



THE CITY OF SAN DIEGO

OFFICE OF THE INDEPENDENT BUDGET ANALYST REPORT

Date Issued: February 20, 2019

IBA Report Number: 19-04

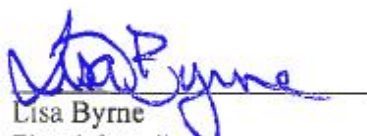
Status Update for Prior Grand Jury Report Recommendations Second Update for Report Titled “Compensation of City of San Diego Elected Officials”

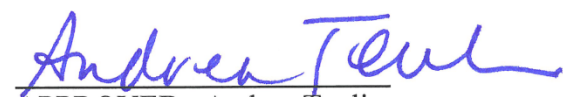
On February 3, 2015 the San Diego County Grand Jury filed a report, directed to the San Diego City Council, entitled “Compensation of City of San Diego Elected Officials.” This Grand Jury report discussed issues related to City Charter language which required Council to approve their own salaries as well as the salary of the Mayor.

Recommendation 15-01 of the Grand Jury report was to submit a ballot measure to City voters amending the City Charter to link salaries of Councilmembers and the Mayor to an external benchmark and to abolish the City’s Salary Setting Commission. Recommendation 15-02 was to fully vet the amendment proposed in Recommendation 15-01.

IBA Report 16-42, the original status update for these recommendations, explains that vetting of the Grand Jury’s recommended amendment took place in early 2016. The result at that time was a proposed amendment would not be placed on an upcoming ballot, but the issue could be considered at a later date.

Subsequently, during the next elections cycle in 2018, a ballot proposal by Proponent Robert P. Otilie was submitted to the City Clerk. This proposal was vetted by the Rules Committee and City Council. The resulting Charter amendment proposal approved by the Council was ultimately approved by City voters in November 2018. The substance of Grand Jury Recommendation 15-01 was included in this amendment. See attached ballot materials for Measure L, Charter Amendments Regarding Ethics and Compensation for Elected City Officers, for information on the ballot measure that was passed. The Charter amendments were chaptered by the California Secretary of State and added to the City Charter effective December 24, 2018.


Lisa Byrne
Fiscal & Policy Analyst


APPROVED: Andrea Tevlin
Independent Budget Analyst

CITY OF SAN DIEGO

(This Measure will appear on the ballot in the following form.)

MEASURE L

CHARTER AMENDMENTS REGARDING ETHICS AND COMPENSATION FOR ELECTED CITY OFFICERS: Shall the Charter be amended to: (1) restrict benefits for elected City officers; (2) restrict lobbying and campaign activities of elected City officers; and (3) remove the requirement that Councilmembers set their salaries and those of the Mayor and City Attorney, providing instead that their salaries be set as percentages of the salary set by the State of California for Superior Court judges?

This measure requires approval of a simple majority (50% plus 1) of those voting on the measure.

OFFICIAL TITLE AND SUMMARY

BALLOT TITLE

Amendments to the San Diego City Charter to Remove Requirement that Councilmembers Vote to Establish Salaries; and to Set Elected Officials' Salaries as Percentages of State Judicial Salary, Restrict Compensation and Benefits, and Enact Ethics Measures, for City Councilmembers, the Mayor, and the City Attorney.

BALLOT SUMMARY

This measure would amend the San Diego City Charter (Charter) to eliminate the requirement that the City Council (Council) vote to establish Councilmembers' salaries and those of other elective officers, and to eliminate the Salary Setting Commission that proposes salary amounts for Council consideration and approval.

The proposed Charter amendments would change the salary setting process and automatically tie the salaries of City Councilmembers, the Mayor, and the City Attorney to a percentage of the state-approved salary for California Superior Court judges.

The amendments also would eliminate the following for City elective officers: honoraria, car allowances paid as additional compensation, and free use of City-owned-and-controlled sports and entertainment venue tickets. The amendments would expand restrictions on lobbying, and add regulations regarding incumbent officers' use of taxpayer-funded, mass form constituent mailings.

The ballot measure was proposed during a process in which members of the public submitted ballot measure proposals for consideration by a Council standing committee and then the full Council. If approved, the Charter amendments would become effective after they are chaptered by the California Secretary of State.

CITY ATTORNEY'S IMPARTIAL ANALYSIS

The Charter requires that the City Council (Council) vote to establish salaries of the Mayor and Councilmembers, and the Council must consider recommendations from the City's Salary Setting Commission (Commission) every two years. The Council may accept a proposed increase, but may not set salaries higher than the Commission recommends. The Council has not accepted a salary increase proposed by the Commission since 2002.

The Charter also requires the Council to fix the City Attorney's salary.

If approved, the proposed Charter amendments would eliminate the Commission and the requirement that the Council vote to establish elective officer salaries. Instead, the amendments would automatically tie salaries of Councilmembers, the Mayor, and the City Attorney to the state-approved salary for California Superior Court judges in the California Government Code.

The amendments would phase in salaries:

- Councilmembers would be paid 60 percent of the state salary for California Superior Court Judges beginning December 10, 2020, and 75 percent of the state salary for California Superior Court judges beginning December 10, 2022.
- The Mayor and City Attorney would be paid an amount equal to the state salary for California Superior Court judges beginning December 10, 2020.

A state formula provides that Superior Court judges' salaries increase by the average percentage salary increase for the current fiscal year for state employees. Salaries for City elected officials would increase as state employees' salaries increase.

The amendments would eliminate the following for elected City officials: honoraria, car allowances, and free use of City-owned-and-controlled sports and entertainment venue tickets.

The amendments also would expand restrictions on lobbying, and regulate incumbent officers' use of taxpayer-funded, mass form constituent mailings.

Honoraria are fees such as speaker fees that are prohibited under state law, but with some exceptions. The measure would eliminate exceptions for City elective officers.

Effective December 10, 2020, the amendments would eliminate a regularly paid car allowance as a form of additional compensation for an elective officer's use of a private vehicle, but allow reimbursement for actual miles driven in a personal vehicle while on City business, following federal tax laws.

A City policy governs the use of admission tickets it receives, including tickets for City-owned-and-controlled sports and entertainment venues. This measure would prohibit free use of such tickets. The City would be required to market such tickets to the public at fair market value, keeping the proceeds. Tickets for certain venues and events may be governed by agreements that would require further analysis to determine whether the City could sell them.

City law prohibits lobbying by former City officials, including elective officers, for one year after leaving City employment. This measure extends the prohibition to two years.

State law regulates the use of public funds for mailings featuring a public official. This measure prohibits an incumbent official's mass mailings starting 75 days before an election when the official, or a staff member, seeks City office.

This measure was proposed by a member of the public. The Council placed it on the ballot.

FISCAL IMPACT ANALYSIS

The portions of this ballot measure that create a fiscal impact to the City of San Diego include net compensation increases for the City's 11 elective officers – the Mayor, nine Councilmembers, and the City Attorney. This measure would produce salary and related fringe benefits cost increases (including retirement plan and Medicare costs) and would eliminate the availability of a car allowance.

The net annual compensation cost increase in today's dollars (not adjusted for wage inflation) for the 11 positions is estimated to be approximately **\$560,000** beginning December 10, 2020, and approximately **\$870,000** beginning December 10, 2022. In 2020 and 2022, these costs will be somewhat higher if annual wage adjustments (based on the salary increase percentage for state judicial salaries) are applied between now and 2020/2022. After 2022, salary increase percentages will continue to match those that may occur for judicial salaries.

The largest component of the estimated net annual compensation increase is salaries. The table below reflects only the estimated annual salary increase (in today's dollars) that this measure would generate for each individual elective officer position.

	Annual Salary Increase Beginning December 10, 2020			Annual Salary Increase Beginning December 10, 2022
	Mayor	City Attorney	Individual Councilmembers	Individual Councilmembers
Current Salary	\$ 101,000	\$ 194,000	\$ 75,000	\$ 75,000
Estimated Salary in Today's Dollars with this City Charter Amendment	\$ 206,000	\$ 206,000	\$ 124,000	\$ 155,000
Estimated Increase in Salary	\$ 105,000	\$ 12,000	\$ 49,000	\$ 80,000

This measure also contains a prohibition on elective officers distributing City-held tickets for sports and entertainment events without payment for such tickets. The City's revenue increase related to this provision, if any, cannot be readily determined, due to the uncertainty of the City's ability to sell event tickets.

The full text of this measure is included in this Voter Pamphlet.

ARGUMENT IN FAVOR OF MEASURE L

Measure L is bipartisan, citizen-initiated ethics reform for City Hall that will:

- **Prohibit Campaigning on Taxpayer Dollars** – Measure L prohibits City-funded mailings by incumbents in the last 75 days of a reelection campaign.
- **Restrict Lobbying by Former Elected Officials** – Measure L keeps politicians from cashing in as special-interest lobbyists by prohibiting former elected City officers from lobbying the City for two years after they leave office.
- **Outlaw Acceptance of Honoraria** – Elected City officers will not longer be able to accept speaking fees, including from individuals, companies or groups with business before the City.
- **End the Practice of Councilmembers Voting on Their Own Pay** – Councilmembers now get to set their own salary, a system the San Diego County Grand Jury called “fundamentally flawed” and an “inherent conflict of interest,” concluding that “salaries of Councilmembers and the Mayor should be tied to an external benchmark.” Measure L implements this recommendation by permanently setting elected City officer salaries as percentages of Superior Court Judge salaries.
- **Eliminate the Car Allowance** – Elected officers are now entitled to an almost \$10,000 annual car allowance whether they drive on City business or not. Under Measure L, elected officials will be reimbursed for actual miles driven, like any other City employee.
- **Ban Free Luxury Box Seats** – Measure L bars elected officers from the free use of luxury skyboxes in all City-owned venues and prohibits them from giving those expensive seats away to donors, lobbyists and other cronies.

Measure L enshrines in the City Charter comprehensive reform that is designed to encourage citizen legislators and repel career politicians who are more interested in perks than public service.

Join us in supporting good government. Yes on Measure L.

Mark Kersey
SD City Councilman

Haney Hong
President and CEO,
San Diego Taxpayers Association

Bob Otlie
Former Chair,
San Diego Salary Setting Commission

Lori Thiel
President,
League of Women Voters

ARGUMENT AGAINST MEASURE L

No argument against Measure L was filed with the City Clerk's Office.

FULL TEXT OF MEASURE L**ARTICLE III****LEGISLATIVE POWER****SECTION 11.1: LEGISLATIVE POWER -- NONDELEGABLE**

The same prohibition against delegation of the legislative power which is imposed on the State Legislature by Article XI, Section 11a of the Constitution of the State of California shall apply to the City Council of the City of San Diego, so that its members shall must not delegate legislative power or responsibility which they were elected to exercise in the adoption of any ordinance or resolution which raises or spends public monies, including ~~but not limited to~~ the City's annual budget ordinance or any part thereof, and the annual ordinance setting compensation for City employees, or any ordinance or resolution setting public policy, except where authorized by this Charter.

The City Council shall must annually adopt an ordinance establishing salaries for all City employees, except the City's elective officers. ~~The City Council shall adopt this ordinance not later than May 30 of each year after considering all relevant evidence, including but not limited to the needs of the citizens residents of the City of San Diego for municipal services, the ability of the citizens residents to pay for those services, local economic conditions, and other relevant factors as the City Council deems appropriate. The City Council shall must give priority in the funding of municipal services to the need of the citizens residents for police protection in considering adoption of this salary ordinance and the annual budget ordinance, and must comply with any collective bargaining laws binding on the City as a public agency employer.~~

The prohibition imposed by this section against unlawful delegation of the legislative responsibility to set compensation for City employees shall ~~extend~~ to any scheme or formula which seeks to fix the compensation of City of San Diego employees, except City elective officers, at the level of compensation paid to employees of any other public agency whose governing board is not elected by and not accountable to the people of the City of San Diego. This prohibition shall also extend to any scheme or formula which seeks to fix, establish, or adjust the compensation of City of San Diego employees, except City elective officers, at the level of the largest cities in California or the State of California.

City elective officers will receive annual salaries based on the salary paid to Superior Court judges by the State of California. The Chief Financial Officer is responsible for determining the State salary of Superior Court judges and for setting and adjusting the salaries of the City Councilmembers, Mayor, and City Attorney, as provided in sections 12.1, 24.1, and 40, respectively.

SECTION 12.1: COUNCILMANIC SALARIES

~~On or before February 15 of every even year, the Salary Setting Commission shall recommend to the Council the enactment of an ordinance establishing the salary of members of the Council for the period commencing July 1 of that even year and ending two years thereafter. The Council may adopt the salaries by ordinance as recommended by the Commission, or in some lesser amount, but in no event may it increase the amount. The ordinance shall be subject to the referendum provisions of this Charter and upon the filing of a sufficient petition, the ordinance shall not become effective and shall be repealed by the Council or shall forthwith be submitted to a vote of the people at the next general statewide election. Effective December 10, 2020, the salary paid to City Councilmembers will be 60 percent of the salary prescribed by law and as adjusted by law for judges of the Superior Court for the State of California. Effective December 10, 2022, the salary paid to City Councilmembers will be 75 percent of the salary prescribed by law and as adjusted by law for judges of the Superior Court for the State of California.~~

FULL TEXT OF MEASURE L (CONTINUED)**ARTICLE IV****THE MAYOR****SECTION 24.1: MAYOR'S SALARY**

~~On or before February 15 of every even year, the Salary Setting Commission shall recommend to the Council the enactment of an ordinance establishing the Mayor's salary for the period commencing July 1 of that even year and ending two years thereafter. The Council shall adopt the salary by ordinance, as recommended by the Commission, or in some lesser amount, but in no event may it increase the amount. The ordinance shall be subject to the referendum provisions of this Charter and upon the filing of a sufficient petition, the ordinance shall not become effective and shall be repealed by the Council or shall forthwith be submitted to a vote of the people at the next general statewide election. Effective December 10, 2020, the salary paid to the Mayor will be equal to the salary prescribed by law and as adjusted by law for judges of the Superior Court for the State of California.~~

ARTICLE V**EXECUTIVE AND ADMINISTRATIVE SERVICE****SECTION 40: 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 Ethics Commission, which shall have its 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 must be licensed to practice law in the State of California and must have been so licensed for at least ten years at the time he or she submits nominating petitions.

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 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.

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.

FULL TEXT OF MEASURE L (CONTINUED)

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; to give advice in writing when so requested, to the Council, its Committees, the 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 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 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.

~~Effective December 10, 2020, the salary paid to the City Attorney will be equal to the salary prescribed by law and as adjusted by law for judges of the Superior Court for the State of California. 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 and in no event shall said salary be less than \$15,000.00 per year.~~

Whenever a vacancy exists in the office of the City Attorney, an Assistant City Attorney, previously designated by the City Attorney to fulfill duties in the event of a vacancy and whose name has been recorded with the City Clerk as the Interim City Attorney in the event of a vacancy, shall fulfill the duties of the City Attorney as the Interim City Attorney until a replacement can be appointed or elected as provided by this Charter. The Interim City Attorney shall have the full authority of the Office.

~~SECTION 41.1: SALARY SETTING COMMISSION~~

~~There is hereby created a Salary Setting Commission consisting of seven members who shall be appointed by the Civil Service Commission for a term of four years. The first members shall be appointed for a term commencing January 1, 1974. Initially, the Commissioners shall be appointed in a manner so that three are appointed for two-year terms and four are appointed for four-year terms.~~

FULL TEXT OF MEASURE L (CONTINUED)

~~The Salary Setting Commission shall recommend to the Council the enactment of an ordinance establishing salaries for the Mayor and Council as provided by this Charter. The Council shall provide the funds necessary to enable the Commission to perform its duties. The Civil Service Commission in its appointments shall take into consideration sex, race and geographical area so that the membership of such Commission shall reflect the entire community.~~

ARTICLE XVI**ELECTIVE OFFICERS****SECTION 303: RESTRICTIONS ON COMPENSATION AND BENEFITS FOR****ELECTIVE OFFICERS**

All elective officers for the City, defined in this section as the City Councilmembers, Mayor, and City Attorney, must adhere to the restrictions on compensation and benefits set forth in this section. This section is not intended to conflict with any provisions in federal or state law, except, however, where the restrictions on compensation are greater in this section than what is authorized under federal or state law, the greater restriction controls the compensation received by an elective officer.

- (a) Elective officers are prohibited from accepting honoraria, as that term is defined by State law.
- (b) Effective December 10, 2020, elective officers are prohibited from receiving a regularly paid car allowance as a form of additional compensation, except they may be reimbursed for actual miles driven in a personal vehicle while on City business, in accordance with reimbursement policies that comply with federal tax laws and regulations in effect at the time of the request for reimbursement.
- (c) Elective officers are prohibited from attending any sports or entertainment event in a venue owned, partially or in whole, by the City unless the officer has paid fair market value for admission, seats, or other accommodations. Elective officers are prohibited from giving away any City-held ticket, unless the recipient pays the face value of the ticket to the City. Any seats or similar amenities or services owned or controlled by the City, in part or in whole, within any sports or entertainment venue, must be marketed to the public at fair market value with all revenues received to be directed to the City Treasurer.

SECTION 304: RESTRICTIONS ON LOBBYING AND CAMPAIGNING FOR**ELECTIVE OFFICERS**

- (a) Elective officers are prohibited from lobbying the City for a two-year period after leaving office.
- (b) Elective officers are prohibited from using taxpayer-funded mass form constituent paper mailings during the 75 days before an election in which that officer is running, for reelection or for a different City elective position. Elective officers are also prohibited from using mass form constituent paper mailings to publish information about any City employee who works for the elective officer and who is seeking City elective office during the 75 days before the election in which the employee is seeking office.