

# **2007 SAN DIEGO CHARTER REVIEW COMMITTEE**

## **FINAL REPORT**



**October 4, 2007**

**ATTACHMENT A**

City Attorney or his or her designee, a member of the City Council and two outside financial experts.

7. Adds a new Section 39.2 (City Auditor) to establish a City Auditor who shall be appointed by the City Manager in consultation with the Audit Committee and confirmed by the City Council. The City Auditor shall be a Certified Public Accountant or Certified Independent Auditor. The City Auditor shall serve for a term of ten (10) years and report to the Audit Committee. The Audit Committee with a four-fifths vote may terminate the City Auditor with a right to appeal to the City Council who can override the Audit Committee's action with a two-thirds vote. Amends Section 111 (Audit of Accounts of Officers) to transfer auditing responsibilities of City Auditor and Comptroller to City Auditor and Audit Committee.
8. Amends Section 69 (Fiscal Year and Manager's Estimate) to require that the Manager propose and the Council adopt a balanced budget annually. The term "balanced budget" will mean sufficient funds are available to cover projected expenditures. The Manager shall monitor and report on the budget throughout the fiscal year and if he or she determines there will no longer be sufficient funding from all available sources to cover projected expenditures and encumbrances, the Manager shall propose revisions to keep the budget balanced. Within 60 days of the Manager's submission of these revisions, the Council shall adopt them or offer alternative ones to ensure a balanced budget. The Manager and Council shall take the necessary steps to ensure a balanced budget by the end of each fiscal year. The City shall post copies of the budget on appropriate electronic media, such as the internet, to allow the public full access to the document.

#### DUTIES OF ELECTED OFFICIALS

9. Amend section 117 (Unclassified and Classified Services) to clarify that Police officers, fire fighters and lifeguards who participate in the Safety Retirement System are exempt from Managed Competition.
10. Amend Section 40 (City Attorney) to create professional qualifications for this Office, define the civil client as the municipal corporation of the City of San Diego, clarify authority over the control and settlement of litigation, and establish a process allowing a City entity to retain outside legal counsel (at the entity's own expense) when the City Attorney's Office may not provide legal advice due to an ethical or financial conflict of interest.
11. Repeal Section 24.1 (Mayor's Salary) and amend Section 12.1 (Councilmanic Salaries), Section 40 (City Attorney) and Section 41.1 (Salary Setting Commission) to alter the salary setting process for all elected officials. Henceforth, the Salary Setting Commission shall include individuals with particular expertise, authorized to examine all appropriate factors and establish the salaries of the Mayor, City Attorney and Council. The Council must adopt the Salary Setting Commission's recommendations for salaries, and the Mayor may not veto them. The public will retain its referenda authority over the ordinance enacting these salaries.

matters where the Mayor or Council have given their approval. This language is only controversial in that the present Charter language is so vague it allows action that might well violate the Rules of Professional Conduct. This Charter language requires the City Attorney to follow those rules. The Charter language recommended would preserve intact the City Attorney's ability to use an injunction or *writ of mandamus* to restrain or compel actions of City officials, and thus the officer's oversight role is protected. The Subcommittee spent a great deal of time on the issue, and a number of the other Committee members who were not on this Subcommittee are already well versed in the rules of conduct governing all attorneys. Finally, City Attorneys are not guaranteed representation on appointed or elected Charter commissions: only the governing body or the voters can create a Charter commission. Ultimately, the Committee's majority felt that this issue was one of the most important addressed by the Committee, and that to fail to recommend an improvement to remove this dangerous ambiguity from the Charter would be a dereliction of duty.<sup>3</sup>

VOTE: SEPTEMBER 27, 2007; 9 AFFIRMATIVE, 5 NEGATIVE, 1 ABSENT. ROLL CALL: AFFIRMATIVE = BERSIN, CHANNICK, DAVIES, JONES, MCDADE, MILLIKEN, MUDD, NELSON, ROTH; NEGATIVE = CLEVES ANDERSON, GORDON, KWIATKOWSKI, SORENSEN, SPARROW; ABSENT = WILSON.

11. Repeal Section 24.1 (Mayor's Salary) and amend Section 12.1 (Councilmanic Salaries), Section 40 (City Attorney) and Section 41.1 (Salary Setting Commission) to alter the salary setting process for all elected officials. Henceforth, the Salary Setting Commission shall include individuals with particular expertise, authorized to examine all appropriate factors and establish the salaries of the Mayor, City Attorney and Council. The Council must adopt the Salary Setting Commission's recommendations for salaries, and the Mayor may not veto them. The public will retain its referendum authority over the ordinance enacting these salaries.

The City's Salary Setting Commission (SSC) has done a good job in recommending appropriate salaries for the Mayor and Council members. The only problem with the current process is that it requires the Mayor and Council to vote upon their salaries. This has placed elected officers in a difficult position, where they always appear to be acting from narrow self-interest. Consequently, they do not act to raise their salaries, even when an objective body has indicated the need to do so. As a result, these salaries are now set at such a level that unless they are able to support themselves from independent means (such as retirement pensions or their own investments), good potential candidates might hesitate to seek City office. This does more than injure the short-run financial standing of the individuals elected to City government. It threatens the City's long-run interests, because San Diego's ability to continue attracting quality candidates to elective offices may depend upon establishing salaries that would allow these candidates to live in the City.

The full Committee recommended this change because it would retain the best features of the present process, maintaining the right of voters to use the referendum if they think City officers' salaries should not be increased. Yet the recommended language would remove the politics from the process, allowing an independent body to decide upon their compensation. The recommendation would also include establishing compensation for the City Attorney within the SSC's

---

<sup>3</sup> For a fuller discussion of the position of those Committee members who opposed this recommendation, please see the Minority Report, which is included in the attachments.

purview. The Subcommittee debated a great deal on whether to recommend that the SSC examine any particular indices. The Subcommittee and Committee decided in the end that since the City was delegating this decision to a non-legislative body, it would be appropriate to offer guidance. The SSC presently considers the very indices included in the Charter amendment proposal in making its recommendations for Mayor and Council salaries.

The majority of Committee members favored this recommendation, but there was no clear consensus. Those members who opposed it did indicate they were not doing so because they thought the City's elected officials were over-compensated. Their main objection was that the Council should be making this recommendation, because its members are already aware of the need for this Charter amendment. The other objection raised was that this matter was beyond the scope of the tasks assigned to the Committee. The full Committee voted to recommend the Charter change, despite these issues.

VOTE: SEPTEMBER 6, 2007; 8 AFFIRMATIVE, 6 NEGATIVE, 1 ABSENT. ROLL CALL: AFFIRMATIVE = BERSIN, CHANNICK, JONES, MCDADE, MUDD, NELSON, ROTH, SORENSEN; NEGATIVE = CLEVES ANDERSON, DAVIES, GORDON, KWIATKOWSKI, SPARROW, WILSON; ABSENT = MILLIKEN.<sup>4</sup>

---

<sup>4</sup> On October 4, 2007, the Committee revisited this issue in deliberating on the priority to be accorded its several recommendations. The draft report had placed this salary setting recommendation among the list of items to be dealt with on a later ballot. The Committee decided this matter was one of greater urgency, and thus voted unanimously to recommend that the salary setting amendment be placed on the ballot in 2008. The Committee approved the recommendation by a roll call vote; the margin was 14 affirmative, 0 negative, 1 absent. The absence was that of Committee member Lei-Chala Wilson.

## **Recommendation #11: Salary Setting**

### ***Summary of Recommendation***

Repeal Section 24.1 (Mayor's Salary) and amend Section 12.1 (Councilmanic Salaries), Section 40 (City Attorney) and Section 41.1 (Salary Setting Commission) to alter the salary setting process for all elected officials. Henceforth, the Salary Setting Commission shall include individuals with particular expertise, authorized to examine all appropriate factors and establish the salaries of the Mayor, City Attorney and Council. The Council must adopt the Salary Setting Commission's recommendations for salaries, and the Mayor may not veto them. The public will retain its referenda authority over the ordinance enacting these salaries.

### ***Recommended Charter Language***

#### **Section 12.1: Salaries of Elected Officials**

On or before February 15 of every even year, the Salary Setting Commission shall recommend to the Mayor and Council the enactment of an ordinance establishing or modifying the salary of all elected City officials for the period commencing July 1 of that even year and ending two years thereafter. The Council shall adopt those salaries by ordinance. The ordinance adopting the salaries of elected officials shall be separate from the City's Salary Ordinance and shall not be subject to any veto provision of Article XV. The ordinance shall be subject to the referendum provisions of this Charter and upon the filing of a sufficient petition, the ordinance shall not become effective and shall be repealed by the Council or shall forthwith be submitted to a vote of the people at the next general statewide election. Until an ordinance establishing or modifying the salaries of elected City officials takes effect, the officials shall continue to receive the same annual salary received previously. This section shall not be subject to the provisions of section 11.1.

[REPEAL SECTION 24.1 (MAYOR'S SALARY) IN ITS ENTIRETY.]

#### **Section 40: City Attorney**

###

The salary of the City Attorney shall be fixed as provided in section 12.1 and set forth in the annual appropriation ordinance, except that the salary of the City Attorney may not be decreased during a term of office, and in no event shall said salary be less than \$15,000.00 per year.

###

#### **Section 41.1: Salary Setting Commission**

There is hereby created a Salary Setting Commission consisting of seven members who shall be appointed by the Civil Service Commission for a term of four years. The Commission shall consist of the following persons: (1) Three public members, at least one of whom has expertise in the area of compensation, including but not limited to an economist, market researcher, or personnel manager. No person appointed pursuant to this paragraph may, during the 12 months prior to his or her appointment, have held public office, either elective or appointive, have been a candidate for elective public office, or have been a lobbyist, as defined by the Political Reform Act of 1974. (2) Two members who have experience in the business community. (3) Two members, each of whom is an officer or member of a labor organization. All members shall be residents of this City. The Civil Service Commission shall strive insofar as is practicable to provide a balanced representation

of the geographic, gender, racial, and ethnic diversity of the City in appointing commission members. The Salary Setting Commission shall recommend to the Council the establishment and modification of salaries for all elected City officials as provided in section 12.1 of this Charter. The City Manager shall provide from existing resources the staff and services necessary to enable the Commission to perform its duties. The Commission shall consider in establishing or modifying the annual salary for elected officials the following factors, including but not limited to:

- (1) The elected official's responsibility and scope of authority, and the amount of time directly or indirectly related to the performance of the duties, functions, and services of the office.
- (2) The annual salary of other elected and appointed municipal officials with comparable responsibility in this and other states.
- (3) The benefits package accompanying the City office.
- (4) Comparable data including the Consumer Price index and rates of inflation.
- (5) The relative cost of living in the City and the establishment of salaries adequate to attract sufficiently qualified candidates.

**Recommended Language for Official Ballot**

**Section 12.1: ~~Councilmanic~~ Salaries of Elected Officials**

On or before February 15 of every even year, the Salary Setting Commission shall recommend to the Mayor and Council the enactment of an ordinance establishing or modifying the salary of ~~members of the Council~~ all elected City officials for the period commencing July 1 of that even year and ending two years thereafter. The Council ~~may~~ shall adopt ~~these~~ salaries by ordinance ~~as recommended by the Commission, or in some lesser amount, but in no event may it increase the amount.~~ The ordinance adopting the salaries of elected officials shall be separate from the City's Salary Ordinance and shall not be subject to any veto provision of Article XV. The ordinance shall be subject to the referendum provisions of this Charter and upon the filing of a sufficient petition, the ordinance shall not become effective and shall be repealed by the Council or shall forthwith be submitted to a vote of the people at the next general statewide election. Until an ordinance establishing or modifying the salaries of elected City officials takes effect, the officials shall continue to receive the same annual salary received previously. This section shall not be subject to the provisions of section 11.1.

**~~Section 24.1: Mayor's Salary~~**

~~On or before February 15 of every even year, the Salary Setting Commission shall recommend to the Council the enactment of an ordinance establishing the Mayor's salary for the period commencing July 1 of that even year and ending two years thereafter. The Council shall adopt the salary by ordinance, as recommended by the Commission, or in some lesser amount, but in no event may it increase the amount. The ordinance shall be subject to the referendum provisions of this Charter and upon the filing of a sufficient petition, the ordinance shall not become effective and shall be repealed by the Council or shall forthwith be submitted to a vote of the people at the next general statewide election.~~

[SECTION 24.1 REPEALED IN ITS ENTIRETY.]

**Section 40: City Attorney**

###

The salary of the City Attorney shall be fixed as provided in section 12.1 ~~by the Council~~ and set forth in the annual appropriation ordinance, ~~provided except~~ that the salary of the City Attorney may not be decreased during a term of office, ~~but~~ and in no event shall said salary be less than \$15,000.00 per year.

###

**Section 41.1: Salary Setting Commission**

There is hereby created a Salary Setting Commission consisting of seven members who shall be appointed by the Civil Service Commission for a term of four years. The Commission shall consist of the following persons: (1) Three public members, at least one of whom has expertise in the area of compensation, including but not limited to an economist, market researcher, or personnel manager. No person appointed pursuant to this paragraph may, during the 12 months prior to his or her appointment, have held public office, either elective or appointive, have been a candidate for elective public office, or have been a lobbyist, as defined by the Political Reform Act of 1974. (2) Two members who have experience in the business community. (3) Two members, each of whom is an officer or member of a labor organization. All members shall be residents of this City. The Civil Service Commission shall strive insofar as is practicable to provide a balanced representation

of the geographic, gender, racial, and ethnic diversity of the City in appointing commission members. The first members shall be appointed for a term commencing January 1, 1974. Initially, the Commissioners shall be appointed in a manner so that three are appointed for two-year terms and four are appointed for four-year terms. The Salary Setting Commission shall recommend to the Council the establishment and modification enactment of an ordinance establishing salaries for all elected City officials the Mayor and Council as provided in section 12.1 of by this Charter. The City Manager shall provide from existing resources the staff and services Council shall provide the funds necessary to enable the Commission to perform its duties. The Commission shall consider in establishing or modifying the annual salary for elected officials the following factors, including but not limited to:

- (1) The elected official's responsibility and scope of authority, and the amount of time directly or indirectly related to the performance of the duties, functions, and services of the office.
- (2) The annual salary of other elected and appointed municipal officials with comparable responsibility in this and other states.
- (3) The benefits package accompanying the City office.
- (4) Comparable data including the Consumer Price Index and rates of inflation.
- (5) The relative cost of living in the City and the establishment of salaries adequate to attract sufficiently qualified candidates. The Civil Service Commission in its appointments shall take into consideration sex, race and geographical area so that the membership of such Commission shall reflect the entire community.