



THE CITY OF SAN DIEGO

## Report to the City Council

DATE ISSUED: May 18, 2016

REPORT NO: 16-055

ATTENTION: Charter Review Committee

SUBJECT: Creation of a Charter Article for Independent, Non-Mayoral Offices.

REFERENCE:

**REQUESTED ACTION:**

1. Move the following independent, non-mayoral administrative services from Article 5 to a new Article: Sections 37 – Personnel Director, 38 – City Clerk, 39.1 – Audit Committee, 39.2 – Office of City Auditor, 39.3 – Independent Budget Analyst, 40 – City Attorney, 40.1 – Concurrent Jurisdiction of City Attorney with District Attorney and 41 – Commissions.
2. Approve an introductory section to the new article.
3. Forward the previously approved substantive changes to the non-mayoral administrative services sections 39.3 – Independent Budget Analyst, 41(c) Planning Commission, 41(d) Ethics Commission and 42 – Membership to the City Council for placement on a ballot,
4. Direct the City Attorney to prepare a draft new Charter Article reflecting the above organizational and substantive changes, and return to the City Council.

**STAFF RECOMMENDATION:** Approve the requested action.

**EXECUTIVE SUMMARY OF ITEM BACKGROUND:** The following three requested actions are summarized in turn below:

1. Reorganization of Charter Article 5, moving the sections addressing non-mayoral administrative services to a new article of their own.
2. Introductory section for the new article, stating its purpose.
3. Outline of the substantive changes to non-mayoral administrative services sections being forwarded to the full City Council.

1. Reorganization of non-mayoral administrative services sections.

The requested action helps better communicate to the Charter's readers the separation of powers that exists in our City's governance.

Every student in American civics class learns that democracy works in large part because the Federal government operates as a "three-legged stool" of shared authority among the Executive, Legislative and Judicial branches. The third branch, Judicial/courts, does not play an immediate role in the governance of local cities like it does in the federal government. The third, independent, daily voice of checks and balances for city government resides not in one institution, but in a cluster of independent departments and offices. The City of San Diego's independent departments and offices are described in Charter Article 5.

From 1931 when the Charter was first approved until 2006 when the Strong Mayor form of government was implemented, all departments and offices in Article 5 – Executive and

Administrative Service were independent of the Mayor and City Council. The Article 5 departments were under the direction of the City Manager and the independent offices described there were directed by their respective head. (e.g. City Attorney, City Clerk, etc.) San Diego's "three-legged stool" consisted of a Mayor, Council and City Manager.

With the implementation of the Strong Mayor form of government in 2006, many of the departments listed in Article 5 came under the direction of the Executive branch/Mayor for the first time. The City of San Diego continues to work in a triangle of shared authority; Mayor, Council and the independent offices listed in this requested action. However, the independent departments/offices are still described in Article 5 and may appear to the Charter's readers to also come under the direction of the Mayor when in fact they do not.

The requested action to move these independent department/offices to their own Charter Article will reaffirm their independence, accurately depict the City's governance by separation of powers, and more clearly distinguish the independent departments from Mayoral departments.

2. Introductory description of the content of the new article.

Staff recommends adopting an introductory section at the beginning of the new article that reads: "It shall be the obligation and responsibility of the Mayor and City Council to provide for and cooperate with the independent offices that in turn, collectively provide checks and balances in the governance of the City."

3. Substantive changes to non-mayoral administrative services.

The Charter Review Committee previously took the following actions, and now needs to forward the draft language along with the recommended introductory section and article reorganization, to the full City Council.

Section 39.3 Independent Budget Analyst

May 14, 2015, the Charter Review Committee voted to update the office's name to the "Office of the Independent Budget and Policy Analyst, and in addition, change the words "shall have the right to establish" in the first sentence to read "shall establish" [an office of the IBA]. The name change passed by the following vote: Yea, 1, 5, 6, 9; Nay: 0; Recused: 0; Not Present: 0

The change to mandatory language passed by the following vote: Yea: 1, 5, 9; Nay: 6; Recused: 0; Not Present: 0

Section 41(c) Planning Commission

December 3, 2015, the Charter Review Committee voted to formalize the Planning Commission in the Charter, but place the duties, membership composition, selection and terms of the Commission in the Municipal Code; subject to legal review.

The motion passed by the following vote: Yea: 1, 5, 9; Nay: 0; Recused: 0; Not Present: 6

Section 41(d) Ethics Commission

December 3, 2015, the Charter Review Committee voted to change the name of "The City of San Diego Ethics Commission" to "The City of San Diego Fair Political Practices Commission", approve a legally sufficient, high level version of the proposed language with details placed in the Municipal Code, and refer it to the full Council, subject to legal review. [See the attached November 16, 2015, City Ethics Commission Memorandum, Recommended Update to the City Charter.]

The motion passed by the following vote: Yea: 1, 5; Nay: 9; Recused: 0; Not Present: 6

**Section 42 Membership**

November 4, 2015, the Charter Review Committee voted to remove “sex, race” from the list of considerations when selecting appointees to City boards, commissions, committees and panels.

The motion passed by the following vote: Yea: 1, 5, 6, 9; Nay: 0; Recused: 0; Not Present: 0

FISCAL CONSIDERATIONS: None

EQUAL OPPORTUNITY CONTRACTING INFORMATION (if applicable): None

PREVIOUS COUNCIL and/or COMMITTEE ACTIONS: See part 3 of the above Executive Summary.

COMMUNITY PARTICIPATION AND OUTREACH EFFORTS: None

KEY STAKEHOLDERS AND PROJECTED IMPACTS: The Departments/Offices involved are the only stakeholders and should not be impacted negatively by the action.

Council District 1

Steven Hadley, Committee Consultant

Originating Department

Name-Title

Attachment(s):

1. November 16, 2015, City Ethics Commission Memorandum, Recommended Update to the City Charter.
2. Report to the City Council 16-022, Creation of a Charter Article for Independent, Non-Mayoral Departments and Offices.