



THE CITY OF SAN DIEGO

## Report to the City Council

DATE ISSUED: June 16, 2016

REPORT NO: 16-064

ATTENTION: Charter Review Committee

SUBJECT: Charter Section 40: City Attorney

REFERENCE: City Attorney Report to the City Council re: 2014 San Diego Charter Legal Review (February 5, 2014)

REQUESTED ACTION: Review and approve forwarding to Council the recommended edits to Charter Section 40: City Attorney, subject to legal review, for placement on the November 2016 ballot.

Direct the City Attorney to work with the Office of the Council President to prepare draft language for review by the Council.

Recommend the Council enter into meet and confer regarding the amendment to change the probationary period for Deputy City Attorneys from two years to one year.

STAFF RECOMMENDATION:

Approve recommended amendments to Charter Section 40: City Attorney for greater clarity and incorporation of best practices within the Municipal Code.

EXECUTIVE SUMMARY OF ITEM BACKGROUND:

The City Attorney's office in their February 5, 2014 report identified 7 issues that should be reviewed and possibly amended within Charter Section 40. In addition to these, it is recommended that broader language be included throughout Charter Section 40 in order to allow for more flexibility and best practices to be included within our Municipal Code.

Those sections recommended for amendments are as follows:

- 1) **Qualifications for the City Attorney:** Amend section 40 to require the City Attorney to be a member of the California State Bar in good standing with a minimum of 10 years of experience practicing law in California.
- 2) **SDCERS independent legal counsel:** Amend section 40 to provide that SDCERS may have its own legal counsel independent of the City Attorney, in recognition of

its fiduciary duties under Article XVI, section 17 of the California Constitution, and the potential for conflicts of interest.

*The City Attorney shall be the chief legal adviser and attorney for the City. The Ethics Commission and the Board of Administration, as defined in Charter Section 144, shall have their own legal counsel independent of the City Attorney.*

**3) Deputy City Attorneys Probationary period:** Shorten the probationary period for Deputy City Attorneys from two years to one year. (This item is subject to meet and confer with the Deputy City Attorneys Association.)

*No Deputy City Attorney, who has served continuously as a Deputy City Attorney in the Office of the City Attorney for one year or more shall be terminated or suspended without good cause, except that any Deputy City Attorney may be subject to layoff due to lack of work or insufficient appropriation to meet the salary requirements necessary to maintain existing personnel in the Office of the City Attorney.*

**4) Correct inconsistencies and allow best practices and procedure to be incorporated into the Municipal Code:** Correct the inconsistency with Charter Section 280(b) and refer intended scope of contracts, other instruments, and procedure regarding legal opinions and other matters to the Municipal Code. This would allow the City to capture best practices along with the flexibility required in a growing city with technological advancements.

*It shall be the City Attorney's duty, either personally or by such assistants as he or she may designate, to perform all services incident to the legal department and as determined by Ordinance of the Council; to give advice in writing when so requested, to the Council, its Committees, the Mayor, the Commissions, or Directors of any department; to prosecute or defend, as the case may be, all suits or cases to which the City may be a party; to prosecute for all offenses against the ordinances of the City and for such offenses against the laws of the State as may be required of the City Attorney by law; to prepare in writing all ordinances, resolutions, contracts, bonds, or other instruments as determined by Ordinance of the Council in which the City is concerned, and to endorse on each approval of the form and legality thereof; to preserve in the City Attorney's office a docket of all cases in which the City is interested in any of the courts and keep a record of all proceedings of said cases; to preserve in the City Attorney's office copies of all written opinions he or she has furnished to the Mayor, Council, Commission, or any officer. Such docket, copies and papers shall be the property of the City, and the City Attorney shall, on retiring from office, deliver the same, together with all books, accounts, vouchers, and necessary information, to his or her successor in office.*

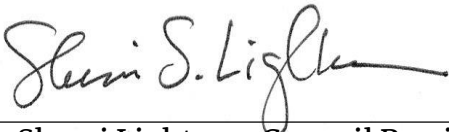
**5) Delete reference to Vacancy:** The Charter Review Committee has been working on a new Charter Section 2.5 to address removal from office, vacancy, succession, and interim authority. The ballot measure for the new item should include reference to

amending Charter Section 40 to remove all reference to this matter in order to avoid any inconsistencies and duplications.

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: None.

A handwritten signature in black ink, reading "Sherri S. Lightner". The signature is written in a cursive style with a long horizontal flourish extending to the right.

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Sherri Lightner, Council President

Attachments: 1) Proposed Strike-Out for Charter Section 40 (pending legal review)  
2) February 4, 2015 City Attorney Report to the City Council re: 2014 San Diego Charter Legal Review

#### **Section 4.0: City Attorney**

A City Attorney shall be elected for a term of four (4) years in the manner prescribed by Section 10 of this Charter. The City Attorney shall hold office for the term prescribed from and after 10 a.m. on the tenth day of December next succeeding the election and until a successor is elected and qualified. If the tenth day of December falls on a weekend or holiday, the term shall begin at 10 a.m. on the next calendar day that is not a weekend or a holiday.

No person shall serve more than two (2) consecutive four-year terms as City Attorney. If for any reason a person serves a partial term as City Attorney in excess of two (2) years, that partial term shall be considered a full term for purposes of this term limit provision.

The City Attorney shall be the chief legal adviser ~~of,~~ and attorney for the City ~~and all Departments and offices thereof in matters relating to their official powers and duties, except in the case of the~~ The Ethics Commission and Board of Administration, as defined in Charter Section 14.4, which shall have ~~their~~ own legal counsel independent of the City Attorney. The attorney and his or her deputies shall devote their full time to the duties of the office and shall not engage in private legal practice during the term for which they are employed by the City, except to carry to a conclusion any matters for which they have been retained prior to taking office.

The City Attorney shall appoint such deputies, assistants, and employees to serve him or her, as may be provided by ordinance of the Council, but all appointments of subordinates other than deputies and assistants shall be subject to the Civil Service provisions of this Charter. The City Attorney may appoint no more than six Assistant City Attorneys and four other assistants, who shall serve at the pleasure of the City Attorney and may be removed by the City Attorney at any time.

No Deputy City Attorney, who has served continuously as a Deputy City Attorney in the Office of the City Attorney for ~~one two~~ years or more shall be terminated or suspended without good cause, except that any Deputy City Attorney may be subject to layoff due to lack of work or insufficient appropriation to meet the salary requirements necessary to maintain existing personnel in the Office of the City Attorney. To ensure that Deputy City Attorneys conduct their legal work with the highest level of integrity, honesty, and professionalism, good cause for purposes of termination or suspension includes, but is not limited to, failure to comply with the California Rules of Professional Conduct.

It shall be the City Attorney's duty, either personally or by such assistants as he or she may designate, to perform all services incident to the legal department ~~and as determined by Ordinance of the Council;~~ to give advice in writing when so requested, to the Council, its Committees, the ~~Mayor~~ Manager, the Commissions, or

Directors of any department, ~~but all such advice shall be in writing with the citation of authorities in support of the conclusions expressed in said written opinions;~~ to prosecute or defend, as the case may be, all suits or cases to which the City may be a party; to prosecute for all offenses against the ordinances of the City and for such offenses against the laws of the State as may be required of the City Attorney by law; to prepare in writing all ordinances, resolutions, contracts, bonds, or other instruments as determined by Ordinance of the Council in which the City is concerned, and to endorse on each approval of the form or correctness thereof; to preserve in the City Attorney's office a docket of all cases in which the City is interested in any of the courts and keep a record of all proceedings of said cases; to preserve in the City Attorney's office copies of all written opinions he or she has furnished to the Mayor, Council, Manager Commission, or any officer. Such docket, copies and papers shall be the property of the City, and the City Attorney shall, on retiring from office, deliver the same, together with all books, accounts, vouchers, and necessary information, to his or her successor in office.

The City Attorney shall have charge and custody of all legal papers, books, and dockets belonging to the City pertaining to his office, and, upon a receipt therefor, may demand and receive from any officer of the City any book, paper, documents, or evidence necessary to be used in any suit, or required for the purpose of the office. The City Attorney shall apply, upon order of the Council, in the name of the City, to a court of competent jurisdiction for an order or injunction to restrain the misapplication of funds of the City or the abuse of corporate powers, or the execution or performance of any contract made in behalf of the City which may be in contravention of the law or ordinances governing it, or which was procured by fraud or corruption.

The City Attorney shall apply, upon order of the Council, to a court of competent jurisdiction for a writ of mandamus to compel the performance of duties of any officer or commission which fails to perform any duty expressly enjoined by law or ordinance.

The City Attorney shall perform such other duties of a legal nature as the Council may by ordinance require or as are provided by the Constitution and general laws of the State.

The Council shall have authority to employ additional competent technical legal attorneys to investigate or prosecute matters connected with the departments of the City when such assistance or advice is necessary in connection therewith. The Council shall provide sufficient funds in the annual appropriation ordinance for such purposes and shall charge such additional legal service against the appropriation of the respective Departments.

The salary of the City Attorney shall be fixed by the Council and set forth in the annual appropriation ordinance, provided that the salary of the City Attorney may

not be decreased during a term of office, but in no event shall said salary be less than \$15,000.00 per year.

~~In the event of a vacancy occurring in the office of the City Attorney by reason of any cause, the Council shall have authority to fill such vacancy, which said authority shall be exercised within thirty (30) days after the vacancy occurs. Any person appointed to fill such vacancy shall hold office until the next regular municipal election, at which time a person shall be elected to serve the unexpired term. Said appointee shall remain in office until a successor is elected and qualified.~~