OFFICE OF

THE CITY ATTORNEY

CITY OF SAN DIEGO

Michael J. Aguirre

CITY ATTORNEY

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

September 28, 2005

REPORT TO THE STRONG MAYOR
TRANSITION COMMITTEE

THE MAYOR'S ROLE IN THE OPERATION OF THE CITY OF SAN DIEGO REDEVELOPMENT AGENCY UNDER PROPOSITION F, THE "STRONG MAYOR" FORM OF GOVERNMENT

INTRODUCTION

This Report addresses certain issues pertaining to the recently approved "Strong Mayor" form of government and its relationship to the functions of the Redevelopment Agency of The City of San Diego.

BACKGROUND

On November 7, 2004, City of San Diego [City] voters passed Proposition F, which authorizes a "Strong Mayor" form of governance for a five-year trial period, beginning on January 1, 2006, and ending on December 31, 2010. To implement the Strong Mayor form of governance, Proposition F authorizes the temporary suspension of certain provisions of the City Charter with the concurrent enactment of new provisions to effect the Strong Mayor system during the five-year trial period.[1]

On August 4, 2005, our office presented a report to the Strong Mayor Transition Committee [Committee], outlining the effects of Proposition F on the City of San Diego Redevelopment Agency [Agency]. *See* Report to the Strong Mayor Transition Committee, dated August 4, 2005, attached as Exhibit A. The report concluded that once Proposition F takes effect the following will occur: (1) the Mayor will be removed from the City's legislative body and will assume solely executive functions; (2) the Mayor can no longer serve as a member of the Agency Board and the Agency Board will be composed of eight Council members; (3) the Agency Board must amend the Agency Bylaws so that the Agency Bylaws, in light of the Strong Mayor changes, do not conflict with the Community Redevelopment Law [CRL] (Cal. Health & Safety Code §§ 33000-33855); (4) the City Manager can no longer serve as the Executive Director of the Agency absent Mayoral supervision; and (5) the Agency has discretion to designate the Mayor as Executive Director, or the Mayor as the CEO with the City Manager as the Executive Director, or any other qualified person who is not the Mayor or City Manager as the Executive Director. After presentation of the report, several Committee members

[1] The new City Charter sections are 250, 255, 260, 265, 270, 275, 280, 285, 290, and 295. The inoperative City Charter sections are 12(a), 13, 16, 17, 22, 24, 25, and 27.

posed questions about the Mayor's role with respect to Agency governance and the Agency's budget. Since the August 4 Committee hearing, other staff members have requested clarification on (1) whether the Agency Board could appoint an unclassified City employee as the Agency's interim Executive Director during the period from January 1, 2006, through the completion of the proposed Agency separation from the City and (2) whether the City and Agency could modify the existing operating agreement between the two parties to allow classified City employees that currently staff the Agency to continue to staff the Agency under the direction of the Agency Board after January 1, 2006. This report addresses these issues.

DISCUSSION

I. The adoption or approval of redevelopment items is governed by the CRL, which specifies which actions must be approved by the legislative body and the Agency Board.

The CRL governs redevelopment activity by public agencies within the state, including charter cities such as the City of San Diego. *Redevelopment Agency v. City of Berkeley*, 80 Cal.App.3d 158, 168-69 (1978)(the CRL preempts the field, therefore, charter provisions may not conflict with the CRL).

The CRL sets forth the creation, purpose, and operation of "the redevelopment agency" for each public agency desiring to exercise redevelopment powers within its jurisdiction. Cal. Health & Safety Code § 33101. When the legislative body declares the need for a redevelopment agency in accordance with the CRL, the legislative body may establish itself as the redevelopment agency, or it may establish a separate redevelopment agency comprised of resident electors of the community. Cal. Health & Safety Code §§ 33003, 33110, 33200. The legislative body means "the city council, board of supervisors, or other legislative body of the community." Cal. Health & Safety Code § 33007.

When the legislative body declares itself to be the redevelopment agency, as the City Council did pursuant to resolution, on May 6, 1958, the legislative body becomes the governing board of the redevelopment agency (the "Agency Board"). Cal. Health & Safety Code § 33200(a). All of the "rights, powers, duties, privileges and immunities," vested by the CRL in the Agency, except as specifically provided by the CRL, then vest in the legislative body of the community. *Id.* The City's legislative body currently consists of eight Council members plus the Mayor. However, once Proposition F takes effect on January 1, 2006, the legislative body will consist of eight Council members without the Mayor. Consequently, after January 1, 2006, the Agency Board will also be composed of the eight Council members without the Mayor.

The adoption or approval of redevelopment items is governed by the CRL, which specifies which actions must be approved by the legislative body, and whether by resolution or ordinance. For example, section 33365 of the CRL provides that a redevelopment plan for a redevelopment project area must be adopted by ordinance of the legislative body and section 33434 provides that the lease or sale of real property for purposes of redevelopment must be approved by resolution of the legislative body. Under section 33606 of the CRL, the Agency Board must adopt an annual budget containing all of the following information, including all of the activities to be financed by the Low and Moderate Income Housing Fund established pursuant to section 33334.3 of the CRL:

(a) The proposed expenditures of the Agency.
(b) The proposed indebtedness to be incurred by the Agency.
(c) The anticipated revenues of the Agency.
(d) The work program for the coming year, including goals.
(e) An examination of the previous year's achievements and a comparison of the achievements with the goals of the previous year's work program.

The annual budget may be amended from time to time as determined by the Agency. Cal. Health & Safety Code § 33606. All expenditures and indebtedness of the Agency shall be in conformity with the adopted or amended budget. *Id.* If the legislative body has *not* declared itself to be the Agency Board, then the legislative body must approve the Agency budget. *Id.* All administrative decisions not specifically delegated to the legislative body by the CRL -- for example, the selection, appointment, and employment of permanent and temporary officers, agents, counsel and employees of the Agency -- may be approved by the Agency Board. *See, e.g.*, Cal. Health & Safety Code § 33126(a). For a list of redevelopment decisions that require adoption or approval by the legislative body, see Table of Redevelopment Decisions, attached as Exhibit B.

II. The City Council, acting as the legislative body to exercise the powers of the CRL, may adopt the City's voting procedures by ordinance.

Subject to certain specific exceptions, the CRL does not dictate the number of votes required by the legislative body to pass a resolution or ordinance, or the procedure by which such actions become effective.[2] Therefore, an issue arises as to whether the City Council, acting as the legislative body under the CRL, may adopt the City's voting procedures to pass a resolution or an ordinance required under the CRL.

---

[2] The noted exceptions are section 333365 of the CRL, which requires a two-thirds vote of the entire membership eligible and qualified to vote and, section 33433 of the CRL, which provides that a resolution approving the lease or sale of property acquired in whole or part with tax increment, must be approved by a majority vote unless the legislative body has provided by ordinance for a two-thirds vote.

Chartered cities have full power to regulate municipal affairs, and ordinances supersede general laws insofar as the latter conflict with the ordinance unless the state has preempted the field. *See Redevelopment Agency v. City of Berkeley*, 80 Cal. App. 3d 158 (1978)(*citing Bellus v. City of Eureka*, 69 Cal. 2d 336, 346 (1968)). For charter cities such as the City of San Diego, which has been a charter city since 1931, this determination is left to the discretion of the legislative body, as provided in section 33204 of the CRL, which states that "[a] chartered city may enact its own procedural ordinance and exercise the powers granted by this part." This does not mean, however, that a charter city may use its procedural ordinance to *regulate the powers* delegated by the CRL to the legislative body. *See e.g., Redevelopment Agency v. City of Berkeley*, 80 Cal. App. 3d 158 (1978)(Section 33204 did not authorize a charter city to regulate the administrative actions of the city's redevelopment agency by initiative proceedings.) Consequently, we believe that the City Council, acting as the legislative body under the CRL, may adopt the City's voting procedures for passage of ordinances and resolutions, as long as those procedures do not conflict with the CRL or usurp the legislative body's authority to carry out the CRL.

III. The Mayor's veto does not conflict with the CRL or usurp the City Council's authority because only the Council members may vote to pass a redevelopment item.

The City's voting procedures are set forth in the San Diego City Charter. In particular, the number of votes required to pass a resolution or ordinance is governed by San Diego Charter section 15, which provides that "[e]xcept as otherwise provided herein the affirmative vote of a majority of the members elected to the Council shall be necessary to adopt any ordinance, resolution, order or vote ...." Once the Strong Mayor form of governance takes effect, however, Charter section 15 will operate in conjunction with sections 275, 280, and 285, which provide as follows:

Section 275: Introduction and Passage of Ordinances and Resolutions

(a) Ordinances shall be introduced in the Council only in written form. An alteration necessary only to correct a typographical or clerical error or omission may be performed by the City Clerk with the written approval and concurrence of the City Attorney, so long as the alteration does not materially or substantially alter the contents, requirements, rights, responsibilities, conditions, or prescriptions contained in the original text of the ordinance. A typographical or clerical error shall include, but is not limited to, incorrect spelling, grammar, numbering, punctuation, transposed words or numbers, and duplicate words or numbers.

(b) All ordinances except annual appropriation ordinances and ordinances codifying or rearranging existing ordinances, shall be confined to one subject, and the subject or subjects of all ordinances shall be clearly expressed in the title.

(c) The following ordinances may be passed by the Council on the day of their introduction: ordinances making the annual tax levy; the annual appropriation ordinance; ordinances calling or relating to elections; ordinances recommended by the Mayor or independent department heads transferring or appropriating moneys already appropriated by the annual appropriation ordinance; ordinances establishing or changing the grade of a public highway; and emergency ordinances as defined by section 295 of this Charter. Other ordinances, however, shall be passed by the Council only after twelve calendar days have elapsed from the day of their introduction.

(d) Each ordinance shall be read in full prior to passage unless such reading is dispensed with by a vote of five members of the Council, and a written copy of the ordinance was made available to each member of the Council and the public prior to the day of its passage.

(e) The yeas and nays shall be taken upon the Council's passage of all resolutions and ordinances and entered upon the journal of the proceedings of the Council.

(f) The enacting clause of ordinances passed by the Council shall be "Be it ordained by the Council of the City of San Diego." The enacting clause of ordinances submitted by initiative shall be "Be it ordained by the People of the City of San Diego."

Section 280: Approval or Veto of Council Actions by Mayor

(a) The Mayor shall have veto power over all resolutions and ordinances passed by Council with the following exceptions:

(1) The Mayor's veto power shall not extend to matters that are exclusively within the purview of Council, such as selection of the Independent Budget Analyst, the selection of a presiding officer, or the establishment of other rules or policies of governance exclusive to the Council and not affecting the administrative service of the City under the control of the Mayor.

(2) The Mayor's veto power shall not extend to those matters where the Council has acted as a quasi-judicial body and where a public hearing was required by law implicating due process rights of individuals affected by the decision and where the Council was required by law to consider evidence at the hearing and to make legal findings based on the evidence presented.

(3) Emergency Ordinances.

(4) The Annual Appropriation Ordinance.

(5) The Salary Ordinance, which instead shall be subject to veto in accordance with the process described in section 290.

(b) Matters that are not subject to the Mayor's veto power shall be clearly indicated as such on the Council's agenda and within the body of the

resolution or ordinance, which pursuant to section 40, shall be signed as to form and legality by the City Attorney.

(c) The following shall apply to each resolution and ordinance that has been passed by the Council and is subject to the Mayor's veto:

(1) Each such resolution or ordinance shall, within forty-eight hours of passage, be transmitted to the Mayor by the City Clerk with appropriate notations of the action taken by the Council.

(2) The Mayor shall act upon each resolution or ordinance within ten business days of receiving the City Clerk's transmittal.

(3) The Mayor shall either approve the resolution or ordinance by signing and return it to the City Clerk within the specified time limit, or shall veto any resolution or ordinance and return it to the City Clerk with his or her written objections within the specified time limit.

(4) Failure to return the resolution or ordinance within the specified time limit shall constitute approval and such resolution or ordinance shall take effect without the Mayor's signed approval. The City Clerk shall note this fact on the official copy of such resolution or ordinance.

Section 285: Enactment Over Veto

The Council shall reconsider any resolution or ordinance vetoed by the Mayor. If, after such reconsideration, at least five members of the Council vote in favor of passage, that resolution or ordinance shall become effective notwithstanding the Mayor's veto. If more than five votes are required for the passage of any resolution or ordinance by the provisions of this Charter or other superseding law, such larger vote shall be required to override the veto of the Mayor. If a vetoed resolution or ordinance does not receive sufficient votes to override the Mayor's veto within thirty calendar days of such veto, that resolution or ordinance shall be deemed disapproved and have no legal effect.

As indicated in the above procedure, while the Mayor may exercise veto authority over any items not subject to specified exceptions under section 280, the Mayor may not vote to pass or reject an item. Additionally, unlike other veto procedures (e.g., Cal. Const., Art IV, § 10(a), which requires a two-thirds vote to overcome the Governor's veto), the Mayor's veto does not alter the number of legislative votes required to pass an item. Therefore, the Council members' authority to vote on an item, while potentially delayed by the Mayor's veto for reconsideration, is not usurped or reduced in any manner. This situation is, therefore, distinguishable from the one considered in *Redevelopment Agency v. City of Berkeley*, 80 Cal. App. 3d 158 (1978), wherein the court invalidated an ordinance passed by a voters' initiative, which was authorized by the city charter and which allowed the voters to invalidate a redevelopment plan approved by the

city's redevelopment agency. Consequently, we believe that the City Council, acting as the legislative body under the CRL, may adopt the City's Strong Mayor voting procedures to exercise the powers of the CRL.

IV. Unless the Agency revises its bylaws, the Mayor will have veto power over legislative body decisions but not Agency Board decisions.

In accordance with the CRL, the Agency Board may "make, amend, and repeal" bylaws and regulations not inconsistent with, and to carry into effect, the powers and purposes of the CRL. Cal. Health & Safety Code § 33125(d). The Agency's first set of bylaws were adopted by the Agency Board on April 29, 1969. The Agency Bylaws were amended most recently on March 3, 1975, approximately thirty years prior to the passage of Proposition F. *See* copy of the Agency Bylaws attached as Exhibit C. This version is still current as of the date of this writing.

Article II, section 1 of the Agency Bylaws designates the "Council members" as the "Board Members." Article III, section 4 provides that, "[w]hen a quorum [of five members] is in attendance, action may be taken by the Agency upon a vote of a majority of the Agency members." Consequently, the number of votes required to pass any action is currently compatible with the majority vote required by Council to pass any ordinance or resolution under San Diego Charter section 15.[3] Once the Strong Mayor form of governance takes effect, however, without an amendment to the Agency Bylaws, redevelopment decisions made by the legislative body will be subject to the City's voting procedures under San Diego Charter sections 275, 280 and 285 while Agency Board decisions will not.[4] For a complete list of legislative body versus Agency Board actions, see Table of Redevelopment Decisions attached as Exhibit B.

In light of the disparate voting procedures discussed above, we anticipate that the Committee members may pose the question of whether the Agency Board could adopt the City's voting procedure under the Strong Mayor form of governance to allow the Mayor to provide direct input in all Agency decisions.

---

[3] The exceptions to the majority vote under San Diego Charter section 15 do not apply to redevelopment decisions required under the CRL. *See, e.g.*, table of decisions requiring a two-thirds vote of the City Council, attached as Exhibit D.

[4] While the Mayor will not have direct input in the Agency Board decision making process, he or she will still have direct input for legislative body actions, the most significant of which are as follows: the designation of the redevelopment survey area (section 33310), adoption/amendment of a redevelopment plan (section 33364-33366), formation of a Project Area Committee (section 33385), the sale or lease of property acquired with tax increment (section 33433), the appropriation of funds to the Agency (section 33610), the issuance of Agency Bonds (33640), and the delegation of powers to a Community Development Commission (section 34112).

As previously stated in the aforementioned paragraphs, the CRL does not specify the number of votes required to pass an Agency Board action or the procedure by which such action becomes effective. Rather, the CRL allows the Agency Board to "make, amend, and repeal" bylaws and regulations not inconsistent with, and to carry into effect, the powers and purposes of the CRL. Cal. Health & Safety Code § 33125(d). The analysis for adoption of the City's voting procedure in the Agency bylaws is thus analogous to the analysis of whether the City Council, acting as the legislative body to carry out the CRL, can adopt the City's voting procedures in that the Agency Board can only adopt a procedure that does not conflict with the CRL or usurp the Agency Board's authority to carry out its duties under the CRL. Therefore, we believe that for exactly the same reasons as those given in Paragraph III, above, the Agency Board may adopt the City's voting procedures, if it desires to do so.

If the Agency Board elects to adopt a parallel voting procedure, we propose, for discussion, the following modification to Article III, Section 4 of the Agency Bylaws:

> Section 4. Quorum. The powers of the Agency shall be vested in the members thereof in office from time to time. Five members shall constitute a quorum for the purpose of conducting its business and exercising its powers and for all other purposes, but a smaller number may adjourn from time to time until a quorum is obtained. *During the period that San Diego Charter sections 275, 280, and 285 are in effect (Strong Mayor form of governance), the Mayor shall have veto powers over actions approved by the members in accordance with the procedures set forth in those sections with the following exception: The Mayor's veto power shall not extend to matters that are exclusively within the purview of the members such as the selection, removal and duties of the Agency officers, members, and personnel under Article II of the bylaws of the Agency.*

As a practical matter, this amendment would allow the Mayor to have input in almost all Agency decisions, including the Agency's budgetary process, as it would provide the Mayor with an opportunity to veto Agency Board decisions subject to enactment over veto, in accordance with the Council's voting procedure.

V. The Agency may only appoint an unclassified "at will" employee of the Mayor to act as its interim Executive Director, subject to Mayoral approval.

Staff has requested an analysis of whether the Agency Board could appoint an unclassified City employee, currently operating under the supervision of the City Manager, to act as interim Executive Director during the period from January 1, 2006, the effective date of the Strong Mayor form of governance, through the completion of the Agency's proposed separation from the City, the form of which has yet to be determined.

As stated in Section IV of the August 4 report to the Committee (see attached Exhibit A for reference), the Board's appointment of the Executive Director is not limited by the CRL or the common law doctrine of incompatible offices, as the CRL leaves the existence of all Agency positions as well as the qualifications of any Agency officer (other than the Board members) entirely up to the discretion of the Agency Board. Rather, the only limitation we identified arises from the San Diego Charter sections 260 and 265, which become effective once the Strong Mayor form of governance takes effect on January 1, 2006.

San Diego Charter section 260(b) provides that the Mayor shall have all executive authority, power, and responsibilities conferred upon the City Manager in Article V, VII, and IX of the City Charter during the period that the Strong Mayor form of governance is in effect. Article V of the San Diego Charter sets forth the executive and administrative duties of the City Manager, including section 28, which provides that all Directors, or heads of the administrative Departments under the Manager shall be immediately responsible to him for the efficient administration of their respective departments, and section 30, which provides that officers and employees in the unclassified service appointed by the Manager may be removed by the Manager at any time, subject to appropriate rules and regulations for dismissal. San Diego Charter section 265(b) provides, in relevant part, that, "[in] addition to exercising the authority, power, and responsibilities formally conferred upon the City Manager as described in section 260(b), the Mayor shall have the following additional rights, powers, and duties: ... (9) Sole authority to dismiss the City Manager without recourse."

Sections 260 and 265 do not limit the Agency Board's powers to appoint the Executive Director, but, taken together, limit the ability of certain City employees, including the City Manager and all unclassified positions existing at the will of the Mayor, to undertake the duties of the Executive Director without the supervision and/or approval of the Mayor. Consequently, if the Agency Board desires to appoint an at will employee of the Mayor to serve as the Executive Director after January 1, 2006, then we recommend that the appointment be effectuated via an Operating Agreement subject to the Mayor's approval (see Paragraph VI, below, for further discussion).

VI. The City Council and Agency Board may not modify the existing Operating Agreement to ensure that classified City employees currently staffing the Agency can continue to staff the Agency under the direction of the Agency Board after January 1, 2006 without the Mayor's approval.

Committee staff members have requested an opinion on whether the City and Agency can modify the existing Operating Agreement wherein the City is providing the

following services to the Agency (see copy of Operating Agreement attached hereto as Exhibit E):

a. A redevelopment staff
b. Necessary accounting services
c. Investment services
d. Purchasing services
e. Building inspection services
f. Legal services
g. Such further services and/or personnel as may be required by the Agency.

At issue are the redevelopment staff positions currently staffed by City's classified employees. The Operating Agreement provides that all services provided by the City to the Agency will be carried out in accordance with the Agency's regulations and policies unless no Agency regulation or policy exists, in which case City regulations and policies shall apply.

The analysis for the service to the Agency by the City's classified employees is analogous to that for the City's unclassified employees under Paragraph V, above. San Diego Charter section 260(b), which becomes affective on January 1, 2006, provides that the Mayor shall have all executive authority, power, and responsibilities conferred upon the City Manager in Article V, VII and IX of the City Charter during the period that the Strong Mayor form of governance is in effect. Article V of the San Diego Charter sets forth the executive and administrative duties of the City Manager, including section 28, which provides that the Manager may prescribe such general rules and regulations as he or she may deem necessary and expedient for the proper conduct of each department. Section 28 further provides that, "[t]he Manager may direct any Department or Division to perform work for any other Department or Division." Consequently, once the Strong Mayor form of governance takes effect on January 1, 2006, the Mayor will assume control over all City classified employees subject only to the express limitations in the San Diego City Charter. As such, Council would be acting outside of its jurisdiction under the Charter to pledge the staffing of the Agency with the City's classified employees, subject to the direction and control of the Agency Board, without the Mayor's approval. Consequently, we propose the following options for consideration: (1) propose the desired amendment to the Operating Agreement after the new Mayor is elected, subject to his or her approval, with an effective date of January 1, 2006; or (2) if the Council members and Agency desire to process an amendment before the new Mayor is elected, then include a provision which would allow the Mayor to terminate the Operating Agreement after January 1, 2006.

VII. Given that the Mayor's separation from the Agency is an unintended consequence of Proposition F, the City Council should adopt a procedure that would allow the Mayor to serve as the Agency Executive Director while the Strong Mayor form of governance is in effect.

As explained in our previous report to the Committee (see attached Exhibit A), Proposition F has essentially removed the Mayor from a direct role in redevelopment unless accorded a role through the discretion of the legislative body. Given this result, we believe that this analysis would be incomplete without (1) highlighting the purpose of Proposition F and its unintended consequence on the Mayor's role in redevelopment and (2) offering a solution to rectify Proposition F's unintended consequence.

1. There is no evidence in either the Charter amendments implementing Proposition F or the voters' pamphlet for Proposition F that the voters intended to remove the Mayor from the operation of the Redevelopment Agency.

Two rules of statutory construction are to ascertain the intent of the legislature to effectuate the purpose of the law and give provisions a reasonable and common sense interpretation consistent with apparent purpose, which will result in wise policy rather than mischief or absurdity. Witkin, Summary of California Law, vol. 7, *Constitutional Law* § 94. (9th ed. 1988) With respect to voter approved legislation, the language of the legislation and the printed voters' pamphlets are generally accepted sources of legislative intent. *California Housing Finance Agency v. Patitucci*, 22 Cal. 3d 171, 177 (1978). With these principals in mind, we turn to the implementing language of Proposition F and the voters' pamphlet for Proposition F to discern the voters' intent.

To implement the Strong Mayor form of governance, Proposition F authorizes the temporary suspension of certain provisions of the City Charter with the concurrent enactment of new provisions to effect the Strong Mayor system during the five-year trial period. Neither the sections of the City Charter that are being removed nor the Strong Mayor replacement sections reference the Mayor's role with respect to redevelopment. Therefore, on its face, the implementing language of Proposition F does not evidence intent to exclude the Mayor from having an executive role for the Agency that is analogous to his or her new role as CEO for the City.

According to the City Attorney's impartial analysis, which was included in the voters' pamphlet, Proposition F would have the following impact:

CITY ATTORNEY'S IMPARTIAL ANALYSIS

> The current San Diego City Charter provides for a Council-Manager form of government. The San Diego City Council is composed of nine members, eight Council members and the Mayor. The Council governs and sets policy for the City. The Mayor is the chief elective officer and the

City Manager is the chief executive officer. The City Manager runs the day-to-day affairs of the City and implements Council policy. The Council has no administrative powers. The Council is forbidden by the Charter's non-interference clause from directing the City Manager's employees.

If adopted, this measure would amend the Charter to suspend certain provisions of the Charter to create a Mayor-Council form of government for a five-year trial period, beginning January 1, 2006, and ending December 31, 2010. Voter action would be required to extend or make this change permanent; otherwise after the December 31, 2010, sunset date, all changes implemented by this measure are repealed and all provisions of the Charter suspended by this measure are revived.

Approval of this measure would remove the Mayor from the Council by providing for an eight-member Council. The eight Council Districts would not be affected by this measure. The Mayor would have the authority to give direction to all City officers and employees, except those in departments and offices recognized in the Charter as being independent, such as the Council offices, City Attorney, Personnel, Retirement, and the Ethics Commission. The Mayor retains the power to veto those resolutions and ordinances adopted by the Council establishing policy. The veto power would not extend to matters of internal governance of the Council or to the application of existing municipal rules to specific decisions of the Council, such as the issuance of land use permits. The Mayor would be responsible for preparing the annual budget for the Council's consideration and adoption. The Council would appoint an Independent Budget Analyst to review and provide budget information to the Council, independent from the Mayor. It would take the affirmative vote of five Council members to take any action, and five votes to override any mayoral veto.

The Council would establish its own rules, elect a presiding officer, establish committees, and set the legislative agenda for the City, including establishing procedures for docketing matters in open session. The Mayor, City Attorney, and presiding officer of the Council would jointly set the agenda for closed session meetings, and, when present, the Mayor would preside over those meetings, but the Mayor would have no right to vote.

The Mayor would appoint the City Manager with Council confirmation. The City Manager would serve at the pleasure of the Mayor. The Mayor would appoint the City Auditor and Comptroller, Police Chief, and Fire Chief, subject to Council confirmation. All other managerial department heads formerly under the City Manager would be appointed by the Mayor and serve at the pleasure of the Mayor. As under the current Charter, the

Mayor would appoint all other members of City Boards and Commissions, subject to Council confirmation.

As can be seen from the language of the impartial analysis, the impact of Proposition F on the Agency was not contemplated. Similarly, the arguments in favor and against Proposition F make no mention of the Mayor's role in or removal from redevelopment. *See* attached copy of the Proposition F voters' pamphlet, attached as Exhibit F. Consequently, there is no evidence from the voters' pamphlet that evidences the voters' intent to empower the Mayor with executive authority for the City but not for the Redevelopment Agency. In fact, the arguments in favor of Proposition F, expressing the intent to "elect a chief executive who is accountable for how the City is run," evidence the voters' intent to elect a Mayor that will assume all of the executive duties held by City Manager, including the position of Executive Director for the Agency. Consequently, we believe that the juxtaposition of CRL upon Proposition F has resulted in the unintended consequence of the Mayor being removed from his or her role in the Agency under the CRL, at the election of the legislative body.

2. To rectify the unintended consequence of Proposition F on the Mayor's role in redevelopment during the time that the Strong Mayor form of governance is in effect, the City should adopt an interim solution by amending the Agency Bylaws to designate the Mayor as Executive Director of the Agency and consider more permanent solutions once the City Council has worked through the proposals for transition of the Agency's administrative structure.

To rectify the unintended consequence of Proposition F on the Mayor's role in redevelopment during the time that the Strong Mayor form of governance is in effect, the City should adopt an interim solution by amending the Agency Bylaws to designate the Mayor as Executive Director of the Agency and consider more permanent solutions once the City Council has worked through the proposals for transition of the Agency's administrative structure.

As explained in Paragraph V of the prior report to the Committee (see Attachment A), the Agency has the discretion to appoint the Mayor as the Executive Director by an amendment to the Agency Bylaws, which must be introduced and adopted at two separate meetings. *See* Agency Bylaws, Article IV. To effect a smooth transition once the Strong Mayor form of governance takes effect, we recommend that the Agency Board consider the amendment at least two docket sessions in advance of January 1, 2005. The resolution authorizing the amendment should provide that the amendment take effect on January 1, 2006.

Once the Mayor is appointed as the Executive Director of the Agency Board through an amendment to the Agency Bylaws, the Council should then consider other solutions to more permanently address the unintended consequence of Proposition F,

particularly in light of the upcoming discussions pertaining to the proposals for Agency transition. *See* copy of attached Report to the Public Safety & Neighborhood Services Committee [PS&NS], dated September 16, 2005, attached as Exhibit G.

One solution would be for the City Council to adopt a procedural ordinance for the exercise of powers under the CRL that would empower the Mayor as the Executive Director of the Agency. Article XI, section 3 of the California Constitution authorizes the adoption of a city charter and provides that such a charter has the force and effect of state law. Article XI, section 5 of the California Constitution affirmatively grants to charter cities supremacy over municipal affairs. Thus, charters act as instruments of limitation on the broad power of charter cities over matters of municipal affairs. *City of Glendale v. Tronsden*, 48 Cal. 2d 93, 98 (1957). A city charter represents the supreme law of a city, subject only to conflicting provisions in the state or federal constitutions and preemptive state law on matters of statewide concern. *Harman v. City and County of San Francisco*, 7 Cal. 3d 150, 161 (1972). In light of these principles and the facts that (1) the Strong Mayor charter sections and the Proposition F voters' pamphlet evidence an express intent to empower the Mayor with CEO powers, (2) the new Strong Mayor charter sections do not limit the Mayor's role in redevelopment, and (3) the CRL accords the Agency Body with discretion in the appointment of officers (see Paragraph V, above), we believe that the City Council could adopt a procedural ordinance to appoint the Mayor as Executive Director of the Agency as long as the Strong Mayor form of governance is in effect. The adoption of such an ordinance would effect the voters' intent in passing Proposition F and rectify the unintended consequence of Proposition F on the Mayor's role in redevelopment.

Another more permanent solution would be to initiate a charter amendment. Because the CRL does not limit a charter city from enacting a charter provision that does not conflict with the CRL and the CRL does not dictate what officers must be appointed by the Agency, we believe that the San Diego City Charter could be amended to require the Mayor to serve as the Executive Director for the Agency analogous to the Strong Mayor provisions that require the Mayor to serve as CEO for the City.[5] The drawback of this permanent solution, however, is that it may remove the Agency's flexibility to adopt an alternative governing structure. For example, under the CRL, the Agency may operate with its current structure or may operate as a Community Development Commission [CDC], which would allow the CDC to operate and govern its community redevelopment agency, or its redevelopment agency and its housing authority under a single operating entity and board. Cal. Health & Safety Code § 34112. Given these considerations, our office will work with the Council members and the Mayor to address more permanent solutions in light of the on-going discussions pertaining to the Agency reorganization post January 1, 2006.

---

[5] For example, Charter section 265(b)(1) could be amended to require that the Mayor serve as "Chief Executive Officer of the City *and the City of San Diego Redevelopment Agency*."

CONCLUSION

Once the Strong Mayor form of governance takes effect, the City Council acting as the legislative body under the CRL may adopt the City's voting procedures under the Strong Mayor form of governance. Similarly, the Agency Board may adopt the City's voting procedures.

Neither the CRL nor the common law restricts the Agency Board from appointing an Executive Director of its choosing. However, once it takes effect on January 1, 2006, San Diego Charter section 265 will prevent any employee that is "at will" to the Mayor from undertaking a role as the Executive Director without the Mayor's consent and approval. Similarly, the City Council and Agency Board may not pledge the staffing of the Agency with the City's classified employees without the Mayor's approval post January 1, 2006.

In light of our recommended changes to the Agency Bylaws in the August 4 and present reports, we have attached a proposed strikeout version of the Agency Bylaws (attached as Exhibit H) to facilitate the Committee's discussion of the aforementioned issues.

We also recommend that the Agency Board approve an amendment to the Agency Bylaws that would designate the Mayor to be the Agency Executive Director post January 1, 2006 and offer to work with both the Council member and the Mayor to effect a more permanent solution to the unintended consequences of Proposition F.

Respectfully submitted,

MICHAEL J. AGUIRRE
City Attorney

MJA:SYC:amp
Attachments
RC-2005-23