



Administrative Report

N.1., File # 24-1264

Meeting Date: 7/23/2024

To: MAYOR AND CITY COUNCIL
From: MICHAEL W. WEBB, CITY ATTORNEY

TITLE

DISCUSSION AND POSSIBLE FURTHER DIRECTION TO STAFF REGARDING DRAFTING AN AMENDMENT TO ARTICLE XXVII OF THE REDONDO BEACH CITY CHARTER CONFIRMING WHICH PROVISIONS ARE PREEMPTED BY STATE LAW AS IT PERTAINS TO THE HOUSING ELEMENT PROCESS

EXECUTIVE SUMMARY

Give further direction to the City Attorney and the Community Development Director regarding the draft amendment to Article XXVII of the Redondo Beach City Charter confirming which provisions are preempted by State law as it pertains to the housing element process, for the Mayor and City Council's consideration at a future meeting.

In a ruling filed on October 30, 2023, a Superior Court Judge found that Article XXVII of the Redondo Beach City Charter is pre-empted by statewide law as it relates to the housing element process, nullifying its requirement of voter approval of zoning changes contemplated by a draft housing element. At the April 2, 2024 meeting, the City Council directed the City Attorney to draft language for an Article XXVII amendment that would exempt from Article XXVII's ambit housing elements passed by the City Council and enacting legislation so that they do not need to go to a vote of the people and, consistent with comments from the Mayor, a sunset clause. A Charter Amendment of Article XXVII submitted to and approved by the voters, would confirm which provisions are pre-empted by State law.

BACKGROUND

In case number 22TRCP00203, Petitioners New Commune DTLA, LLC and Leonid Pustilnikov filed a Petition for a Writ of Mandamus seeking to overturn the Housing Element that the City Council adopted and which the State of California Department of Housing and Community Development found was in "full compliance with State Housing Element Law". The petition was based in part on the contention that voter approval of the housing element is required under the City Charter. Ironically, while Petitioners in their petition purported to champion the will of the people, it is Petitioners' position that thwarts the voters. In amending the Charter to add Article XXVII, the City's residents sought to ensure they have a voice in land use decisions. Petitioners want to overturn the City's adopted and certified Housing Element to invoke a statutory provision and attempt to force the City to approve Petitioners' own development project, and skirt voters entirely.

In 2008, City voters adopted Measure DD, which added Article XXVII to the City Charter. The primary purpose of Measure DD was to "[g]ive the voters of Redondo Beach the power to determine whether the City should allow major changes in allowable land use, as defined below, by requiring voter approval of any such proposed change".

The City's Planning Commission and City Council, relying on a long-standing understanding of the Community Development Department, concluded that the Housing Element did not trigger Article XXVII because it was a policy document that is prefatory to implementing the intentions of the Housing Element such as by adopting a zoning change. Furthermore, a major change in allowable land use is implicated only by changes to the City's land use plan and map, and zoning designations. They also concluded that these revisions, which *implement* housing element policies, would require a vote of the electorate.

On October 30, 2023, the Court denied the Petition for Writ of Administrative Mandamus and upheld the City's Housing Element. **However**, the Court's basis for its ruling was different from the argument that the City had made regarding Measure DD. The Court held that the City was not required to seek voter approval of the housing element because Measure DD is preempted by California State Housing Element Law. Ultimately the Court concluded that "(b)ecause the Court finds that Measure DD is preempted by the statewide law and thus no future vote of City's residents is required as a precondition of the Draft Housing Element being adopted, the Petition is denied".

Article XXVII does explicitly state that "(t)he provisions of this article shall not apply to the extent that they would violate state or federal laws". However, to bring clarity as to which provisions are preempted by State law, Staff recommended submitting a Charter Amendment for approval by the voters.

At the April 2, 2024 meeting, the City Council directed the City Attorney to draft language for an Article XXVII amendment that would exempt from Article XXVII's ambit housing elements passed by the City Council and enacting legislation so that they do not need to go to a vote of the people and, consistent with comments from the Mayor, a sunset clause. The proposed draft amendment does just that. It additionally changes the requirement that ballot materials be "mailed" to voters to "made available" to voters per subsequent comments by Mayor Light due to changes in technology and how voters can access City records on-line in the time since Measure DD was written. Finally, it corrects some typographical errors and makes some other non-substantive changes.

COORDINATION

The City Attorney's Office coordinated the preparation of this item with the City Manager's Office and the Community Development Department.

ATTACHMENTS

- Draft Charter Amendment
Clean and Redline versions
- Final Ruling in Case Number 22TRCP00203

