

**MEMORANDUM**

**TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL**

**FROM: CAROL W. LYNCH, CITY ATTORNEY, and  
SHIRI KLIMA, ASSISTANT CITY ATTORNEY**

**DATE: SEPTEMBER 7, 2010**

**SUBJECT: ADOPTING THE CITY CHARTER**

**REVIEWED: CAROLYN LEHR, CITY MANAGER** 

**RECOMMENDATIONS**

Review and approve the attached revised draft of the City Charter of the City of Rancho Palos Verdes to propose to the City's voters for adoption at an upcoming election.

**BACKGROUND**

The City Council stated as one of the City's tactical goals that staff should provide information about the advantages and disadvantages of becoming a charter city to the City Council by the end of April 2010. Accordingly, a presentation was made to the Council on April 6, 2010. As a result of that meeting, the City Council decided to call a special meeting to occur on June 29, 2010, to hear a comprehensive presentation and discuss the issue of becoming a charter city. At that meeting, the City Attorney's Office gave a presentation to the Council, which was supplemented with a detailed staff report, regarding a variety of areas in which a charter city does or does not have different powers from a general law city, advantages and disadvantages to chartering, and the procedures for becoming a charter city.

Because the entire Council could not attend that special meeting, the Council opted to continue the matter until the next regular City Council meeting on July 6, 2010, so that all of the Members of the City Council would be present to make the determination of whether to proceed with the process of adopting a charter. At that meeting, the Council unanimously determined that the City should initiate the process of drafting a charter and appointed a Council Subcommittee of Mayor Wolowicz and Mayor Pro Tem Long to lead the process of having the charter adopted by the City's voters at a consolidated election that would be held on March 8, 2011.

On July 23, 2010, the Council Subcommittee met with staff and instructed the City Attorney to prepare a simple city charter, similar to the charter of the City of Buena

Park, for the Council's consideration and approval at the August 3, 2010 City Council meeting. Due to the recent publicity regarding the City of Bell, the Council Subcommittee requested that the restrictions on Council salaries and reimbursement of expenditures that apply to general law cities continue to be applicable in Rancho Palos Verdes by expressly including them in the City Charter.

On August 3, 2010, a proposed City Charter was presented to the City Council. Councilmember Missetich requested language be added to the City Charter regarding preserving the transparent process of compensating City staff. Additionally, the City Attorney's office reviewed the Bell City Charter in light of the recent controversy and has proposed additional language regarding the Councilmember compensation issue. Finally, when the Council Subcommittee met on August 20, 2010, it requested proposed language be added to the City Charter regarding retaining the Council-Manager form of government, continuing to not allow gifts of public funds, and preserving the requirement that the City's Zoning Ordinance be consistent with the General Plan.

## **DISCUSSION**

The proposed City Charter of the City of Rancho Palos Verdes ("City Charter") is substantially similar to the one presented to the City Council on August 3, 2010, with the following five (5) exceptions:

### **1. Transparency in Process of Providing Staff Compensation**

Currently, there is no statutory regulation on staff compensation for general law cities. However, the City has a history of transparency in the process of providing its staff with compensation, and Councilmember Missetich has articulated an important request to preserve that transparency. Thus, proposed Article IV now not only limits Councilmember compensation and expenses but also states in Section 300 that the compensation provided to City staff shall continue to be approved in a transparent manner at duly noticed City Council meetings.

### **2. Prohibiting City Councilmember Additional Compensation**

The draft City Charter presented on August 3, 2010 already included a provision that would continue to restrict City Councilmember compensation, including that of the Mayor, to the limitations in the Government Code regarding the salaries that are paid to council members of general law cities, which for a City with approximately 40,000 residents is a monthly salary of \$400.00 per Councilmember. The former proposed City Charter also already included a provision that would continue to restrict City reimbursement of expenses incurred by City Council Members, including the Mayor, in the performance of their official duties on behalf of the City to the limitations specified in the Government Code for city council members in general law cities. However, the City Attorney's office suggests additional language to restrict the City Council, including the Mayor, from earning additional compensation for attendance at other meetings of City or City-affiliated commissions, committees, subcommittees, and boards of directors,

including the Rancho Palos Verdes Redevelopment Agency and the Rancho Palos Verdes Improvement Authority.

Compensation and reimbursement changes are not motivating factors for the City Council in proposing that the City become a charter city. Rather, the City Council is interested in providing the many economic benefits to the City that derive from being a charter city, such as not being required to pay prevailing wages in connection with City projects and the ability to protect, to the extent feasible, City revenues from incursion by the State.

Because of the situation in the City of Bell, the City Council wants to assure the public that the City Council does not wish to create a similar opportunity for malfeasance in the City of Rancho Palos Verdes. Thus, the draft City Charter provides that the restrictions on Council salaries and reimbursement of expenditures that apply to general law cities will continue to be applicable in Rancho Palos Verdes, and that the City Council will not be paid additionally for its attendance at other City or City-affiliated commissions, committees, subcommittees, and boards of directors. Because these provisions would be included in the City Charter, any amendments to, or repeal of, these provisions would require a majority vote of the City's voters.

### **3. Continuing a Council-Manager Form of Government**

The City currently has a Council-Manager form of government, which was established under the legal parameters of California Government Code section 34851 *et seq.* Under this form of government, the City Council establishes the policy of the City, and the City Manager, with the assistance of the rest of the staff, carries out that policy. The City Manager's specific powers and duties are defined by ordinance in Municipal Code section 2.08.070, and they include: enforcing the laws of the City; controlling, appointing and dismissing City staff; recommending ordinances and an annual budget; purchasing all supplies; investigating City affairs and complaints; and exercising supervision over all City property.

A charter city may establish its form of government within its charter. Recognized forms of government include the Council-Manager form, the Council-Administrator form, or the Strong Mayor form. The Council-Manager form for a charter city is the same as for a general law city, as described above. The Council-Administrator form is similar to the Council-Manager form but limits the city manager to only administrative duties. The Strong Mayor form of government gives the mayor the authority to hire and fire the city manager and many of the department heads and may include the authority to present a budget to the city council much like the Governor of the State presents a budget to the State Legislature. Political power in the Strong Mayor form of government is concentrated in the mayor, and thus he or she is much more involved in the day-to-day management of the city than in the other two forms of government.

The Council Subcommittee requested proposed language in the City Charter preserving the current form of government. Thus, the proposed language in Article III states that the municipal government established is a Council-Manager form of government

whereby the City Council shall establish the policies of the City, and the City Manager shall carry out those policies.

#### **4. Continuing to Prohibit Gifts of Public Funds**

California Constitution Article XVI, Section 6 prohibits State and local governments from making gifts of public funds or property. This includes any transfer of City assets without pay or other consideration, unless it is transferred for a “public purpose.” The prohibition on gifts of public funds does not apply to charter cities except to the extent that the same prohibition may be adopted by a charter or an ordinance.

The Council Subcommittee indicated that it would like to preserve the prohibition on gifts of public funds. Thus, the proposed language in Article V of the City Charter states that the City shall comply with the laws of the State that are applicable to general law cities with respect to the prohibition against gifts of public funds.

#### **5. Requiring Zoning Ordinance Consistency with General Plan**

Pursuant to Government Code section 65860, a general law city’s zoning ordinance must be consistent with the general plan of that city, which means that the various land uses authorized by the zoning ordinance must be compatible with the objectives, policies, general land uses, and programs specified in the general plan. Government Code section 65803 expressly provides that many zoning statutes, including this consistency requirement, do not apply to a charter city except to the extent that the same consistency requirement may be adopted by a charter or an ordinance.

The City’s residents took great care to draft the General Plan to reflect the objectives, policies and goals of the City. Former Councilmember Dyda suggested at a City Council meeting that the General Plan must be preserved as the foremost City land use document, and the Charter Subcommittee would like to preserve the consistency of the Zoning Ordinance with the General Plan. The proposed language in Article VI of the City Charter thus states that the General Plan is the paramount City land use document and that the City shall be governed by State law as it applies to general law cities with respect to the requirement that the Zoning Ordinance must be consistent with the General Plan.

### **CONCLUSION**

The City Attorney recommends that the City Council approve the proposed revised City Charter of the City of Rancho Palos Verdes, which is attached to this report, and move forward with public education and outreach efforts about chartering so that the City Charter can be presented at an upcoming election.

*Attachment: Proposed City Charter of the City of Rancho Palos Verdes (with proposed changes italicized)*

## City Charter of the City of Rancho Palos Verdes

### PREAMBLE

We the people of the City of Rancho Palos Verdes declare our intent to restore to our community the historic principles of self governance inherent in the doctrine of home-rule. Sincerely committed to the belief that local government has the closest affinity to the people governed, and firm in the conviction that the economic and fiscal independence of our local government will promote the health, safety and welfare of all the citizens of this City, we do hereby exercise the express right granted by the Constitution of the State of California to enact and adopt this Charter for the City of Rancho Palos Verdes.

### Article I – Municipal Affairs: Generally

Section 100. Municipal Affairs. The City shall have full power and authority to adopt, make, exercise and enforce all legislation, laws, and regulations and to take all actions relating to municipal affairs that may be lawfully adopted, made, exercised, taken or enforced under the Constitution of the State of California, without limitation *except as otherwise provided in this Charter.*

### Article II – General Laws

Section 100. General Law Powers. In addition to the power and authority granted by the terms of this Charter and the Constitution of the State of California, the City shall have the power and authority to adopt, make, exercise and enforce all legislation, laws and regulations and to take all actions and to exercise any and all rights, powers, and privileges heretofore or hereafter established, granted or prescribed by any law of the State of California or by any other lawful authority. In the event of any conflict between the provisions of this Charter and the provisions of the general laws of the State of California, the provisions of this Charter shall control.

### Article III – Form of Government

Section 100. Council-Manager Form of Government. *The municipal government established by this Charter shall be known as the “Council-Manager” form of government. The City Council shall establish the policies of the City, and the City Manager shall carry out those policies.*

### Article IV – Compensation and Expenses

Section 100. Councilmember Compensation. All of the members of the City Council, including the Mayor, shall continue to receive as compensation for their services a monthly salary in an amount established in accordance with, and limited by, the provisions of law applicable to the salaries of City Council members in general law cities as set forth in Section 36516 of the Government Code of the State of California or any successor provision thereto. *The City shall not provide any additional compensation for attendance at other meetings of City or City-affiliated commissions, committees,*

*subcommittees, and boards of directors, including the Rancho Palos Verdes Redevelopment Agency and the Rancho Palos Verdes Improvement Authority.*

Section 200. Councilmember Expenses. All of the members of the City Council, including the Mayor, shall continue to be entitled to reimbursement for their actual and necessary expenses incurred in the performance of their official duties as stated in, and limited by, the provisions of law applicable to the reimbursement for expenses of City Council members in general law cities as set forth in Sections 36514.5, 53232.2 and 53232.3 of the Government Code of the State of California or any successor provisions thereto.

Section 300. Staff Compensation. *The compensation provided to City staff shall continue to be approved in a transparent manner at duly noticed City Council meetings.*

#### **Article V – Gifts of Public Funds**

Section 100. Gifts of Public Funds. *The City shall comply with the laws of the State of California that are applicable to general law cities with respect to the prohibition against gifts of public funds.*

#### **Article VI – General Plan**

Section 100. General Plan. *The General Plan is the paramount City land use document. The City shall be governed by State law as it applies to general law cities with respect to the requirement that the zoning ordinance must be consistent with the General Plan.*

#### **Article VII – Interpretation**

Section 100. Construction and Interpretation. The language contained in this Charter is intended to be permissive rather than exclusive or limiting and shall be liberally and broadly construed in favor of the exercise by the City of its power to govern with respect to any matter which is a municipal affair.

Section 200. Severability. If any provision of this Charter should be held by a court of competent jurisdiction to be invalid, void or otherwise unenforceable, the remaining provisions shall remain enforceable to the fullest extent permitted by law.

The electors of the City of Rancho Palos Verdes, by a majority of the votes cast, adopted this Charter of the City of Rancho Palos Verdes at the general municipal election held \_\_\_\_\_. The results of such election were certified by the City Council of the City of Rancho Palos Verdes through adoption of its Resolution No. \_\_\_\_\_.