setting Commission, appointed by the Civil Service Commission. The ordinance setting Council salaries is expressly made subject to referendum. Charter §§ 12.1 (Councilmanic Salaries), 24.1 (Mayor's Salary), and 41.1 (Salary Setting Commission). The salary of the City Attorney is set by the City Council and made part of the Appropriation Ordinance. Charter § 40 (City Attorney).

In general, the Committee's proposal requires the Salary Setting Commission to recommend to the Mayor and Council the salaries of all City elected officials every two years. It *requires* the Council to adopt an ordinance setting those salaries, with such ordinance to be subject to referendum and exempt from any Mayoral veto. The amendments to Charter section 41.1 (Salary Setting Commission) are patterned after Article III, section 8 of the California constitution. Section 41.1 revisions also set minimum eligibility requirements for Commission members and guidelines for them to consider in establishing these salaries. Committee Report pp. 9, 21-22 and 70-73.

If the Council desires to submit these suggested changes to the voters, the Council may wish to consider the following points first.

- The proposed change to section 12.1 contains phrasing that connects it to Article XV, which may or may not become permanent. The new language provides: “The ordinance adopting the salaries of elected officials shall be separate from the City's Salary Ordinance and shall not be subject to any veto provision of Article XV.” If the goal is to exempt this ordinance from a Mayoral veto for the duration of Article XV, it would be better to delete the phrase “and shall not be subject to any veto provision of Article XV.” Instead an amendment to Charter section 280 (Approval or Veto of Council Actions by Mayor) could be included with this series of changes that would provide a new subsection as follows “(a). . . (6) The ordinance setting the salaries of elected officials in accordance with section 12.1.”

- The changes suggested in this item are germane to each other, but are not reasonably germane to any of the other proposed measures related to the Mayor-Council form of government. Thus, they should be submitted to the voters for a separate vote from other suggested measures.

### CONCLUSION

The Charter Review Commission considered a broad range of issues over a relatively short period of time. Many of the recommendations were adopted by the Committee at a single meeting and without sufficient public input and scrutiny. We urge the Council not to do the same. Charter amendments must not be hastily submitted to the voters. There are many important issues facing the City, especially as they relate to the City's financial structure and oversight. Important questions have not been fully discussed, such as whether the City Auditor should be elected, rather than appointed. There has also been much disagreement over the composition of the Audit Committee. These are important issues that should be fully vetted so that the best proposals can be put to the voters. Further, we note that some of these issues do not require a Charter amendment and may be addressed through ordinances adopted by the City Council, as occurred with the creation of the Audit Committee and clarification of the exemption of safety members from Managed Competition. This Office will provide additional analysis and advice as the City proceeds to review these and other proposed Charter amendments.

Respectfully submitted,

MICHAEL J. AGUIRRE  
City Attorney

JAK:CMB:als  
RC-2008-1