

# CITY OF NEWPORT BEACH OFFICE OF THE CITY ATTORNEY

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**DATE:** February 2, 2010  
**TO:** Honorable Chair and Charter Update Commission  
**FROM:** Office of the City Attorney  
David R. Hunt, City Attorney  
**MATTER:** Charter Update Matters 2009/10;  
A09-00673  
**RE:** Orientation on Legal Issues

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Please allow the Office of the City Attorney to weigh in briefly on your orientation through this memorandum.

## **1. Nature of Assignment.**

Your role is defined by the Council resolution that created the Commission. That role is summarized by the City Clerk's "Attachment A" presented to you along with the Revised List of Issues marked as "Attachment B" in your staff materials.

As you know, you are free to recommend that additional issues be addressed, but the City Council has to approve the addition of issues to the Commission's work program. If possible, we would recommend you address any additional issues that you may wish to address within the first two meetings of the Commission so that we can obtain Council approval and work them into the schedule.

## **2. Brown Act "Legislative Body."**

The Commission is a "legislative body" under the state open meetings law, the Ralph M. Brown Act (the "Act"). As such, the Commission must comply with the Act. Staff will assist in achieving compliance. Most important to the Commission and individual Commissioners are the following:

- ***Open and Public:*** All Commission business, unless subject to an exception of the Act, must be open and public. (Government Code section 54953(a); Council Policy A-6.)
- ***"Meeting":*** The business of the Commission can only be conducted in noticed and public "meetings." You may not meet privately with a quorum or more of Commissioners to address the business of the Commission outside of the context of an open and noticed public meeting.

- **Agenda Requirement:** Subject to limited exceptions for “emergencies” the Commission may only address issues that fall within its published agenda. (Government Code section 54954.2(a).)

### 3. Political Reform Act – Conflicts of interest.

When performing the business of the Commission you are a “public official” and may not use that position in “making, participating in or in any way attempting . . . to influence a governmental decision in which [you] know or have reason to know [you] have a financial interest.” (See Cal. Gov’t Code § 87100. See also 2 Cal. Code Regs. §§ 18700, 18702 - 18702.4.)

### 4. Public Records Concerns.

All of the records of the Commission are “public” unless they fall within limited exceptions, including some emails. As such, treat the records you receive and generate carefully. A good rule is to not say anything in an email or document that you do not want to see on the front page of the *Daily Pilot*. For the most part the City Clerk and other City staff will be responsible for maintaining public records and addressing public records issues, but you need to be sensitive to the issue.

### 5. Charter Cities.

The City of Newport Beach is, as you know, a Charter City recognized under the California Constitution. It is, therefore, unique in many ways from other governmental agencies commonly dealt with.

To begin with, cities are fundamentally different than counties under California law. Counties are in effect state agents and have no authority independent of their delegated power from the state. Cities are not local subdivisions of the state, but are instead instruments of local self-government. (Cal.Const. Art. VI, § 2; Government Code §§ 56000, *et seq.*) While cities may assist the state in providing services, they are not creatures of the state and they are insulated from the state under Article IV section 16 of the Constitution<sup>1</sup> which prohibits the state from enacting local or special legislation where the general laws could be applicable.

There are two classes of cities within California, “general laws” cities and charter cities. General laws cities derive their powers from the Constitution and from the “general laws of the state, such as the Government Code, Public Contract Code, and other laws. Charter cities such as Newport Beach base their powers directly on the Constitution and their Charters, as opposed to the “general laws” of the state. As such, charter cities are much greater autonomy from the state than do general laws cities.

Section 3(a) of Article XI of the Constitution authorizes the adoption of a city charter and provides that a charter has the force and effect of state law. In addition, charter cities are affirmatively granted “home rule” over “municipal affairs” by Constitution Art. XI, §

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<sup>1</sup> All references are to California law and its Constitution since the form and power of cities are for the states to regulate and not the federal government.

5(a). Such "home rule" is established by the adoption of a charter that in effect acts as the supreme law of the City, akin to being its own individual constitution. While the concept of a "municipal affair" lacks certain definition under the law, it is clear that the City has the power to provide for creation and operation of a police force, construct the governing structure of the City, conduct elections of municipal officers, and to establish the roles and number of municipal officers and employees through the adoption of its charter.

As a result, the Charter is a critical document to the governance of the City. Great care must be given to the consideration of amending it. We thank you for taking on this important task and we are honored to have a role in providing you assistance in your efforts. Please feel free to contact me or my office at anytime if you have any questions or concerns that we can assist you with in this effort.

*DRH*