

# (AMENDED) SPECIAL MEETING AGENDA EL SEGUNDO CITY COUNCIL

CITY COUNCIL CHAMBERS - 350 Main Street

The City Council, with certain statutory exceptions, can only take action upon properly posted and listed agenda items.

Unless otherwise noted in the Agenda, the Public can only comment on City-related business that is within the jurisdiction of the City Council and/or items listed on the Agenda during the **Public Communications** portion of the Meeting. The time limit for comments is five (5) minutes per person.

Before speaking to the City Council, please come to the podium and state: Your name and residence and the organization you represent, if desired. Please respect the time limits.

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact City Clerk, 607-2208. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting.

SPECIAL MEETING OF THE EL SEGUNDO CITY COUNCIL MONDAY, FEBRUARY 28, 2011 – 7:00 P.M. (AGENDA AMENDED TO ADD CLOSED SESSION ITEMS)

**CALL TO ORDER** 

**ROLL CALL** 

PUBLIC COMMUNICATIONS - (Related to City Business Only - 5 minute limit per person, 30 minute limit total). Individuals who have received value of \$50 or more to communicate to the City Council on behalf of another, and employees speaking on behalf of their employer, must so identify themselves before addressing the City Council. Failure to do so is a misdemeanor and punishable by a fine of \$250.

#### CLOSED SESSION:

The City Council may move into a closed session pursuant to applicable law, including the Brown Act (Government Code Section §54960, et seq.) for the purposes of conferring with the City's Real Property Negotiator; and/or conferring with the City Attorney on potential and/or existing litigation; and/or discussing matters covered under Government Code Section §54957 (Personnel); and/or conferring with the City's Labor Negotiators; as follows:

#### 1. CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Significant exposure to litigation pursuant to Government Code §54956.9(b): -1- matter (threat of litigation regarding the Initiative Petition to that would transfer the City's fire protection services to the County of Los Angeles); Initiation of litigation pursuant to Government Code §54956.9(c): -1- matter.

#### Special Orders Of Business (Open Session):

1. Consideration and possible action regarding reconsideration of the Council's action taken on February 15, 2011 to place the initiative that would transfer the City's fire protection services to the County of Los Angeles ("Initiative") on the April 2012 general municipal election, including, without limitation, consideration of (1) rescinding and/or amending the resolutions adopted at that Council meeting regarding the Initiative; and (2) adopting new resolutions necessary to place the Initiative on a special election (anticipated to be held in May, June or July of 2011) and the resolutions regarding ballot arguments and the City Attorney's impartial analysis (3) accepting the El Segundo Fire Associations offer to pay the costs of a special election. Alternatively, take other action related to this item. (Placed on the agenda at the request of Councilmember Brann).

#### **ADJOURNMENT --**

POSTED: DATE: 2/24 / I

NAME: Watennings

MEETING DATE: February 28, 2011 AGENDA HEADING: Special Order of Business

#### AGENDA DESCRIPTION:

Consideration and possible action regarding reconsideration of the Council's action taken on February 15, 2011 to place the initiative that would transfer the City's fire protection services to the County of Los Angeles ("Initiative") on the April 2012 general municipal election, including, without limitation, consideration of (1) rescinding and/or amending the resolutions adopted at that Council meeting regarding the Initiative; and (2) adopting new resolutions necessary to place the Initiative on a special election (anticipated to be held in May, June or July of 2011) and the resolutions regarding ballot arguments and the City Attorney's impartial analysis (3) accepting the El Segundo Fire Associations offer to pay the costs of a special election. Alternatively, take other action related to this item. (Placed on the agenda at the request of Councilmember Brann)

#### **RECOMMENDED COUNCIL ACTION:**

- 1. Consideration and possible action regarding reconsideration of the Council's action taken on February 15, 2011 to place the initiative that would transfer the City's fire protection services to the County of Los Angeles ("Initiative") on the April 2012 general municipal election, including, without limitation, consideration of (1) rescinding and/or amending the resolutions adopted at that Council meeting regarding the Initiative; and (2) adopting new resolutions necessary to place the Initiative on a special election (anticipated to be held in May, June or July of 2011) and the resolutions regarding ballot arguments and the City Attorney's impartial analysis (3) accepting the El Segundo Fire Associations offer to pay the costs of a special election.
- 2. Alternatively, take other action related to this item

#### ATTACHED SUPPORTING DOCUMENTS:

1. January 18, 2011 and February 15, 2011 Staff Reports (without attachments) February 21, 2018 letter from the El Segundo Fire Association

Special Election Funding Agreement

Resolution resetting the election date

Resolutions amending previously adopted resolutions to ensure uniformity in election type and date

Resolution repealing Resolution directing City Attorney to Prepare Impartial Analysis Written Communications Received by City

**FISCAL IMPACT:** Fire Association is offering to pay up to \$60,000 of the costs of the Special Election if called by Council. City would be responsible for costs in excess of \$60,000.

ORIGINATED BY: Mark Hensley, City Attorney Cindy Mortesen, City Clerk

#### **BACKGROUND AND DISCUSSION:**

On February 15, 2011, the City Council took action to place the Initiative on the April 10, 2012 Regular Municipal Election. The Council deliberated about whether to call a special or regular election. One of the issues raised was that there was a relatively significant higher cost associated with placing the Initiative on a special election rather than the regular municipal election. Assuming that there are no legal proceedings regarding the matter, the costs are estimated to be between \$35,000 and \$60,000. The \$35,000 estimate is based upon the potential of consolidating the election with a special election administered by the County and the \$60,000 estimate is based upon a stand alone special election administered by the City.

On February 21, 2011 the El Segundo Fire Association delivered a letter to the Council during the Public Communications portion of the Special Council Meeting (copy attached) that generally stated that the Association would pay the costs associated with calling a special election. The City Attorney subsequently prepared a short agreement, which the Association has signed, to simplify the terms and conditions under which the Association will pay the costs associated with the calling of a special election (attached). The City Attorney's Office prepared the Agreement based upon concerns that the offer set forth in the letter was somewhat ambiguous. The Agreement provides that the Association will pay up to \$60,000 of the costs associated with calling and holding the special election and that should the election costs be less than \$60,000 that the difference will be refunded to the Association. If the costs exceed \$60,000, then the City will be responsible for such excess costs.

Based upon the request and financial offer by the Association, Council Member Brann requested that this item be placed on an agenda of a Special Council Meeting so that the Council can reconsider this matter and potentially take action to change the election date from the previously established regular election to a special election. As stated in the past staff reports, a special election must be called no sooner than 88 days and no later from 103 days from the time the Council takes action, unless there is another special election that is being held within 180 days of the date that the Council takes action. At this time it is still speculative as to when the State may call for a special election to fill Congress Woman Jane Harman's seat when she resigns and/or the Governor's proposed tax measures. Additionally, the County Registrar has informed the Clerk's Office that it will not commit at this time to consolidating the election on the City's Initiative with the State's election, if such is held.

Accordingly, if the Council wants to change the election date to a special election it is recommended that the City set the election for either May 17, 2011 or May 24, 2011. In the event that the State calls an election in a timely manner, and the County Registrar agrees that the City can consolidate its Initiative election with the State's election, the Council could

potentially reset the special election date for the Initiative. A resolution is attached that would amend the prior resolution adopted by the Council and change the election date to one of the above stated dates. Should a new date become available for a special election, based upon a consolidated election or otherwise, that falls within the provisions of the Elections Code, the City Council would need to, call another meeting to consider revising the election date.

Also attached is a resolution that would repeal the Council's prior action of requesting that the City Attorney prepare an impartial analysis. It is discretionary as to whether the Council wants the City Attorney to prepare an impartial analysis or not. The other recommended actions would amended previously adopted resolutions to reflect the change in the type of election (from regular to special) and the election date (from April 10, 2012 to a May 2011 date). Additionally the Council already took action to appoint Council Member Fuentes to prepare the ballot argument against the Initiative, as well as the potential rebuttal argument, and authorized all of the Council Members to sign the initiative.

#### MEETING DATE: January 18, 2011 AGENDA HEADING: City Clerk

#### AGENDA DESCRIPTION:

Consideration and possible action regarding an initiative (the "Initiative") amending the El Segundo Municipal Code to transfer all functions of the El Segundo Fire Department to the Consolidated Fire Protection District of Los Angeles County (aka the Los Angeles County Fire Department). (Fiscal Impact: Unknown)

#### RECOMMENDED COUNCIL ACTION:

- 1. Adopt a resolution certifying the Initiative as qualifying for the ballot.
- 2. OPTION ONE: Adopt Resolutions calling for a special election regarding the Initiative, and consider adoption of Resolutions regarding ballot arguments, City Attorney impartial analysis and rebuttal arguments;
- 3. OPTION TWO: Adopt Resolutions calling for a regular election and consider adoption of Resolutions regarding ballot arguments, City Attorney impartial analysis and rebuttal arguments;
- 4. OPTION THREE: Adopt the Ordinance or schedule a Council Meeting within 10 days and consider Adoption of the Ordinance at that meeting;
- 5. OPTION FOUR: Continue consideration of the actions set forth in 2, 3 and 4 above, for a period not to exceed 30 calendar days, to a regular Council Meeting and request Staff to prepare a report pursuant to Elections Code § 9212.
- 6. Take such additional, related, action that may be desirable.

#### ATTACHED SUPPORTING DOCUMENTS:

- 1. Certification of the results of signature verification
- 2. Los Angeles County letter of verification
- 3. Resolution certifying the Initiative as qualifying for the ballot
- 4. Resolution giving notice of a Special or Regular Municipal Election
- 5. Resolution directing the City Attorney to prepare an impartial analysis
- 6. Resolution setting priorities for filing written arguments
- 7. Resolution requesting services from the Board of Supervisors
- 8. Ordinance amending the Municipal Code

#### FISCAL IMPACT: Undetermined

**Amount Budgeted:** 

\$

Additional Appropriation: N/A

Account Number(s):

ORIGINATED BY:

Cindy Mortesen, City Clerk

REVIEWED BY:

Mark Hensley, City Attorney

APPROVED BY:

Jack Wayt, City Manager,

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#### **BACKGROUND AND DISCUSSION:**

#### **The Initiative Process**

On May 13, 2010, Mr. Bryan Partlow requested a title and summary for a proposed initiative and a Notice of Intent to Circulate a Petition. The Notice was subsequently published in the El Segundo Herald on May 27, 2010. The City Attorney prepared the Title and Summary and it was provided to Mr. Partlow on May 20, 2010. Mr. Partlow began the collection of signatures. Elections Code Sections 9207 and 9208 address the time frame for collecting of signatures. The petitions were filed with the City Clerk's office on November 10, 2010.

The City Clerk, as the elections official, determined on April 9, 2010 the number of registered voters in the City of El Segundo was 10,749. Upon examination of the petitions when filed it was determined that a total of 2260 signatures were gathered.

The Los Angeles County Registrar Recorder performed a random sampling of the petitions as authorized by Elections Code § 8084 and on December 13, 2010 reported to the City Clerk that of the number of signatures filed, the projected number of valid signatures is 2,039. This number is in excess of the required 15% (1,612). This number is reached by sampling 500 signatures, of that 500, 451 were determined sufficient 451 divided by 500 equals 90.2%. 90.2% of 2260 projects to 2,039 valid signatures.

Elections Code § 9214 allows for a Special Election to be called by the Council if the proponents have collected not less than 15% of the voters of the city <u>and</u> the initiative contains a request that the ordinance be submitted immediately to a vote of the people at a special election. The Initiative does not contain such a request for a special election. Consequently, the City is not required to hold a special election. However, the City Council may (if it chooses) call for a special election and place the matter on the ballot. Alternatively, the City Council may place the Initiative on the ballot for the next regular election.

#### **Election Process/Decisions**

Pursuant to Elections Code § 9214 Council may potentially set the Initiative for a special election within 88 to 103 days from the date that the Council decides to set the matter for election. Accordingly, should the Council take action on this item tonight, a Special Election could be held on the following dates: April 19, 2011 or April 26, 2011. In accordance with Elections Code § 1405, a special election could also be consolidated with the countywide primary election scheduled for June 7, 2011. The cost of a Stand Alone Special Election is approximately \$60,000, a cost for a consolidated election is not available at this time. The next regular municipal election is scheduled for April 10, 2012.

In the event the Council desires to set the Initiative for an election, Staff has prepared the necessary Resolutions relating to the calling of the election, ordering the City Attorney to prepare the Impartial City Attorney's Analysis, and allowing for rebuttal arguments. Additionally, a Resolution has been prepared which allows for the Council to designate Council Members to prepare arguments against the Initiative.

Elections Code § 9219 allows the Council to designate Council Members to submit argument against the Initiative. The Council does not have to make such a designation.

The Council may, but is not obligated to, provide for; (1) the filing of rebuttal arguments to the initial arguments in favor of and against the Initiative; and, (2) the preparation of an Impartial City Attorney Analysis of the Initiative.

#### Adoption of the Initiative as an Ordinance

Elections Code § 9214 allows the Council to adopt the Initiative as an Ordinance at this meeting or within 10 calendar days of this meeting. If the Council adopts the Initiative as an Ordinance it will have the same effect as though it were adopted by the voters. The Council will not be able amend or repeal the Ordinance. Rather, such could only be accomplished by another properly certified initiative petition adopted by the Council or the voters.

#### Report Ordered by the Council

Elections Code § 9212, allows for Council to refer the proposed initiative measure to any city agency or agencies for a report on any or all of the following:

- Its fiscal impact;
- 2. Its effect on the internal consistency of the city's general and specific plans;
- 3. Its effect on the use of land;
- 4. Its impact on funding for infrastructure of all types;
- 5. Its impact on the community's ability to attract and retain business and employment;
- 6. Its impact on the uses of vacant parcel of land;
- 7. Its impact on agricultural lands; open space, traffic congestion, existing business district, and developed areas designated for revitalization;
- 8. Any other matters the legislative body requests to be in the report.

The report shall be presented to the legislative body within the time prescribed by the Council, but no later than 30 days after the elections official certifies to the legislative body the sufficient of the petition.

## **MEETING DATE:** February 15, 2011 **AGENDA HEADING:** City Clerk

#### **AGENDA DESCRIPTION:**

Consideration and possible action regarding an initiative (the "Initiative") amending the El Segundo Municipal Code to transfer all functions of the El Segundo Fire Department to the Consolidated Fire Protection District of Los Angeles County (aka the Los Angeles County Fire Department). (Fiscal Impact: Unknown)

#### RECOMMENDED COUNCIL ACTION:

- 1. Adopt a resolution certifying the Initiative as qualifying for the ballot.
- 2. OPTION ONE: Adopt Resolutions calling for a special election and requesting that the Los Angeles County Board of Supervisors provide election services to the City regarding the Initiative; consider adopting Resolutions regarding ballot arguments, City Attorney impartial analysis and rebuttal arguments;
- 3. OPTION TWO: Adopt Resolutions calling for a regular election and consider adopting Resolutions regarding ballot arguments, City Attorney impartial analysis and rebuttal arguments;
- 4. OPTION THREE: Adopt the Ordinance or schedule a Council Meeting within 10 days and consider adopting the Ordinance at that meeting;
- 5. Take such additional, related, action that may be desirable.

#### ATTACHED SUPPORTING DOCUMENTS:

January 18, 2011 Staff Report Resolution certifying the Initiative as qualifying for the ballot Resolutions for Special and General Elections Ordinance for adoption on Initiative

#### **FISCAL IMPACT: Undetermined**

Amount Budgeted: \$
Additional Appropriation: N/A

Account Number(s):

ORIGINATED BY: Cindy Mortesen, City Clerk Cofor

**REVIEWED BY:** Mark Hensley, City Attorney

APPROVED BY: Jack Wayt, City Manager

#### BACKGROUND AND DISCUSSION:

At the meeting of January 18, Council requested the City Clerk return with cost estimates regarding the different election (special and general elections) options available to the Council for submitting the Initiative amending the El Segundo Municipal Code to transfer all functions of



the El Segundo Fire Department to the Consolidated Fire Protection District of Los Angeles County to the voters. The Council also directed the City Attorney's Office to provide a report regarding what would likely happen if there was another petition circulated and submitted to the Council that required the City to transfer fire protection services to the County that included a request for a special election (the current initiative contains no such request).

Currently, neither the County of Los Angeles nor the Secretary of State have called an election for June 7, 2011. It was just reported in the newspaper that Congress Woman Jane Harman will likely be resigning and that a Special Election will be conducted to fill her seat if she resigns. That being said, the Council is required by law to take action on the initiative and may not call an election for consolidation with an election that has not been scheduled.

Council's alternatives at this time are to direct a "Stand Alone" Special election to be scheduled for between May 14, 2011 and May 30, 2011 (May 17 or 24) or place it on the General Municipal election in April of 2012. A "Stand Alone" Special would cost a maximum of \$60,000 to conduct. This is an estimate based on the April 2010 election with a small percentage increase. The costs for placing this issue on the ballot in April of 2012 are negligible. The only "hard" costs associated with the measure are the costs per page for the sample ballot.

There were statements made during the last Council Meeting that potentially another initiative petition could be circulated and submitted that would include a request for a special election. It is presumed that the intent of submitting such a petition would be to require that the Council call a Special Meeting.

If the City Council chooses to place the Fire Petition on the ballot for a special or regular election, rather than adopt the initiative by ordinance, the issue of transferring fire services to the County cannot be considered at a special election held within 12 months of that election. For example, if the Fire Petition is placed upon the ballot for the regular election in April 2012, the same issue cannot be placed on a ballot between April 2011 and April 2013. Consequently, it is unlikely that any initiative petition related to the subject matter of transferring fire services from the City to the County circulated during 2011 could qualify, based upon the current set of circumstances, for the ballot during such time period.

<sup>&</sup>lt;sup>1</sup> Elections Code § 9218 ("the same subject matter shall not be voted upon twice within any 12-month period at a special election"; emphasis added); see Referendum Committee of Hermosa Beach v. City of Hermosa Beach (1986) 184 Cal.App.3d 152 (the Elections Code does not prevent a referendum election occurring within 12 months of an initiative election).



## **EL SEGUNDO FIREFIGHTERS' ASSOCIATION**

I.A.F.F. LOCAL 3682 Chris Thomason, President

P.O. Box 55 El Segundo, CA 90245

February 21, 2011

Honorable Members of the El Segundo City Council El Segundo City Hall 350 Main Street El Segundo, CA 90245

Dear City Council Members,

At its February 15 meeting, the El Segundo City Council voted 3-2 (City Council Members Carl Jacobson, Suzanne Fuentes and Bill Fisher voting YES) to place the Fire and Emergency Medical Service Preservation Ordinance ("Ordinance") on the regularly scheduled April 2012 City Election ballot.

In discussion before the vote, City Council Member Fisher asked the City Attorney if it would have been possible for a private party to pay the City's cost for a stand alone City Special Election (City Clerk Cost Estimate: \$60,000). City Attorney Karl Berger answered YES.

Mr. Berger also said that the same rule would apply to a City Special Election that could be consolidated with the expected 2011 Statewide Special Election to be called by Governor Jerry Brown or the Congressional Special Election that must be called to fill the House of Representatives seat soon to be vacated by retiring Congresswoman Jane Harman (City Clerk Cost Estimate: \$35,000).

Believing that it is important for El Segundo voters to cast their vote for or against the Ordinance sooner rather than later, an ordinance that would save taxpayers between \$39 million and \$68 million over ten years, members of the El Segundo Firefighters Association took it upon themselves to raise the estimated \$60,000 needed to cover the City's stand alone Special Election costs.

Next page, please

#### Page Two

Given this new development, we respectfully ask tonight that the City Council set a Special Meeting as soon as possible, preferably no later than Thursday, February 24, 2011. We ask that the City Council's February 15 vote to place the Ordinance on the April 2012 ballot be reconsidered and a City Special Election, now at no cost to taxpayers, be called in its place.

We hoped that our proposal could have been placed on tonight's Special Meeting agenda. However, a general membership vote by our Association was needed before we could commit to \$60,000 in expenditures.

As authorized by a unanimous vote of our membership on Saturday, February 19, I hereby deliver to the City Council tonight two checks totaling \$60,000, each one made payable to the City of El Segundo.

One check is for \$35,000. It will cover the estimated costs associated with a Consolidated Special Election. The other check is for \$25,000. The \$25,000 check is only to be used to cover the remaining costs associated with a stand alone City Special Election – one that must be held in the event that the Governor, for any reason, does not call a 2011 Statewide Special Election or a 2011 Congressional Special Election.

We ask that each check be held in escrow until such time as the Governor either calls a 2011 Statewide Special Election or calls the required 2011 Congressional Special Election to fill the vacated Harman seat, or calls both Special Elections in consolidation.

It is understood that, once the Governor calls either one of these Special Elections, either independently or both in consolidation, that the City Council will take all steps necessary to consolidate the City Special Election set at the requested Special Meeting with any one of those dates.

And, once the City Special Election is consolidated, it is understood that the remaining \$25,000 check held in escrow to cover costs associated with a stand alone City Special Election, would be returned to the firefighters association no more than 10 days after the Ordinance has been placed on the Consolidated Special Election ballot.

Sincerely,

Captain Chris Thomason

President, El Segundo Firefighters Association

#### SPECIAL ELECTION FUNDING AGREEMENT

The City of El Segundo ("City") and the El Segundo Fire Association, IAFF Local 3682 ("Association") hereby enter into this Special Election Funding Agreement ("Agreement") this 1<sup>st</sup> day of March, 2011 with respect to the Association paying the costs associated with calling a special election the for initiative petition circulated by Bryan Partlow and that was placed on the April 2012 general election by the City Council at its February 15, 2011 Regular Council Meeting ("Initiative").

The Association agrees to deposit with the City on or before February 28, 2011 the amount of \$60,000 for purposes of paying the estimated costs associated with calling and conducting a special election for the Initiative. The Association is requesting, but not requiring, that the City consolidate the special election on the Initiative with the potential special election that the state may call for purposes of (1) filling the anticipated vacant Congressional seat of Congresswoman Jane Harman, or (2) that the City consolidate the special election on the Initiative with the potential statewide special election that the state may call for purposes of tax extensions. It is in the City's sole and absolute discretion as to whether it is going to change the election date on the Initiative and call for a special election. If a special election is called and the costs exceed \$60,000, the Association shall not be obligated to pay such costs in excess of \$60,000. If the City Council calls a special election and the City's costs associated with the election are less than \$60,000, then the City shall refund the difference to the Association. If the City does not call a special election, then the City shall immediately refund the \$60,000. If the City Council calls for a special election and there is a legal challenge that prevents it from being placed on the special election ballot, the City shall refund the difference between \$60,000 and the costs incurred by the City as of the date that a court has determined that the special election shall not proceed. Any recovery of legal fees by the City from third parties shall offset the expenses incurred with regard to calling of a special election.

This Agreement shall supersede the Association's written letter/offer dated February 21, 2011.

City of El Segundo:	Association:
	2NO VICE PARIOR
Eric Busch, Mayor	Chris Thomason, President

A RESOLUTION AMENDING RESOLUTION NO. 4711 ADOPTED ON FEBRUARY 15, 2011 CHANGING THE REGULAR ELECTION TO A SPECIAL MUNICIPAL ELECTION AND CHANGING THE ELECTION DATE FROM APRIL 10, 2012 TO [MAY 17 OR 24], 2011 PURSUANT TO ELECTIONS CODE § 1410.

The City Council of the city of El Segundo resolves as follows:

<u>SECTION 1:</u> Pursuant to Elections Code § 1410, the City Council revises its previously called election from a regular to a special municipal election to be held in the City of El Segundo on (May 17 or 24], 2011, instead of April 10, 2012 for the purpose of voting on an initiative.

SECTION 2: Resolution No. 4711 adopted on February 15, 2011 is amended to change the type of election from regular to special and the election date from April 10, 2012 to [May 17 or 24], 2011.

<u>SECTION 3:</u> Other than as set forth in this Resolution, Resolution No. 4711 remains in full force and effect. This Resolution will become effective immediately upon adoption.

PASSED AND ADOPTED this 28th day of February, 2011

ATTEST:	Eric Busch, Mayor	
Cindy Mortesen, City Clerk		
APPROVED AS TO FORM:		
Mark D. Hensley, City Attorney		
By:  Karl Berger, Assistant City Attorney		

A RESOLUTION AMENDING RESOLUTION NO. 4712 ADOPTED ON FEBRUARY 15, 2011 REQUESTING THAT THE LOS ANGELES COUNTY BOARD OF SUPERVISORS PROVIDE ELECTION SERVICES TO THE CITY FOR THE [MAY 17 OR 24], 2011 SPECIAL MUNICIPAL ELECTION.

The City Council of the city of El Segundo resolves as follows:

<u>SECTION 1:</u> Pursuant to Elections Code § 10002, the City Council requests that the Los Angeles County Board of Supervisors assist the City with its previously called Special Municipal Election scheduled for [May 17 or 24], 2011.

<u>SECTION 2:</u> This Resolution amends Resolution 4712 adopted on February 15, 2011 to change the type of election from a regular to a special election and change the election date from April 10, 2012 to [May 17 or 24], 2011.

<u>SECTION 6:</u> Other than as amended by this Resolution, Resolution No. 4712 remains in full force and effect. This Resolution will become effective immediately upon adoption and remain effective unless repealed or superseded.

PASSED AND ADOPTED this 28th day of February, 2011

	Eric Busch, Mayor	
ATTEST:		
Cindy Mortesen, City Clerk		
APPROVED AS TO FORM:		
Mark D. Hensley, City Attorney		
Ву:		
Karl H. Berger, Assistant City Attorney		

A RESOLUTION AMENDING RESOLUTION NO. 4713 ADOPTED ON FEBRUARY 15, 2011 ESTABLISHING REQUIREMENTS FOR BALLOT ARGUMENTS FILED WITH THE CITY CLERK TO BE INCLUDED WITH VOTER INFORMATION FOR AN ELECTION ON			
The City Council of the city of El Segundo resolves as follows:			
SECTION 1: Pursuant to Elections Code § 9281, qualified voters may submit arguments for and against the ballot measures, in addition to rebuttal arguments, for the Special Municipal Election on forms provided by the City Clerk.			
SECTION 2: Resolution No. 4713 adopted on February 15, 2011 is amended to reflect that ballot arguments must be submitted in accordance with Elections Code §§ 9282, 9283, 9285, and 9286 for a Special Election held on, 2011.			
SECTION 3: Other than as amended by this Resolution, all provisions of Resolution No. 47' remain in full force and effect. This Resolution becomes effective immediately upon adoption and remains effective unless superseded by a subsequent resolution.			
PASSED AND ADOPTED this 28 <sup>th</sup> day of February, 2011.			
Eric Busch, Mayor			
Cindy Mortesen, City Clerk			
APPROVED AS TO FORM: Mark D. Hensley, City Attorney			
Ву:			
Karl H. Berger, Assistant City Attorney			

FEBRUARY 15, 2001 TO CALL FOR A SPECIAL ELECTION AND CHANGE THE ELECTION DATE TO, 2011 PURSUANT TO ELECTIONS CODE § 1410.		
The City Council of the city of El Segundo resolves as follows:		
SECTION 1: Pursuant to Elections Code § 1410, the City Council calls for a special election to be held in the City of El Segundo on Tuesday,, 2011, for the purpose of considering a ballot measure.		
SECTION 2: Resolution No. 4711 adopted on February 15, 2011 is amended to change the type of election from regular to special and the election date from April 10, 2012 to, 2011.		
SECTION 3: The City Clerk is directed to forward, without delay, to the Board of Supervisors of the County of Los Angeles, and to the Los Angeles County Elections Department, each, a certified copy of this Resolution.		
SECTION 4: Other than amended by this Resolution, Resolution No. 4711 remains in full force and effect. This Resolution will become effective immediately upon adoption.		
PASSED AND ADOPTED this 28th day of February, 2011.		
Eric Busch, Mayor		
ATTEST:		
Cindy Mortesen, City Clerk		
APPROVED AS TO FORM: MARK D. HENSLEY, City Attorney		
By:  Mark Hensley, City Attorney		

A RESOLUTION REPEALING RESOLUTION NO. 4714 ADOPTED ON FEBRUARY 15, 2011 AND DIRECTING THAT THE CITY ATTORNEY NOT PREPARE AN IMPARTIAL ANALYSIS OF THE BALLOT MEASURE REGARDING AMENDING THE EL SEGUNDO MUNICIPAL CODE TO TRANSFER ALL FUNCTIONS OF THE EL SEGUNDO FIRE DEPARTMENT TO THE CONSOLIDATED FIRE PROTECTION DISTRICT OF LOS ANGELES COUNTY (AKA THE LOS ANGELES COUNTY FIRE DEPARTMENT).

The City Council of the city of El Segundo resolves as follows:

<u>SECTION 1:</u> Resolution No. 4714 adopted February 15, 2011 is repealed in its entirety. The City Attorney need not prepare an impartial analysis in accordance with Elections Code § 9280.

<u>SECTION 2:</u> This Resolution will remain effective until superseded by a subsequent resolution.

SECTION 3: This Resolution will become effective immediately upon adoption.

PASSED AND ADOPTED this 28th day of February, 2011.

	Eric Busch, Mayor
ATTEST:	
Cindy Mortesen, City Clerk	
Approved as to form: Mark D. Hensley, City Attorney	
By: Karl Berger, Assistant City Attorney	

----Original Message-----

From: Nicky Wislocky <nwislocky12@juno.com>

To: dburns.911@gmail.com

Cc: cjacobson@glentek.com; smfuentes@aol.com; Bill@FisherEngineering.com; dsbrann@sbcglobal.net; ebusch@elsegundo.org; cjacobson@elsegundo.org; sfuentes@elsegundo.org; dbrann@elsegundo.org; bfisher@elsegundo.org
Sent: Tue, Jan 18, 2011 4:55 pm

Subject: Re: Questionable Petition Tactics & Process

Dave,

I talked to the DA on this. He said a crime is not committed until they

turn in the petitions. Essentially, they will not have committed perjury

until the clerk accepts the petition. BUT, I had not seen the petition then. The petition (for a state election) does not have the residential

requirement. So, since their lawyer screwed up, they did not commit perjury.

Next,, Should the p[petition be accepted. Court decisions say that just

because the firemen and their attorney are illegal screw-ups, that doesn't disenfranchise those citizens who signed it in good faith.

Yes, the petition itself is illegal as hell and should not have been accepted by the clerk. Also the city attorney had the responsibility to

inform the clerk BEFORE the petition was circulated. But...

The clerk is the king of the mountain here. Her ONLY bosses are the voters of the city. If we don't like her decisions we should fire her. Again the secretary OF state COULD HAVE INTERVENED HAD SHE RELEASED A COPY OF THE PETITION BEFORE it was circulated. She was fully informed of

all of this and chose to not follow the law herself!!!!

Council does not have the authority to over-rule her. She is the clerk,

responsible only to the electorate. As it stands now, only the court could stop this train.

Where do we go from here? When the firemen started this charade, they were the golden boys of the community. As the salary information and the

county details got out, the firemen and policemen took one heck of a beating. They are no longer the golden boys - even with the seniors - their best customers.

Initially I informed the clerk's office that there had been a court decision making the names of the petition signers public record. They denied the names were public record and gave Robbins some info regarding

rtedacting names and only allowing addresses. Now I understand the clerk

is quoted in the paper as saying the names are now public\

#### Shilling, Mona

From:

Mike Robbins [mikerobbins2@yahoo.com]

Sent:

Tuesday, January 18, 2011 6:20 PM

To:

Mortesen, Cindy; Domann, Cathy; Shilling, Mona; JWayt@El.yahoo.com;

UNEXPECTED\_DATA\_AFTER\_ADDRESS@.SYNTAX-ERROR

Cc:

MikeRobbins2@Yahoo.com

Subject:

My communication and testimony for tonight's City Council meeting

Attachments: 2010-01-18-Email-Mike Robbins to El Segundo City Officials-Fire Initiative.pdf

The attached PDF file contains my communication and testimony for tonight's City Council meeting, regarding the El Segundo Firefighters Association initiative on the City Council Agenda.

Please print it and distribute it to all the City officials it is addressed to, including the City Council members, City Clerk, City Manager, City Attorney, Police Chief, and Fire Chief.

Thank you very much.

Sincerely,

Michael D. Robbins

**Public Safety Project** 

P.O. Box 2193

El Segundo, CA 90245

310-322-4314

MikeRobbins2@yahoo.com

PublicSafetyProject.org

#### To:

#### City of El Segundo, California Public Officials, including:

#### City Clerk Cindy Mortesen CMortesen@ElSegundo.org

## **Deputy City Clerk Cathy Domann** CDomann@ElSegundo.org

#### City Manager Jack Wayt JWayt@El Segundo.org

#### Police Chief Mitch Tavera MTavera@ElSegundo.org

## Fire Chief Kevin Smith KSmith@ElSegundo.org

#### Mayor Eric Busch EBusch@ElSegundo.org

#### Mayor Pro Tem Bill Fisher BFisher@ElSegundo.org

#### Councilwoman Suzanne Fuentes SFuentes@ElSegundo.org

## Councilman Carl Jacobson CJacobson@ElSegundo.org

#### Councilman Dr. Don Brann DBrann@ElSegundo.org

## City Attorney Mark Hensley and Staff MHensley@LocalGovLaw.com; KBerger@LocalGovLaw.com; ECalciano@LocalGovLaw.com;

Re: El Segundo Firefighters Association voter initiative petition submitted by El Segundo firefighter Bryan Partlow, possible city exposure to litigation.

Please distribute this communication as soon as possible, before tonight's City Council meeting, to each El Segundo City official it is addressed to, and include it as my written testimony for January 18, 2011 City Council Agenda Item I13 (City Clerk, Initiative to transfer all functions of the El Segundo Fire Department to the Consolidated Fire Protection District of Los Angeles County).

#### Violations of the California Elections Code

It has been well known for some time now, and I am hereby further notifying you and the City of El Segundo, California, that the El Segundo Firefighters Association (union) city voter initiative was circulated in violation of California Elections Code Sections 9207 and 9209 by El Segundo firefighters and El Segundo Firefighters Association (union) members who do not live in the city, and who therefore are not voters or eligible to vote in the city, using an illegal petition form containing an incorrect Declaration of Circulator.

The El Segundo Firefighters Association announced in their letter to the voters of El Segundo that they would have their association members at each of the election polling places in the city on election day for the June 2010 primary election. The City Clerk and all five City Council members, being residents and registered voters of the City of El Segundo, would have received this letter. I will make a copy of this letter available upon request, and will post a copy on the PublicSafetyProject.org web site.

To my knowledge, the El Segundo Firefighters Association only has one or possibly two members who are residents of the City of El Segundo – one of them being Bryan Partlow, the initiative's proponent, who lists his address as 207 W. Walnut Avenue, El Segundo, CA 90245. Furthermore, I and other residents and voters in the city personally witnessed El Segundo firefighters who are not residents of the city at polling places circulating their voter initiative petition and collecting signatures.

I personally witnessed Evan West, an El Segundo firefighter and member of the El Segundo Firefighters Association, collecting initiative petition signatures outside the polling place at the Hacienda Hotel on election day in June, 2010. I asked him his name and whether he was a resident of the City of El Segundo. He said he was not a resident of the City of El Segundo. I then informed him that he and all of the other initiative petition circulators are gathering signatures illegally, in violation of the California Elections Code, which requires that circulators of a city initiative petition must be residents of that city and voters or eligible to vote in that city. He continued to collect initiative petition signatures after I informed him it was in violation of the California Elections Code.

California Elections Code Sections 9207 states, "The proponents may commence to circulate the petitions among the voters of the city for signatures by any registered

**voter of the city** after publication or posting, or both, as required by Section 9205, of the title and summary prepared by the city attorney."

The Firefighters Association used the Declaration of Circulator for the statewide voter initiative petition form, and it states, "I, (print name), am registered to vote or am qualified to register to vote in the State of California." However, California Elections Code section 9209 states: "Each section shall have attached thereto the declaration of the person soliciting the signatures. This declaration shall be substantially in the same form as set forth in Section 9022, except that the declaration shall declare that the circulator is a voter or is qualified to register as a voter of the city, and shall state his or her residence address at the time of the execution of the declaration.

The Declaration of Circulator used in the Firefighters Association initiative petition further states: "I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct." Therefore, it appears that the Firefighters Association used the invalid Declaration of Circulator to protect their association members from falsely signing the declaration under penalty of perjury, thereby committing additional violations of the law, perhaps one for each signature, in addition to violating California Elections Code Sections 9207 and 9209.

Thus, the El Segundo Firefighters Association engaged in multiple violations of the California Elections Code, and it appears they may have also engaged in conspiracy to violate state election laws while protecting their association members from falsely signing the Declaration of Circulator under penalty of perjury.

Furthermore, the petition did not contain the required language requesting a special election. California Elections Code Section 9214 requires that a city initiative petition "contains a request that the ordinance be submitted immediately to a vote of the people at a special election" in order for a special election to be called. This language is required to inform petition signers there will be additional costs to hold a special election.

If the City Council ignores the law and calls a special election, or votes to put the Firefighters Association initiative on a future election ballot, they may expose the city and themselves to litigation.

Furthermore, there should be an investigation and enforcement of the state election laws which were violated, and disciplinary action against all city employees who violated the state election laws.

When city employees, especially those who are sworn to protect the city, violate state election laws and undermine our election integrity, apparently for personal financial gain, it is my personal opinion that they should not hold a position of public trust and authority.

I am not an attorney, and all references herein to the California Elections Code are my personal observations and do not constitute legal advice. However, in the absence of evidence to the contrary, my observations raise serious concerns.

By what statutory authority and applicable precedent setting court rulings has City Clerk Cindy Mortesen certified the El Segundo Firefighters Association initiative petition as being sufficient given the obviously invalid Affidavit of Circulator and the fact that most of the signatures were gathered using circulators who are not residents of the City of El Segundo and who are not voters or eligible to vote in the city?

Furthermore, by what statutory authority and applicable precedent setting court rulings must the City Council submit the insufficient and illegally circulated city initiative for a vote of the people?

There is serious and reasonable concern among El Segundo residents and voters that the City Council will not uphold the election laws and preserve the integrity of our election system.

The El Segundo Firefighters Association endorsed and provided other forms of campaign support to Mayor Eric Busch and Mayor Pro Tem Bill Fisher in their past election campaigns. In fact, for the April 13, 2004 El Segundo Municipal Election, the El Segundo Firefighters Association sent out a letter on official letterhead (dated April 9, 2004) to senior citizen voters, threatening them with "the possibility of our paramedics not being available when you need them" unless Eric Busch, Sandra Jacobs, and Bill Fisher were elected to the City Council. This letter can be viewed at the following web pages:

http://www.PublicSafetyProject.org/elsegundo/senior scare letter scan.html

http://www.PublicSafetyProject.org/elsegundo/docs/senior\_scare\_letter\_v.html

#### It Appears Every City Official Has Failed to Do Their Duty in this Matter

Unless I receive information to the contrary, I believe all of the following to be true.

Thus far, it appears that **City Clerk Cindy Mortesen** has failed to perform her duty to maintain the integrity of our city's election system, by certifying the Firefighters Association initiative as sufficient in spite of its insufficiencies – an invalid and insufficient Declaration of Circulator, and signatures gathered mostly or almost entirely by circulators who are not residents of the city and who are not voters or eligible to vote in the city. The addresses given in the Declaration of Circulator on each petition form would make it clear that the circulator was not a resident of the city and therefore was not a voter or qualified to be a voter in the city.

Thus far, it appears that **City Attorney Mark Hensley**, an officer of the court, has failed to address the issues raised herein in a manner that would uphold the law and protect the integrity of the City election system.

Thus far, it appears that **Police Chief Mitch Tavera** has failed to perform his duty to investigate the aforementioned violations of the California Elections Code by El Segundo Firefighters Association members, even though these violations have been common knowledge in City Hall and throughout the city, and have been publicized in the El Segundo Herald and The Beach Reporter local newspapers.

Thus far, it appears that **City Manager and former Police Chief Jack Wayt** and **Fire Chief Kevin Smith** have failed to perform their duties to investigate the violation of the aforementioned violations of the California Elections Code by El Segundo firefighters and to take appropriate disciplinary action.

Thus far, it appears that **City Manager and former Police Chief Jack Wayt** has failed to perform his duty to direct Police Chief Mitch Tavera to investigate the violation of the aforementioned violations of the California Elections Code by El Segundo Firefighters Association members.

Thus far, it appears that the **Mayor and City Council** have failed to direct the aforementioned city officials to perform their duties in this matter, and/or to refer this matter to the District Attorney's Public Integrity Unit for investigation.

Thus far, it appears that the integrity of our election system has been violated by the El Segundo Firefighters Association and many of its members, and by Cindy Mortesen, our elected City Clerk, who is the Elections Official of our City.

#### **Equal Protection**

If the City Council votes to put the illegally circulated initiative petition on the ballot for any election, then under the equal protection clause of the United States Constitution, will the City Clerk and the City Council apply the same standard to all future voter initiatives, referendums, and recalls of the City Clerk and City Council members? If that is the case, the from now on, all city initiative, referendum, and recall petitions may be circulated using the statewide petition forms with the wrong Affidavit of Circulator (as was used by the El Segundo Firefighters Association), by people who do not live in the City of El Segundo but are qualified to vote in the State of California.

If the firefighters are allowed to pick and choose which laws they will violate without any enforcement by City officials, can the city residents, and also nonresidents who work in the city, pick and choose which laws they will violate without any enforcement? Will the El Segundo police stop issuing traffic and parking tickets, and stop making arrests for more serious violations?

Clearly, it is the responsibility of the City government and City officials to maintain law and order, and not to violate the law and treat City employees – including firefighters and police officers – as above the law. Therefore, the City Council should *not* vote to put the firefighters initiative on a future election ballot, the City Council should *not* call a special election.

#### Future Election Code Violations During the Election Campaign

If the El Segundo City Clerk and City Council tolerate and ignore the multiple violations of the State Elections Code committed by the El Segundo Firefighters Association and many of its members to get their initiative on the ballot, can the citizens of El Segundo expect further Elections Code violations to be committed by the firefighters and permitted by all the aforementioned City officials during the election campaign if the initiative is put on a ballot for a vote of the people?

Will the firefighters be allowed to spend essentially unlimited amounts of money without reporting where the money came from, how the money was spent, and how much was received and spent? Have the firefighters even complied with the applicable campaign finance and reporting laws thus far?

Sincerely,

Michael D. Robbins Public Safety Project P.O. Box 2193 El Segundo, CA 90245 310-322-4314

MikeRobbins2@yahoo.com

PublicSafetyProject.org

#### California Elections Code sections 9207, 9209, and 9214

(Emphasis added)

9207. The proponents may commence to circulate the petitions among the voters of the city for signatures by any registered voter of the city after publication or posting, or both, as required by Section 9205, of the title and summary prepared by the city attorney. Each section of the petition shall bear a copy of the notice of intention and the title and summary prepared by the city attorney.

9209. Each section shall have attached thereto the declaration of the person soliciting the signatures. This declaration shall be substantially in the same form as set forth in Section 9022, except that the declaration shall declare that the circulator is a voter or is qualified to register as a voter of the city, and shall state his or her residence address at the time of the execution of the declaration.

- 9214. If the initiative petition is signed by not less than 15 percent of the voters of the city according to the last report of registration by the county elections official to the Secretary of State pursuant to Section 2187, effective at the time the notice specified in Section 9202 was published, or, in a city with 1,000 or less registered voters, by 25 percent of the voters or 100 voters of the city, whichever is the lesser number, and contains a request that the ordinance be submitted immediately to a vote of the people at a special election, the legislative body shall do one of the following:
- (a) Adopt the ordinance, without alteration, at the regular meeting at which the certification of the petition is presented, or within 10 days after it is presented.
- (b) Immediately order a **special election**, to be held pursuant to subdivision (a) of Section 1405, at which the ordinance, without alteration, shall be submitted to a vote of the voters of the city.
- (c) Order a report pursuant to Section 9212 at the regular meeting at which the certification of the petition is presented. When the report is presented to the legislative body, the legislative body shall either adopt the ordinance within 10 days or order an election pursuant to subdivision (b).

#### California Elections Code sections 9212

(Emphasis added)

- 9212. (a) During the circulation of the petition, or before taking either action described in subdivisions (a) and (b) of Section 9214, or Section 9215, the legislative body may refer the proposed initiative measure to any city agency or agencies for a report on any or all of the following:
  - (1) Its fiscal impact.
- (2) Its effect on the internal consistency of the city's general and specific plans, including the housing element, the consistency between planning and zoning, and the limitations on city actions under Section 65008 of the Government Code and Chapters 4.2 (commencing with Section 65913) and 4.3 (commencing with Section 65915) of Division 1 of Title 7 of the Government Code.
- (3) Its effect on the use of land, the impact on the availability and location of housing, and the ability of the city to meet its regional housing needs.
- (4) Its impact on funding for infrastructure of all types, including, but not limited to, transportation, schools, parks, and open space. The report may also discuss whether the measure would be likely to result in increased infrastructure costs or savings, including the costs of infrastructure maintenance, to current residents and businesses.
- (5) Its impact on the community's ability to attract and retain business and employment.
  - (6) Its impact on the uses of vacant parcels of land.
- (7) **Its impact on** agricultural lands, open space, traffic congestion, **existing business districts**, and developed areas designated for revitalization.
- (8) Any other matters the legislative body requests to be in the report.
- (b) The report shall be presented to the legislative body within the time prescribed by the legislative body, but no later than 30 days after the elections official certifies to the legislative body the sufficiency of the petition.

### <u>Firefighters Association Initiative Petition Affidavit of Circulator:</u>

URGENT! You must sign a second time here as circulator. All signatures are invalid if you fail to sign as a circulator.
DECLARATION OF CIRCULATOR (To be completed after the above signatures have been obtained.)
l,(print name), am registered to vote or am qualified to register to vote in the State of California.
My residence address is(address, city, state, zip) I circulated this section of the petition and witnessed each of the appended signatures being written. Each signature on this petition is, to the best of my information and belief, the genuine signature of the person whose name it purports to be. All signatures on this document were obtained between the dates of(month, day, year) and(month, day, year)
declare under penalty of perjury under the laws of the State of California that the oregoing is true and correct.
Executed on(month, day) ,(year) , at(place of signing), California.
MUST BE SIGNED HERE ALSO → [ Complete Signature of Circulator (May be repeat of name on petition – include middle nitial)
Please return petition to: Bryan Partlow, 207 W. Walnut Avenue, El Segundo, CA

----Original Message-----

From: Nicky Wislocky <nwislocky12@juno.com>

To: dburns.911@gmail.com

Cc: nwislocky12@juno.com; cjacobson@glentek.com; smfuentes@aol.com; Bill@fisherengineering.com; dsbrann@sbcglobal.net; ebusch@elsegundo.org; cjacobson@elsegundo.org; sfuentes@elsegundo.org; dbrann@elsegundo.org;

bfisher@elsegundo.org

Sent: Wed, Jan 19, 2011 10:57 am

Subject: Re: Questionable Petition Tactics & Process

dave, did you get the whole message I wrote or just the section below? Robbins is supposed to get a copy of the court (?) decisions from the attorney. I rather doubt there is a court decision on every error made on the petition. I think the attorney is habnging his hat on the one I cited, that those signing the petition in good faith could not be disenfranchized.

Until the DA or Secretary of State advises otherwise, we need to concentrate on where do we go from here. Just in case Jerry gets Sacaamento to set a June election, we need a plan. Get copies of the petitions (I was given to understan the clerk was quoted in the Daily Breeze saying the petitions are now public record. (The attorney can't have it both ways-either court decisions prevail or the law, as written, prevails.

Get the names of those who signed. Let's not pay 10 cents per page several times, see if carl can help, enter the names on the data base. See where we have emails for those who signed. Gathher info, refer them

tyo your blog. Where there is no email we can do a mailer or hand delivery.

That's a start!

#### Domann, Cathy

From:

Mike Robbins [mikerobbins2@yahoo.com]

Sent:

Tuesday, February 15, 2011 6:50 PM

To:

Busch, Eric (Mayor); Fisher, Bill; Bill Fisher; Fuentes, Suzanne (Council Member); Fuentes, Suzanne (Council Member); Suzanne M. Fuentes; Jacobson, Carl (Council Member); Carl Jacobson; Brann, Don (Council Member); Mortesen, Cindy; Domann, Cathy; Wayt, Jack

Cc:

Mike Robbins

Subject:

Written communication and testimony for tonight's open session City Council meeting

Attachments: 2011-02-15-Email-Mike Robbins to El Segundo City Officials-Fire Initiative.pdf

My written communication and testimony for tonight's open session City Council meeting is in the attached PDF file. Please provide a copy of it to each of the City officials it is addressed to before the meeting. Thank you.

Michael D. Robbins

**Public Safety Project** 

P.O. Box 2193

El Segundo, CA 90245

310-322-4314

MikeRobbins2@yahoo.com

PublicSafetyProject.org

#### To:

#### City of El Segundo, California Public Officials, including:

Mayor Eric Busch EBusch@ElSegundo.org

Mayor Pro Tem Bill Fisher BFisher@ElSegundo.org

**Councilwoman Suzanne Fuentes** SFuentes@EiSegundo.org

Councilman Carl Jacobson CJacobson@ElSegundo.org

Councilman Dr. Don Brann DBrann@ElSegundo.org

City Clerk Cindy Mortesen CMortesen@ElSegundo.org

Deputy City Clerk Cathy Domann CDomann@ElSegundo.org

City Attorney Mark Hensley and Staff
MHensley@LocalGovLaw.com; KBerger@LocalGovLaw.com;
ECalciano@LocalGovLaw.com;

City Manager Jack Wayt JWayt@ElSegundo.org

Re: El Segundo Firefighters Association voter initiative petition submitted by El Segundo firefighter Bryan Partlow, possible exposure to litigation.

Please distribute this communication as soon as possible, before tonight's City Council meeting, to each El Segundo City official it is addressed to, and include it as my written testimony for February 15, 2011 City Council Agenda Item E8 (City Clerk, Initiative to

transfer all functions of the El Segundo Fire Department to the Consolidated Fire Protection District of Los Angeles County, AKA Los Angeles County Fire Department).

Note that I am not an attorney, and all references herein to the California Elections Code or any other legal matters are my personal observations and do not constitute legal advice. However, in the absence of evidence to the contrary, my observations raise serious concerns.

This correspondence addresses two related subject areas related to the firefighters union voter initiative petition submitted by El Segundo firefighter Bryan Partlow, which is the subject of tonight's City Council meeting as Agenda Item E8:

- 1.) Reasons to put the firefighters union initiative on the April 2010 General Municipal Election ballot if it must be put on a ballot for an election;
- 2.) A possible reason to not put the firefighters union initiative on any ballot the initiative forces the City to enter into a possibly illegal contract of adhesion with Los Angeles County.

## Reasons to put the firefighters union initiative on the April 2010 General Municipal Election ballot if it must be put on a ballot for an election

1. <u>The Later Election Date May Save Lives by Delaying the Permanent Loss of Our City Operated Paramedic Transport Service</u>

The firefighters union initiative will cause us to permanently lose our City operated paramedic transport service. This will force us to depend on out-of-town ambulance companies, increasing hospital transport times and fees to residents. A later election date delays the loss of our paramedic transport service and may save lives and prevent permanent disabilities due to strokes and other causes.

2. <u>Firefighters Union Not Legally Entitled to a Special Election – Possible Gift of Public Funds</u>

The firefighters union petition did not contain the required language requesting a special election. California Elections Code Section 9214 requires that a city initiative petition "contains a request that the ordinance be submitted immediately to a vote of the people at a special election" in order for a special election to be called. This language is required to inform petition signers there will be additional costs to hold a special election.

If the City Council ignores the law and calls a special election at an increased cost to the taxpayers, it may be considered an illegal gift of public funds, and they may expose the City and themselves to litigation.

## 3. <u>The Later Election Date Provides More Time to Study and Implement Alternatives</u>

The latest possible election date will give the City Council more time to study and implement alternatives to the dangerous firefighters union initiative. It will provide more time to rein in the wildly excessive and unsustainable firefighter and police salaries, benefits, and pensions, which is a superior alternative to the firefighters union initiative. The City can save more money through necessary and proper cost control measures without suffering the dangerous effects of the firefighters union initiative, which include permanent loss of our City operated paramedic transport service, and a significant reduction in the other emergency services and accountability through the loss of local control over all fire and paramedic services for a minimum of ten years.

4. The Later Election Date Saves Money in Firefighters Salaries and Pensions if Firefighters Union Wins the Election

The Los Angeles County Fire Department Feasibility Study states:

"There would be no reduction in salaries of City fire fighters blanketed in as Fire District fire fighter series employees."

(Feasibility Study page 22, in the section titled "VII. TRANSITION FROM CITY TO DISTRICT", under "City Personnel")

Therefore, the City can save significant amounts of taxpayer money from a later election date, by having more time to reign in the firefighters compensation and pension costs, and by creating a two-tier pension system, in the event the firefighters union wins the election and their initiative is not successfully challenged in court.

5. The Later Election Date Provides More Time for the City to Reduce Costs and Fund the Firefighter's Accumulated Vacation and Sick Leave Hours which will Have to be Cashed Out in One Year if Firefighters Union Wins the Election

The Los Angeles County Fire Department Feasibility Study states:

"The City would be required to transfer to the Fire District for each employee, to the extent the employee is entitled to such benefit time in City employment, a maximum of 20 vacation days, or 10 shifts, whichever is applicable, and 12 sick days, or 6 shifts, whichever is applicable. City would reimburse the Fire District for transferred benefit time at City salary rates. All remaining benefit time, such as vacation days, holidays, sick leave, etc., accrued prior to the employee's transfer to the Fire District would remain as obligations of the City."

(Feasibility Study page 22, in the section titled "VII. TRANSITION FROM CITY TO DISTRICT", under "Benefit Time")

The accrued firefighters' vacation and sick leave hours represent a significant cost to the City, and I believe they are an unfunded liability. A later election date will provide the City with more time to rein in the wildly excessive firefighters' salaries, which will reduce the cost of cashing out their accrued vacation and sick leave hours, and to find funding for those accrued hours, in the event the3 firefighters union wins the election.

6. There is No Financial or Other Advantage to the City by Holding a Special Election

There is no obvious financial, logistic, or other advantage to the City and its residents and taxpayers by holding a special election for the firefighters union initiative.

#### Possible Reasons to Not Put the Firefighters Union Contract on Any Ballot

#### **Contract of Adhesion**

The firefighters union initiative will require the City of El Segundo to enter into what I believe amounts to a contract of adhesion with Los Angeles County for fire and paramedic services.

Contracts of adhesion can be illegal in California, because they are between two parties where one party, Los Angeles County, has most or all of the power to set the terms, conditions, and price of the contract, and the other party, the City of El Segundo, has little or no power to negotiate the terms, conditions, and price of the contract.

The firefighters union initiative, if approved by the voters, creates a new requirement for the City to contract with the Los Angeles County Fire Department before the terms, conditions and price of that contract have even been negotiated. As a result, the Los Angeles County officials will have no incentive or reason to negotiate fairly or in good faith with the City.

The firefighters union initiative destroys our City's negotiating power to get a competitive level of service at a competitive price because it requires the City to contract with the County instead of implementing competing and more effective cost control measures. Therefore, I believe there may be the possibility that the City Council can decide to not place the firefighters union initiative on the ballot, and/or can go to court to get a ruling to prevent the initiative from going on a ballot for an election.

Otherwise, can a trash hauler fund a voter initiative to require the City Council to contract with that trash hauler under the terms, conditions, and price set by that trash hauler? I hope not.

I am not a lawyer, and I cannot and do not give legal advice. However, I believe the questions I have raised should be addressed by the City Council and the City Attorney to protect our city from the multiple dangerous results of the firefighters union initiative.

It is clear that the firefighters union members circulated their initiative petition for only one reason – to protect their union jobs and their wildly excessive and unsustainable salaries and pensions. The firefighters union members knew or should have known that they were destroying the City's negotiating power by forcing the City to enter into a contract of adhesion with the County.

There is serious and reasonable concern among El Segundo residents and voters that the City Council may not uphold and perform its fiduciary duty to the voters and taxpayers of El Segundo to represent the voters' and taxpayers' best interests in their dealings with the El Segundo Firefighters Association (the firefighters union).

The El Segundo Firefighters Association endorsed and provided other forms of campaign support to Mayor Eric Busch and Mayor Pro Tem Bill Fisher in their past election campaigns. In fact, for the April 13, 2004 El Segundo Municipal Election, the El Segundo Firefighters Association sent out a letter on official letterhead (dated April 9, 2004) to senior citizen voters, threatening them with "the possibility of our paramedics not being available when you need them" unless Eric Busch, Sandra Jacobs, and Bill Fisher were elected to the City Council. This letter can be viewed at the following web pages:

http://www.PublicSafetyProject.org/elsegundo/senior\_scare\_letter\_scan.html

http://www.PublicSafetyProject.org/elsegundo/docs/senior scare letter v.html

I hope that the City Council will act appropriately to eliminate this concern of many El Segundo residents and voters.

Sincerely,

Michael D. Robbins Public Safety Project P.O. Box 2193 El Segundo, CA 90245 310-322-4314

MikeRobbins2@yahoo.com PublicSafetyProject.org

Michael D. Robbins PublicSafetyProject.org

#### California Elections Code section 9214

(Emphasis added)

- **9214.** If the initiative petition is signed by not less than 15 percent of the voters of the city according to the last report of registration by the county elections official to the Secretary of State pursuant to Section 2187, effective at the time the notice specified in Section 9202 was published, or, in a city with 1,000 or less registered voters, by 25 percent of the voters or 100 voters of the city, whichever is the lesser number, **and contains a request that the ordinance be submitted immediately to a vote of the people at a special election**, the legislative body shall do one of the following:
- (a) Adopt the ordinance, without alteration, at the regular meeting at which the certification of the petition is presented, or within 10 days after it is presented.
- (b) Immediately order a **special election**, to be held pursuant to subdivision (a) of Section 1405, at which the ordinance, without alteration, shall be submitted to a vote of the voters of the city.
- (c) Order a report pursuant to Section 9212 at the regular meeting at which the certification of the petition is presented. When the report is presented to the legislative body, the legislative body shall either adopt the ordinance within 10 days or order an election pursuant to subdivision (b).

From: Nicky Wislocky [mailto:nwislocky12@juno.com]

Sent: Wednesday, February 23, 2011 2:37 PM

To: ebush@elsegundo.org; DBRANN@ELSEGUNDO.ORG

Subject: Fw: El Segundo fire fighters - more

#### This is the top Jarvis attorney.

---- Forwarded Message -----

From: "Kris Vosburgh" < kris@hjta.org>

To: <nwislocky12@juno.com>

Date: Tue, 22 Feb 2011 13:58:07 -0800 Subject: El Segundo fire fighters - more

Message-ID: <000401cbd2db\$97d7bc80\$c7873580\$@org>

Elections Code § 1405(b) provides, "The election for a municipal or district initiative that qualifies pursuant to Section 9215 or 9311 (*i.e.*, qualifies with signatures fewer than 15% of all registered voters) *shall* be held at the jurisdiction's next *regular* election occurring not less than 88 days after the date of the order of election." I don't see how the firefighers can buy a special election date for their initiative, unless the City Council puts its own measure on the ballot.

Timothy A. Bittle
Director of Legal Affairs
Howard Jarvis Taxpayers Association

#### Enter to WIN...

a 7 to10 Day Europe cruise for two with Holland America Cruise Line! hollandamerica.com