

November 22, 1991 .

REPORT TO THE HONORABLE
MAYOR AND CITY COUNCIL

PROPOSED CHARTER AMENDMENTS ESTABLISHING TWO TERM LIMIT FOR
ELECTED CITY
OFFICIALS

On April 8, 1991, the City Council voted to place a two term limit for elected City officials on a future ballot. By memorandum dated November 7, 1991, the Mayor asked the City Attorney to prepare proposed charter amendments containing appropriate term limit language for Council action on November 25, 1991. In response to the Mayor's request, the City Attorney has prepared an ordinance calling for a special election in June 1992 to vote on three charter amendments. The amendments have been prepared as three separate ballot propositions amending Charter sections 12, 24 and 40 and are included in the election ordinance itself. Strikeout versions of these charter amendments are also attached as Exhibit A to this report.

Please note that the attached draft charter amendments embody policy assumptions that were not articulated by the Council in its April 8 vote. The Council needs to resolve these issues. The basic policy questions that you need to resolve are outlined below:

1. Shall the two term limit affect current or previous terms or only terms that begin after the 1992 elections?

The proposed drafts state that the term limit will commence only with the 1992 elections.

2. Shall the two term limit operate as a life-time ban on holding a particular office, or shall it apply only to limit the number of consecutive terms a person may hold a particular office?

The proposed drafts state that the term limit applies only to consecutive terms.

3. Shall the two term limit operate to prohibit persons from holding any Council district office more than two terms, or shall it only limit the number of times a person may hold one particular Council district office? For example, shall the term limit operate to prohibit Councilmember A, who has for two terms represented Council District X, from moving to Council District Y and running for and holding office as a Councilmember from Council District Y?

The proposed drafts state that the term limit applies only to limit the number of times a person may represent one particular district. The proposed language would not prohibit a person who represents one Council district for two terms from moving to another district and running for and holding office in that new district.

4. Shall the two term limit operate to prohibit persons from holding any City office more than two consecutive terms? For example, should the term limit operate to prohibit a person from holding a Council district office for two terms and then holding the office of Mayor or City Attorney for up to two terms?

The proposed drafts would operate to permit a person to hold one City office for two terms (for example, Councilmember), then hold another City office (for example, Mayor or City Attorney) for another two terms.

5. Shall a partial term be considered a full term for purposes of applying the two term limit?

The proposed drafts state that partial terms in excess of two years are to be treated as full terms for purposes of applying the term limit provision.

6. How shall redistricting affect the two term limit?

The proposed drafts do not explicitly deal with the issue of how redistricting would affect the two term limit. The proposed amendments state, however, that if, for any reason, a person holds office for a partial term of two or more years, that partial term will be treated as a full term for purposes of the term limitation. The City Attorney interprets this language to include partial terms in new districts caused by redistricting. How redistricting will otherwise affect the term limitation needs to be discussed and direction given to the City Attorney to draft appropriate language.

Please also note that the draft amendments to Charter sections 24 and 40 also contain "gender neutralizing" language in accordance with the Rules Committee's direction of November 6, 1991.

As a legal matter, it will be necessary for the Council to support placement of these proposed charter amendments on the ballot by articulating findings as to the City's compelling interest in placing these term limits on the ballot. See, e.g., *Legislature of the State of California v. Eu*, 91 Daily Journal D.A.R. 12510 (filed October 10, 1991), upholding the term limits in Proposition 140, which was adopted by the California voters in November 1990. Some of the compelling reasons that the California Supreme Court viewed favorably to support the Proposition 140 term limits were: eliminating unfair incumbent advantages, restoring open access to the political process, and stimulating electorate participation. *Legislature v. Eu*, 91 D.A.R. 12510 at 12517-12519. Proposed findings supporting placement of the term limit on the ballot have been placed in the prefatory clauses of the election ordinance.

Please also be aware of another legal issue that is currently pending

before the courts of this state with respect to term limit legislation, namely, whether term limit legislation established by charter cities impermissibly establishes qualifications for elected city officers in violation of the California Constitution. The City of Redondo Beach is currently litigating this same issue with respect to a term limitation in their charter. Also, a case arising out of San Diego County holds that term limits imposed on county elected officers established in a county charter is unconstitutional, because it improperly impinges on statewide control over selecting qualifications for elected county officials. *Younger v. Board of Supervisors*, 93 Cal.App.3d 864 (1979). Although powers granted to charter counties in this state are narrower than those granted to charter cities, the power of cities to enact term limit legislation for their own elected officers in their own charters is still unresolved and is an issue in the Redondo Beach case on appeal.

Respectfully submitted,
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City Attorney

CCM:smm:jrl:011(043.1)
Attachments: Exhibit A (3 charter amendments)
RC-91-57