MEMORANDUM OF LAW

DATE: March 3, 1993

TO: Councilmember Judy McCarty

FROM: City Attorney

SUBJECT: Definition of Council Meetings for Purposes of Requiring Removal from Office Under Charter Section 12

This is in response to your memorandum of September 28, 1992, to City Attorney John W. Witt regarding compliance with San Diego City Charter section 12. We understand that your immediate question as to the legality of resolutions excusing Council-members' absences from August 1992 Council meetings was answered orally. We apologize for the delay in delivering this written response, however, as you will see, the issues have required time to research and analyze to give you a meaningful response.

For your convenient reference, we have set forth the questions presented, each followed immediately by their answers. We then provide the background and analysis supporting the answers.

QUESTIONS AND ANSWERS

You ask several related questions, all arising from the language set forth in the following paragraph in Section 12 of the San Diego City Charter (hereafter "Charter").

> It is the duty of the Council members to attend all Council meetings. The Council shall vacate the seat of any Council member who is absent from eight (8) consecutive meetings or fifty percent (50%) of any scheduled meetings within a month unless the absence thereof is excused by resolution of the Council ┌emphasis addedσ.
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> . . . .

Your question breaks down into three (3) major parts:

Question No. 1:

What kinds of Council meetings or other meetings are

Councilmembers required by Charter section 12 to attend?

Answer No. 1:

Charter section 12, as amended in 1963, requires Councilmembers to attend all Council meetings. Those include both regular and special Council meetings. Those do not include meetings of the Redevelopment Agency, Housing Authority, Housing Commission or Council Standing Committees. Council Workshops count as special Council meetings.

Although the Charter establishes a general duty to attend all Council meetings, the harsh penalty of forfeiture of office by declaration of vacancy is reserved only for unexcused absences from regular, not special, Council meetings.

Question No. 2:

What kind of meetings trigger the requirement under Charter section 12 for the Council to declare a vacancy in office for an unexcused Council absence? This second question breaks down into several subissues, as follows:

Question No. 2(a):

For purposes of requiring the Council to declare a vacancy in office for unexcused absences, what is the definition of "Council meetings," including "consecutive meetings" and "scheduled meetings"?

Answer No. 2(a):

For purposes of requiring the Council to declare a vacancy for unexcused absences, the term "Council meeting" includes only "regular" Council meetings. Regular Council meetings are set forth in Council Rule 1(a) (San Diego Municipal Code ("SDMC") Section 22.0101).

Question No. 2(b):

Do meetings of Council Committees, including the Committee of the Whole, count as "consecutive meetings" or "scheduled meetings" for purposes of requiring the Council to declare a vacancy in office for unexcused absences?

Answer No. 2(b):

No.

Question No. 2(c):

Do Council workshops count as "consecutive meetings" or "scheduled meetings" for purposes of requiring the Council to declare a vacancy in office for unexcused absences?

Answer No. 2(c):

No.

Question No. 2(d):
Do "special meetings" of the Council count as "consecutive meetings" or "scheduled meetings" for purposes of requiring the Council to declare a vacancy in office for an unexcused absence?
Answer No. 2(d):
No.
Question No. 2(e):

Do meetings of the City Council sitting as the Redevelopment Agency count as "consecutive meetings" or "scheduled meetings" for purposes of requiring the Council to declare a vacancy in office for unexcused absences?F
Although not directly asked in your opinion request, presumably you also seek to know whether meetings of the Housing Authority or the Housing Commission, or both, count as either "consecutive meetings" or "scheduled meetings" for purposes of Charter section 12. Therefore, information about both the Housi Authority and Housing Commission is included in this memorandum law.
Answer No. 2(e):
No.

Question No. 2(f):
Are there other types of meetings that the Council may hold that count as "consecutive meetings" or "scheduled meetings" for purposes of requiring the Council to declare a vacancy in office for unexcused absences?
Answer No. 2(f):
No. Only "regular" Council meetings count for purposes of requiring the Council to declare a vacancy in office for unexcused absences.
Question No. 2(g):
If a regular and special Council meeting are held on the same day, do the two meetings count as "consecutive meetings" or "scheduled meetings" for purposes of requiring the Council to declare a vacancy in office for unexcused absences?
Answer No. 2(g):

No. Only a regular Council meeting counts.
Question No. 3:
For what types of meetings must Councilmembers seek a Council resolution excusing an absence to avoid the risk that Council will declare their seat vacant?

Answer No. 3:

For purposes of Charter section 12, a Councilmember is required to seek a resolution excusing an absence only for regular meetings.F

Note however, under Council Rule 12, Councilmembers are required to seek a Council resolution for missing standing committee meetings. The penalty for failure to do so is removal from the Committee, not removal from office.

BACKGROUND

We understand your questions arose in large part from facts surrounding the August 1992 Council meetings. Because understanding that background assists us greatly to appreciate the questions, we summarize below the Council's meeting schedule, both proposed and actual, for that month. This includes meetings of the Council sitting as the Council, as well as Council Committees, the Housing Commission, the Housing Authority, and the Redevelopment Agency.

According to the August 1992 Council meeting schedule which was adopted early in 1992 (Resolution No. R-279598, adopted March 23, 1992), there were four (4) regular Council meetings scheduled for Mondays, August 3 and 10, and Tuesdays, August 4 and 11. There were also two (2) "Council Workshops" scheduled for Thursdays, August 6 and 13. Also, the Housing Commission was scheduled to meet on Monday, August 3. Sitting as the Redevelopment Agency, the City Council was scheduled to meet on Tuesday, August 4. Additionally, the Council's Committee on Public Services and Safety and the Council's Committee of the Whole were scheduled to meet on August 5; and the Council's Committee on Public Facilities and Recreation and the Committee on Transportation, Planning and Environment were scheduled to meet on August 12.

A "Legislative Recess" was scheduled for Monday, August 17 through Friday, September 4. Monday, September 7 was a legal holiday (Labor Day). Regular meetings of the City Council were scheduled to resume on Tuesday, September 8. Based on a search of the minutes of Council meetings in the Clerk's legislative database, in addition to the above scheduled meetings, there was a "special" meeting of the Council called and held on August 21, 1992 at 5:00 p.m. Also, the minutes show that the Redevelopment Agency meeting which was scheduled for August 4, 1992 (as shown on the Council Legislative Calendar discussed above) was called and held as a "Special Joint Council Meeting with the Redevelopment Agency."

Records obtained from the Council Administration offices show that the Council Committees of the Whole and of Public

Services and Safety, originally scheduled for August 5, were canceled. Council Administration office records of August 12 show meetings of both Council Committees on Public Facilities and Recreation and on Transportation, Planning and Environment were held as originally scheduled.

Records of the Housing Commission show that the regular meeting of the Housing CommissionF

It is important to note that not all members of the Housing Commission are members of the City Council. At present, only three (3) members of the seven (7) member Commission are members of the City Council; the other four (4) are members of the public appointed by the Mayor, and confirmed by the Council, pursuant to Cal. Health and Safety Code ' 34290 and SDMC ' 98.0301.

set for August 3 took place as scheduled. Although not shown on the above-cited "Council" agenda for August 1992, the Housing AuthorityF

Since it first came into existence in 1969, the Board of Directors of the San Diego Housing Authority is made up entirely of members of the City Council. Just as there are nine (9) members of Council, there are nine (9) members of the Housing Authority; the Mayor serves as Chair of the Housing Authority. The Housing Authority is technically a state agency and exists by authority of state law. See Cal. Health and Safety Code ' 34200 et seq.

also met on August 3, 1992.

ANALYSIS

The paragraph of Charter section 12 quoted on page one basically does three (3) things: 1) It places a duty on Councilmembers to attend all "Council meetings;" 2) it describes the circumstances under which the Council is required to declare a vacancy in a Council office for a Councilmember's missing certain meetings (specified by Charter section 12 as eight (8) "consecutive meetings" or fifty percent (50%) of any "scheduled meetings"); and, 3) it provides a method for excusing Councilmembers for absences from meetings.

Unfortunately, Section 12 of the Charter contains no definition of the terms "meeting," "Council meeting," "consecutive meeting," or "scheduled meeting" for purposes of Charter section 12. Neither does it clearly indicate whether the terms "Council meetings," "consecutive meetings," and "scheduled meetings" are identical.

Where the meaning of a city charter provision is not clear, the fundamental rules of statutory construction apply to interpret the provision. DeYoung v. City of San Diego, 147 Cal. App. 3d 11 (1983), cited in 7 Witkin Const. Law Section 94 (9th

ed.). "To interpret a statute, a court should first ascertain the intent of the legislature in enacting the statute so as to effectuate the purpose of the law." DeYoung at 18. ╒Citation omitted.σ In the present case, San Diego voters enacted the charter, therefore a court's task would be to determine the voters' intent in adopting the charter language at issue.

The DeYoung case goes on to delineate the applicable rules of statutory construction as they relate to city charters.

> ╒Tσhe provision must be given a reasonable and common sense interpretation consistent with the apparent purpose and intention of the lawmakers, practical rather than technical in nature, which upon application will result in wise policy rather than mischief or absurdity ╒citation omittedσ. Significance, if possible, should be attributed to every word, phrase, sentence and part of an act in pursuance of the legislative purpose, as "the various parts of a statutory enactment must be harmonized by considering the particular clause or section in the context of the statutory framework as a whole" ╒citation omittedσ. "'The court should take into account matters such as context, the object in view, the evils to be remedied, the history of the times and of legislation upon the same subject, public policy, and contemporaneous construction'" ╒citation omittedσ. "'Consistent administrative construction of a statute over many years, particularly when it originated with those charged with putting the statutory machinery into effect, is entitled to great weight . . . .'" ╒Citation omitted.σ Especially where there has been acquiescence by persons having an interest in the matter ╒citation omittedσ, "courts will generally not depart from such an

> interpretation unless it is clearly erroneous" ┌citation omittedσ. Accordingly, since the construction of a statute by officials charged with its administration is entitled to consideration, so are the opinions of the city attorney construing the charter provisions, like those of the Attorney General construing state constitutional and statutory law ┌citation omittedσ. Finally, lawmakers are presumed to be aware of long-standing administrative practice and, thus, the reenactment of a provision, or the failure to substantially modify a provision, is a strong indication the administrative practice was consistent with underlying legislative intent ┌citation omittedσ.

DeYoung at 18-19.

Below, we apply the above-cited rules of statutory construction to determine the meaning of "meetings" as used in Charter section 12. We first attempt to determine the voters' intent by construing the terms within the context of surrounding language. Next, we examine the historical development of the quoted paragraph in Section 12 of the Charter. We next analyze the Council Rules as evidence of administrative construction of the Charter section in question. The result of this examination is set forth below.

I. Surrounding Charter Language.

As mentioned above, Charter section 12 does not define the term "Council meetings," "consecutive meetings," or "scheduled meetings." Significantly, however, another Charter section (Section 13) is devoted entirely to the subject of "Council meetings." Even Section 13 does not, however, define the term "Council meetings." Charter section 13 nonetheless expressly acknowledges the existence of both "regular" and "special" Council meetings.

Also significantly, nowhere in Charter section 12 or 13 are Council Committees mentioned.F

Council Committees were created by the City Council by ordinance in 1974, codified in SDMC ' 22.0101. This Municipal Code section is called commonly the "Council Rules" and will be referred

to as "Council Rules" in this memorandum.

Additionally, the Redevelopment Agency, the Housing Authority and Housing Commission are not mentioned in the Charter.F

The Redevelopment Agency is created pursuant to Cal. Health and Safety Code ' 33200 et seq. The Housing Authority is created pursuant to Cal. Health and Safety Code ' 34200 et seq.; the Housing Commission in turn is appointed by the Mayor and Council, pursuant to both state and local law (Cal. Health and Safety Code ' 34290 and SDMC ' 98.0301).

Construing Charter section 12 in light of Charter section 13, it is possible, but not entirely clear, that Charter section 12 was intended to require Councilmembers to attend all "regular" and "special" meetings of the Council. Likewise, examining Charter language alone, it is possible, but not certainly so, that the Council was intended to be required to declare a vacancy in office whether a Councilmember is absent from the requisite number of "special" or "regular" Council meetings. Absent other evidence, the Charter's silence about Council Committees, the Redevelopment Agency, Housing Authority, and Housing Commission is evidence that the voters who adopted the Charter did not intend these entities' meetings to be covered by Charter section 12. Because examination of the language in Charter section 12 itself and surrounding sections yields inconclusive results, we turn to Charter history for more guidance.

II. Charter History.

The current Charter language quoted above from Section 12 (cited on page one) was adopted as an amendment to the Charter on September 17, 1963 (Proposition B). This language was not in the original Charter approved by the voters on Tuesday, April 7, 1931. Nonetheless, the 1931 Charter, as originally adopted, contained a provision for dealing with Councilmembers' absences. As approved in 1931, Charter section 12 said in relevant part: "In case a member of the Council is absent from the City for a period of forty (40) days, unless by permission of the Council, his office shall be declared vacant by the Council and the same filled as in the case of other vacancies."F

It is interesting, if not particularly helpful in resolving our current questions, that the voters in 1931 considered Councilmembers' absence from the City, not just from Council meetings, to be important.

There are other features of the 1931 Charter that have more bearing on resolving the current question.

As originally adopted in April 1931, Charter section 13

required the Council to hold "regular" meetings; it also mentioned specifically that both "regular" and "special" meetings were to be held in public. As pointed out above, the same language appears in the City Charter today.F

The first paragraph of Section 13 reads in full as follows:

> SECTION 13. MEETINGS OF THE COUNCIL.
>
> The Council shall provide by ordinance for the time and place of holding its meetings; provided, however, that there shall be at least one regular meeting in each week. Any regular meeting may be adjourned to a date and hour certain, and such adjourned meeting shall be a regular meeting for all purposes. All legislative sessions of the Council, whether regular or special shall be open to the public. ┌Emphasis added.σ

Charter section 13 was amended by vote of the people on November 6, 1992, but not in a way to affect the results here.

The most significant piece of legislative history helping us to interpret the paragraph at issue in Charter section 12 appears in the ballot argument supporting Proposition B on the September 17, 1963 ballot. Printed ballot arguments are persuasive aids to construing statutes, charters, or constitutional provisions. See, e.g., White v. Davis, 13 Cal. 3d 757, 775 (1975).

The ballot argument in favor of Proposition B stated in relevant part: "The Charter Review Committee also felt that Charter provisions were necessary to require a good attendance record at Council meetings on the part of all members, and is proposing that limits be set as to the number of unexcused absences at regular meetings" ┌emphasis addedσ.F

The ballot argument was signed by Howard L. Chernoff, Chairman of the Citizens Charter Review Committee. There was no printed argument against Proposition B in the September 17, 1963 ballot.

In our opinion, it is significant and persuasive that the drafters of Proposition B used the term "Council meetings" to describe the duty to attend meetings, but deliberately chose the word "regular" meetings to describe the limits on unexcused meetings.

Assuredly, the Charter Review Committee that proposed this ballot language was aware of Charter section 13 that distinguished between "regular" and "special" meetings of the Council. The ballot argument appears to have been carefully drafted to expressly use the term "regular" to describe the types of Council meetings for which the Council should be required to obtain excuses for absences and for which there should be a

severe penalty of forfeiture of office if the absences remain unexcused. By the same token, there appears to have been a clear intent on the part of Charter amendment drafters, by omitting the word "special," not to require attendance at "special" Council meetings by means of threat of forfeiture of office.

Based on the Charter history and especially the ballot argument supporting the current Charter section 12 language at issue, we conclude that the voters intended to impose a duty on Councilmembers to attend all Council meetings, but to require them to be excused only for regular, not special, Council meetings under threat of forfeiture of office.F

This interpretation is consistent with the law governing general law cities. Government Code ' 36513, which governs unauthorized absences of Councilmembers of general law cities, requires declaration of vacancies only for unexcused absences from "regular" Council meetings.

III. Interpretation of Charter Section 12 in Council Rules

Charter section 14 requires the City Council to determine its own rules and order of business. By this Charter section, the Council is also declared to be the judge of the "qualifications of its members." As mentioned above, the Council has by ordinance adopted rules governing the conduct of its meetings and business in Council Rules 1-34, codified at SDMC section 22.0101.

In Rule 1(a), the Council sets forth its regular meeting schedule, which is: Monday 2:00 p.m. - 5:30 p.m. and, Tuesday 9:00 a.m. - 5:30 p.m. Rule 1(e) sets forth the procedure for changing the regular meeting schedule. Rule 1(f) gives the requirements for calling a "special" meeting of the Council.F

Council Rules 1(f) and (g) largely paraphrase the state's Open Meetings Law (also known as the Ralph M. Brown Act, Cal. Gov't Code ' 54950 et seq.). Generally, the Open Meetings Law lends little, if any, guidance to the particular questions at hand.

Government Code ' 54953 provides that "╒aσll meetings of the legislative body of a local agency shall be open and public." However, the Open Meetings Law does not define the term "meetings." Construing the Open Meetings Law, the California Attorney General has opined that a meeting is "a gathering of a quorum of the legislative body, no matter how informal, where business is discussed or transacted." California Attorney General's Office, Open Meetings Law, 15 (1989) (quoting 61 Ops. Cal. Att'y Gen. 220, 223 (1978)).

Applying the above law to the facts presented here, the term "Council Workshop" as set forth in the Council's originally scheduled meetings for 1992, would be treated as a "meeting" both

under the Open Meetings Law and as a "special" meeting under Charter section 12.

A "special" meeting requires at least 24 hours written notice to each Councilmember and the press. It provides that Councilmembers may waive the 24-hour notice under certain circumstances. Rule 1(g) also provides for "emergency" Council meetings. An "emergency" meeting, for which the 24-hour notice is not required under narrowly circumscribed, truly urgent circumstances, is treated as a form of "special" meeting.

In 1974, Council Rule 10 was adopted as part of the Council Rules. This Council Rule created four (4) Council standing committees: 1) Committee on Rules, Legislation and Intergovernmental Relations;F

During 1992, by Temporary Rule (adopted on February 25, 1992, pursuant to Rule 32, by Resolution No. R-279476), the Council replaced the Rules Committee with the Committee of the Whole and renamed the Transportation and Land Use Committee the Committee on Transportation, Planning and Environment.

(2) Committee on Transportation and Land Use; (3) Committee on Public Facilities and Recreation; and, (4) Committee on Public Services and Safety. Each Committee is made up of some, but not all, members of the Council.

Rule 12 sets forth the procedure and rules governing Committee meetings. Rule 12 also creates two (2) additional Council Committees: 1) the Budget Review Committee; and 2) the Committee of the Whole. In contrast with the four (4) Council Standing Committees described in Rule 10, all members of the Council are also members of each of these two (2) committees.

As originally created, the Committee of the Whole did not meet regularly: It only did so during 1992 under a Temporary Rule described in note 12.

The Council Rules require Councilmembers to attend Council Standing Committee meetings. The Council is required to vacate the Committee seat of any appointed Committee member who is absent from four (4) consecutive scheduled meetings of a Committee unless the absence thereof is excused by resolution of the Council.F

Interestingly, and perhaps confusingly, the Council has chosen the same mechanism to excuse absences from standing committee meetings as it has for Charter section 12 absences for regular Council meetings, that is, by resolution. But the consequences of failure to attend standing committee meetings without obtaining an excuse under Council Rule 12 is different from that for missing regular Council meetings without obtaining an excuse under Charter section 12. Under the Council Rule an

unexcused absentee Council Committee member loses his or her seat on this Committee (but still sits on the Council); whereas, an unexcused absentee City Council member loses his or her elected Council seat.

Perusal of the Council Rules reveals that the Council has made no specific provision interpreting Charter section 12 pertaining to absences from Council meetings. Presumably, the Council has found Charter section 12 sufficiently clear until now so that no special rule was necessary to define what are Council meetings for purposes of Charter section 12. However, as the August 1992 schedule of meetings shows, the proliferation of terms pertaining to various terms of Council meetings,F
The types of meetings scheduled or actually held in August 1992 ranged from "regular" and "special" Council meetings, to "Council Workshops," to meetings of the Housing Authority, Housing Commission and the Redevelopment Agency, to joint meetings of the Council and the Redevelopment Agency, and to meetings of several standing Council Committees.

suggest

that an amendment to the Council Rules to clarify the meaning of "regular Council meetings" for purposes of vacating Council seats for unexcused absentee Councilmembers would be appropriate.

CONCLUSION

Charter section 12 requires Councilmembers to attend "all Council meetings." It also requires the Council to vacate the seat of any Councilmember who is absent from eight (8) consecutive meetings or fifty percent (50%) of any scheduled meetings within a month unless their absence is excused by Council resolution.

The Charter recognizes the existence of both "regular" and "special" Council meetings, but does not define what constitutes a meeting for purposes of requiring a vacancy in office for unexcused absenteeism. Charter history clarifies that the voters intended only "regular" Council meetings to be counted for purposes of requiring vacancies to be declared for unexcused absences from Council meetings. Therefore, Councilmembers are required, under penalty of removal from office by declaration of vacancy, to obtain excuses only for missed "regular," not special, Council meetings. Regular meetings of the Council are set forth in Council Rule 1(a) (SDMC Section 22.0101). They are currently set for Mondays 2:00 p.m. - 5:30 p.m. and Tuesdays 9:00 a.m. - 5:30 p.m.

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