



THE CITY OF SAN DIEGO

Report to the City Council

DATE ISSUED: May 18, 2016

REPORT NO: 16-053

ATTENTION: Charter Review Committee

SUBJECT: Removal from, Succession to and Interim Authority in Elected Office

REFERENCE:

REQUESTED ACTION: Review and approve this modified report addressing removal from, succession to and interim authority in elected office.

STAFF RECOMMENDATION: Staff recommends the Committee:

1. Review and decide among the options described where they are provided in the Report,
2. Accept and approve the Report as modified by the Committee,
2. Direct the City Attorney to prepare draft language for a new Article 2.5, Elected Officials, consisting of existing sections common to all of the City of San Diego's elected officials; including Charter sections 23 – Initiative, Referendum, Recall, 108 – Forfeiture of Office for Fraud and relevant portions of other sections including 12- The Council, 40 – City Attorney and 265 – The Mayor.

EXECUTIVE SUMMARY OF ITEM BACKGROUND: This report combines the March 23 and April 20, 2016, Charter Review Committee discussions regarding:

1. Cause for Removal/Forfeiture of Office,
2. Succession to Elected Office, and now adds
3. Scope of Interim Authority for consideration.

Committee feedback from the first two discussions is incorporated into this completed Report. Staff's recommendations and options are discussed in the order previously considered.

1. Cause for Removal from/Forfeiture of Office

March 23, the Committee considered a list of causes for removal in 15 comparable cities found on the attached Chart, "Background – Causes for Removal" dated March 23, 2016. In response to Committee input, staff suggests that the Charter list the following nine actions or conditions as cause for removal from/forfeiture of office:

The City Charter currently lists six activities for which an elected official must forfeit his/her office:

1. Conflict of interest in City contracts (section 94),
2. Favoritism in contracts (section 100),
3. Collusion in contracts (section 101),
4. Fraud in payments (section 108),
5. Payments for office (section 217), and
6. Accepting payments for employment (section 218).

Staff suggests three more activities/conditions for which an elected official must forfeit his/her office. These suggestions reflect the common practice of 15 comparable cities, input from the Offices of the Mayor, City Attorney and Independent Budget Analyst, and previous Committee discussion.

7. Conviction of a felony,
8. Judicially declared incompetent as defined by statute, and
9. Moving out of the city (Mayor or City Attorney) or Council District (Councilmember).

Staff intends for removal/forfeiture to be automatic and free of the political will of other elected officials. In order for that to happen, the determination that cause for removal exists needs to be made by a neutral, detached, objective entity or standard.

Accordingly, staff suggests the Committee consider the following options as a method or methods for determining that cause for removal/forfeiture exists:

Option A: Council Initiated Recall and Special Election

The Council would have the authority to hold a “for cause hearing” and by a 3/4 vote (currently 7 of 9 members) initiate a recall election and concurrently a special, enabling the people of the City to decide whether to retain or remove the elected official. This process would adhere to existing recall and special election time schedules, but would undoubtedly be political.

Option B: Judicial Process

Anyone could file a complaint with the appropriate court and let the judicial process reach a decision, determining if any of the above nine actions or conditions had occurred or existed. If they had, the elected official would be ordered by the court to vacate his/her office. While neutral, detached, objective, and more removed from politics; the judicial process could be lengthy, especially if the judgment was appealed.

Option C: Quo Warranto

Quo Warranto is a statutory proceeding, described in California Code of Civil Procedure section 803, to determine whether holders of public office or franchises are legally entitled to hold that office or exercise those powers. It may only be brought by the Attorney General in the name of the people of the State, or by a private party acting with the Attorney General’s consent. (See the attached opinion Quo Warranto, Resolution of Disputes – Right to Public Office, California Attorney General’s Office, 1990.)

Two related and additional notes are:

Nothing proposed in this Report changes or interferes with the inalienable right of the people of the City, apart from any action on the part of any elected official, to initiate a recall of an elected official as outlined in Charter section 23.

Charter section 265 currently states that a vacancy in elected office occurs from death, resignation or recall. Staff recommends adding the category of “removal” to that list of causes of vacancy.

2. Succession to Office:

Staff recommends clarity and uniformity for succession to all elected offices in the interim between the vacation of an office and a *special election* or *appointment* of a new elected official.

Staff does not recommend changing the circumstances currently used in determining whether a vacated office is filled by special election or appointment.

Special Election: Continue to conduct a special election when an elected office is vacated with more than one year remaining on the term.

Appointment: Appoint a replacement official when the elected office is vacated with one year or less remaining on the term. The City Council shall, within 30 days of the vacation, by a majority vote, appoint a replacement official who is not eligible to be a candidate in the next regular election. This succession process is currently used for the City Council, and this action would bring the Mayor and City Attorney into uniformity with this process.

The interim designee between the vacation of an elected office until either a special election is held or an appointment is made is the following person for the:

- Mayor: The Council President
- Councilmember: The chief of staff for the departing Councilmember, under the authority of the Council President, to manage the office for the departing Councilmember.
- City Attorney: The Assistant City Attorney previously designated by the City Attorney and recorded with the City Clerk

3. Interim Authority in an Elected Office:

Staff considered the following title prefixes/suffixes for a designee maintaining the Mayor's or City Attorney's offices until a special election is held or appointment is made. Such titles do not apply to the Council offices, because no designee comparable to a Councilmember maintains the office after it is vacated:

Option A: Interim Mayor, Interim City Attorney,

Option B: Acting Mayor, Acting City Attorney,

Option C: Mayor Pro Tem, City Attorney Pro Tem,

Option D: No prefix or suffix is used. He/she is simply referred to by the title of the elected officeholder; Mayor or City Attorney.

Staff recommends, Option A, using the prefix "Interim" to differentiate the designee with limited authority from the elected or appointed official with full authority. Thus, it is the Interim Mayor in the Office of the Mayor and Interim City Attorney in the Office of the City Attorney.

The recommended scope of authority for the designee maintaining an elected office until a special election is held or appointment is made is outlined below:

Mayor:

Per Charter section 265(i), the Council President acting as Interim Mayor shall have authority to:

1. "Supervise the staff remaining employed in the Office of the Mayor,
2. Direct and exercise control over the City Manager in managing the affairs of the City under the purview of the Mayor, and
3. Exercise other power and authority vested in the Office of the Mayor when the exercise of such power and authority is required by law. This limited authority would include circumstances where the expeditious approval of a legislative action is necessary to meet a legal requirement imposed by a court order or another governmental agency."

However, section 265(i) proceeds to curtail the Interim Mayor's authority by stating:

4. "Such limited authority would not include the exercise of the power of veto, or
5. Any other discretionary privilege which is enjoyed by a person appointed or elected to the Office of Mayor."

Staff recommends adding language to section 265(i) clarifying that during an interim in the Mayor's Office:

6. The 10-day waiting period following Council action for the Mayor to sign resolutions and ordinances shall be suspended.
7. Regarding the authority to make appointments to boards, commissions and taskforces, there are two options:
 - a. The appointment authority shall be transferred to the City Council as a whole during a mayoral interim, and the 45 day waiting period be suspended. This is basically the same process currently used, per Council Policy 000-13, when a seat has been vacant for 45 days.
 - b. The Council President/Interim Mayor may vet and recommend appointees to boards, commissions and taskforces to the incoming Mayor, but shall not forward any appointments to the City Council unless a vacancy has not been filled for 45 days.

In accordance with section 265(i), during the interim, the Council President/Interim Mayor shall continue to have a vote on the City Council, but shall not chair the Council meetings. The Council President Pro Tem shall chair the Council meetings and work with the existing legislative affairs staff to manage the docketing process. But, the President Pro Tem shall not make appointments to the committees or change the committee structure.

The Council President/Interim Mayor shall continue to have a vote on the Council committee(s) on which he/she serves, but the Vice-Chair shall chair the committee(s) which the Council President normally chairs.

During the interim, the Council President/Interim Mayor shall continue to represent the City on any extra-city committees he/she is appointed to, and serve in whatever leadership capacity, if any, he/she holds on those committees.

Councilmembers: During the interim, the chief of staff shall continue, under the authority of the Council President, to manage the Council staff to ensure that constituent/community work is addressed and policy information is preserved for the incoming Councilmember.

During an interim, until a special election is held or an appointment is made, no one represents or votes for the Council District on committees or at City Council meetings.

City Attorney: The Assistant City Attorney/Interim City Attorney of record shall be vested with the full authority and tasked with the full responsibility of the City Attorney during an interim in that office.

FISCAL CONSIDERATIONS: The cost to place this measure on the ballot has yet to be determined.

EQUAL OPPORTUNITY CONTRACTING INFORMATION (if applicable): N/A

PREVIOUS COUNCIL and/or COMMITTEE ACTIONS:

February 2, 2016, the Charter Review Committee unanimously requested the Independent Budget Analyst, Mayor’s Office, Committee Consultant and Director of Legislative Affairs work with the City Attorney to study similarly situated jurisdictions and return with:

1. A comprehensive list of what constitutes “cause” for removal from office.
2. Clear line and process of succession for the Mayor and City Attorney similar to what currently exists for Councilmembers.
3. Complete outline of authority and operations for a succeeding Mayor and City Attorney similar to what currently exists for the City Council.

March 23, 2016, the Charter Review Committee reviewed Report to the City Council 16-031, Clarification of What Constitutes Cause for Removal from Elected Office, and provided feedback to staff.

April 20, 2016, the Charter Review Committee reviewed Report to the City Council 16-404, Removal from and Succession to Elected Office, and provided feedback to staff.

COMMUNITY PARTICIPATION AND OUTREACH EFFORTS:

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

Council District 1 Steven Hadley, Committee Consultant

Originating Department Name-Title

- Attachment(s):
1. Report to the City Council 15-031, Clarification of What Constitutes Cause for Removal from Elected Office.
 2. Background Chart – Causes for Removal, March 23, 2016.
 3. Report to the City Council 15-040, Removal from and Succession to Elected Office.
 4. City Attorney’s August 29, 2013, Memorandum of Law, Role of Council President During Mayoral Vacancy.
 5. Quo Warranto, Resolution of Disputes – Right to Public Office, California Attorney General’s Office, 1990.