



M E M O R A N D U M

CITY ATTORNEY'S OFFICE

DATE: September 4, 2013
TO: Charter Review Committee Members
FROM: Michael Houston, City Attorney *MJH*
RE: Charter Sections 402 (Eminent Domain) and 517 (Publishing Notices)

At subsequent Charter Review Committee ("Committee") meetings, several Committee members inquired as to whether Charter sections 402 and 517 may be "obsolete", either as a result of changes in the law or as a result of changes in technology.

Charter Section 402 (Limitations on the Use of Eminent Domain): Several Committee members recognized that state law had dissolved redevelopment agencies, and there was further discussion that state law established successors to these dissolved agencies. Committee members inquired whether it was appropriate to update Section 402 to reflect this change in law by potentially amending or deleting potentially obsolete references to the "Anaheim Redevelopment Agency."

Staff Recommendation: Staff recommends this reference to the "Anaheim Redevelopment Agency" not be deleted based on the explanation below. Rather, staff recommends that the final paragraph of Section 402 be amended as follows (proposed changes shown in underline): "Anaheim Redevelopment Agency (or any successor agency or successor in interest to this entity)".

Explanation: As part of the 2011 Budget Act, the legislature dissolved redevelopment agencies. Pursuant to amendments made by the dissolution legislation, Health & Safety Code Section 34163(e) expressly prohibits redevelopment agencies and their successors (known as "successor agencies") from acquiring any real property by any means, including through eminent domain. However, the dissolution law also requires that successor agencies to the dissolved redevelopment agencies continue to perform certain "enforceable obligations" (e.g., certain specified contracts where the former agency may have continuing obligations). Some of these contracts could include requirements to consider or take other actions related to acquiring property (including by the use of eminent domain at a private property owner's request for parcel assemblage). Thus, the dissolution statute precludes most acquisitions but may require a successor agency to acquire property if obligated by a valid contract. Likewise, "housing successors" who have assumed a dissolved redevelopment agency's housing functions, are expressly permitted to perform certain housing related functions, which could (but

does not necessarily) include use of eminent domain (*see* Health & Saf. Code § 34176).

Staff therefore believes that merely deleting the reference to the "Anaheim Redevelopment Agency" would be inappropriate and could, inadvertently, lead to the former redevelopment agency's successor entities being excepted from Section 402's prohibition (which would not be the intent of the Committee, we presume). For this reason, staff believes it is best to clarify that City-affiliated agencies include any successors to the former Anaheim Redevelopment Agency.

Section 517: Section 517 establishes a process for qualification and contracting with a newspaper to publish legal notices and other notices of the City. It was suggested that Charter section 517 may be outdated and, therefore, potentially subject to either revision or deletion.

Staff Recommendation: In further reviewing this matter, the City Attorney believes this section still is valuable and serves to provide an efficient basis to undertake noticing/publishing obligations that are required of the City in state law, the Anaheim Municipal Code or elsewhere in the Charter. For the reasons stated below, the City Attorney does not recommend revising Section 517, nor do I recommend revising publication provisions elsewhere in the City Charter that are analogous to state law because these provisions provide valuable "reminders" of the state law publication obligations.

However, to the extent that the Charter contains "unique" publication requirements that are not mandated by state law, the Committee may consider changing those provisions without revising section 517. Charter Section 1219, which requires that the City publish the City's financial statement in the City's official newspaper, and Section 1222, which requires publication of the City's intention to receive bids for the sale of City property, are not mandated by state law.

Explanation: Section 517 does not address or require notices be published in a particular way. Rather, this section solely addresses the *method* by which the City is obligated to *procure* notices that are "required to be published in a newspaper of general circulation in the city". Generally speaking, Section 517 requires that the City seek bids from applicable newspapers and also specifies the cost parameters of any such contract entered with a newspaper.

While newsprint media may be viewed by some as anachronistic, numerous Charter, Municipal Code and state law provisions require that notices and other matters be published in a newspaper of general circulation in the City or County. The status of a newspaper as being one of "general circulation" in a city is governed by state law, not local ordinance or charter. *See* Govt. Code 6000. The designation process applies to charter cities. A number of state laws require the publication of matters and notices in newspapers of general circulation and many of these laws apply to charter cities. For instance, Government Code Section 65090 et seq. requires that certain notices of land use and zoning matters be published in newspapers of general circulation. These provisions apply to charter cities. Further, both the City's Charter and state law applicable to charter cities require the publishing of City ordinances in a newspaper of general circulation. *See* Anaheim Charter § 512; Govt. Code § 36933.

Conclusion: If the Committee approves the recommendation to Section 402 (or recommends other changes), staff will prepare specific text for your consideration at an upcoming meeting.