

## MEMORANDUM

**To:** Tom Hatch, Costa Mesa City CEO

**From:** Thomas P. Duarte, Costa Mesa City Attorney

**Date:** January 26, 2012

**Subject:** **ANALYSIS OF PROPOSED CHARTER PROVISIONS REGARDING ETHICS/CONFLICT OF INTEREST AND COUNCILMEMBER QUALIFICATIONS**

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### 1. Introduction

Our office was asked to determine which proposed provisions could, legally speaking, be added to the Proposed Charter. After analyzing each proposed provision, we have determined that two proposed provisions attempt to govern an area of law that is already addressed by either State law, municipal ordinance, or both; and, therefore, would be potentially duplicative or conflicting with already establish law.

### 2. Qualifications of Councilmembers

While Council expressed a desire to provide in the Proposed Charter a section that detailed the qualifications for councilmembers (e.g. minimum age and residency requirements), we have determined that placing qualifications that are not in line with the Government and Election Codes may potentially run into constitutional problems. Article XI, § 5 of the California Constitution allows a Charter City to set up city council candidate qualifications (using the “home rule” provision). *See Ops Cal Atty Gen 6, 8 (1999)*. Thus, it is possible to set such qualifications in the Proposed Charter. Nevertheless, because any candidate qualifications would involve residency requirements, any such charter provision would have to be in line with the “privileges and immunities” clause of the United States Constitution. Generally speaking, the constitutional rights of candidacy, voting, and travel are implicated in analyzing any durational residency requirements and, therefore, a city would have to show a compelling state interest in such a restriction. *See Johnson v. Hamilton, 15 Cal. 3d 461, 468 (1975)*.

To that end, it was our intent to draft the councilmember qualifications in a manner that would give the City an option of either proscribing such requirements by ordinance or, absent an ordinance so stating, use the requirements as set forth in the Government Code § 36502 and Election Code § 321. This conservative position allows the City to use the already-tested and constitutional candidate qualifications found in the Government and Election Codes while, at the same time, gives the City the option to change candidate qualifications in the future if desired.

### 3. Ethics and Conduct Code

#### a. Political Reform Act applies to charter cities.

Our office has determined that the inclusion of an “Ethics and Conduct Code” to be unnecessary as it would be duplicative of statutes/ordinances already in place and could, if improperly drafted, potentially conflict with state law provisions. The Political Reform Act (Government Code § 82000 et seq.) covers both general law and charter cities. Specifically, the Political Reform Act defines a “city” to include both general and charter cities. *See* Cal. Gov. Code § 82008. Thus, anytime the Act refers to a “city” in its regulations, it is being inclusive of charter cities. Further, regulations promulgated by the Fair Political Practices Commission also apply to charter cities for the same reason. Therefore, providing for codes of ethics and conduct that attempt to duplicate the Political Reform Act could potentially lead to a conflict with State law, and, thus, rendering this proposed revision invalid.

#### b. Government Code § 1090 apply to charter cities.

Government Code § 1090 covers the following public officials: “[m]embers of the Legislature, state, county, district, judicial district, and city officers or employees.” Cal. Gov. Code § 1090. Thus, because councilmembers and city employees are still “city officers or employees” under a charter city, § 1090 applies regardless of whether the City is a general law or charter city. Therefore, it would be unnecessary to state, in the Proposed Charter, that § 1090 is applicable. Further, an attempt to duplicate the language in § 1090 would immediately invalidate the proposed provision because it would be duplicative of State law.

#### c. City’s Municipal Code already contains a conflict of interest code.

Chapter X of Title 2 of the Costa Mesa Municipal Code already contains a “Conflict of Interest Code” as required by the Political Reform Act. This Conflict of Interest Code, when originally adopted, has already been vetted to be in line with the Political Reform Act. As such, it is unnecessary to duplicate the Code in the Proposed Charter.