January 31, 1992

REPORT TO THE HONORABLE
MAYOR AND CITY COUNCIL

PROPOSED MEASURES FOR JUNE 2, 1992 BALLOT

This report sets forth the drafts and measures proposed to date, or discussed, for placement on the June 2, 1992 ballot. This report also takes note of those proposed measures for which further direction from the Council is required before preparation of the final ballot language.

PROPOSED CHARTER AMENDMENTS

1. Term Limits for Mayor, Council and City Attorney

By Ordinance No. O-17713 (N.S.) adopted on November 25, 1991 (copy attached as Exhibit A) the City Council called a special election to submit amendments to Charter sections 12, 24 and 40 establishing term limits for the Mayor, City Council, and City Attorney to the voters on the June 2, 1992 ballot.

Council Action Requested: No further direction required.

2. Redistricting Commission

On January 13, 1992, the City Council by a 9-0 vote agreed to place charter amendments establishing a redistricting commission on the June 2, 1992 ballot and directed the City Attorney to prepare the appropriate ballot language. The City Attorney was directed to use the draft submitted at the January 13 hearing by San Diego Common Cause as a basis for preparing the ballot language.

As we were preparing the ballot language, we noticed the proposed amendments to Charter section 5 were based on outdated Charter language (i.e., did not contain the June 1990 amendments). With the concurrence of Mark Zerbe, representing Common Cause, the City Attorney has prepared the ballot language to amend Charter section 5 using as a starting point the language of Section 5 as amended in June 1990. In the same mode, we prepared proposed amendments to Charter section 4 to reconcile it with the changes in Section 5 and new Section 5.1. Also, at Mr. Zerbe's request, we deleted a paragraph from proposed Section 5.1, so as to avoid conflicts with amended Section 5.

In addition, the City Attorney has made housekeeping changes. The major changes are set out below. All housekeeping changes have been approved by Mr. Zerbe on behalf of Common Cause.

a. In accordance with Rules Committee direction of November 6, 1991, gender specific language is eliminated. Specifically, the term "Councilmanic"

reads "Council" whenever it appears, and the terms "chairman" and "vice-chairman" read "chair" and "vice-chair" wherever they appear.

b. For consistency in reference to charter sections, the term "article" is changed to read "section" wherever it appears.

c. The severability clause has been redrafted to clarify the references to the amendments to Charter sections 4 and 5 and new Charter section 5.1.

The proposed Redistricting Commission ballot language is attached as Exhibit B to this Report.

It is important to note that there may be other problems with the measure which purports to require superior court judges to appoint the City's Redistricting Commissioners. It is questionable whether the City may require the judges, who are state or county officers, to do this.

Chief Deputy City Attorney Ken So has forwarded these proposed amendments to the presiding judge of the superior court to get his reaction. The City Attorney received a response dated January 28, 1992, from the Superior Court Presiding Judge Arthur W. Jones. A copy of his response is attached as Exhibit C to this Report.

Requested Council Direction: If the Council chooses to go forward with this matter, approve the ballot language as shown in Exhibit B and direct us to include it in the election ordinance.

3. Mandatory Elections to Fill Council Vacancies

At its meeting on November 6, 1991, the Rules Committee directed the City Attorney to prepare ballot language establishing mandatory elections to fill Council vacancies in lieu of appointments, the winner to be the top vote recipient. The City Attorney has prepared the appropriate language amending Section 12 of the City Charter, attached as Exhibit D to this Report.

Please note that the proposed amendments do not take into account the term limit amendments already approved for the ballot and contained in the election ordinance (Exhibit A). If these proposed amendments are approved for the ballot, the Council must provide direction to the City Attorney about merging and conforming them. If they are not merged and if both are placed on the ballot and adopted, inconsistent Charter amendments will result.

As a practical matter and a money-saving measure, the Council may wish to consider language permitting the Council to refrain from calling a special election to fill a vacancy if a vacancy occurs within a specified number of days (e.g., 100 days) before a regularly scheduled municipal election.

Requested Council Direction: Decide whether to place this matter on the ballot, and if so: 1) give direction to the City Attorney as to how to reconcile this amendment with the term limit amendment already in

a previously adopted election ordinance alluded to in paragraph 1 of this Report, and 2) give direction to the City Attorney as to whether to draft language permitting the Council not to call a special election to fill a vacancy if a vacancy occurs within a specified number of days before a regularly scheduled municipal election.

4. Amendments Restricting City Franchises

At its November 6, 1991, meeting the Rules Committee directed the City Attorney to prepare ballot language placing certain restrictions on City franchises. In accordance with Rules Committee direction, draft language was prepared and submitted with a status report to Rules Committee dated November 14, 1991.

The City Attorney has continued to research the issues and refine the proposed language for possible placement on the June 2, 1992 ballot. A copy of the revised ballot language creating a new Charter section 103.2 is attached as Exhibit E to this Report.

Requested Council Direction: Decide whether to place this matter on the ballot, and if so, to approve the proposed amendment as drafted and direct us to place it in the election ordinance.

PROPOSED ORDINANCE AMENDMENTS

1. Alcohol Ban

In the spring of 1991, Ordinance No. O-17609 (N.S.) (attached as Exhibit F) went into effect. It banned the possession or consumption of alcohol in certain time periods in some parks, beaches, and other areas of the City. The ordinance was subject to a successful referendum petition, and a less stringent ordinance (No. O-17663) was enacted in July 1991 by the City Council. A third ordinance (No. O-17677) was enacted in July 1991 which extended the alcohol ban to certain parks and an additional parking lot. On July 1, 1991, the Council also adopted Resolution No. R-278233 stating, among other things, that an ordinance similar to the referended ordinance (O-17609 (N.S.)) be placed on the June 1992 ballot. The referended ordinance instituted a 24-hour ban on alcohol in most affected areas. Ordinance No. O-17677, adopted in August 1991, which is currently in effect, bans alcohol in most areas for a 12-hour period, 8:00 p.m. to 8:00 a.m.

City Manager's Report No. 91-483 addressed to the Public Facilities and Recreation Committee, dated November 8, 1991 (attached as Exhibit G), contains an evaluation of the ban currently in effect. It appears that, based on the City Manager's assessment of reduced crime and improved safety resulting from the current ban, the current ordinance is effective as presently worded.

Council Action Requested: Decide whether to place any form of alcohol ban on the June 2, 1992 ballot, and if so, give direction to the City Attorney as to the scope of the ban for preparation for the ballot.

2. People's Ordinance of 1919 (Trash Ordinance)

In his Report No. 92-30, dated January 29, 1992, the City Manager is recommending a ballot measure to amend the People's Ordinance of 1919 (Trash Ordinance). This report is scheduled to be presented to the City Council on February 3, 1992, as Docket Item No. 203.

Council Action Requested: See City Manager Report No. 92-30.

OTHER MATTERS

1. Transfer of Property Upon Which Mt. Soledad Memorial Cross is Situated

Over the past several weeks, the Council has discussed a proposal to place on the June 1992 ballot the issue of transferring the park land upon which the Mt. Soledad Memorial Cross is sited to private, non-profit ownership. If such a transfer were to take place, Charter section 55 requires that two-thirds of the voters approve it. Proposed ballot language pertaining to that proposed transfer is attached as Exhibit H to this Report.

As the Council is aware, litigation is pending pertaining to the Mt. Soledad Cross which could be affected by changing the ownership of the land at this time. The current status of the litigation follows:

On December 3, 1991, Judge Gordon Thompson, Jr., decided that the cross on Mt. Soledad (as well as the cross on Mt. Helix and the City of La Mesa insignia) were unconstitutional and ordered their removal by March 3, 1992. On December 19, 1991, the City filed a Motion to Amend the Judgment with the district court, requesting that Judge Thompson grant more time before removal. That motion was denied by a written order dated December 23, 1991. On January 2, 1992, the City filed a Notice of Appeal with the 9th Circuit Court of Appeals, and, on January 27, 1992, we filed a motion requesting that the 9th Circuit stay the removal order pending completion of the appeal process.

The City Council has directed the City Attorney to appeal Judge Thompson's order and also to research the feasibility and legality of transferring title to a private entity of that portion of the park land on which the cross is located. That research is progressing and, obviously, it is imperative that any potential transfer be accomplished in the most legally correct and defensible manner, in order to withstand any attack.

Although a vote of the people authorizing a transfer of the land would not in all probability affect the current litigation, actual transfer of the land might affect it. There is the possibility that if the cross were to be located on private land, the appellate court could decide that the litigation is moot and dismiss the appeal. Then, if the land transfer were successfully challenged, the appellate court would not rehear this case and all remedies for preserving the cross would have been exhausted. For these reasons, the City Attorney strongly recommends that any transfer of the land be held in abeyance until the appellate

process is completed.

Council Action Requested: Direct the City Attorney to prepare the necessary language to place the issue of authorizing the transfer of land on the June 2, 1992 ballot. However, hold in abeyance any direction to the City staff to transfer any park land upon which the Mt. Soledad Memorial Cross is situated until the appellate process has been completed.

2. Appointment and Removal of Port District Commissioners

At its November 6, 1991, meeting the Rules Committee directed the City Attorney to prepare amendments to the Charter pertaining to the appointment and removal process of the San Diego Port District Commissioners. As the City Attorney attempted to point out at the Rules Committee meeting, Port District Commissioners are appointed pursuant to state law,F

See Sections 16 and 17, San Diego Unified Port District Act, ch. 67, Stat. 1st Ex. Sess. (1962), amended by ch. 171, Stat. (1982).

not the Charter. Therefore, any amendment to the Charter pertaining to their appointment or removal would be ineffective and would only add confusion to the law.

Requested Council Direction: If the full Council wishes to pursue this matter further, we recommend that you direct us to work with the Department of Legislative Services to prepare the appropriate amendments to state legislation.

3. Charter Amendment Prohibiting the City from Doing Business with Anonymous Parties

At its November 6, 1991, meeting, the Rules Committee directed the City Attorney to prepare Charter amendment(s) to make it explicit that the City will not do business with anonymous parties. As pointed out to the Rules Committee, there are several legal questions raised by this proposal, described as follows:

> While the City Attorney agrees that the City has a vital interest in the type of company with which the City does business, a Charter amendment prohibiting doing business with "anonymous parties" would be unclear. What is an "anonymous party" for the purposes of this proposed amendment? Furthermore, names and addresses of corporate shareholders and of limited partners in a limited partnership are not available as public information. See Corporations Code section 1600 (right of shareholders to obtain lists of other shareholders only under certain conditions; right not held by public

generally). See also Corporations Code section 15634 (right of inspection of partnership list held by other limited and general partners; not a right held by public generally).

╒Excerpt from City Attorney's Report to Rules Committee, dated June 19, 1990, p. 3.σ

To date, the City Attorney has not been provided sufficient direction to formulate a substantive ballot measure that would withstand legal scrutiny.

Requested Council Action: If the Council chooses to go forward with this matter, give sufficient direction to the City Attorney, including a proposed definition of "anonymous party," to prepare appropriate ballot language.

Respectfully submitted,
JOHN W. WITT
City Attorney

CCM:jrl:011(043.1)
Attachments
RC-92-4