



THE CITY OF SAN DIEGO

OFFICE OF THE INDEPENDENT BUDGET ANALYST REPORT

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Item Number: 1

Initial Analysis of a Ballot Proposal to Divide the City Attorney's Office

OVERVIEW

On July 26, 2023, the Rules Committee reviewed a citizen-submitted ballot measure that would split the existing City Attorney's Office into two offices. One office would be led by a Council-appointed Municipal Counsel to handle the City's civil matters, and the other office would be led by an elected City Attorney whose duty would be to prosecute the City's misdemeanors and San Diego Municipal Code violations. The Committee approved a motion for the proponents of the measure to work with the City Attorney's Office and the Independent Budget Analyst to furnish background information and provide an analysis of the proposal, including an assessment of similar governance models in California, operational impacts, and impacts on affected workers. This report responds to the request for additional analysis and is intended to facilitate further discussion at the October 4th Rules Committee meeting, when this measure will be heard again.

BACKGROUND

This ballot measure was first considered in concept on April 21, 2020 when a [four-Councilmember memorandum](#) addressed to the then-Council President requested that it be docketed for Council consideration per Section 2.10.2 of Rules of Council. The Council approved the preparation of ballot language to place the measure on the November 2020 ballot. However, there was insufficient time to complete the meet-and-confer process with the San Diego Municipal Employees Association (MEA) and the Deputy City Attorneys Association (DCAA), so the measure was not placed on the ballot. The proposal is being brought forward now, with the ballot measure language drafted in 2020, to have more time for those discussions before possibly being placed on the November 2024 ballot.

The City of San Diego City Attorney position has a mixed history of being appointed at times, and elected in others. The City has had an attorney position since its incorporation in 1850 which was

elected in the City's first election.¹ Between 1907 and 1932 there were no elections for the City Attorney as they were all appointed (please see Attachment 2 for a complete list of City Attorneys noting whether they were elected or appointed).² While the issue of whether the City Attorney should be appointed or elected was significantly debated by the Board of Freeholders who were charged with drafting a new charter, voters approved the new City Charter which included making the City Attorney an independently elected official on April 7, 1931,³ corresponding with the transition to a Manager-Council form of governance. According to a [2005 City Attorney memorandum of law](#), at that time the intent of an elected City Attorney was that it be an independent position so that their opinions may not be influenced by an appointive power, such as the Council, and would not merely carry out the wishes of the Council or manager.

The elected City Attorney structure was ultimately maintained with the switch to a Strong Mayor/Strong Council form of government. However, the structure continued to be discussed. The issue of whether the City Attorney should be elected or appointed came up in the City's 2007 San Diego Charter Review Committee and was included in its final report as an "Item Researched, but Needing Further Study by a Future Charter Committee or Commission."⁴ According to the Committee's final report, this issue has come up for consideration by every Charter commission the City has formed since its decision to elect the City Attorney under the provisions of the 1931 Charter. According to the staff presentation to Council on April 21, 2020 by former Councilmember Kersey's office, this issue was also discussed during the 2015/2016 Charter Review Committee.

Organization of the Office of the City Attorney

As provided in [City Charter section 40](#), the City Attorney is the chief legal advisor of, and attorney for the City and all departments and offices.⁵ Specifically, the City Attorney's major duties are reflected in its five divisions:

1. **Advisory Division:** provides advice to the City and each of its departments, including the City Council and Mayor.
2. **Civil Litigation Division:** prosecutes or defends civil lawsuits in which the City is a party.
3. **Criminal & Community Justice Divisions:** prosecutes criminal misdemeanor violations and infractions committed within the City limits and prosecutes cases that the community has identified as important to quality of life.
4. **Administrative Division:** In addition to being responsible for the day-to-day operations of the Office, including personnel, management, budget, and other things, this division participates in the negotiation of labor agreements impacting the Office.

¹ San Diego History Center, <https://sandieghistory.org/archives/books/smythe/part2-9/>

² City Clerk, *Election History – City Attorney, City of San Diego*
https://www.sandiego.gov/sites/default/files/cityattorney_0.pdf

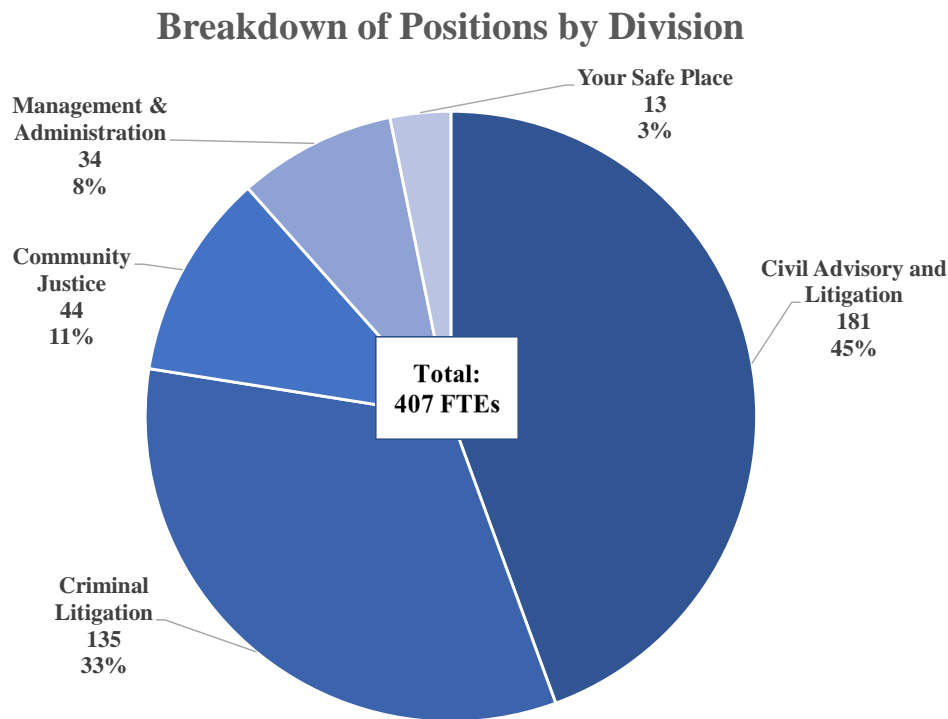
³ City Attorney's Office Memorandum of Law dated August 29, 2005. <https://docs.sandiego.gov/memooflaw/ML-2005-20.pdf>

⁴ 2007 San Diego Charter Review Committee Final Report, dated October 4, 2007 (page 34)
https://www.sandiego.gov/sites/default/files/legacy/iba/pdf/11_24Attachment2.pdf

⁵ We note that there are two exceptions. Both Ethics Commission and the Commission on Police Practices have their own legal counsel.

5. **Your Safe Place, a Family Shelter:** provides confidential, comprehensive services to anyone who has experienced domestic violence, family violence, elder abuse, sexual assault, or sex trafficking.

In FY 2024, the City Attorney’s Office has a total of 406.73 budgeted full-time equivalent (FTE) positions and a budget of \$83.8 million in General Funds. As shown in the pie chart below, roughly half of the City Attorney’s staff works on civil matters (45%) while the other half works on criminal (33%) and community justice issues (11%). Your Safe Place does not fit into either the Civil, Criminal, or Community Justice divisions and makes up 3% of the Office’s staff. The remaining 8% of positions are management and administration.



According to proponents, there is a need to separate the City Attorney’s Office between its civil and criminal duties. Their presentation at the July 26th Rules Committee stated that “asking the City’s top lawyer to also be a politician while advising and working with other politicians, creates too many inherent conflicts.” They further state that this measure would reduce friction and public disputes between city officials and increase the Mayor and Council’s accountability for the City’s legal issues, among other things. In 2020, the intent was similar, to depoliticize the office so that the Mayor and City Council do not have to seek advice from a fellow elected official.⁶

⁶ March 4, 2020 [four-Councilmember memorandum](#) and [April 20, 2020 letter from former Councilmembers](#), both attached as backup to the Council meeting item.

FISCAL AND POLICY DISCUSSION

At this early stage of ballot measure consideration, it should be noted that our Office’s assessment of operational impacts and impacts on affected workers is preliminary. The Rules Committee may wish to provide policy guidance on some areas identified by our Office in this report or otherwise expand on the intent for the Municipal Counsel and the proposed City Attorney’s Office. This additional clarification could affect our analysis of impacts. Additionally, this measure is expected to go through a meet-and-confer process with the appropriate labor organizations which may result in future changes to the ballot proposal and further impact our analysis. With this in mind, our Office provides our assessment of potential operational impacts and impacts to affected workers of the proposed measure in the sections that follow.

The proposed ballot largely maintains existing language in the City Charter pertaining to the City Attorney except that it divides the office’s duties into two offices: a Municipal Counsel responsible for civil matters and a City Attorney responsible for criminal matters. The Municipal Counsel would be appointed by the City Council with no specified term limits and the City Attorney would be elected by voters and maintain the current two, four-year terms. Section 40.1 of the Charter, not proposed to be amended, maintains that the City Attorney is to prosecute misdemeanors in the City of San Diego. Generally speaking, the elected City Attorney would handle criminal matters, and Municipal Counsel would defend against criminal matters brought against the City and its officials, as well as provide advice to the City and its departments, including the City Council and Mayor.

Beyond the proposed change in structure, we did not identify proposed increases or substantial changes in the duties of either office, as is consistent with our understanding of the proponents’ intent. However, the proposed language does include several notable deviations to existing law, as we discuss in the next section. We note that [the City Attorney’s September 20, 2023 report](#) (City Attorney Report) identifies some areas where, even though there is no proposed language change, the existing Charter language would have different legal implications based on the new structure. Some of these issues will be discussed later in this report under the “Implementing Ordinance” section.

Operational Impacts

Impacts Associated with Proposed Charter Language Changes

Selection of the Municipal Counsel

Establishment of a Municipal Counsel would create a third Charter officer who is selected by, and reports to the City Council, in addition to the Independent Budget Analyst and the City Clerk.⁷ Although the Municipal Counsel would be the chief legal advisor of, and attorney for the City and all departments, the proposed language does not include a role for the Mayor in the selection process.

⁷ According to Charter section 39.2, the City Auditor is appointed by the City Council and can be removed by City Council upon recommendation of the Audit Committee. It states that the City Auditor reports to and is accountable to the Audit Committee. Additionally, the Housing Authority (composed of all nine Councilmembers) appoints the Executive Director of the San Diego Housing Commission.

Number of Assistant City Attorneys that may be Budgeted

The proposed ballot measure changes the number of assistant attorneys the Council can budget from six to five. The proposed language states “The City Council may budget no more than a total of five assistant attorneys and no more than a total of four other assistants, to be divided between the Office of the City Attorney and the Office of the Municipal Counsel as the City Council from time to time determines.” This reduction would require an odd number of assistant attorneys to be divided between the two offices, which is a decision that Council would likely need to be made during implementation of the measure if approved. We note that currently only five Assistant City Attorneys are budgeted within the existing City Attorney’s Office, so this change in isolation does not have a budgetary impact, either positive or negative. It should be noted that the City Attorney’s Office has expressed the need for a sixth Assistant City Attorney under its current structure.

It is important to note that, according to the City Attorney’s Office and also discussed in the City Attorney Report, because labor negotiations took place to arrive at the six Assistant City Attorneys, it may require meet-and-confer to make the reduction to five due to a reduction of promotional opportunity. Leaving the number of assistant attorneys at six in the Charter would preserve flexibility to add an assistant attorney in the future without requiring a charter amendment or requiring meet-and-confer on this particular issue.

Legislative Counsel at Council Meetings

The proposed ballot measure language allows *the Council* to designate an Assistant Municipal Counsel or “another legal counsel” that may be from the Municipal Counsel Office to attend Council meetings and advise Council deliberations. Currently the City Attorney designates the attorney to attend Council meetings, a decision the current City Attorney bases largely on experience. Instead, under the proposed language, the Council may make this designation. Alternatively, the Council can designate another legal counsel, providing the Council discretion to hire outside counsel, if necessary, which would likely be a meet-and-confer issue.

Qualifications of Municipal Counsel

There are no proposed changes to existing law for qualifications of the proposed City Attorney. The current Charter says: “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.” For the Municipal Counsel, this is proposed to be ten years at the time he or she *takes office* since nominating petitions would not apply to an appointed office. It is worth noting that the required time for licensure is slightly longer for the City Attorney as opposed to the Municipal Counsel since submission of nominating petitions would occur before the individual would take office.

Use of Independent Counsel

The proposed ballot measure provides that the Municipal Counsel is the chief legal advisor of the City except in the case of the Ethics Commission⁸ which has its own legal counsel, and additionally

⁸ We note that since the proposed language was drafted before the November 2020 election, it does not reflect the amendment to Charter section 40 approved in that election allowing the Commission on Police Practices to have its own legal counsel independent of the City Attorney. This should be corrected if this proposal moves forward as the City Attorney’s Office drafts the ballot measure language for the November 2024 election.

provides an exemption with the phrase “or as this Charter or other law may otherwise require.” It is unclear what ‘other law’ is contemplated with this change.

In a separate section, the proposed ballot measure preserves, with no changes, the ability for Council to hire outside counsel. Specifically, it states that “[t]he 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.” As discussed in the City Attorney Report, under the existing structure, this has been interpreted to mean that the City may hire outside legal counsel only if the City Attorney determines that the office lacks sufficient resources, lacks the skill set necessary to accomplish the contemplated work, or has a conflict of interest. However, this dynamic may change, not as a result of a proposed amendment to this provision, but rather as a result of the new structure, potentially giving City Council additional authority to independently employ outside counsel (although meet-and-confer requirements would likely apply). The City Attorney Report states that “The proposed language suggests that the Council may employ outside legal counsel whenever it wants...” **The Rules Committee may wish to provide guidance on circumstances under which the Council would seek outside counsel under the proposed ballot measure.**

As mentioned under the section above called “Legislative Counsel at Council Meetings,” we note that transferring work away from employees represented by a bargaining unit through the use of outside counsel is typically an issue requiring meet-and-confer. Finally, we note that any increase in the use of outside legal counsel would result in additional costs.

Other Operational Impacts Not Associated with Specific Proposed Language Changes

Centralized Staff and Programs that do not Fit Neatly in Either Criminal or Civil Sections

Most of the current City Attorney’s Office is naturally divided between civil and criminal matters, especially due to the existence of an ethical wall.⁹ Therefore, if this measure were to be approved, the Municipal Counsel Office would include the Civil Advisory and Litigation divisions and the new City Attorney’s Office would include the Criminal and Community Justice divisions.

However, the current City Attorney’s Office does have some centralized staff in the Administrative Division that provide internal administrative support across the office. These duties include such things as payroll, recruitment, budgeting and accounting, and information technology. It is unclear how this centralized staff would be split, potentially duplicated, or whether they could continue to support both the Criminal and Civil divisions. We note that after discussions with the City Attorney’s Office, given the reporting structure created in the proposed measure where the elected City Attorney would be accountable to City residents and the appointed Municipal Counsel would be accountable to the City Council, it would likely be cleaner to have two separate Administrative Divisions for each office, as opposed to sharing the support staff among both legal offices. If the intent is for both offices to have separate support staff, there would likely be a need for additional

⁹ According to the City Attorney’s Office, generally speaking, the ethical wall is maintained between the Criminal and Civil divisions to ensure there is no inappropriate influence of criminal prosecutions for the People of the State of California, on the one hand, and civil litigation/legislation for the City, on the other. One aspect of the ethical wall, among other things, is that there are no cross divisional discussions on the specifics of work handled by each division outside of what may be public knowledge.

positions which would require additional analysis. The City Attorney's Office roughly estimates that each office would need 16 to 18 administrative support staff. This would be an increase of about 8 to 11 staff members above the Administrative Division's current staffing level of 24.50 full-time equivalent positions.

According to the City Attorney's Office, there are also some programs that do not fit neatly within either the Criminal or Civil divisions. For example, Your Safe Place, a Family Justice Center, is not part of the Criminal or Community Justice divisions. Additionally, the Nuisance Abatement Unit of the Community Justice Division can pursue cases civilly or criminally, which suggests that consideration could be given to splitting this unit between the two offices. Further, we note that one of the reasons for support of the measure is to allow the City Attorney to focus more on gun violence prevention; the City Attorney Report states that the Gun Violence Response Unit is housed under the Civil Advisory Division as gun violence restraining orders are civil orders. Consideration could be given to housing the Gun Violence Response Unit under the proposed new City Attorney's Office instead of the Municipal Counsel's Office. **In summary, additional direction will be needed from the Rules Committee to appropriately split the current City Attorney's Office so that each office has sufficient administrative support and that the programs that do not fit neatly within the Civil or Criminal divisions are organized under the appropriate office; a final split and structure would further be subject to negotiations during a meet-and-confer process with impacted employee organizations.**

Office Space

If the Administration Division is not split, we could assume that these employees can largely maintain their existing office space. However, if it is split there may be a need for additional office space. According to the City Attorney's Office, they are in need of additional office space now, so the need would be greater if additional staff were added to build out both Administrative Divisions and further provisions for remote work were not made.

Transition Time

If approved by voters, this measure as written would take effect immediately upon certification of the election results. However, it will take some time to recruit and appoint a Municipal Counsel. For example, the appointment of the most recent Independent Budget Analyst was a competitive process that took about five months¹⁰ with the involvement of a contracted recruiter and a detailed recruitment process involving multiple rounds of interviews. The cost for the recruiter was approximately \$17,000. Additionally, a meet-and-confer process may be required for implementing this measure if approved by voters. If so, it is uncertain how long this process could take but this, along with time to transition to the separate offices, should be considered when determining an effective date for this measure.

For context, the ballot measure for the transition to the to the Strong Mayor/Strong Council form of government included an effective date of a little over one year from the election (November 2004 election with an operative date of January 1, 2006). More recently, the November 2020 ballot measure to dissolve the Community Review Board on Police Practices and replace it with a new Commission on Police Practices did not include an effective date, so it took effect shortly after the

¹⁰ From the time the previous Independent Budget Analyst (IBA) retired (November 2021), to the time that a new IBA was appointed (April 2022)

election. However, the Charter amendment did require the Council to adopt an ordinance establishing certain elements of the Commission (implementation ordinance), which went through a meet-and-confer process, and took effect on November 19, 2022. The new Commission held its first meeting in August 2023, nearly three years since voters approved the measure.

Therefore, Rules Committee may wish to consider setting a reasonable effective date for this measure that takes into account an appointment process, a possible meet-and-confer process for implementation, and time to transition to the new offices. Given these considerations, a possible reasonable effective date could be at least two years after approval of the measure.

Impacts to Existing Election for City Attorney

If this ballot measure is approved by Council to be placed on the November 2024 ballot, voters will also be asked to elect a new City Attorney on the same ballot. Currently candidates are campaigning for City Attorney under its existing structure. Should the ballot measure pass, depending on the effective date of the measure, the City Attorney position could be limited to prosecuting misdemeanors and Municipal Code violations for part of the next term. This should be communicated clearly to voters.

Impacts on Affected Workers

The City Attorney's Office is made up of employees that are represented by recognized employee organizations and those that are not represented. Almost half or 49% (200.25 FTE positions) of employees are represented by San Diego Municipal Employees Association (MEA) and 43% (174.23 FTE positions) are represented by the Deputy City Attorneys Association (DCAA). The remaining 8% of employees are not represented. MEA employees include various positions such as administrative staff, investigators, court support clerks, and legal secretaries. DCAA employees include Deputy City Attorneys. Unrepresented employees largely include management staff and labor and employment attorneys.

As mentioned earlier, the bargaining process for this measure will need to be completed prior to placing the measure on the November 2024 ballot. Additionally, meet-and-confer may also be required with respect to implementing this measure if approved by voters. Therefore, impacts on affected workers will only be fully known after these processes occur. However, our Office raises some issues that may be topics for those discussions.

Retention of Existing Civil Attorneys

Although not explicitly stated in the proposed ballot measure language, **we assume, though the intent should be clarified, that the same attorneys that are currently employed would be hired on to the new Municipal Counsel Office.** Section 40.3 of the proposed language extends existing employment protections afforded to Deputy City Attorneys to Deputy Municipal Counsels, as long as an individual served in either position for one year. It states that:

No Deputy City Attorney or Deputy Municipal Counsel who has served continuously in either position for the City for one year or more shall be terminated or suspended without good cause, except that any deputy may be subject to layoff due to lack of work or

insufficient appropriation to meet salary requirements necessary to maintain existing personnel in the respective offices.

Clarification may be needed to confirm whether the protections above extend to an individual who has served continuously for one year, but across both positions. Additionally, it is unclear whether attorneys would be able to keep their same assignments, which may be a topic of discussion in future labor negotiations.

Organizational Structure

A split off of civil matters from the City Attorney's Office into a separate Municipal Counsel Office would conceivably result in changes to division make up and therefore changes to the reporting structure for current employees. However, these changes and their impacts are currently unknown.

Opportunities for Transfers Between Civil and Criminal Divisions

Currently the City Attorney's Office allows staff to move between the Criminal and Civil divisions. While our Office anticipates that opportunities for transfer would still exist, the process for transfers would change, and transfers will likely be up to the discretion of the respective director. This could also be a meet-and-confer issue.

Other Issues for Consideration

Beyond operational impacts, our Office offers several other items for consideration when this measure is considered for further review.

Salary for the Municipal Counsel

There are no salary specifications outlined in the proposed ballot language for the Municipal Counsel as there are currently for the elected City Attorney. According to the existing Charter section 40: "...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..." For FY 2024, this amount is approximately \$232,000. We note that Charter section 70 gives Council the power to fix salaries of the Mayor, the City Clerk, the City Auditor, the Independent Budget Analyst, and all other officers under the Council's jurisdiction, which would also cover the Municipal Counsel. Hiring a Municipal Counsel would be a new cost incurred by the City, and it is possible that for a city of San Diego's size, a non-elected attorney's salary could be higher than that of the elected City Attorney. Although our Office has not benchmarked compensation for appointed city attorneys of other cities when fringe benefits are included, a preliminary range for the cost of this position may be between \$300,000 to \$400,000.

Confidential Secretary for the City Attorney

The Charter provides the current City Attorney authority to have one unclassified confidential secretary. The proposed measure includes an amendment that designates this position as belonging to the Municipal Counsel by adding a cross reference to the appropriate Charter section. Section 40.4(a) states that "References to the City Attorney in the following sections of the Charter shall

be deemed to refer to the Municipal Counsel: ... Section 117(a)(13).”¹¹ The proposal does not include authority for another unclassified confidential secretary for the new City Attorney handling criminal matters. **Consideration should be given as to whether an unclassified confidential secretary may be necessary for the proposed new City Attorney’s Office.**

Cross-References to Charter Sections

In addition to the cross-reference mentioned above related to the City Attorney’s confidential secretary, the proposal changes references to the City Attorney and Deputy City Attorneys in other sections of the Charter in the same manner, instead of amending the applicable sections. As stated in the City Attorney Report, this can be problematic if those Charter sections are deleted or renumbered in the future, because the cross-reference included in the proposed measure would become incorrect. Our Office also notes that this method makes it difficult to interpret the City Charter. If the ballot measure is approved as written, readers may not recognize how references in the proposed Charter section 40.4 impact other sections in the Charter (such as section 117 noted above), which may lead to misinterpretations.

Implementing Ordinance

An implementing ordinance may be helpful in fleshing out issues in more detail that are not included in the proposed ballot measure amending the Charter. One issue that could fall into this category is establishing procedures governing when and how the Mayor and his staff will access legal services from the Municipal Counsel. Section J (beginning on page 13) of the City Attorney Report raises this issue and other related questions to consider. In the same section, the issue of how Councilmembers will request advice from the Municipal Counsel is raised. Currently, the Rules of Council in the Municipal Code outline how Councilmember requests for legal analysis are prioritized. If there are desired changes to this process, a future ordinance could be passed by the Council that outlines how this ballot proposal would be implemented.

As mentioned earlier, the City Attorney Report identifies some areas where, even though there is no proposed language change, the existing Charter language could have different legal implications. Examples include: Sections O and P from the City Attorney Report entitled “Municipal Counsel’s Inability to Address Abuse of Power Without Council Permission” and “Municipal Counsel’s Inability to Compel the Performance of a Municipal Officer Without Council Permission,” respectively. In both cases, there are no proposed changes to existing law, which provides the City Attorney the authority to do these things “upon order of the Council.” In practice, the City Attorney states in her report that, in her independent capacity, she is able to “refer potentially criminal conduct to law enforcement or regulatory agencies without permission from the Council or Mayor” and “hold accountable City officials and employees who fail to perform responsibilities without permission from elected officials.” The City Attorney Report states that the proposed measure would require the Municipal Council to seek permission from Council for these things. If this is not the intent, these issues could also potentially be clarified in an implementing ordinance.

¹¹ Section 117(a)(13) states that the Unclassified Service shall include, among other things, “A Confidential Secretary to the Mayor, City Council, City Manager, Police Chief, City Attorney.”

Other Governance Models

Our Office reviewed the structure and selection process for the chief legal officers in 14 cities, including the eight largest cities in California (including the City of San Diego) and the six largest cities across the country. The main factors for the review were informed by the proposed ballot measure and included (1) whether the chief legal officer is appointed or elected, and (2) whether civil matters and prosecution (most often of misdemeanor crimes within the city jurisdiction) were combined under one office or separated between two offices. The results are summarized in Attachment 1 and detailed in the remainder of this section. Overall, although San Diego aligns with the practices of most large California cities by electing the city attorney, our review indicates that this practice does not appear widespread in other large U.S. cities, where city attorneys are more likely appointed by the mayor and confirmed by the city council, or hired by the city manager.

“City councils directly appoint the city attorney in 469 of California’s 482 incorporated cities. Of those, approximately two-thirds are contract city attorneys from outside firms; the remaining one-third are hired as in-house city attorneys. Voters directly elect their city attorney in ten charter cities (Compton, Chula Vista, Huntington Beach, Long Beach, Los Angeles, Oakland, Redondo Beach, San Diego, San Francisco, and San Rafael) and city managers appoint the city attorney in two charter cities (Folsom and Shafter).”

*-[League of California Cities](#)
(2022)*

Other California Cities

According to a 2022 report¹² from the [League of California Cities](#), most California cities have city attorneys who are appointed by city councils (see nearby box for additional details). The report found that in 469 out of California’s 482 incorporated cities (97%), the city council directly appoints the city attorney, but in ten charter cities, voters directly elect the city attorney. To assess cities of more comparable size to the City of San Diego, our office conducted a review of the eight largest cities in California, and based on our review, the *largest* California cities typically have elected city attorneys. Specifically, five out of the eight largest California cities elect their city attorneys. This includes Los Angeles, San Diego, San Francisco, Long Beach, and Oakland.

As a Strong Mayor/Strong Council city, the City of San Diego largely aligns with other comparable California cities by having an elected city attorney. In our review,

four out of the five cities with the Strong Mayor form of government elect their city attorney. Of these cities, only Fresno has a Strong Mayor system where the city attorney is appointed by the city council. Two of the three Council-Manager city governments included in our review – San Jose and Sacramento – similarly have their city attorneys appointed by the city council.¹³ These findings suggest that in California Strong Mayor city governments tend to have elected city attorneys, whereas Council-Manager cities are more likely to have appointed city attorneys.

¹² The categories included in the box from the 2022 League of California Cities report does not appear to be completely exhaustive since at least Fresno and Sacramento have city attorneys appointed by the city council (not the city manager) and are not mentioned in the cited text.

¹³ The City of Long Beach is one of three cities in our California review that has a Council-Manager form of government and is the only one of the three that has an elected city attorney.

Regarding the division between civil matters and prosecution, these responsibilities are jointly handled under the office of the city attorney in six out of the eight largest cities. The two exceptions are Long Beach and San Francisco. Long Beach has an elected city attorney, who handles municipal matters such as providing legal advice to the city council and departments, as well as an elected city prosecutor, who is responsible for prosecuting misdemeanor crimes. For San Francisco, by virtue of being its own city and county, an elected district attorney handles criminal prosecution, while the elected city attorney handles civil matters.

Notably, on the November 2011 ballot, voters in the City of Oakland considered Measure H, which would have changed the city attorney from an elected position to a position appointed by the city council. Supporters argued that an appointed city attorney would be more focused on providing sound legal advice rather than re-election and allow professional qualifications to be the basis for hiring. Opponents argued that appointing a city attorney would make the position more political due to the city council's power to hire and remove the city attorney, and an appointed city attorney would remove a check on the power of the city council. Measure H failed to gain passage with only 26.8% of voters in support.

Other Large U.S. Cities

Our review also included the six largest cities across the country outside of California to provide additional context on how other cities select and structure the office of the chief legal officer.

In contrast to California cities, all of the six largest cities outside of California have appointed or hired city attorneys, rather than elected city attorneys. In four cities – New York, Chicago, Houston, and Philadelphia – the city attorney is appointed by the mayor and subject to confirmation by the city council. Among these four cities, three have a Strong Mayor government system. The fourth city, Chicago, has a Weak Mayor-Strong Council system. In the two cities with Council-Manager systems – Phoenix and San Antonio – the city attorney is hired by the city manager.

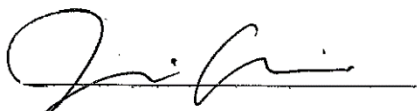
Regarding the division between civil matters and prosecution, the six cities were evenly split between those that combined the responsibilities under one office and those that separated the responsibilities between two offices. The practice of electing a district attorney to handle the prosecution of misdemeanor crimes within the city jurisdiction appears more common in other large cities – namely, New York and Philadelphia – than in large California cities. Of note, the City of New York also has a chief city hall counsel, who is appointed by the mayor and primarily advises the mayor and oversees ten offices, commissions, and other agencies.

CONCLUSION

This report responds to the request from the Rules Committee to furnish background information and provide an analysis of the proposed ballot measure to create a Municipal Counsel, including an assessment of similar governance models in California, operational impacts, and impacts on affected workers. At this early stage of ballot measure consideration, our Office's assessment of operational impacts and impacts on affected workers is preliminary. Additional clarification on the intent of the measure as well as the completion of the meet-and-confer process with appropriate labor organizations would impact our analysis. We identify areas where the Rules Committee may wish to provide policy guidance throughout this report.

We also provide an analysis of the structure and selection process for the chief legal officers in 14 cities, including the eight largest cities in California (including the City of San Diego) and the six largest cities across the country. San Diego aligns with the practices of most large California cities by electing the city attorney, but this practice does not appear widespread in other large U.S. cities, where city attorneys are more likely appointed by the mayor and confirmed by the city council or hired by the city manager.

We appreciate the opportunity to provide an initial review of this measure and are available to assist with any further analysis requested by the Committee or Council.



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APPROVED: Charles Modica
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Attachments:

1. Summary of Benchmarking Analysis
2. List of City Attorneys 1850 - Present

Summary of Benchmarking Analysis

City	Government System	Name of Office of Chief Legal Officer	Appointed or Elected?	Civil Matter and Prosecution Responsibilities	Other
<i>California Cities (sorted by descending size)</i>					
Los Angeles	Strong Mayor	Office of the City Attorney	Elected by voters	Combined	
San Diego	Strong Mayor	Office of the City Attorney	Elected by voters	Combined	
San Jose	Council-Manager	Office of the City Attorney	Appointed by City Council	Combined	
San Francisco	Strong Mayor	Office of the City Attorney	Elected by voters	Separate	Since San Francisco is both a city and a county, the District Attorney prosecutes alleged criminal violations.
Fresno	Strong Mayor	Office of the City Attorney	Appointed by City Council	Combined	
Sacramento	Council-Manager	Office of the City Attorney	Appointed by City Council	Combined	
Long Beach	Council-Manager	Office of the City Attorney	Elected by voters	Separate	City Prosecutor is a separate elected position.
Oakland	Strong Mayor	Office of the City Attorney	Elected by voters	Combined	Ballot Measure H (2011) to make the City Attorney an appointed position instead of an elected position failed with 26.8% of the Yes vote.
<i>Other Large U.S. Cities (sorted by descending size)</i>					
New York	Strong Mayor	Department of Law, led by Corporation Counsel	Appointed by Mayor, confirmed by City Council	Separate	Prosecution handled by elected district attorneys for each borough. Mayor also appoints Chief City Hall Counsel, who largely serves to advise Mayor and oversee ten agencies.
Chicago	Weak Mayor-Strong Council	Department of Law, led by Corporation Counsel	Appointed by Mayor, confirmed by City Council	Combined	
Houston	Strong Mayor	Legal Department, led by City Attorney	Appointed by Mayor, confirmed by City Council	Combined	
Phoenix	Council-Manager	Department of Law, led by City Attorney	Hired by City Manager	Separate	Within the Department of Law, the City Attorney's Office handles civil matters, and the City Prosecutor's Office, which is led by the City Prosecutor, handles prosecution of misdemeanor crimes committed in Phoenix. Both positions are hired by the city manager.
Philadelphia	Strong Mayor	Department of Law, led by City Solicitor	Appointed by Mayor, confirmed by City Council	Separate	Prosecution handled by an elected district attorney.
San Antonio	Council-Manager	Office of the City Attorney	Hired by City Manager	Combined	

LIST OF CITY OF SAN DIEGO ATTORNEYS	
1850 - PRESENT	
<u>NAME</u>	<u>TERM</u>
Mara Elliott	2016 - Present
Jan Goldsmith	2008 - 2016
Michael J. Aguirre	2004 - 2008
Casey Gwinn	1996 - 2004
John W. Witt	1969 - 1996
Ed Butler	1965 -1959
Richard J. Curran (Acting)	1963 - 1965
Alan M. Firestone (appt 1961/elect 1963)	1961 - 1963
Jean F. Du Paul	1943 - 1961
Clarence J. Novotny (appt)	1943 - 1943
Dayton L. Ault	1941 - 1942
Jacob Weinberger (appt)	1941 - 1943
Dayton L. Ault (appt 1936/elect 1937)	1936 - 1941
Clinton L. Byers	1932 - 1936
Frank H. Heskett (appt)	1931 - 1931
M.W. Conkling (appt)	1928 -1931
J.E. O'Keefe (appt)	1927 -1928
S.J. Higgins (appt)	1919 - 1927
T.B. Cosgrove (appt)	1914 - 1919
W.R. Andrews (appt)	1910 - 1913
George Puterbaugh	1907 - 1909
W.R. Andrews	1905 - 1906
Herbert E. Doolittle	1895 - 1904
Wm. H. Fuller	1891 -1894
J.P. Goodwin	1889 - 1890
H.L. Titus	1888 - 1888
David C. Collier (appt)	1887 - 1887
Harry L. Tittus (appt)	1886 - 1887
John D. Works (appt)	1886 - 1886
E.W. Hendrick (appt)	1884 - 1886
Eugene B. Cushing (appt)	1882 - 1884
Will M. Smith (appt)	1880 - 1882
A.B. Hotchkiss (appt)	1878 - 1880
Jeff W. Gatewood (appt)	1876 - 1878
D.T. Phillips (appt)	1873 - 1876
James W. Robinson	1852 - 1852
Thomas Sutherland	1850 - 1851

Note: Attorneys were elected unless otherwise denoted.

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