

PAUL E. COOPER  
EXECUTIVE ASSISTANT CITY ATTORNEY

MARY T. NUESCA  
ASSISTANT CITY ATTORNEY

SHARON B. SPIVAK  
DEPUTY CITY ATTORNEY

OFFICE OF

# THE CITY ATTORNEY

CITY OF SAN DIEGO

JAN I. GOLDSMITH

CITY ATTORNEY

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

## MEMORANDUM OF LAW

**DATE:** March 4, 2015

**TO:** Charter Review Committee

**FROM:** City Attorney

**SUBJECT:** Applicability of Single Subject Rule to Charter Amendments Proposed by the City Council

### INTRODUCTION

The Council's Charter Review Committee is considering potential amendments to the San Diego Charter, encompassing numerous topics ranging from housekeeping items to substantive changes. Charter amendments require approval by San Diego voters. Cal. Const. art. XI, § 3; San Diego Charter § 223.

Once the full Council determines which potential amendments it wishes to submit to a future ballot, the amendments would be drafted and included in ordinances for the Council's review. The Council then would vote on ordinances that place individual measures on the ballot. This Office has been asked whether such Charter amendment measures are subject to the limitations of the single subject rule, which would require a ballot measure to embrace only one subject. This could affect the number and content of the Charter amendment measures the Council ultimately submits to voters. This Memorandum of Law considers that issue.

### QUESTION PRESENTED

Does the single subject rule of the California Constitution apply to Charter amendments proposed by a legislative body, as opposed to initiative measures that result from voter petitions?

### SHORT ANSWER

No, but the analysis does not end there: A California appellate court has held that the California Constitution does not impose a single subject rule on Charter amendments sponsored

by a governing body such as the City Council, as opposed to initiative measures that result from signed voter initiative petitions. *Hernandez v. County of Los Angeles*, 167 Cal. App. 4th 12, 22-23 (2008). This Office last formally opined on this issue before the *Hernandez* case provided that direction.<sup>1</sup> Significantly, however, the *Hernandez* court indicated that the Council is authorized “to group technical changes of disparate but *reasonably related provisions* and statutory amendments into one measure to achieve a *common theme or purpose*.” *Id.* at 23 (emphasis added).

Prior to *Hernandez*, this Office opined that the San Diego Charter requires imposition of a single subject rule through the language of Charter section 223 (“Amendment of Charter”) and section 275(b)’s requirement that all ordinances “shall be confined to one subject.” (See n. 1 and attachments, 2007 City Att’y Report 302 (2007-17; Nov. 2, 2007) and 2008 City Att’y Report 241 (2008-3; Jan. 29, 2008)). The earlier opinions noted that a California court had yet to rule directly on the issue of whether the single subject rule in the California Constitution applied to Council-sponsored Charter amendment measures.

To harmonize these laws and minimize the risk that the substance of a measure is not clear to voters, this Office concludes that potential Charter amendments are to follow the standard set by *Hernandez*, and if grouped must be in measures in which the content is “reasonably related” to the same subject and will “achieve a common theme or purpose.” Such amendments can be drafted to also satisfy any Charter requirements that do not directly conflict with the Constitution. Significantly, the *Hernandez* standard could ensure that ballot materials (such as the ballot question, arguments, impartial analysis and fiscal impact analysis) better inform voters of the reach of a particular measure. This could minimize the risk of lawsuits regarding a given ballot measure, including those brought to prevent a successful measure from taking effect.

## ANALYSIS

### **I. THE CALIFORNIA CONSTITUTION DOES NOT IMPOSE A SINGLE SUBJECT RULE ON CHARTER AMENDMENTS PROPOSED BY THE LEGISLATIVE BODY AND NOT SUBMITTED BY THE VOTERS.**

Charter amendments are governed by the California Constitution and state law. There are two ways to propose an amendment: Voters can submit signed petitions to qualify a measure for the ballot, or the governing body of the city can sponsor a Charter amendment.<sup>2</sup> Cal. Const. art.

---

<sup>1</sup> Attached to this Memorandum of Law are two previous reports from the City Attorney’s Office that provide helpful background on the topic. (See 2007 City Att’y Report 302 (2007-17; Nov. 2, 2007), Report to the Committee on Rules, Finance and Intergovernmental Relations, “City Ballot Measures Submitted to Voters are Subject to the Separate Vote (Single Subject) Rule”; and 2008 City Att’y Report 241 (2008-3; Jan. 29, 2008), Report to the Mayor and Council, on “Supplemental Report Regarding Measures to Amend the City Charter.”)

<sup>2</sup> The California Constitution provides that a Charter Review Commission can also be formed to propose revisions to a Charter, but the revisions would need to be placed on a ballot by the governing body. Cal. Const. art. XI, § 3.

XI, § 3(b); *See Hernandez*, 167 Cal. App. 4th at 21. San Diego's Charter confirms that it may be amended in accordance with the California Constitution. San Diego Charter § 223.

Voter initiatives to amend a charter "must conform to a wide range of stringent procedural requirements before they can be placed on the ballot." *Hernandez*, 167 Cal. App. 4th at 21. Among those requirements is a provision in the California Constitution that imposes a single subject rule on such measures. The Constitution states:

An initiative measure embracing more than one subject may not be submitted to the electors or have any effect.

Cal. Const. art. II, § 8(d).

The ballot measure considered in *Hernandez*, Measure R, was a City Council-sponsored measure, submitted to the Council by the Los Angeles Area Chamber of Commerce and League of Women Voters of Los Angeles. *Hernandez*, 167 Cal. App. 4th at 16. The Council made several alterations to the proposal before placing it on the ballot, which the court stated was "a further indication that Measure R was not, and was not treated as, a voter initiative." *Id.* at 22. The measure did not result from voter-signed petitions. Measure R combined Charter amendments regarding term limits, lobbyists, campaign contributions, and ethics laws. A trial court noted that the measure's content violated the "single subject rule," designed "to prevent politicians and special interests from manipulating the initiative process by bundling together measures to force voters to accept all or none of them," rather than submit them to separate votes. *Id.* at 17. The trial court held, however, that the single subject rule did not apply to Measure R because it was not an initiative.

The appellate court agreed that the single subject rule did not apply to a Charter amendment sponsored by a legislative body. *Id.* at 22-23. The appellate court thus did not consider whether the content of Measure R encompassed more than one subject. *Id.* at 23, n. 6.

The *Hernandez* court considered the purpose of the single subject rule, stating that it was added to the Constitution by voters to protect "the integrity of this 'most precious right'" of the voter initiative process. *Hernandez*, 167 Cal. App. 4th at 22, citing *Senate of the State of Cal. v. Jones*, 21 Cal. 4th 1142, 1168 (1999). The Court then distinguished the voter initiative process of amending a charter from a legislative body's action to draft Charter amendments and place them on a ballot. The court held that the people's power of initiative is "fundamentally distinguishable from the power of the legislative body." *Hernandez*, 167 Cal. App. 4th at 22. The court then provided direction to Charter cities by addressing the governing body's authority when it drafts Charter amendments:

The California Constitution contains specific provisions regulating charter amendments sponsored by the governing body of a charter city in article XI. The provisions do not contain any single subject requirement on charter amendments sponsored by such governing bodies. Specifically, as noted, *article XI, section 3, authorizes the governing body of a charter city to sponsor a charter amendment, and those provisions contain no single subject requirement.* (See

Cal. Const. art. XI, § 3, subd. (b).) Nor does article XI, section 7.5, which sets forth certain constraints on city council sponsored charter amendments, include any single subject requirement. (*See* Cal. Const. art. XI, § 7.5.) By not encumbering governing bodies of charter cities with a single subject requirement, the framers enabled charter cities to sponsor measures aimed at accomplishing comprehensive reform at the ballot box. Charter cities are also able to group multiple technical amendments into one ballot measure. Since every ballot question carries significant administrative costs, substantial efficiencies can be achieved by *a city council's authority to group technical changes of disparate but reasonably related provisions and statutory amendments into one measure to achieve a common theme or purpose.*"

*Hernandez*, 167 Cal. App. 4th at 22-23 (emphasis added).

Although the court confirmed that the single subject rule does not apply to Charter amendments sponsored by the Council, the court nonetheless also confirmed that the Council is to "group" those with "technical changes of disparate but reasonably related provisions," and to draft measures that "achieve a common theme or purpose." *Id.* Thus, this standard must be followed when the Council considers Charter amendment measures for the ballot.

## **II. THE SAN DIEGO CHARTER REQUIRES THAT ORDINANCES ENCOMPASS ONLY A SINGLE SUBJECT AND THAT CHARTER AMENDMENTS FOLLOW CONSTITUTIONAL REQUIREMENTS.**

The Charter represents the supreme law of the City, subject only to conflicting provisions in the United States and California Constitutions or to preemptive state law. *Domar Electric, Inc. v. City of Los Angeles*, 9 Cal. 4th 161, 170 (1994). Prior to *Hernandez*, this Office opined in two Reports to Councilmembers that San Diego's Charter requires the single subject rule to apply to Charter amendments proposed by the legislative body. The Reports noted, for example, that all ballot measures are included in ordinances, and ordinances must be "confined to one subject" under Charter section 275. These issues are fully considered in the attached Reports (*see n. 1*) and thus are not detailed here.

Post-*Hernandez*, this Office concludes that if technical changes must be "reasonably related," and Charter amendments must be drafted to "achieve a common theme or purpose" when amendments are grouped, the ordinances including such ballot measures can be drafted to comply with the Charter. Once the Council has decided which amendments it seeks to place before the voters, this Office is prepared to assist with drafting measures to meet legal requirements.

## **CONCLUSION**

The *Hernandez* case confirms that the California Constitution authorizes the City Council of a Charter city to sponsor Charter amendment ballot measures that do not need to be confined to a single subject. The court directed, however, that ballot measures may group amendments if

they are “technical changes of disparate but *reasonably related provisions*” and amendments that will “achieve a *common theme or purpose*.” *Hernandez*, 167 Cal. App. 4th at 23 (emphasis added). The *Hernandez* standard provides the Council with some flexibility in drafting measures, and may allow for fewer measures that combine different Charter amendments.

This legal standard can be harmonized with Charter requirements, keeping in mind paramount goals of providing voters with clear direction about the measures before them, and minimizing the risk that a measure will be contested in court. Thus, once the Council determines which amendments it wishes to submit to voters, this Office can assist the Council in determining which amendments may be grouped and drafted to meet legal requirements.

JAN I. GOLDSMITH, CITY ATTORNEY

By     /s/Sharon B. Spivak      
Sharon B. Spivak  
Deputy City Attorney

SBS:jdf  
ML-2015-4  
Doc. No. 952880  
Attachments