
OFFICE OF THE INDEPENDENT BUDGET ANALYST REPORT

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Item Number: 154

Proposed Ballot Measure to Amend Charter Section 30, 40, and 117 for the November 2010 Election

OVERVIEW

On June 28, 2010 the City Council will be asked to direct the City Attorney to prepare an ordinance with appropriate ballot language for the proposed amendment to Charter Sections 30, 40, and 117, as proposed by the Deputy City Attorney's Association (DCAA), for consideration for placement on the November 2, 2010 ballot.

This ballot measure was brought forward by the DCAA to the May 19 meeting of the Rules Committee. The Committee voted to forward the matter for consideration to the full City Council to be placed on the ballot for the November 2, 2010 Special Election.

This ballot proposal would amend Charter Section 30: Removal of Unclassified Officers and Employees, Charter Section 40: City Attorney, and Charter Section 117: Unclassified and Classified Services. The proposed measure would change the status of Deputy City Attorneys; while positions would still be considered unclassified, they would no longer serve in an "at-will" capacity. If approved by voters, changes would become effective January 1, 2011. The most recent cost estimate for a five-page ballot measure begins at \$250,000.

FISCAL/POLICY DISCUSSION

The IBA has reviewed the proposed Charter changes related to the DCAA ballot measure. In general, the proposal will provide job protection to Deputy City Attorneys. The IBA is concerned that providing special consideration to one segment of City employees could create an inequitable work environment, and it grants special benefits unfairly.

The DCAA indicates that the San Diego County Grand Jury recommended in a June 2008 report that the City should explore moving Deputy City Attorneys from Unclassified to Classified Civil Service positions. In the City's response to the Grand Jury Report, the Mayor and City Council jointly responded that further analysis of this idea was needed, and should be taken up in a future study of the City Charter, particularly Section 40.

The Grand Jury recommended converting Deputy City Attorney positions to Classified Civil Service; however, the DCAA ballot measure would create basically a hybrid employment status; in other words, the positions would remain unclassified, but enjoy protection similar to that of the Civil Service.

Changes to Charter Section 117: Unclassified and Classified Services

Charter Section 117 states that "Employment in the City shall be divided into the Unclassified and Classified Service." It also states that "The Classified Service shall include all positions not specifically included by this section in the Unclassified Service." Currently, the Charter indicates that "All Assistant and Deputy City Attorneys" are included in the Unclassified Service. The proposal would eliminate Deputy City Attorneys from the list of "Unclassified" positions. However, it would not move them to the "Classified" service.

The IBA notes that, according to the Mayor's FY 2011 Proposed Budget, the City has over 430 unclassified positions, budgeted in the City's various funds and operations. This is in addition to the 139 positions represented by the DCAA. This language change of exempting Deputy City Attorneys from the traditional "unclassified" designation would create another category that is not clearly defined in the Charter. This change would provide job protection for one particular group that cannot be shared or enjoyed by other "unclassified" employees in similar circumstances, many of which also report to elected officials subject to term limits, who also serve in an "at will" capacity.

Changes to Charter Section 30: Removal of Unclassified Officers

Proposed changes to Charter Section 30 would exclude Deputy City Attorneys from those employees in the unclassified service that can be removed at any time.

This language is intended to address the concern that a newly elected City Attorney could choose to remove existing Deputy City Attorneys (regardless of job performance) and have them replaced as he/she desires. While turnover may disrupt the provision of continued, experienced legal advice to the City, imposing restrictions on the actions of future City Attorneys may limit their ability to carry out their plans for the future operations of the Office.

Changes to Charter Section 40: City Attorney

The requested changes to Charter Section 40 include the following additions:

“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 two years or more shall be terminated, suspended or have his or her salary reduced without good cause except that a Deputy City Attorney may be subject to layoff due to lack of work or lack of funds.”

The first addition specifies a maximum number of Assistants that the City Attorney may appoint and remove at any time. These positions would remain unclassified. While this may seem like a reasonable number for the current operations of the Office of the City Attorney, and may be acceptable to the current City Attorney, the inclusion of this language could restrict future City Attorneys from structuring their office functions as they see fit. It is unclear how limiting the number of Assistants will benefit the City, or translate into cost savings given the City Attorney must operate within an approved budget.

The second language addition creates the requirement for Deputy City Attorneys to experience a two-year probationary period, after which they then receive job protection, and can only be removed for good cause. Further, the language seems to eliminate future salary reductions.

During our review of the proposed measure, the IBA expressed concern to representatives of the DCAA that this language appears to limit the ability of the Mayor and City Council to implement possible budget reductions, including across-the-board salary and/or benefit reductions in the future, and could negatively impact the City’s position in future labor negotiations. Given the City’s current structural budget deficit, it would seem inappropriate to eliminate options available to balance the budget, especially as benefit changes are being considered. It is further inequitable to protect only one segment of the City employee unclassified population.

DCAA representatives responded that salary reductions could still be negotiated with the labor organization as long as they were applied to the group as a whole. The language is meant to ensure that an individual's salary is not reduced unfairly. However, the IBA is concerned that the proposed language could be subject to various interpretations, and could have unintended, or negative consequences.

CONCLUSION

The IBA has reviewed the proposed Charter changes related to the DCAA ballot measure. In general, the proposal will provide job protection to Deputy City Attorneys, if approved by San Diego voters. The IBA is concerned that providing special consideration to one segment of City employees could create an inequitable work environment, and it grants special benefits unfairly.

The IBA is concerned that some of the proposed language appears to limit the ability of the Mayor and City Council to implement possible budget reductions, including across-the-board salary and/or benefit reductions in the future, and could negatively impact the City's position in future labor negotiations. Further, is it unclear what public benefit will be derived from these Charter revisions. For these reasons, the IBA does not recommend the Council refer these items to the ballot.

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Elaine DuVal
Fiscal & Policy Analyst

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APPROVED: Andrea Tevlin
Independent Budget Analyst