

MARY JO LANZAFAME
ASSISTANT CITY ATTORNEY

JOSEPHINE A. KIERNAN
DEPUTY CITY ATTORNEY

OFFICE OF

THE CITY ATTORNEY

CITY OF SAN DIEGO

Jan I. Goldsmith

CITY ATTORNEY

1200 THIRD AVENUE, SUITE 1620
SAN DIEGO, CALIFORNIA 92101-4178

TELEPHONE (619) 236-6220

FAX (619) 236-7215

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REPORT TO THE COMMITTEE ON RULES, OPEN GOVERNMENT AND INTERGOVERNMENTAL RELATIONS

PROPOSED COMPANION MEASURE REGARDING TITLE CHANGE AND MODIFICATION TO THE APPOINTMENT OF ELECTED OFFICIALS TO OUTSIDE AGENCIES

INTRODUCTION

At the last meeting of the Rules, Open Government and Intergovernmental Relations Committee meeting this Office was requested to prepare for the Committee's review a companion to the June 2010 measure voters will consider to continue the Mayor-Council form of governance. The proposed companion measure would change the name of Article XV, and provide the Council President with authority to appoint elected officials to outside agencies, boards or committees. This Report includes the proposed measure for the Committee's review with a brief analysis of issues related to the measure.

DISCUSSION

This proposed measure would be placed on the ballot as a complement to the measure to continue the Mayor-Council form of governance. Depending on the final language of the measure approved by the Council, the ballot question would ask something like "In the event the San Diego City Charter is amended to continue the Strong Mayor (Mayor-Council) form of governance, shall the Charter also be amended to . . . ?" This informs the voters that those wanting only to continue the Mayor-Council form of government could vote yes on the first proposition and no on the second. Voters wanting to continue the Mayor-Council form of government with the additional changes in the second measure could vote yes on both propositions. *See Sacramento County Deputy Sheriff's Ass'n v. County of Sacramento*, 85 Cal. App. 4th 960, 965-968 (2001).

I. Title Change for San Diego Charter Article XV.

If voters decide to continue the Mayor-Council form of government, this measure will first ask them to change the title of San Diego Charter Article XV. The Committee suggests the title of the article be changed from "Strong Mayor Form of Government" to "Strong Mayor-Strong Council Form of Government." We suggest instead that any change to Article XV's title be to "Mayor-Council Form of Government" to be more legally accurate.

Voters must be provided with accurate information regarding ballot measures. For example, the question voters were asked in November, 2004 was: "Shall the City Charter be amended to change from *a* City Manager structure of government to *a* Strong Mayor structure of government for a five year trial period starting January 1, 2006?" San Diego Ballot Pamphlet. General Elec. Nov. 2, 2004, Ballot Question. (emphasis added) They were informed that adopting this measure would "create *a* Mayor-Council form of government for a five-year trial period." *Id.* City Attorney Impartial Analysis. (emphasis added)

Both labels, Strong Mayor and Mayor-Council, are legal words of art describing the same sort of governmental structure. Recognizing there are significant variations on the structure depending on local needs, the structure is generally one in which the Mayor has executive authority and control over administrative affairs of the City, and is separate from the City Council. Often the Mayor is given authority to approve or veto the Council's legislative acts, or to force their reconsideration. In some cases, the Mayor is given budgetary approval authority. In others, the legislative body retains that authority.

On the other hand, the suggested title for Charter Article XV "Strong Mayor-Strong Council Form of Government" has no accepted legal meaning. Also, its proposed use may be legally inaccurate. If voters approve continuance of the Mayor-Council form of governance in June, the government structure may provide the Mayor with more authority than that Office has at present, by requiring a two-thirds vote to override Mayoral vetoes. Yet, the companion measure does not equally strengthen City Council authority. If approved, it would change only who may appoint a few elected officials to some outside entities. Nonetheless, the overall governmental structure still remains a Mayor-Council form of governance. Accordingly, if the Council wishes to change the title of Article XV in this companion measure, we recommend the change be to "Mayor-Council Form of Government."

II. Council President Authority to Appoint Elected Officials to Outside Agencies.

This measure will also ask voters to amend San Diego Charter Article XV, section 265(b)(12), to permit the Council President to make appointments of elected City representatives with Council confirmation, and to permit the Mayor a right of first refusal for appointments for which that Office is eligible. We provide the requested language for the measure in the attached document. However, the Council should be aware that this change to the City Charter will not change the specific legal requirements for appointments of elected officials to most of these outside entities.

This Office has provided the Council with two reports on the subject of appointments under the Mayor-Council form of governance explaining which City Officials hold the legal authority to appoint to various outside agencies. City Att'y Reports 2009-33 (Dec. 21, 2009) and 2006-9 (Feb. 28, 2006). They explain why the proposed change would have little practical effect on the appointing authority, if City Officials do not share their appointing authority as they have for the past four years. This is because controlling state law, or other legally binding agreements, control which Office holds the appointing authority regardless of City Charter language. City Att'y Report 2009-33 (Dec. 21, 2009). Those laws and agreements are always subject to change.

However, as they currently exist, for example, the only change to the appointing authority for elected officials would give to the Council President, not the Mayor, the authority to make Councilmember appointments to the Mission Trails Regional Park Task Force and the Los Peñasquitos Canyon Preserve Task Force.

CONCLUSION

Once voters have decided whether they wish to continue the Mayor-Council form of governance, the City Council is not precluded from presenting future measures to them to further change the City Charter. However, if the Committee desires to move forward with a companion measure, we recommend the title change to Article XV be modified as we suggest in this report.

Respectfully submitted,

JAN I. GOLDSMITH, City Attorney


Josephine A. Kiernan
Deputy City Attorney

JAK:lkj
RC-2010-3
Attachment

cc: Mayor and IBA

PROPOSITION

Article XV

~~Strong Mayor-Council~~ Trial Form of Governance

Section 265: The Mayor

(a) [no change in text].

(b) [no change in text].

(1) through (11) [no change in text].

(12) sole authority to appoint City representatives to boards, commission, committees and government agencies, unless controlling law vests the power of appointment with the City Council or a City Official other than the Mayor. When the representative must be an elected official, the Council President shall make the appointment subject to Council confirmation, giving the Mayor the right of first refusal to any appointment for which the Mayor is eligible, unless controlling law vests the power of appointment with the Mayor or a City Official other than the Council.

(13) through (14) [no change in text].

(c) through (j) [no change in text].

END OF PROPOSITION
