

*Mr. Howard*

February 14, 1941.

To the Honorable, The Mayor and Council  
of The City of San Diego, California.

Gentlemen:

REPORT OF SPECIAL COUNCIL COMMITTEE  
ON PROPOSED CHARTER AMENDMENTS.

Your committee, appointed to study and recommend upon the proposed charter amendments submitted by the Charter Revision Committee, has given careful consideration to the same, and in the following recommendations has, pursuant to the Council's expressed desire, sought to eliminate all proposed amendments which are not deemed urgent or particularly important at this time. A number of changes are suggested in the amendments proposed by the Charter Revision Committee. Your committee is also including in its recommendations several additional amendments.

For the sake of brevity the Charter Revision Committee will hereafter be designated as "CRC."

(1) Your committee recommends against the submission of CRC proposed amendment to Section 8 (page 1), and in lieu thereof proposes the following amendment:

"Section 8. ELECTION CODE. Within ninety (90) days after this amendment has been ratified by the State Legislature the Council shall adopt an election code ordinance, providing an adequate and complete procedure to govern municipal elections, including the nomination of candidates for all elective offices. All elections provided for by this charter, whether for choice of officers or submission of questions to the voters, shall be conducted in the manner prescribed by said election code ordinance."

(2) Your committee recommends against the submission of CRC proposed amendment to Section 9 (page 1), and in lieu thereof proposes the following amendment:

"Section 9. NOMINATIONS. Nominations of candidates for all elective offices shall be made in the manner prescribed by the election code ordinance provided for in Section 8 of this article."

EXPLANATION: The reason for the foregoing suggested changes is that since an election code is provided for, there seems to be no sound reason for lengthy provisions in the Charter which are properly a part of such an election code.

(3) CRC proposal to amend Section 12 (page 7), to provide that each councilman shall receive \$1200.00 per year, is recommended, but in the judgment of your committee should be changed to read as follows:

"Section 12. (6th paragraph) Each councilman shall receive as compensation the sum of twelve hundred dollars (\$1200.00) per year, payable in semi-monthly installments. The compensation or salary of each councilman may be changed at any time by a majority vote of the qualified electors of the City at either a special or general mu-

municipal election. The compensation herein provided for shall be payable to each councilman in office at the time of the ratification of this amendment by the State Legislature until the expiration of the term for which he was elected."

EXPLANATION: The City Attorney has advised your committee very definitely that there is no legal reason why the holdover councilmen should not receive the compensation provided for by this amendment during the balance of their terms.

(4) Your committee recommends against the submission of GRG proposed amendment to Section 23 (page 8 et seq.), and proposes in lieu thereof the following:

"Section 23. INITIATIVE, REFERENDUM AND RECALL. The right to recall municipal officers and the powers of the initiative and referendum are hereby reserved to the people of the City. Ordinances may be initiated; and referendum may be exercised on any ordinance passed by the Council, except an ordinance which by the provisions of this charter takes effect immediately upon its passage; and any elective officer may be recalled from office. The Council shall include in the election code ordinance required to be adopted by Section 8, Article II, of this charter an expeditious and complete procedure for the exercise by the people of the initiative, referendum and recall, including forms of petitions; provided that the number of signatures necessary on petitions for the initiation of an ordinance for the consideration of the Council shall be three per cent of the registered voters of the City at the last general City election; that for the direct submission of a measure to the people it shall require a petition signed by ten per cent of the registered voters of the City at the last general City election; that for a referendum upon an ordinance passed by the Council it shall require a petition signed by five per cent of the registered voters of the City at the last general City election; and that for the recall of an elected officer it shall require a petition signed by fifteen per cent of the registered voters of the City at the last general City election."

EXPLANATION: Your committee feels that there is no sound reason for burdening the Charter with the lengthy procedural provisions for the exercise of the initiative, referendum and recall, as they would seem logically to belong in the election code. It is felt, however, that the percentages of voters required to set these powers in motion, as suggested by the CRC, or other percentages which the Council may decide upon, should, for the protection of the people, be set forth in the Charter.

(5) Your committee recommends against the submission of CRC proposed amendment to Section 24 (page 15), for the reason that the same is unimportant and unnecessary. The Auditor, ever since the adoption of the Charter, has paid the salary of officials semi-monthly.

(6) Your committee recommends against the submission of CRC proposed amendment to Section 27 (page 15), dealing with the City Manager. The present section as amended in 1933, in the committee's opinion, is not only adequate, but more satisfactory than the proposed amendment.

(7) Your committee recommends against CRC proposal to amend the last two paragraphs of Section 40 (pg. 16).

EXPLANATION: The City Attorney strongly advises against this proposed amendment, pointing out that it would not only be costly but almost inevitably lead to serious abuses, and encourage city employees to expect to be dependent for their own torts upon the City.

(8) Your committee recommends the submission of CRC proposed amendment to Section 53 (pages 17 and 18), provided the words "operation and" are inserted after the word "property" in the 16th line of the proposed amendment.

EXPLANATION: This proposed amendment was prepared by the City Manager, and has his unqualified approval.

(9) Your committee recommends against the submission of CRC proposed amendment to Section 54(f) (page 18), and suggests in lieu thereof the following:

"Section 54 (f) The Council shall appropriate each fiscal year until the fiscal year 1948-1949, the sum of \$150,000.00 in the Annual Appropriation Ordinance for the use of the Harbor Commission on harbor improvements. This sum so appropriated annually, together with such portions of the revenues and receipts of the department as may not be needed for operating expenses, shall be placed in a trust fund in the City Treasury, and expended by the Harbor Commission for capital purposes only in the development of the harbor of San Diego and of tidelands heretofore or hereafter granted to The City of San Diego by the State of California. When the harbor has been fully developed all such funds which are not necessary for the maintenance and operation of said department shall be placed in the general fund of the City and thereafter used for any lawful purpose."

EXPLANATION: While the committee recognizes the great importance of continuing the annual appropriation for harbor development, it feels that the increasing demands upon the City are such that the increase of \$100,000.00 is not justified. Furthermore, that such a proposed increase would in all probability be defeated at the election.

(10) CRC proposal to amend Section 55(a), first paragraph (page 19), is submitted without recommendation.

(11) CRC proposal to amend Section 55 by deleting the last paragraph of subdivision (a) (page 19), is disapproved, for the reason that your committee believes that the electors should retain the right to decide whether or not land may be taken out of the park for streets and highways. The present provision should not be disturbed.

(12) Your committee recommends against the submission of CRC proposed amendment to Section 61(f) (page 19), relating to the Department of Social Welfare, for the reason that the changes are neither essential nor important.

(13) Your committee recommends against the submission of CRC proposed amendment to Section 64 (page 20), for the reason that the proposed changes are neither essential nor important at this time.

(14) Your committee recommends against the submission of CRC proposed amendment to Section 66 (last sentence) (page 20), for the reason that the indicated change is unimportant. The Auditor, since the adoption of the Charter, has made semi-monthly payments of compensation, being advised by the City Attorney's office that he had the right so to do.

(15) Your committee recommends against the submission of CRC proposed amendment to Section 69(k) (page 20), for the reason that the indicated changes are unimportant and trivial.

(16) Your committee recommends against the submission of CRC proposed amendment to Section 86 (page 21), and proposes that in lieu of the new matter proposed by the amendment the following be used:

"Section 86. DISPOSITION OF PUBLIC MONIES. All City officials and employees empowered to collect money for fees, permits, licenses, inspections, services, taxes or other municipal charges, shall collect the same promptly at the time they become due, turn them into the City Treasury daily, obtain a receipt therefor, and report the same to the City Auditor and Comptroller weekly; provided, however, that in the case of employees located in distant parts of the city or county who in the course of their duties collect money belonging to the City, which collections can be deposited in the City Treasury daily only with difficulty and undue cost to the City, such collections may be deposited in the City Treasury within one week after their receipt by the employee collecting the same. All such moneys and all fines or pecuniary penalties or forfeitures which may accrue to the City, and all funds which may remain in the possession of the City unclaimed after a period of one year from the date when due and payable, shall be credited to the general fund of the City, and shall be applicable to any purpose to which the Council may appropriate them and the Council shall appropriate from this fund whatever sum may be necessary to pay valid claims of more than one year's standing."

(17) CRC proposed amendment to Section 94 (pages 21 and 22), authorizing the Council, upon the recommendation of the City Manager or head of an independent department, and by the affirmative vote of five members of the Council, to authorize the Purchasing Agent to purchase equipment, etc., where the expenditure is in excess of \$1000.00 and under \$3000.00, without notice or advertising for competitive bids, when it can be shown that the best interests of the City and public policy will be

subscribed thereby, is submitted to the Council for its consideration without recommendation by this committee, for the reason that the committee is divided upon the question of the soundness of this proposal.

(18) Your committee recommends against the submission of CRC proposed amendment to Section 95(a) (page 23), in the form submitted, and suggests that in lieu thereof the following amendment be submitted:

"Section 95(a). That the articles, products or materials are to be in whole or in part manufactured, made or produced in industries established in The City of San Diego or in the County of San Diego, specifying the name and location thereof; or that the articles, products or materials are regularly stocked, handled and sold by business establishments located in The City of San Diego or in the County of San Diego, specifying the name and location of such establishments.

(b) That the mechanical and other labor, employed in the manufacture, making or production of such portion of the articles, products or materials to be manufactured, made or produced in The City of San Diego, or in the County of San Diego, will be paid not less than the prevailing or current rate of per diem wages paid by private employers in The City of San Diego for the same quality of services, specifying such rates for each class of labor to be employed;

Provided, however, that the bid of such higher bidder does not in amount or price exceed by five per cent that of the lowest responsible bidder for such contract."

EXPLANATION: The committee feels that since the purpose of the five per cent differential is to protect and encourage local enterprise and local business, it should be extended to cover not only manufacturers and producers but also established business concerns which sell and deal in ma-



terials and products, even though the same may be wholly manufactured elsewhere.

(19) Your committee recommends against the submission of CRC proposal to amend Section 99 (page 23), and proposes that there be submitted in lieu thereof the following amendment:

"Section 99. CONTINUING CONTRACTS. No contract or obligation involving the payment of money out of the appropriations of more than one year, except bonded indebtedness provided for in Section 90 of this article, shall be entered into unless there shall first have been notice published in the official newspaper of the City at least two weeks before final action of the Council thereon. Such a contract shall require the approval of not less than five members of the Council. If the contract is to be for a period of more than five years it must also first be submitted to the electors of the City at a regular or special election and be approved by a two-thirds majority of those voting thereon. Any contract entered into in violation of the requirements of this section shall be invalid, and no rights, indebtedness, liabilities or obligations shall arise thereunder or be created thereby."

EXPLANATION: The ambiguity in the wording of this section as it stands at present in the Charter has caused the City Attorney's office great difficulty. Construed literally it seems to prevent the City from entering into a contract for more than five years even though two-thirds of the electors have approved a longer term contract. The CRC proposed amendment merely changes the word "and" to the word "or" in next to the last line, which makes the confusion even worse. The committee believes that the intent of the framers of the Charter was to vest in the Council the right to enter into a

contract up to five years' duration after publication of notice and approval by five members; but that if a contract was to be for a longer period than five years it would necessitate a submission to the voters. It cannot be supposed that the freeholders intended to prohibit the electors of the City from authorizing a contract for more than five years, although Section 99 would bear that construction.

(20) Your committee recommends for submission CRC proposed amendment to Section 103 (page 24). This amendment was sponsored by Mr. Cooper, and is of extreme importance.

(21) NOTE: CRC inadvertently omitted a proposal sponsored by the City Manager to amend Section 104 by striking out of the section the phrase "at specified intervals of not more than ten years after the beginning of operation," occurring after the word "ordinance" in line 8 of the Section in the City Charter. Your committee recommends that Section 104 be amended by deleting the quoted language.

(22) Your committee recommends the submission of CRC proposed amendment to Section 105 (page 24).

(23) Your committee recommends against the submission of CRC proposed amendment to Section 107 (page 25), for the reason that the change is unimportant.

(24) Your committee recommends for submission CRC proposed amendment to Section 109 (page 25 et seq.), with the slight following change in the second line of the

proposed amendment on page 27. After the word "ownership" insert the words "and operation, or such other information as the Council shall deem expedient."

(25) Your committee recommends for submission CRC proposed amendment to Section 112 (page 27.)

EXPLANATION: The present section does not accomplish any really valuable purpose. The amendment will provide the Council, the City Manager and the public with important information.

(26) Your committee recommends against the submission of CRC proposed new Section 114.01 (Advertising and Promotion Commission) (page 27), for the reason that in the opinion of the Committee there is no occasion for the creation of such a commission, and if the same were done it would in all probability be very unsatisfactory.

(27) Your committee recommends against the submission of CRC proposal to amend Section 202 (page 28).

EXPLANATION: The proposed amendment attempts to freeze into the Charter the present Municipal Court set-up in San Diego, and to preserve its present jurisdiction, salaries of the judges, etc., irrespective of any changes which the State Legislature may make in the future. Such an amendment would probably be unconstitutional, since the Municipal Court is a part of the State judicial system, subject, only, to the Legislature. The Court's jurisdiction is not confined exclusively to The City of San Diego, and in the opinion of the City Attorney

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it probably cannot be controlled by any charter provision.

(28) Your committee recommends that Sections 202 to 210, both inclusive, comprising all of Article XIII of the Charter, be repealed, since all of these sections are now entirely obsolete.

(29) Your committee recommends for submission CRC proposal to repeal Section 161 (page 29).

( EXPLANATION: The Committee feels that the fluctuation of pension increases with the salaries paid in the Department from time to time is unsound, and should not be continued. The salary trend is constantly upward due to changing conditions, and there seems to be no good reason why a pensioner long since retired should have his pension automatically increased when he is not in any way participating in the work of the Department. Practically all pension systems definitely fix the amount of the pension at the date of retirement.

(30) Your committee recommends for submission CRC proposal to amend Section 162 (pages 29 and 30).

EXPLANATION: The committee feels that it is more fair and equitable to all members of the Department that the amount of the pension should be computed upon the average yearly salary for the five years immediately preceding the date of retirement rather than upon the amount attached to the rank

or employment held by the retiring person for one year previous to retirement. As the section stands at present favoritism can easily be practised by deliberately promoting an officer to a higher rank for the year preceding his right to retire in order to provide him with a larger pension. This obviously is discriminatory and unfair to the other members of the Department, particularly those who are approaching retirement.

(31) Your committee recommends against CRC proposal to amend Section 211 (page 30).

EXPLANATION: At present the Charter provides that all officers shall take a proper oath. There seems to be no good reason for requiring all of the 1300 or 1400 employees of the City, which include a large number of laborers, garbage and rubbish collectors, etc., to go through the empty formality of taking an oath. If the purpose of the amendment is to secure a greater degree of loyalty to the City and to the Government, it is obvious that this result would not be accomplished. Those engaged in subversive or traitorous activities are notoriously willing to subscribe to any sort of oath; in fact welcome the opportunity to do so.

(32) Your committee recommends the submission of CRC proposal to amend Section 213 (page 30).

EXPLANATION: This amendment is necessary for the reason that no ordinances were expressly

repealed by the Charter, yet there are many ordinances which are inconsistent with the Charter, but which, under the awkward wording used in Section 213, are apparently continued in force and effect. The result has been and will continue confusing and harmful unless changed as proposed.

(33) Your committee recommends against the submission of CRC proposal to amend Section 221 (page 31).

EXPLANATION: The amendment merely specifically states that public offices are to be open on Saturdays from 8:30 o'clock in the morning until 12 o'clock noon. This, of course, has long been the universal practice, and the section as it now stands in effect provides for the closing of offices on Saturday at 12:00 o'clock, since the Political Code designates Saturday afternoon as a legal holiday so far as public offices are concerned.

(34) Your committee recommends against the submission of CRC proposal to amend Section 224 (page 31).

EXPLANATION: The section is awkwardly and improperly worded, in that it purports to repeal laws of the State inconsistent with the Charter. However, the amendment is unimportant. The Constitution takes care of the matter involved. In municipal affairs the City is entirely independent of state laws.

THE FOLLOWING AMENDMENTS WERE SUBMITTED TO THE COUNCIL CONFERENCE ON MONDAY, FEBRUARY 10, 1941, AND WERE UNANIMOUSLY APPROVED.

(1) Proposed amendment of Section 77a of the Charter:

"Section 77a. The Council shall levy annually, in addition to all other taxes provided for in this Charter, not less than two cents (\$.02) on each one hundred dollars (\$100.00) of the assessed valuation of the real and personal property within the City, to be used exclusively for the maintenance in Balboa Park of zoological exhibits.

Whenever the Council deems it to be for the best interests of the City, the Council may enter into a contract, upon such terms and conditions as the Council may prescribe, for the maintenance in Balboa Park of zoological exhibits, with any organization formed primarily for the purposes of maintaining zoological gardens and zoological exhibits and conducting general zoological work; and may make available to such organization the proceeds of the special tax levy provided for in this section."

(2) Proposed amendment of Section 118 of the Charter, by the addition of sub-section (s), to read as follows:

"(s) That the appointing authority shall have the power to lay off or suspend any employee because of lack of funds, lack of work, or where there has been an unsufficient appropriation to meet the salary requirements of the department affected thereby; provided, however, that within the meaning of this section the appointing authority shall be construed to be the person having the power in the first instance to select the employee from the eligible list provided for that purpose."

(3) Proposed amendment of Section 130 of the Charter:

"Section 130. The Council shall by ordinance, prior to the beginning of each fiscal year, establish a schedule of compensation for officers and employees in the Classified Service, which shall provide uniform compensation for like service. It shall be the duty of the Civil Service Commission to prepare and furnish to the Council, prior to the adoption of said ordinance, for the information and guidance of the Council, a schedule of compensation recommending a minimum and maximum for any grade. The Council may adopt such schedule as presented, or make such changes therein as it may deem necessary and proper. An increase in compensation, within the limits provided for any grade, may be granted at any time by the City Manager or other appointing authority upon the basis of efficiency and seniority record, after having first received the approval of the Civil Service Commission therefor."

AMENDMENTS PROPOSED BY THE CITY ATTORNEY AND  
SUBMITTED FOR THE COUNCIL'S CONSIDERATION,  
WITHOUT RECOMMENDATION BY THE COMMITTEE.

(1) Proposed amendment to Section 77 of the

Charter:

"Section 77. SPECIAL TAX LEVY. In addition to the taxes herein or by general law authorized to be levied and collected in an amount sufficient to pay the bonded indebtedness of the City, and subject to the limitation of Section 76 of this Article, the Council shall have the power to levy and collect a tax at the rate of not more than five cents on each one hundred dollars of the assessed valuation during any one fiscal year, for the acquisition and construction of permanent improvements, real property, public buildings and structures and public offices, including equipping and furnishing of the same. Provided, however, that said amount of five cents may be increased by a vote of two-thirds of the electors voting on the proposition, but not to exceed the amount limited by said Section 76."

EXPLANATION: The proposed clarification is very important. The City Attorney has on several



occasions, in connection with our bond proceedings, encountered great difficulty with bond counsel and attorneys for the RFC, because of the wording of this section. It could bear the construction that the City is limited to a levy of five cents on each one hundred dollars of assessed valuation to pay bond interest and redemption requirements. In fact this very construction has been forcefully argued by the attorneys referred to.

(2) Proposed amendment to Section 143 of the

Charter:

"Section 143. CONTRIBUTIONS. The retirement system herein provided for shall be conducted on the contributory plan - the City contributing jointly with the employees affected thereunder. Employees shall contribute an amount not to exceed five per cent (5%) of their salary or wage, except that all present members of the retirement system may hereafter, and any employee who enters the system, may, at any time thereafter, elect to receive allowances in excess of those normally established, at rates of contribution to be determined by the Board; but in no event shall such rates provide said employees who elect to receive allowances in excess of those normally established, a total retirement allowance in excess of one hundred dollars (\$100.00) per month. Any employee who is a member of the system at the time this amendment takes effect, may, at any time hereafter, elect to make up arrears from the time when he last became eligible to membership therein to the date when he became a member thereof, by contributing an amount to be determined by the actuary, which amount shall be the difference between his present accumulated contributions and what said accumulated contributions would have been, had he joined the system when he last became eligible thereto; and said amount shall, at the discretion of the Board, be paid in cash or in monthly payments, said cash or first monthly payment to begin within thirty (30) days after notification by the Board; provided, however, that no such employee shall receive the benefits of initial liabilities as here-

after provided.

The City shall contribute an equal amount, except where employees elect to receive a retirement allowance at a rate in excess of that normally established; in which case the City shall contribute only the amount provided in the actuarial tables adopted by the said Board for normal retirement allowances. The mortality, service, experience or other table calculated by the actuary and the valuation determined by him, and approved by the Board, shall be conclusive and final, and any retirement system established under this Article shall be based thereon; provided that initial liabilities accruing under a retirement plan because of past service of employees in active service on the 7th day of April, 1925, may be covered by annual appropriations by the Council."

EXPLANATION: The Committee has not had the time to study the foregoing proposed amendment. Furthermore, it involves an important question of policy, which naturally the entire Council should pass upon.

(3) Proposal to amend subdivision (a) of Section 55 by inserting therein the following paragraph after the word "purpose," in line 12 of said subdivision (a), on page 29 of the Charter:

"Provided, however, that whenever the Council deems it to be for the best interests of the City, the Council may authorize the City Manager to enter into leases or contracts or let concessions, upon such terms and conditions as the Council shall prescribe, for the use and operation of the City Stadium in Balboa Park and for the use and operation of City-owned equipment and facilities of an amusement character located in the parks of the City, together with buildings and space therein necessary and convenient for the operation of the same."

EXPLANATION: The City Attorney recommends the submission of the foregoing amendment as being

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very important in order to remove any doubt as to the City's right to lease or contract for the use of city-owned equipment and amusement facilities, such as those in the Amusement Center at Mission Beach, the Stadium, etc. The Committee joins in the recommendation that it be submitted.

CONCLUSION: The Committee has, as indicated at the beginning of this report, endeavored to confine its recommendations for submission of amendments to those which appear to be of immediate importance, some, indeed, being urgent. The proposed amendments which have been rejected, together with many others which might be but have not been suggested, all of which would cure more or less minor defects in the Charter, the Committee feels may well be postponed to some future election when the ballot will not be encumbered with so many propositions.

Respectfully submitted,

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Special Council Committee.