DATE: September 12, 1986

TO: City Manager
FROM: City Attorney
SUBJECT: Housing Commission

By memorandum dated September 10, 1986, in connection with a pending study regarding the continued operations of the Housing Commission, you asked this office to "please render ╒by September 12σ an opinion on whether or not the following options are legal:"

Option One

Abolish the Citizen Commission and establish City Council as the Commission and the Authority. This is permissible under State Law if the City Council appoints two people (a low income tenant and a senior citizen) to provide input. The organization could then be placed under the City Manager and Civil Service System as a City Department.

Option Two

Maintain the current Commission organization but stipulate that the Commission is advisory to the City Council, that the Mayor will appoint the Chairperson and that the City Council will be the appointing authority for the Executive Director (similar to the Planning Commission).

Option Three

Maintain the current Commission organization with the sole exception that the Executive Director be placed on a contractual basis with City Council approval required.

A brief background discussion of the legal basis and relationship between the City, the Housing Authority and the Housing Commission would seem helpful prior to discussing the above options.

In 1968, pursuant to the Housing Authorities Law as set forth in Section 34200 et seq. of the Health and Safety Code of the State of California, the City Council adopted a resolution creating the Housing Authority of the City of San Diego. A copy of the resolution is attached. The Housing Authority is a State agency and is governed by the provisions of Section 34200 et seq. and not the City Charter. Under the Housing Authorities Law, the City Council had the option of appointing five persons as commissioners of the Authority or appointing themselves as commissioners of the Authority. The City Council opted to

declare themselves as the commissioners of the Authority. The Housing Authorities Law authorizes the Authority to contract for staff services and, during the period 1968 to 1978, the Housing Authority contracted with the City of San Diego pursuant to which contract it supplied several staff members to the Housing Authority and the City was reimbursed from federal funds received in connection with the Housing Authority's programs.

The largest program involved the now largely replaced "Section 23" rental housing program. The Housing Authority contracted during most of the 1968-1978 period with a private apartment management firm and that firm managed the Section 23 program with only a small number of City/Housing Authority staff involved. In the late 1970s, the City Council, acting as the Housing Authority, determined to manage the Section 23 program with Housing Authority staff rather than continuing to contract with the private management firm.

At about the same time, the Housing Authorities Law was amended to require that each Housing Authority have two residents of the low-income housing program on the Housing Authority Board of Commissioners. The City Council, and perhaps several other cities' city councils which also sat as housing authorities, encouraged the Legislature to adopt an emergency measure which allowed the appointment of the two low-income residents to a housing commission in those fact situations where a city council sat as a housing authority. The Legislature adopted such law and the City Council appointed two low-income tenants to the Housing Advisory Board which had been established in 1969 and which was purely advisory to the Housing Authority.

At that time, there was considerable City Council concern with regard to the efficiency of the Housing Authority's low-income housing activities. The process involved Housing Authority staff proposing various actions which were thereafter reviewed by the Housing Advisory Board which made recommendations to the Housing Authority. The City Council at that time felt that the Housing Advisory Board's recommendations to the Housing Authority should be passed through the City Council's Public Services and Safety Committee prior to going to the Housing Authority itself. The City Manager at that time was still the Executive Director of the Housing Authority and at times disagreed with recommendations of the Housing Advisory Board. The process was obviously time consuming and somewhat inefficient.

The City Council then, pursuant to Sections 34291 and 34292 of the Health and Safety Code, adopted an ordinance now codified

as Section 98.0301 of the Municipal Code which in effect transferred the majority of functions of the Housing Authority to the Housing Commission. The Housing Authority retained only certain basic approval rights and since that time the Housing Authority has generally only been involved in annual approval of the Housing Commission budget, the approval of annual contributions contracts from the United States Department of Housing and Urban Development, and any proposed long term lease or sale of Housing Authority real property. The ordinance, however, further specifies that all decisions of the Housing Commission are subject to referral to the Housing Authority for final action. The ordinance allows any member of the City Council or the City Manager, by written notice to the Executive Director within seven days after an action by the Housing Commission, to have the matter referred to the Housing Authority for final action in which case the "action" by the Housing Commission is specified to be only "advisory."

As you know, since the creation of the Housing Commission, the staff level for the City's low and moderate income housing programs has risen dramatically as has the level of activity in providing various low and moderate income housing opportunities. It is my understanding that there are now approximately 132 persons employed by the Housing Commission as staff, including approximately six persons who serve in positions which would probably be considered "unclassified" if such persons served in a similar capacity for the City.

In light of the above historical and legal background, with regard to Option One, it would not be appropriate, as a legal matter, to abolish the "Citizen Commission" and establish the City Council as the Commission and the Authority. However, the City Council could abolish the Commission and appoint the two low-income housing tenants as additional members of the Housing Authority thereby creating an eleven-member Housing Authority.

The above conclusion is based upon the provisions of the Housing Authorities Law which preclude having more than seven members on a housing commission and only allow for the appointment of two low-income tenants to a commission where a City Council has appointed itself as the commissioners of the Housing Authority.

With regard to the second portion of Option One, a discussion with the City's Personnel Director indicates that there are a number of problems involved in the concept of taking approximately 132 employees of an outside agency and

incorporating them into the Civil Service without going through a process of screening, testing and competition. The Personnel Director indicates that most or all of the problems are potentially surmountable but if Option One is to be seriously considered, substantial additional discussion should be held with the Personnel Director with regard to the logistics and the Civil Service rules relating to and affecting such a transfer.

With regard to Option Two, it is legally feasible to maintain the current Commission organization but stipulate that the Commission is only advisory to the Housing Authority (not the City Council). It is also legally feasible to provide that either the Mayor or the Mayor sitting as Chairman of the Housing Authority will appoint the chairperson of the Commission and that the City Council or the City Council sitting as the Housing Authority will be the appointing authority for the Executive Director of the Housing Authority and/or the Housing Commission. It should be noted that at present, by City Council action, the Housing Commission was delegated with the Authority to appoint an Executive Director who serves as both the Executive Director to the Authority and the Commission.

As to Option Three, it is legally feasible to maintain the current Commission organization with the sole exception that the Executive Director be placed on a contractual basis with either City Council or Housing Authority approval required.

It is recommended in connection with the above options, that in keeping with the basic concept that the Housing Authority and the Housing Commission are separate and distinct legal entities from the City, that the Housing Authority, rather than the City Council, take any actions necessary in connection with the control and operation of the Housing Commission activities.

JOHN W. WITT, City Attorney
By
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Deputy City Attorney

HOV:ps:559(x043.2)
Attachment
ML-86-111