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**MEMORANDUM OF LAW**

**DATE:** March 22, 2006

**TO:** Honorable Mayor and City Councilmembers

**FROM:** City Attorney

**SUBJECT:** The Mayor's Authority to Approve or Veto Council Ordinances Proposing Ballot Measures to Amend the City Charter

**INTRODUCTION**

The Mayor and City Council are discussing various ballot measures to amend the City Charter related to employee pension increases and managed competition. Under the City's new form of Mayor-Council governance, the Mayor has the right to veto resolutions and ordinances passed by the City Council, unless one of the exceptions outlined in the City Charter or the law apply. The question has arisen whether the Mayor may veto an ordinance passed by the City Council to place a measure on the ballot.

**QUESTIONS PRESENTED**

May the Mayor approve or veto City Council actions proposing ballot measures to amend the City Charter?

**SHORT ANSWER**

No. Controlling state law vests sole authority in the City Council to propose charter amendments for voter approval and the Mayor may not approve or veto such Council actions.

**ANALYSIS**

Effective January 1, 2006, the City's Council-Manager form of governance changed to a Mayor-Council form of governance on a five-year trial basis. San Diego Charter art. XV. The implementation of article XV divided City government into two parts: an executive-administrative branch headed by the elected Mayor and a legislative branch headed by the City Council. The City Charter vests all legislative power in the City Council, which must act by

ordinance or resolution in all substantive matters. San Diego Charter §§ 11 and 270(c). The Mayor must approve or veto most City Council resolutions or ordinances passed at open City Council meetings. San Diego Charter §§ 265(b)(5), 270, and 280(a). The City Charter provides a list of certain matters the Mayor may not veto. For example, the Mayor may not veto matters exclusively within the purview of Council; matters where the Council has acted as a quasi-judicial body; emergency ordinances; the annual appropriations ordinance, and the salary ordinance (except as provided in City Charter section 290). San Diego Charter § 280(a).

City Charter section 280(a) does not specifically except City Council ballot proposals to amend the City Charter from the Mayoral approval and veto process. Because election-related matters are often subject to State laws and constitutional requirements, the question has arisen whether the Mayor may veto a ballot proposed by the City Council to amend the City Charter.

## DISCUSSION

### I. State Laws Preempt the Procedures Related to City Charter Amendment.

In a series of cases, various courts have concluded that the procedures regulating amendment of a city's charter are a matter of statewide concern and are governed exclusively by the constitution and general laws of the state. It is now settled that these laws preempt this field to the exclusion of any attempted municipal regulation. *Howard Jarvis Taxpayers Assn. v. City of San Diego*, 120 Cal. App. 4th 374, 387-889 (2004); *District Election v. O'Connor*, 78 Cal. App. 3d 261, 273-274 (1978) (cited with approval in *People ex rel. Seal Beach Police Officers Assn. v. City of Seal Beach*, 36 Cal. 3d 591, 598-599 (1984)); *Clark v. Patterson*, 68 Cal. App. 3d 329, 335-336 & n. 6 (1977).

Consistent with this case law, the City Charter specifically provides that amendments to the Charter are governed by the California Constitution. City Charter section 223 provides: "This Charter may be amended in accordance with the provisions of Article Eleven, Section Eight, of the Constitution of the State of California, or any amendment thereof or provision substituted therefor in the State Constitution."<sup>1</sup>

The pertinent constitutional and statutory provisions now include the following. article XI, section 3(b) of the California Constitution provides in pertinent part: "The governing body or charter commission of a county or city may propose a charter or revision. Amendment or repeal may be proposed by initiative or by the governing body." California Government Code section 34458 provides: "[T]he governing body of any city or city and county, on its own motion may propose or cause to be proposed, amend or cause to be amended, or repeal or cause to be repealed, a charter and may submit the proposal for the adoption, or the amendments or repeal thereof, to the voters . . ." <sup>2</sup> California Elections Code section 9255 (a)(2) also provides: "The following city . . . charter proposals shall be submitted to the voters . . . (2) An amendment or

repeal of a charter proposed by the governing body of a city or a city and county on its own motion.” Each of these controlling provisions vest the authority to propose City charter amendments in a City’s governing body.<sup>3</sup>

## II. The City Council has the Authority to Propose Charter Amendments.

Since the mid 1800’s, the charter City of San Francisco has been governed in similar fashion to San Diego’s new form of government. San Francisco’s Mayor is head of the City’s executive branch, and must also approve or veto certain legislative actions of that City’s governing body, the Board of Supervisors. See, *Jacobs v. Board of Supervisors*, 100 Cal. 121 (1893); *Affordable Housing Alliance v. Feinstein*, 179 Cal.App.3d 484, 490 (1986).

Considering the 1970 constitutional revisions and statutes, the First District Court of Appeal addressed the question posed here – whether a governing body’s action regarding a proposed charter amendment required the approval or potential veto of San Francisco’s Mayor. *Clark*, 68 Cal.App.3d at 334-336.<sup>4</sup> The Court held in part that a City charter could *not* require proposed charter amendments be sent to the Mayor for approval or veto. *Id.* at 335. The Court found the constitutional revisions and implementing statutes to be “unequivocal,” “exclusive and controlling” in their language. *Id.* at 335 & n. 6. This controlling language made “no mention of executive officer approval or veto,” vesting the governing body of the City with the power “on its own motion” to submit proposed charter amendments to the voters. *Id.* at 335, 336 & n. 6. The California Supreme Court came to the same conclusion on the same issue when interpreting language in the predecessor constitutional provision, article XI, section eight. *Harrison v. Roberts*, 145 Cal. 173, 179-180 (1904); see also, *Jacobs*, 100 Cal. at 130-132; and 133-135 (Harrison, J., concurring).

Because the controlling constitutional and statutory provisions today are identical in all pertinent aspects to those assessed in the preceding cases, we conclude courts would find them applicable to the City of San Diego under the new Mayor-Council form of government. San Diego’s City Council is our City’s governing body, exercising the City’s legislative authority under the City Charter. San Diego Charter §§ 11 and 270(a). Accordingly, we conclude the San Diego City Council’s authority to propose charter amendments is not subject to Mayoral veto.

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<sup>3</sup> Article XI, section 8 originally vested authority in the “legislative body” of a City. See note 1. The phrase was changed to “governing body” in the constitution and implementing statutes of 1970. Because no substantive change was intended by the constitutional revisions, we assume for purposes of this memorandum that the governing body of a City remains the City’s legislative body.

<sup>4</sup> Specifically, the Court considered whether a resolution withdrawing a charter amendment from the electorate required Mayoral approval. *Ibid.*

**III. To Avoid Conflict with State Laws, the Mayor May Not Veto City Council Proposals to Amend the City Charter.**

The San Diego Municipal Code requires the City Council to propose ballot measures, including those suggesting amendments to the City Charter, by ordinance. SDMC § 27.0503. City Charter sections 265(b)(5) and 280(a) also require the Mayor to approve or veto any ordinance passed by the Council in open session. However it is settled law that “[a]lthough a charter represents the supreme law of a charter city, it is subject to preemptive state law. [Citations omitted]” *Jarvis*, 120 Cal. App. 4th at 387. In San Diego, as in other charter cities in the state of California, the source of a City Council’s authority to propose charter amendments derives not from the City’s Charter but from the procedures set forth in the California Constitution and preemptive state laws. This body of laws does not require the governing body’s authority be subject to Mayoral approval or veto.

Accordingly, we conclude, as did courts previously in *Clark* and *Harrison*, that City Council proposals to the voters seeking charter amendments are not subject to Mayoral approval or veto under these laws. In addition and to avoid conflict with these state laws, we also conclude that an ordinance, by which the City Council proposes a charter amendment for consideration by the voters, is not an ordinance which is subject to Mayoral approval or veto.

**CONCLUSION**

Under the new Mayor-Council form of governance, the Mayor must approve and may veto most ordinances passed by City Council. Ballot measures, including those suggesting City Charter amendments, are locally accomplished by City Council ordinance. However, preemptive state laws govern all procedures relating to City charter amendments. Those state laws give authority to the City Council to propose Charter amendments for submission to the voters, with no mention that ballot proposals may be approved or vetoed by a Mayor. To avoid conflict with

these preemptive state laws and procedures, we conclude ordinances by which the City Council proposes City Charter Amendments for voter consideration are not subject to Mayoral approval or veto.

Respectfully submitted,

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