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February 5, 2014

REPORT TO THE CITY COUNCIL

2014 SAN DIEGO CHARTER LEGAL REVIEW

## INTRODUCTION

On October 22, 2013, our Office provided the Council with a draft plan for a complete review of the San Diego Charter. A copy of the draft plan is attached. The review is necessary because our Charter contains provisions that are ambiguous, outdated and incomplete. This Report represents the completion of the first stage of the review outlined in my draft plan. It identifies sections of the Charter needing legal review and discusses possible options.

The legal issues we identified were provided by attorneys throughout the Civil Division to ensure we had a comprehensive list based upon impacts in all practice areas. Some Charter sections, especially those adopted with the original Charter in 1931, are outdated or superseded by State laws and can be repealed. Other provisions may be more appropriate as an ordinance codified in the San Diego Municipal Code. Many provisions may benefit from more public discussion and debate, especially if the proposal has both legal and policy considerations.

The Charter sections are listed in chronological order and include options prioritized for upcoming elections: Level 1 (November 2014), Level 2 (June 2016), or Level 3 (November 2016). In evaluating the timing, keep in mind that some proposals may require compliance with the Meyers-Milias-Brown Act (MMBA) before placing an amendment on the ballot. Also, amendments that alter any procedural or substantive protection, right, benefit, or employment status of any City employee, retiree, or employee organization must be submitted to the voters at a statewide general election.

We look forward to working with the Council and/or a Charter Review Commission to provide ongoing legal advice to improve the Charter. It is up to the Council to determine the process for considering these options.

## DISCUSSION

### Charter § 5.1 Redistricting Commission

Issues: During the redistricting process in 2010 and 2011, Charter section 5.1 required constant legal interpretation. After the redistricting process ended, a grand jury suggested the City clarify ambiguities and eliminate archaic provisions. The section needs greater clarity regarding how Commissioners are to be appointed, how many Appointing Authority members must be present to make the appointments, when the map takes effect, when the district boundaries change, what is the role of the City Council in the process, and how the Commission's budget is set. The section also needs to be amended to delete archaic references to the non-existent "Municipal Court." A detailed list of suggested changes can be provided in a report to City Council.

Options: Amend Charter section 5.1 to clarify ambiguous language, eliminate archaic provisions, and provide greater clarity for the issues identified above.

Level: 3

### Charter § 14 Council Rules, § 94 Contracts, § 108 Forfeiture of Office for Fraud, § 217 No Payment for Office, § 218 No Contributions for Employment

Issue: Various sections of the Charter provide for the removal of officers under certain circumstances, but do not provide a uniform or consistent way for handling the removal of officers. Instead, in a patchwork quilt of provisions, the Council is sometimes tasked with adjudicating grounds for removal from office, and other times the Charter is silent, meaning the City must look to the courts to adjudicate the basis for removal. *See* City Att'y MOL No. 2013-13 (Aug. 14, 2013).

Charter section 14, for example, empowers the Council to decide disputes related to Council elections and the qualifications of Council members, and makes that decision subject to the review of the courts. This provision no longer applies to the Mayor as the Mayor is not a member of the Council. Other Charter sections provide the option of either an internal or a court process. Sections 217 (No Payment for Office) and 218 (No Contributions for Employment) both state that any officer or employee found guilty of the provision "by the Council or a court of competent jurisdiction shall thereby forfeit his office or position." Section 94 (Contracts), contains forfeiture language very similar to that contained in Section 108 (Forfeiture of Office for Fraud), but unlike Section 108, it states that violation of the section is a misdemeanor, thereby referencing a court process.

Options: Amend the Charter to clarify the means for adjudication of the grounds for forfeiture of elected office, whether exclusively by the Council, or by application to the courts, or both. A list of options for Council consideration would be provided as part of the ongoing review.

Level: 2

**Charter § 18 Authentication and Publication of Ordinances and Resolutions**

Issue: Charter section 18 requires that ordinances and resolutions "of a general nature" be published within 15 days after final passage in "such manner as may be provided by this Charter or by ordinance." San Diego Municipal Code section 22.0102 restates the Charter language and provides that "the City Clerk shall cause . . . to be published" in the official city newspaper all ordinances or resolutions of a general nature within fifteen days of their final passage. The publication requirement for ordinances not subject to referendum has been held to be directory, rather than mandatory. (*See* 2009 City Att'y MS-753 (09-4; Mar. 16, 2009). Most resolutions are not subject to referendum and publication in the official city newspaper seems unnecessary as resolutions are made available online both before and after final passage.

Options: Amend section 18 to remove the requirement to publish resolutions in the official city newspaper.

Level: 3

**Charter § 23 Initiative, Referendum, and Recall (Removal of Elected Officials)**

Issue: Charter section 23 reserves the right of recall to the people of the City. However, the recall process can be lengthy and take several months. There are some occasions when an elected official should be removed from office more quickly, for example, when the official has engaged in misconduct or is incapacitated.

Options: Amend section 23 to provide a removal process for elected officials for misconduct or incapacity. The removal process could be combined with a recall initiated by the Council after due process to the elected official. Another option would be to have the decision to remove the elected official subject to review by the courts. (*See* section 14 above for discussion on forfeiture of office.) Attached is a preliminary review of what some other cities have on this issue.

Level: 1

**Charter § 26 Administrative Code**

Issue: Charter section 26 requires the Council adopt an "administrative code providing for the detailed powers and duties of the administrative offices and departments of the City." Thereafter, any change in the ordinance requires a two-thirds vote of the Council. In 1997, this Office issued a Report indicating that the Manager (Mayor) has the power to reorganize departments under Charter section 27 and 28, however, such power is subject to any contrary or additional action by the Council if it chooses to act under Charter section 26.

Options: Amend to clarify whether reorganization of departments, including detailed duties is authority Council can delegate to Mayor or City Manager and review whether to keep the two thirds vote requirement.

Level: 3

**Charter § 32.1 Responsibility of Manager and Non-Managerial Officers to Report to Council**

Issue: Charter section 32.1 requires the Manager (Mayor) and "non-managerial officers" to inform the Council of all material facts or significant developments relating to all matters within the jurisdiction of the Council. It appears that this duty is self-executing and the Council does not have to make a request for information. However, the Charter is not explicit on this point. It also is not clear when the information must be provided to Council. Finally, there is no mechanism for enforcing the requirement to provide material facts.

Options: Amend section 32.1 to clarify that the duty to provide information is self-executing and information must be provided to the Council prior to its decisions to help ensure that they are fully informed. Consider whether to provide a mechanism for enforcement and if this mechanism could be placed in the Municipal Code instead of the Charter.

Level: 3

**Charter § 35 Purchasing Agent and § 94 Contracts**

Issues: These sections are outdated in a number of areas, specifically not in keeping with the current prevalent use of the Internet and with procurement practices, such as cooperative procurement. For example, the references to advertising in newspapers and "sealed proposals" does not take into account the direction in which the City is moving with electronic bidding.

Options: Amend to allow flexibility to comply with current technology and procurement practices.

Level: 3

**Charter § 39.1 Audit Committee**

Issues: This section provides that the three public members shall be appointed by the Council from a pool of at least two candidates for each vacant position, to be recommended by a majority vote of a screening committee. Except for the initial appointments, it has been difficult to find public members that are qualified and willing to serve, especially when a public member is seeking reappointment.

Options: Amend the section to eliminate the requirement that at least two candidates be recommended by the screening committee.

Level: 3

**Charter § 39.2 Office of the City Auditor**

Issue: Charter section 39.2 provides that the City Auditor reports to and is accountable to the Audit Committee. Upon recommendation of the Audit Committee, the City Auditor may be removed for cause by two-thirds vote of the Council. The Charter does not specifically provide that the Audit Committee may take lesser forms of discipline against the City Auditor for conduct that does not amount to cause for termination.

Options: Clarify that the Audit Committee may take lesser forms of discipline (warning, suspension, etc) against the City Auditor if necessary.

Level: 3

**Charter § 40 City Attorney**

Issues:

(1) Contracts: Section 40 requires the City Attorney to prepare in writing all contracts and "endorse on each approval of the form or correctness thereof." The City enters into hundreds of contracts each year, including purchase orders and credit card purchases. It is not practical or reasonable to require the City Attorney to review and approve each separate contract if every purchase order is considered a "contract."

(2) Other Instruments: Section 40 also requires the City Attorney to prepare and approve all "other instruments in which the City is concerned." The term "other instruments" is not defined in the Charter. As a legal term of art, it is subject to multiple variations in meaning.

(3) Inconsistency on Review: There is an inconsistency between the City Attorney's duties in section 40 and section 280(b). Section 40 says the City Attorney signs for "form or correctness" and section 280 says "form and legality." The sections should be consistent.

(4) Non-City Entities: This section states that the City Attorney is the chief legal adviser to the City and its departments and cannot engage in private legal practice. The issue has arisen on occasion whether the City Attorney can represent the interests of a non-City entity if that entity's interests are closely aligned with the City's interests.

(5) Outside Counsel: Section 40 states that the Council is authorized to employ "additional competent technical legal attorneys" when such assistance or advice is necessary. The practice of requesting Council approval to hire outside counsel is inconsistent with the hiring of other City consultants. For example, the Council has delegated this authority to the City Manager for consultant contracts under $250,000.

(6) Counsel for SDCERS: Section 40 states that the City Attorney is the chief legal adviser and attorney for the City and all its departments and offices, "except in the case of the Ethics Commission, which shall have its own legal counsel independent of the City Attorney." It does not address independent legal counsel for SDCERS which was recognized as necessary to fulfill its fiduciary obligations under the State constitution.

(7) Qualifications: Charter section 40 does not include any qualifications for the City Attorney or require that the City Attorney be a member of the California State Bar. This issue was raised by the prior Charter Review Committee.

Options:

(1) Review the contract approval process and provide recommendation for amendment to section 40 to clarify intended scope.

(2) Amend to either delete reference to "other instruments" or provide clarification to establish intended scope, for example "financial instruments."

(3) Correct inconsistency with section 280(b) regarding approval as to form or legality.

(4) Amend the section to clarify whether, and under what circumstances, the City Attorney may represent the interests of a non-City entity. For instance, assuming there is no conflict of interest in the representation, the City may be able to realize substantial cost savings if the City Attorney represents a non-City entity in a matter of public interest where that entity's interests are closely aligned with the City's interests or where the City has contractually agreed to defend and indemnify the entity.

(5) Amend section 40 to provide that SDCERS may have its own legal counsel independent of the City Attorney, in recognition of its fiduciary duties under article XVI, section 17 of the California Constitution, and the potential for conflicts of interest between SDCERS and the City.

(6) Amend section 40 to require that the City Attorney be a member of the California State Bar in good standing. Consider adding a requirement that the candidate have a minimum number of years as an attorney.

Level: 3

**Charter § 41(c) Planning Commission**

Issues: With respect to the Planning Commission: (1) the list of duties is outdated and inconsistent with current ordinances and practice; and (2) since Planning and DSD sit with the Planning Commission consider whether they should be designated as ex officio members.

Options: Review duties and ex officio membership and determine appropriate amendments to the Charter or Municipal Code.

Level: 3

**Charter § 41(d) Ethics Commission**

Issues: With respect to the Ethics Commission, Charter section 41 provides that the Mayor appoints the members, subject to Council confirmation. Over the last few years, Councilmembers have suggested that these appointments should be done by someone other than the elected officials who are subject to the jurisdiction of the Ethics Commission. This has been especially problematic when a Councilmember is the subject of a confidential investigation and must confirm the appointment of members.

Options: Amend the Charter to allow appointments be made by a panel of retired judges or some other independent individuals or group. (*See*, 2009 City Att'y MOL 282 (09-14; Sep. 10, 2009).

Level: 3

**Charter § 41.1 Salary Setting Commission**

Issue: The Civil Service Commission appoints members of the Salary Setting Commission. When making the appointments, section 41.1 requires that the Civil Service Commission "take into consideration sex, race and geographical area so that the membership of such Commission shall reflect the entire community." Using sex and race as a factor may be prohibited by state and federal discrimination laws.

Options: Amend section 41.1 to delete the requirement to consider sex and race in making appointments and provide more appropriate language regarding appointments.

Level: 3

**Charter § 42 Membership Selection**

Issue: When making appointments to commissions, boards, committees or panels, the appointing authority is required to "take into consideration sex, race and geographical area so the membership of such commissions, boards, committees or panels shall reflect the entire community." Using sex and race as a factor may be prohibited by state and federal discrimination laws.

Options: Amend section 42 to delete the requirement to consider sex and race in making appointments and provide more appropriate language regarding appointments.

Level: 3

**Charter § 69 Fiscal Year and Manager's Estimate**

Issue: This provision is dated with respect to the Mayor-Council form of government and requiring the printing of the proposed budget. The City's budget process and relationship between the Mayor and Council should be codified in Article XV. This would obviate certain annual actions such as the adoption of the Statement of Budgetary Principles and locate all relevant budget provisions in one place.

Options: Repeal Charter section 69 and add a modernized budget section or sections in Article XV. The Los Angeles City Charter may be a useful model.

Level: 2

**Charter § 70 Power to Fix Salaries**

Issue: This section relates to preparation of the annual Salary Ordinance. It states that all increases and decreases of salary or wages of officers and employees must be determined at the time of preparation and adoption of the Salary Ordinance and modifications during a fiscal year may only occur based upon required specific determinations by the Council. However, this limitation does not recognize that the meet and confer obligations of the City under the MMBA may not have been met by the time of adoption of the Salary Ordinance. Section 290(a) recognizes that the Salary Ordinance must be proposed by the Mayor in a form consistent with any existing memoranda of understanding or otherwise in conformance with the MMBA.

Options: Delete limiting language and conform to Charter section 290 and the MMBA.

Level: 2 or 3

**Charter § 71 Preparation and Passage of Annual Appropriation Ordinance**

Issue: The Appropriation Ordinance enacts the adopted budget and delegates certain authorities to the Chief Financial Officer to administer the budget during the fiscal year. There is no particular reason why this action is separate from the adoption of the budget. Moreover, any necessary authorities could be specified in the Charter or the Municipal Code. Adoption of the Appropriation Ordinance adds at least two weeks to the City's budget process.

Options: Repeal Charter section 71 and incorporate appropriation language into Charter section 290 or nearby.

Level: 2

**Charter § 71A Reappropriations at Beginning of Fiscal Year for Salaries and Maintenance and Support Expenses**

Issue: This section allows for the continuing appropriation of funds from the prior year's budget if the Council fails to adopt the Appropriation Ordinance on time. This does not need to be a stand-alone section and should be incorporated with the other appropriation provisions.

Options: Repeal Charter section 71A.

Level: 2

**Charter § 75 Annual Tax Levy**

Issue: This provision has generally been superseded by Proposition 13. The only tax levy imposed citywide by the City is the Zoo tax.

Options: Provision could be simplified to state any legally authorized taxes shall be levied not later than July of each fiscal year and transmitted to the tax collector.

Level: 3

**Charter § 76 Limit of Tax Levy**

Issue: This provision has been superseded by Proposition 13 and can be removed.

Options: Repeal provision.

Level: 3

**Charter § 76.1 Special Taxes**

Issue: This provision restates the requirements of the California Constitution and can be removed.

Options: Repeal provision.

Level: 3

**Charter § 77B Public Transportation**

Issue: This provision allows for an ad valorem property tax to be imposed to fund public transportation. Because the City did not levy this tax in Fiscal Year 1982, the City is now prohibited from doing so.

Options: Repeal provision.

Level: 3

**Charter § 77 Capital Outlay Fund**

Issue: This provision requires funds from the "sale of city owned real property" to be deposited in the Capital Outlay Fund. It does not define what is City owned property and there is no legislative history to provide further guidance. Under general real property law principles, it could be interpreted to apply only to property owned in fee or to other lesser interests in real property, such as easements. The interpretation has potentially significant impacts on departmental budgeting. Therefore clarification is recommended.

Options: Revise to clarify the intended scope of real property interests intended to be affected.

Level: 1

**Charter § 84 Money to be Drawn from Treasury in Accordance with Appropriation**

Issue: This provision refers to other Charter sections that have since been repealed or amended.

Options: Provision could be simplified to reflect City's current practice, which also conforms with existing requirements.

Level: 3

**Charter § 86 Disposition of Public Moneys**

Issue: There is a conflict between Charter section 86 and Government Code section 50050 with regard to the time period that the City must hold unclaimed money before it escheats to the City's General Fund. Charter section 86 requires that such funds be held for only one year and does not require that notice be provided. Government Code section 50050 requires that such funds be held for at least three years and requires published notice. It is unclear whether the amount of time that unclaimed public funds must be held constitutes a municipal affair or is a matter of statewide concern. Apparently, in the abundance of caution, the City is currently following the process under state law.

Options: (1) Amend Charter section 86 to eliminate the one year period for unclaimed City funds to escheat to the City's General Fund; or (2) Maintain the existing language regarding the one year holding period, but amend Charter section 86 to include an appropriate notice provision before such funds escheat to the City's General Fund. If the latter option is implemented and challenged, a court would determine whether the matter of unclaimed public money held by a City is a municipal affair or a statewide concern.

Level: 3

**Charter § 90.1 Waterworks and § 90.2 Sewer**

Issue: These provisions deal, respectively, with the issuance of water bonds and sewer bonds. Each is approximately six pages long. Neither is actually used by the City to issue water or sewer bonds. These bonds are generally revenue bonds issued by a Joint Powers Authority or other applicable law.

Options: Both of these sections could be repealed.

Level: 3

**Charter § 91 General Reserve Fund**

Issue: This section is internally contradictory as it speaks of a "revolving fund" that can be expended only in case of emergency. Changes made to the section in 1962 made it less clear.

Options: This section should revert to the pre-1962 language or be revised to more clearly state that the purpose is to require the City maintain sufficient cash on hand to meet all demands against the treasury until receipt of property taxes. The name could also be changed to avoid confusion with other reserve funds.

Level: 3

**Charter § 99 Continuing Contracts**

Issue: The following language in this provision has presented multiple issues of legal interpretation and confusion over the years:

> No contract, agreement or obligation extending for a period of more than five years may be authorized except by ordinance adopted by a two-thirds' majority vote of the members elected to the Council after holding a public hearing which has been duly noticed in the official City newspaper at least ten days in advance.

It has been generally settled that the provision applies only to contracts creating a financial obligation on the part of the City although clarification of this interpretation would be helpful.

Options: Deputies have recommended clarification in a number of areas:

(1) Provide an exception for license and software maintenance agreements and for music/motion picture license agreements. This suggestion was based upon unique issues associated with software and music licenses and with software maintenance contracts (hundreds of which were inherited from San Diego Data Processing Corp upon its dissolution).

(2) To read consistent with City Attorney memos, revise "no contract, agreement, or obligation extending for a period of more than five years may be authorized except by . . ." to state only those contracts, agreements, or obligations creating

financial expenditure obligations (versus, for example, standard City leases where City is lessor and there is no public expenditure).

(3) Consider further clarification to provide that the limitation only applies to those contracts, agreements, or obligations with financial obligations that will arise/become due in more than five years.

Level: 3

**Charter § 110 Claims Against the City**

Issue: Charter section 110 provides a 100-day time limit in which to file claims for damages for injuries to person or property due to City or City officer negligence, and claims for money the City may be obligated to pay a person by contract or operation of law. By contrast, Government Code section 911.2(a) of the Claims Act provides that claims "shall be presented . . . not later than six months after the accrual of the cause of action. A claim relating to any other cause of action shall be presented . . . not later than one year after the accrual of the cause of action." The City's 100-day limit raises a possible state preemption issue. *See, Helbach v. City of Long Beach*, 50 Cal. App. 2d 242, 246-247 (1942) (charter provision specifying longer time limit than provided in Claims Act was preempted).

Options: Amend section 110 to provide that claims shall be submitted in accordance with state law.

Level: 3

**Charter § 113 Official Advertising**

Issue: Charter section 113 deals with official advertising for bids. The section should be reviewed to see if print advertising should be replaced with internet advertising on the City's website. See section 114 below regarding using the "City Bulletin" for official advertising and possible changes to internet communications.

Options: Amend section 113 to update advertising for bids. Also consider issues related to sections 35 (Purchasing Agent) and 94 (Contracts) discussed above.

Level: 3

**Charter § 114 Bureau of Information and Publicity**

Issue: This section provides that the Council *may* establish a Bureau of Information and Publicity to be given a number of duties – many of them similar to a public information officer and overlapping with functions currently carried out by the City Clerk. This section also allows for the "City Bulletin" as a means of providing information relating to the affairs of the City and official advertising. Because the establishment of the Bureau and its duties is permissive, it is not a direct legal issue. Nonetheless, the section should be reviewed in light of open data and other open government policies.

Options: Consider elimination or clarification with respect to other transparency laws.

Level: 3

**Charter § 117(c) Unclassified and Classified Services**

Issue: This section was added by Charter amendment in 2006 to provide authority for the City to hire an independent contractor as an alternative to employees in the classified service when the Mayor determines, and the Council agrees, that the City services can be provided more economically and efficiently by an independent contractor than by persons in the classified service while maintaining service quality and protecting the public interest. However, the Charter-mandated process is ambiguous. The section should be clarified to address issues, including whether there are circumstances in which the Mayor may make the required determination by using other means to compare City forces to the cost and efficiency of a contractor (such as budget figures), and whether the Mayor has to use the Managed Competition Independent Review Board.

Options: Resolve ambiguities and propose amendments through meet and confer process with the City's impacted employee organizations.

Level: 3

**Charter § 118 Rules**

Issue: There is no discussion or recognition in this section as to how the Civil Service Commission, in recommending new Civil Service Rules (Rules) or modifications to Rules, interacts with the meet and confer process required under the MMBA. Language in Charter section 118 that explains that any rule change that relates to a mandatory subject of bargaining under the MMBA is subject to the MMBA would be appropriate. However, this is not necessarily a legal problem because under clear California authority, the City's Charter must be read in conjunction with the MMBA. Therefore, section 118 and the Civil Service Commission process for recommending Civil Service Rule changes must recognize the MMBA, whether it says so in the Charter or not.

Options: Add the following language: "The City Council must ensure compliance with the Meyers-Milias-Brown Act or other state or local law related to collective bargaining before it adopts any new rule or amendment to an existing rule that involves a mandatory subject of bargaining."

Level: 2 or 3

**Charter § 129.1 Removal of Striking Employees**

Issue: Charter section 129.1 provides limitations on the ability of City employees to engage in "strike" activities. This provision, which was adopted in 1976, is not consistent with current California law. Given the current state of California case law, Charter section 129.1 is overly broad and likely subject to challenge. *See, City of San Jose v. Operating Engineers Local Union No. 3*, 49 Cal. 4th 597, 601 (2010), stating that common law "allows public employees to go on strike to enforce their collective bargaining demands unless the striking employees perform jobs that are essential to public welfare." The Court further explained that a threatened strike may be unlawful if it creates "a substantial and imminent threat to public health and safety." *Id.* at 606. Closer review of this provision should be done to conform to controlling state law.

Options: Recommend engaging in meet and confer to develop revisions narrowing the language to conform to state law.

Level: 2 or 3

**Charter § 140 Establishment of Separate Retirement Pension Systems; Definitions**

Issue: This section was added by Proposition B. It provides that all officers and employees who are initially hired or assume office after the effective date of this section (July 20, 2012) may participate only in defined contribution plans and not in SDCERS (the defined benefit plan), with the exception of sworn police officers. As a result, police recruits participating in the City's police academy must participate in an alternate defined contribution plan for the six months they are in the academy, and must move to the defined benefit plan when they become sworn officers. It is inefficient to have them contribute for such a short period of time in a defined contribution plan.

Options: Amend section 140 to allow police recruits participating in the City's police academy to participate in the defined benefit plan.

Level: 3

**Charter § 142 Employment of Actuary**

Issues: Section 142 references "subdivision (k) of Section 118 of Article VIII of this Charter." Due to amendments to section 118 in the 1940's, subdivision (k) was removed from the Charter.

Options: Amend to delete the reference to section 118(k).

Level: 3

**Charter § 144 Board of Administration**

Issues:

Section 144 provides that seven of the 13 members of the SDCERS Board be appointed by the Mayor and confirmed by the Council, and that these Board members have the following qualifications: "a college degree in finance, economics, law, business, or other relevant field of study or a relevant professional certification. In addition, such appointees shall have a minimum of fifteen (15) years experience in pension administration, pension actuarial practice, investment management, real estate, banking, or accounting." Currently, all seven Board members in the category have a financial background, and none have an investment background.

Options:

Amend section 144 to require more diversity of backgrounds of the appointed trustees, possibly requiring that some number of appointed trustees have a background in institutional investing.

Level: 3

**Charter § 145 Retirement Fund**

Issue: The first sentence of section 145 states that all employee and employer contributions under this Article "shall be placed in a special fund in the City Treasury to be known as the City Employees' Retirement Fund, which said fund is hereby created." However, California Constitution, article XVI, section 17, subsection (a) gives the board of a public retirement system "the sole and exclusive fiduciary responsibility over the assets of the public pension or retirement system."

Options: Delete the first sentence of section 145 and add a statement, consistent with the California Constitution, recognizing the Board's sole and exclusive authority over the assets of the retirement system.

Level: 3

**Charter Article X Transfer of Police and Fire Department Employees into the Retirement System**

Issue: This Article consists of one section, which in 1946 transferred the members of the City's Police and Fire Departments from their independent retirement system into the CERS retirement system described in Article IX. This language is no longer needed.

Options: Repeal Article X.

Level: 3

**Charter § 215 Publicity of Records and § 216 Copies of Records**

Issue: These sections were adopted with the original Charter. Since then, the California Public Records Act was enacted and requires that the City allow the public to inspect and copy documents unless an exception applies. Sections 215 and 216 are no longer necessary and may conflict with state law.

Options: Consider repeal as the sections are no longer required.

Level: 3

**Charter § 219 Pueblo Lands**

Issue: Currently, the language in section 219 is unclear and reads too broadly. Recommend revising the last sentence ("No lease shall be valid for a period of time exceeding 15 years.") to state the section only applies to leases of those Pueblo Lands covered by the section. Also, the section should be revised to limit applicability of the section to only those Pueblo Lands north of the San Diego River actually City-owned when the predecessor of Section 219 was adopted in 1909, and which have remained in continuous City ownership since that time. *See,* 1999 Op. City Att'y 40 (99-2; Jul. 15, 1999).

Options: Clarify language to read consistent with City Attorney memos.

Level: 3

**Charter § 225 Mandatory Disclosure of Business Interests**

Issue: Charter section 225 requires that the person applying or bargaining for any right, title or interest in the City's real or personal property, or any right, title or interest arising out of a contract, or lease, or any franchise, right or privilege may be granted pursuant to section 103 or 103.1, must make a full and complete disclosure of the name and identity of any and all persons directly or indirectly involved in the application or proposed transaction and the precise nature of all interests of all persons therein. The term "person" means any natural person, joint venture, joint stock company, partnership, association, firm, club, company, corporation, business trust, organization or entity. The City has had difficulty complying with this provision given the large number of contracts and leases the City enters into each year. Also, the requirement to disclose "any and all persons directly or indirectly involved" is extremely broad.

Options: Review section 225 to clarify intent and scope of the terms to help ensure compliance with the provision. Consider amending to include only persons with a direct and substantial interest in the application.

Level: 3

**Charter § 226 Super Majority Vote Requirements**

Issue: Charter section 226 was ordered reformed by the court in *Howard Jarvis Taxpayers Assn. v. City of San Diego,* 120 Cal. App. 4th 374 (2004). The court ordered section 226 to read as follows:

> (a) Notwithstanding any other provision of this Charter, any ballot proposal, initiative, statute, law or regulation of any type, except amendments of this Charter whether proposed to be adopted by the electorate, the City Council, or any other body acting pursuant to this Charter or the Municipal Code, that requires a vote of the electorate in excess of a simple majority for any matter, must itself be approved by a vote of the electorate in the same proportion as proposed, in order to be adopted, valid or otherwise effective.
>
> (b) This section may be adopted by a simple majority vote.

Options: Amend section per court order.

Level: 3

**Charter § 265(b)(8) The Mayor (Role of the City Manager)**

Issue: Charter section 260 states that "all executive authority, power, and responsibilities conferred upon the City Manager . . . shall be transferred to, assumed, and carried out by the Mayor." However, the Charter contemplates a role for the City Manager who is appointed by the Mayor, subject to Council confirmation.

The Charter section 260 reference to the City Manager's "executive" authority rather than "administrative" authority causes some ambiguity about Mayor's role in the day-to-day administration of the City. Charter section 265(b)(8) states that the Mayor has sole authority to "direct and exercise control over the City Manager in managing those affairs of the City under the purview of the Mayor." This implies that the City Manager manages the day-to-day affairs of the City with oversight and direction from the Mayor. The requirement that the Council confirm the Manager's appointment suggests that the Manager plays an important role in the day-to-day administration of the City.

Options: Amend section 265(b)(8) to clarify the City Manager's role.

Level: 3

**Charter § 265(i) The Mayor (Council President's Duties and Authority During Mayoral Vacancy)**

Issue: This section is unclear as to the authority of the Council President in exercising discretion during a Mayoral vacancy. Although couched in terms suggesting a "caretaker" role, authority to direct and control the City Manager is arguably inconsistent with such a role. The Council President's authority to make Mayoral appointments also should be clarified.

Options: Clarify scope of authority to be given to Council President in the event of Mayoral vacancy.

Level: 3

**Charter § 275 Introduction and Passage of Ordinances and Resolutions**

Issue: Charter section 275(d) states: "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." The requirement of a written copy for each Council member is outdated as the City moves to electronic Council agendas. Also the reading requirement is routinely waived as the reading of an ordinance during a Council meeting is impractical in most cases.

Options: Amend section 275(d) to eliminate the requirement that the ordinance be read in full. Add the words "or electronic" to allow written or electronic copies of ordinances be provided to the Council and public.

Level: 3

**Charter § 280 Approval or Veto of Council Actions by Mayor**

Issue: Charter section 275(c) provides that certain ordinances may be passed by the Council on the day of their introduction: (1) ordinances making the annual tax levy; (2) the annual appropriation ordinance; (3) ordinances calling or relating to elections; (4) ordinances recommended by the Mayor or independent department heads transferring or appropriating moneys already appropriated by the annual appropriation ordinance; (5) ordinances establishing or changing the grade of a public highway; and (6) emergency ordinances as defined by section 295 of this Charter. These ordinances are not subject to the 30-day referendum period.

Charter section 280 makes all of these ordinances subject to veto, except for the annual appropriation ordinance and emergency ordinances. The veto process can extend the timeline for final passage of these ordinances by 14 to 44 days if Council reconsideration is required. This is especially problematic for ordinances calling or relating to elections. These election items are subject to other election deadlines, are within the Council's purview, and often are ministerial (e.g. calling elections and certifying the results of an election). Also, state law prohibits the Mayor's veto of a proposed Charter amendment.

The ordinance making the annual tax levy is a matter within the legislative power to tax. The annual levy is tied to the annual appropriation ordinance and the Mayor will have already had an opportunity to present the budget and veto the budget resolution. Giving the Mayor an additional chance to veto the annual tax levy would send the Council back to the beginning of the budget process. This could cause uncertainty within the City.

Options: Amend the Charter to provide that ordinances that take effect on the day of introduction are not subject to Mayoral veto.

Level: 2

**Charter § 290 Council Consideration of Salary Ordinance and Budget; Special Veto Power**

Issue: Changes discussed above in sections 69 and 71 regarding budget and appropriations would require additional changes here.

Options: See above.

Level: 2

## CONCLUSION

The Charter sections identified above would require a fuller legal analysis to determine appropriate language for any amendments. As the Charter review process continues, it is anticipated that other sections may be identified for legal review. Given the number of potential amendments the Council may want to consider adopting a more streamlined and modern Charter. In either case, we are available to provide assistance upon further direction from the Council.

JAN I. GOLDSMITH, CITY ATTORNEY

By *_/s/Paul E. Cooper_*
Paul E. Cooper
Executive Assistant City Attorney

PEC:PMD:CB:sc
Attachments
RC-2014-3
Doc. No. 713088

Office of
The City Attorney
City of San Diego

MEMORANDUM
MS 59

(619) 533-5800

DATE: October 22, 2013

TO: iMayor and Members of the City Council

FROM: City Attorney Jan Goldsmith

SUBJECT: Charter Reform

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DRAFT PLAN

Our City Charter contains provisions that are ambiguous, outdated and incomplete. In addition, key governance issues are not addressed in the City Charter. For example, there is no express provision setting forth authority and responsibility regarding labor negotiations. Nor, is there a provision that addresses incapacity of the Mayor or City Attorney. The appointment process for commissions and boards is incomplete and the elections process is inconsistent with portions of state law. As a result, our office is often faced with interpreting City Charter provisions without clear language in the Charter.

I believe a complete Charter review is needed. After all, this is our local Constitution, the highest law in our City.

This brief memo provides background and timelines that may be helpful in announcing a comprehensive Charter review involving our office. We recommend five stages:

1. Our office will lead a legal analysis to identify sections of the Charter needing review and options that might be available. We would solicit input from attorneys from the community and would retain outside experts to assist. This work would be done in law libraries and not in a public setting, but the results would be presented in a public report to the City Council by the end of January.

2. The City Council would create a Charter Review Commission before the end of January. Membership could consist of City Council members and/or members of the community. The purpose would be to take ideas from the legal team and the City Council out into the community for public input.

3. Schedule the election-related amendments now before the Rules Committee for the

June 2014 primary. One or two other proposals from the City Council might be added.

4. Schedule high priority changes for the November 2014 ballot.

5. Schedule the bulk of amendments for the 2016 ballot.

## DISCUSSION

### 1. Governing Law for Charter Amendments

Charter section 223 and the California Constitution govern amendments to the San Diego City Charter. State law governs the placement of a Charter amendment on a municipal ballot, even in a Charter city such as San Diego.

A new law passed by the California Legislature in 2013 prohibits certain Charter amendments from appearing on any ballot but a general election, citywide ballot. The next such election will occur November 4, 2014. When a Charter amendment measure is proposed, our office would review its text to determine if it may appear on any other ballot.

### 2. A Pending Charter Amendment Regarding Elections is Targeted for the June 2014 Ballot

The City's Committee on Rules and Economic Development, as directed by Committee Chair Sherri Lightner, has been conducting an overview of the City's election laws with our office to place related Charter amendments on the ballot. Our office has prepared a draft ballot measure that is expected to be placed on the June 2014 ballot: The measure will extend deadlines for City special elections to fill a Councilmember or Mayoral vacancy, and will change the date of the inauguration of City officials. The Rules Committee has directed our office to finalize this measure and bring it to the Council in January for placement on the June ballot. Although the Committee has asked our office to review many other election law issues, it has not asked us to prepare any other measures. The public can bring in other proposals for the Council's consideration in January.

### 3. Potential Amendments to the City Charter

Deputy City Attorneys will be very helpful in reviewing the specific areas of the Charter they routinely interpret, to determine where language most needs amendment. Our Deputies work with City departments on a daily basis and can identify issues. For example, the Charter requires that all contracts be drafted and signed off by the City Attorney's office. The problem is that purchase orders, amendments and change orders are all deemed contracts. Requiring our office to sign off on everything could shut the City down.

Our intent is to solicit input from our Deputy City Attorneys and City departments, explore options and set them out for the City Council by late January. We would invite attorneys with special expertise to volunteer to assist and would want to retain an expert consultant. That consultant would assist us and then continue on as consultant to the Charter Review Commission.

## Timeline and Process of Amendments for the November 2014 Ballot

Given the short timeframe before measures are due for a June 2014 ballot, initial Charter amendment proposals should be targeted for the November 4, 2014, citywide, general election ballot.

City Council Policy 000-21 establishes the procedure for submittal of ballot measures that would appear on that ballot. Members of the public submit proposals to the City Clerk, who then transmits them to the Rules Committee for review and comment. In 2014, proposed measures will no longer be sent to the Rules Committee, but instead will be sent by the Council President to any Council committee on which he or she is a member. This is due to recent amendments to the Council's Permanent Rules, found in the Municipal Code.

Ballot proposals must be submitted in time for the Clerk to list them on a Council Docket at least 127 days prior to the November 2014 election, so the public will know what the Council committee will review. Although the deadlines for the November 4, 2014, election remain tentative and have not been published, we have received these projected deadlines from the City Clerk's Office:

| DAY | DATE | DAYS BEFORE ELECTION | EVENT |
|---|---|---|---|
| Friday | 6/6/14 | 151 | LAST DATE (10:00 a.m.) for public, departments and agencies to submit ballot proposals to City Clerk for review by Council Committee |
| Wednesday | 6/11/14 | 146 | Council Committee review |
| Monday | 6/16/14 | 141 | Council Docket (PUBLIC NOTICE) lists proposals referred by Council Committee |
| Monday | 6/23/14 | 134 | Council adopts propositions for ballot; directs City Attorney to prepare ordinances |
| Monday | 7/14/14 | 113 | Council adopts ordinances prepared by City Attorney |
| Friday | 8/8/14 | 88 | Last day for City Clerk to file with Registrar of Voters all elections material |

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| Thursday | 8/21/14 | 75 | Last day to file ballot arguments with City Clerk |

Thus, initial drafts of proposed Charter amendment measures for the November 2014 ballot should be prepared well before June 2014, which is only eight months away. A more comprehensive revision of the Charter can target the November 2016 ballot, with the draft due on the same timeframe (June 2016).

Additionally, to the extent it may be helpful; we have attached two documents from the City's last Charter Review Committee, which convened in 2007. One document is the Executive Summary that accompanied the Committee's final report; the other is the memo from former Mayor Sanders that was distributed when the appointments were made. As our office served as counsel to the Committee and its subcommittee, we have additional materials that may be helpful as the process begins.

## CONCLUSION

Initial Charter amendment proposals should be targeted for the November 4, 2014, citywide, general election ballot. State law indicates a preference for all Charter amendments to be heard at a citywide, general election and requires some to only appear on such a ballot.

Measures that will appear on the November 2014 ballot need to be finalized by June and adopted by the Council no later than July 14, 2014. The measures would first be reviewed by a Council committee, and then placed on the ballot by the City Council. As cost will also be an issue, initial measures could be proposed for 2014 and a more comprehensive Charter revision can be planned for the November 2016 general election ballot.

JG:cs
Attachment: What Is the City Charter – and How Does It Affect Me?

## What Is the City Charter—and How Does It Affect Me?

*Prepared by the San Diego Charter Review Committee*

The Charter is the "Constitution" for the City of San Diego. Just as the United States Constitution serves as the "supreme law of the land" for our country, the San Diego Charter serves as the basic set of rules for our City government. The San Diego Charter limits City officials in much the same way that the Constitution constrains the officials of the federal government. They are not allowed to pass any law or act in any way the Charter prohibits.

The Charter establishes the boundaries that San Diego's people have imposed upon their City government. It is the source of the City's system of checks and balances, prescribing the relationship between the two branches of government: the Mayor and the City Council and the interaction of the City Attorney with both. The Mayor's authority to recommend policies, the Council's power to enact policy subject to Mayoral veto, and the Mayor's control over the implementation of City policy are all established by the Charter as the City's basic law.

### The Charter Review Committee

The Mayor and City Council have recognized that there are a number of areas within the City Charter that require clarification or modification. Consequently, the Mayor and the Council have assembled a Committee of independent, qualified and broadly representative members of the community to take on the task of addressing the ambiguities and problems of the current Charter.

### Mission Statement

The San Diego Charter Review Committee's mission is "to determine modifications necessary to implement the Kroll report recommendations and other financial reforms; to clarify the roles and responsibilities of elected officials and the separation of powers under the strong mayor form of governance; to identify modifications that would improve the functionality of the strong mayor form of governance during the trial period; and to identify legislative tightening that would be required for effective permanent implementation of the Strong Mayor form of governance." The Committee has established a work-plan to help achieve this important mission.

### How Does the Charter Affect Me?

The Charter is the vehicle through which the people of San Diego limit and control the powers and responsibilities of their City government. If it is clear and consistent, it can allow voters to reward and punish City officials for their job performance. If it is vague, it makes it difficult for officials to act on behalf of the public. The City provides many services through responsible use of taxpayer dollars. If the Charter provides the opportunity for accountable leadership, the City can improve the quality and quantity of services delivered to the public. Otherwise, City officials are hamstrung in the performance of their duties, and cannot provide San Diego with the quality of public service that our City deserves.

### Meeting Dates and Times

The Charter Review Committee and its three subcommittees are meeting every Friday from 9 a.m.-12 noon on the 12th floor of the City Administration Building, 202 C Street, San Diego, CA 92101. Please come in and make your voice heard.

We are also holding several public meetings throughout the City during evening hours so that we can elicit further public input on how the Charter can be improved.

The S.D. Charter Review Committee is online at http://www.sandiego.gov/charterreview

## Historical Background

San Diego has had several different charters since this City became part of the United States in 1850. The City is presently governed under the terms of the Charter of 1931. This document has been amended hundreds of times in the past 76 years. The most significant changes increased the size of the City Council from six to eight members, provided for electing City Council members by district elections, and transformed the City from a Council-Manager to a strong Mayor-Council form of government.

## Elected Offices

The Charter mandates the structure of City government. Among other things, this document establishes the number of officials who are elected to serve the public, the number of districts from which they are elected, which officials are to be elected citywide, and how much authority elected officials may exercise. The Charter also determines how City elections shall be conducted, including the process for redistricting.

Under San Diego's current Charter, the City is governed by a Mayor and City Council members elected by eight districts. The Charter also provides for the election of a City Attorney on a citywide basis. The City Attorney generally rules on the legality of ordinances considered by the Council and approves most contracts involving the City or any of its officers or agencies.

## Appointed Offices

There are several important appointed officials whose roles and duties are prescribed by the Charter. The Chief Operations Officer (formerly, City Manager), Auditor and Comptroller, Treasurer, Independent Budget Analyst, and the chiefs of the Fire and Police departments, are all officers whose positions are established by the Charter. Some of these officers have their duties spelled out in great detail, such as the Auditor and Comptroller. Others have whatever powers are given them by a specific City ordinance, such as the Independent Budget Analyst.

There are several important boards and committees that are established by the Charter. The Charter provides for the Board of Administration of SDCERS, which administers the retirement system for City employees. The Charter provides for the appointment of a Civil Service Commission and specifies the powers of the Ethics Commission, which are authorized to oversee the integrity of the City's employment and governmental processes.

The Charter also establishes the manner in which other City agencies, boards, committees and departments may be created and staffed by the Mayor and City Council. For several agencies mandated by state law, such as the Centre City Development Corporation, the Charter sets up the method for appointing the City's representatives.

## How Can I Get Involved?

**Remember that the San Diego Charter cannot be changed without a vote of the people! This means there will always be public involvement. Your participation as San Diegans is critical. We welcome your involvement at every stage of this important process of Charter change.**

Email the Charter Review Committee: Charterreview@sandio.gov

The S.D. Charter Review Committee is online at http://www.sandiego.gov/charterreview

# OFFICE OF MAYOR JERRY SANDERS
# CITY OF SAN DIEGO

## MEMORANDUM

| | | |
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| DATE | : | January 22, 2007 |
| TO | : | Council President Peters and Members of the San Diego City Council |
| FROM | : | Mayor Jerry Sanders |
| SUBJECT | : | Establishment of a Charter Review Committee |

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In the City's first year operating under Charter Article XV: Strong Mayor Trial Form of Governance it has become apparent there are a number of areas where clarification and fine-tuning would help achieve the original intent of this reform.

In cooperation with the City Attorney's office we have begun to work through some of these issues as they arise, but much more work must be focused on these issues in order to fully prepare for an effective long-term implementation of the Strong Mayor form of governance. I believe we can all agree that when roles and responsibilities are unclear, the business of the public is not optimally served, and that a fresh review of this Charter section is a timely priority.

In addressing these issues, there are four subject areas or questions around which a work plan for the Committee will be set:

- What Charter modifications are necessary to implement the Kroll recommendations and other financial reforms?
- What is a clear definition of the roles and responsibilities of elected officials and the separation of powers under strong mayor?
- What measures may improve the functionality of strong mayor during this trial period?
- What legislative tightening would be required for effective permanent implementation of Article XV?

Each of these areas will be explored by a designated subcommittee and addressed concurrently in the Committee's work.

Committee meetings will be held twice monthly and will be noticed to the public in keeping with the Ralph M. Brown Act. Subcommittees working in each topic area are anticipated to meet once or twice monthly as is convenient for their membership and in keeping with their work load.

I will move immediately to empanel the Committee in preparation for them to begin their work on or around March 1st. It is my intention that the Committee complete its work and return its recommendations in readiness for the 2008 election cycle.

Valuing varied points of view, I would like to work with each of you to identify and nominate three individuals who may be appropriate to serve on the Committee from which I will select one from each of your submissions. In addition, I will make a number of appointments to round out the Committee ensuring a representative balance. We are looking for individuals who can be independent, possess scholarly and operational subject matter expertise, those who have experience with previous charter reform efforts and who are broadly representative of our talented citizenry.

In addition to the Committee members, three ex-officio members will serve as support resources and advisers to the Committee; one each from the City Attorney, Mayor and the Independent Budget Analyst.

I look forward to working with you on these issues so critical to our City's future and welcome your support for this effort.

JS:ACH

CHARTER CITIES REMOVAL PROVISIONS

| Jursidiction & Structure | Charter Language | Summary |
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| San Jose Charter<br>*Manager-Council structure*<br><br>§ 405 Judge of Qualifications | The Council shall be the judge of the election and qualification of its members, including the Mayor, and of any other elective officer, and of the grounds for forfeiture or loss of their respective offices, and for that purpose shall have the power to subpoena witnesses, administer oaths and require the production of evidence. A member, or the Mayor, or the holder of any other elective office, charged with conduct constituting grounds for forfeiture or loss of his or her office shall be given, if he or she so demands, an opportunity to be heard in his or her own defense at a public hearing after reasonable notice to such members. | City Council removal authority for all elective officers with due process provisions |
| Sacramento Charter<br>*Manager-Council structure*<br><br>§ 63 Removal of City Manager | The city manager cannot be removed from office except by a vote of six members of the city council. The city manager shall not be subject to removal from office within twelve months of the date that the city manager first assumes the duties of office except for incompetence, malfeasance, misfeasance or neglect of duty. If the removal is proposed within the first twelve months, the city manager may demand written charges and a public hearing before the city council prior to the date upon which his removal becomes effective; but the | Due process provisions for removal of City Manager – no discussion of elective officers |

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| | decision of the city council shall be final, conclusive and binding upon the city manager, and pending such hearing the council may suspend the city manager from duty without loss of normal compensation. | |
| San Francisco Charter<br>*Mayor-Supervisor structure*<br><br>§ 13.101.5(b) Vacancies | If the Office of Mayor becomes vacant because of death, resignation, recall, permanent disability or the inability to carry out the responsibilities of the office, the President of the Board of Supervisors shall become Acting Mayor and shall serve until a successor is appointed by the Board of Supervisors. | Board appointment of Mayoral successor for vacancy in office |
| § 15.105 Suspension & Removal | (a) ELECTIVE AND CERTAIN APPOINTED OFFICERS. Any elective officer, and [other appointed board and commission positions omitted] is subject to suspension and removal for official misconduct as provided in this section. Such officer may be suspended by the Mayor and the Mayor shall appoint a qualified person to discharge the duties of the office during the period of suspension. Upon such suspension, the Mayor shall immediately notify the Ethics Commission and Board of Supervisors thereof in writing and the cause thereof, and shall present written charges against such suspended officer to the Ethics Commission and Board of Supervisors at or prior to their next regular meetings following such suspension, and shall | Mayoral authority to suspend and remove for official misconduct as described with due process provisions |

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| | immediately furnish a copy of the same to such officer, who shall have the right to appear with counsel before the Ethics Commission in his or her defense. The Ethics Commission shall hold a hearing not less than five days after the filing of written charges. After the hearing, the Ethics Commission shall transmit the full record of the hearing to the Board of Supervisors with a recommendation as to whether the charges should be sustained. If, after reviewing the complete record, the charges are sustained by not less than a three-fourths vote of all members of the Board of Supervisors, the suspended officer shall be removed from office; if not so sustained, or if not acted on by the Board of Supervisors within 30 days after the receipt of the record from the Ethics Commission, the suspended officer shall thereby be reinstated.<br>. . .<br><br>(c) REMOVAL FOR CONVICTION OF A FELONY CRIME INVOLVING MORAL TURPITUDE.<br>(1) Officers Enumerated in Subsections (a) and (b).<br>(A) An appointing authority must immediately remove from office any official enumerated in subsections (a) or (b) upon:<br>(i) a court's final conviction of that official of a felony crime involving moral turpitude; and | Mandatory removal for conviction of certain felonies. Mayor is considered appointing authority for purposes of removal of elected officials |

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| | (ii) a determination made by the Ethics Commission, after a hearing, that the crime for which the official was convicted warrants removal.<br>(B) For the purposes of this subsection, the Mayor shall act as the appointing authority for any elective official.<br>(C) Removal under this subsection is not subject to the procedures in subsections (a) and (b) of this section.<br>[provisions for appointee removal omitted]<br>(3) Penalty for Failure to Remove. Failure to remove an appointee as required under this subsection shall be official misconduct. | Failure to remove is itself official misconduct |
| | (d) DISQUALIFICATION.<br>(1) (A) Any person who has been removed from any federal, state, County or City office or employment upon a final conviction of a felony crime involving moral turpitude shall be ineligible for election or appointment to City office or employment for a period of ten years after removal.<br>(B) Any person removed from any federal, state, County or City office or employment for official misconduct shall be ineligible for election or appointment to City office or employment for a period of five years after removal. | 10-year disqualification for removal based upon felony convictions involving moral turpitude; 5-year disqualification for removal based upon official misconduct |

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| | (2) (A) Any City department head, board, commission or other appointing authority that removes a City officer or employee from office or employment on the grounds of official misconduct must invoke the disqualification provision in subsection (d)(1)(B) and provide notice of such disqualification in writing to the City officer or employee.<br>(B) Upon the request of any former City officer or employee, the Ethics Commission may, after a public hearing, overturn the application of the disqualification provision of subsection (d)(1)(B) if: (i) the decision that the former officer or employee engaged in official misconduct was not made after a hearing by a court, the Board of Supervisors, the Ethics Commission, an administrative body, an administrative hearing officer, or a labor arbitrator; and (ii) if the officer or employee does not have the right to appeal his or her restriction on holding future office or employment to the San Francisco Civil Service Commission. | Procedural due process provisions with appeal to ethics commission with potential to overturn decisions based upon official misconduct (no similar provision for felony conviction) |
| | (e) OFFICIAL MISCONDUCT. Official misconduct means any wrongful behavior by a public officer in relation to the duties of his or her office, willful in its character, including any failure, refusal or neglect of an officer to perform any duty enjoined on him or her by law, or conduct that falls below the standard of decency, good faith | Official misconduct defined |

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| | and right action impliedly required of all public officers and including any violation of a specific conflict of interest or governmental ethics law. When any City law provides that a violation of the law constitutes or is deemed official misconduct, the conduct is covered by this definition and may subject the person to discipline and/or removal from office. | |
| Los Angeles Charter<br>*Mayor-Council structure*<br><br>§ 430 Subject of Recall | Any incumbent of an elected office, whether elected by vote of the people or appointed to fill a vacancy, may be removed from office by the registered voters of the City of Los Angeles, or the registered voters of the School District in the case of removal of a member of the Board of Education. The removal of the incumbent shall be known as the recall. | Removal by recall |
| Santa Barbara Charter<br>*Mayor-Council structure*<br><br>§ 503 Vacancies | If the Mayor or other member of the City Council absents himself from all regular meetings of the City Council for a period of sixty (60) days consecutively from and after the last regular Council meeting attended by him, unless by permission of the City Council expressed in its official minutes, or if convicted of a crime involving moral turpitude, or ceases to be an elector of the City, his office shall become vacant. The City Council shall declare the existence of any such vacancy. | Provision for automatic vacancy in office for sufficient number of unexcused absences or conviction of crime involving moral turpitude (no misdemeanor/felony distinction) |

CHARTER CITIES REMOVAL PROVISIONS

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| Oakland Charter<br>*Mayor-Council structure*<br><br>§ 304 Vacancy: What Constitutes | The office of Mayor shall be declared vacant by the Council when the person elected or appointed thereto fails to qualify within ten days after his term is to begin, dies, resigns, ceases to be a resident of the City or absents himself/herself continuously from the City for a period of more than thirty days without permission from the Council, is convicted of a felony, is judicially determined to be an incompetent, is permanently so disabled as to be unable to perform the duties of his office, forfeits his office under any provision of this Charter, or is removed from office by judicial procedure. A finding of disability shall require the affirmative vote of at least six members of the Council after considering competent medical evidence bearing on the physical or mental capability of the Mayor. | Upon occurrence of various events, included extended absence or felony conviction, Council is required to declare the office vacant. |
| Fresno Charter<br>*Mayor-Council structure*<br><br>§ 305 Vacancies | (a) An elective office becomes vacant when the incumbent thereof dies, resigns, is removed from office under recall proceedings, is adjudged insane, is convicted of a felony or of an offense involving a violation of his or her duties, ceases to be a resident of the City or the district corresponding in number to the office to which he or she was elected, neglects to qualify within the time prescribed by the provisions of this Charter, is absent from the State without leave for more than sixty consecutive days, or fails | Provides for "vacancy" to occur under various circumstances, including for conviction of a felony involving the official's duties. |

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| | the attend the meetings of the body of which he or she is a member for a like period without being excused therefrom by such body.<br><br>(b) The Council shall declare the existence of any vacancy except vacancy caused by death or resignation. Such declaration shall be a final determination of the existence of the vacancy unless a court review is sought within thirty days after such declaration. | |
| New York Charter<br>*Mayor-Council structure*<br><br>§ 9 Removal of Mayor | The mayor may be removed from office by the governor upon charges and after service upon him of a copy of the charges and an opportunity to be heard in his defense. Pending the preparation and disposition of charges, the governor may suspend the mayor for a period not exceeding thirty days. | Authority to remove mayor rests with governor with due process provisions |
| Seattle Charter<br>*Mayor-Council structure*<br><br>Article V. Executive Department<br>§ 10 Removal of Mayor | The Mayor may be removed from office after a hearing, for any willful violation of duty, or for the commission of an offense involving moral turpitude, upon written notice from the City Council at least five days before the hearing. He or she shall have the right to be present, to the aid of counsel, to offer evidence and to be heard in his or her own behalf. Upon the affirmative | Mayoral removal by City Council for willful violation of duty, with due process provisions, 2/3 vote |

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| | vote of two-thirds of all the members of the City Council, acting as a court of impeachment, the office shall become vacant. | |
| Article XIX. Officers; Terms and Vacancies<br>§ 5 Vacancies | An office becomes vacant on failure to qualify within the time limited by law; upon the death or removal from office or resignation of the incumbent, or his or her removal from or absence from the City for sixty days without leave of the City Council, or upon an adjudication of insanity; by a conviction of drunkenness, or by any permanent disability, preventing the proper discharge of duty. | Similar to Oakland, where office "becomes" vacant upon occurrence of specified events |
| § 7 Suspensions and Removals | Any elective or appointive officer may be suspended and removed for cause by the Council, as hereinafter provided and the Council shall temporarily fill the vacancy, except as hereinafter provided. | Allows for elective officer to be removed by City Council "for cause" with due process provisions, without definition of "cause" |
| § 8 Suspension of Elective & Appointive Officers | Whenever the Council shall suspend any officer it shall immediately notify the officer of such suspension and the cause thereof. The accused shall be furnished with a copy of the charges, and shall have the right to appear with counsel and make his or her defense. The City Council shall speedily try such officer on such charge, and for that purpose shall have power to adjourn from time to time until the trial shall be completed, to summon and compel the | |

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| | attendance of witnesses, to hear their testimony, to receive other evidence, and to hear the arguments of counsel. SUSPENSION OF COUNCILMEMBERS; CHARGES; TRIAL; REMOVAL: In case of the suspension of a member of the City Council by that body, the member so suspended shall be tried in like manner as herein provided, except that the charges may be preferred by any elector or member of the City Council. In either case, the President of the City Council shall preside at such trial, and in his or her absence or disability the acting President. If two-thirds of all the members of the City Council shall by resolution find the accused guilty, then the suspended officer shall thereby be removed from office. | |