


**Office of
The City Attorney
City of San Diego**

**MEMORANDUM
MS 59**

(619) 533-5800

DATE: October 22, 2013
TO: iMayor and Members of the City Council
FROM: City Attorney Jan Goldsmith 
SUBJECT: Charter Reform

DRAFT PLAN

Our City Charter contains provisions that are ambiguous, outdated and incomplete. In addition, key governance issues are not addressed in the City Charter. For example, there is no express provision setting forth authority and responsibility regarding labor negotiations. Nor, is there a provision that addresses incapacity of the Mayor or City Attorney. The appointment process for commissions and boards is incomplete and the elections process is inconsistent with portions of state law. As a result, our office is often faced with interpreting City Charter provisions without clear language in the Charter.

I believe a complete Charter review is needed. After all, this is our local Constitution, the highest law in our City.

This brief memo provides background and timelines that may be helpful in announcing a comprehensive Charter review involving our office. We recommend five stages:

1. Our office will lead a legal analysis to identify sections of the Charter needing review and options that might be available. We would solicit input from attorneys from the community and would retain outside experts to assist. This work would be done in law libraries and not in a public setting, but the results would be presented in a public report to the City Council by the end of January.

2. The City Council would create a Charter Review Commission before the end of January. Membership could consist of City Council members and/or members of the community. The purpose would be to take ideas from the legal team and the City Council out into the community for public input.

3. Schedule the election-related amendments now before the Rules Committee for the

June 2014 primary. One or two other proposals from the City Council might be added.

4. Schedule high priority changes for the November 2014 ballot.
5. Schedule the bulk of amendments for the 2016 ballot.

DISCUSSION

1. Governing Law for Charter Amendments

Charter section 223 and the California Constitution govern amendments to the San Diego City Charter. State law governs the placement of a Charter amendment on a municipal ballot, even in a Charter city such as San Diego.

A new law passed by the California Legislature in 2013 prohibits certain Charter amendments from appearing on any ballot but a general election, citywide ballot. The next such election will occur November 4, 2014. When a Charter amendment measure is proposed, our office would review its text to determine if it may appear on any other ballot.

2. A Pending Charter Amendment Regarding Elections is Targeted for the June 2014 Ballot

The City's Committee on Rules and Economic Development, as directed by Committee Chair Sherri Lightner, has been conducting an overview of the City's election laws with our office to place related Charter amendments on the ballot. Our office has prepared a draft ballot measure that is expected to be placed on the June 2014 ballot: The measure will extend deadlines for City special elections to fill a Councilmember or Mayoral vacancy, and will change the date of the inauguration of City officials. The Rules Committee has directed our office to finalize this measure and bring it to the Council in January for placement on the June ballot. Although the Committee has asked our office to review many other election law issues, it has not asked us to prepare any other measures. The public can bring in other proposals for the Council's consideration in January.

3. Potential Amendments to the City Charter

Deputy City Attorneys will be very helpful in reviewing the specific areas of the Charter they routinely interpret, to determine where language most needs amendment. Our Deputies work with City departments on a daily basis and can identify issues. For example, the Charter requires that all contracts be drafted and signed off by the City Attorney's office. The problem is that purchase orders, amendments and change orders are all deemed contracts. Requiring our office to sign off on everything could shut the City down.

Our intent is to solicit input from our Deputy City Attorneys and City departments, explore options and set them out for the City Council by late January. We would invite attorneys with special expertise to volunteer to assist and would want to retain an expert consultant. That consultant would assist us and then continue on as consultant to the Charter Review Commission.

Timeline and Process of Amendments for the November 2014 Ballot

Given the short timeframe before measures are due for a June 2014 ballot, initial Charter amendment proposals should be targeted for the November 4, 2014, citywide, general election ballot.

City Council Policy 000-21 establishes the procedure for submittal of ballot measures that would appear on that ballot. Members of the public submit proposals to the City Clerk, who then transmits them to the Rules Committee for review and comment. In 2014, proposed measures will no longer be sent to the Rules Committee, but instead will be sent by the Council President to any Council committee on which he or she is a member. This is due to recent amendments to the Council’s Permanent Rules, found in the Municipal Code.

Ballot proposals must be submitted in time for the Clerk to list them on a Council Docket at least 127 days prior to the November 2014 election, so the public will know what the Council committee will review. Although the deadlines for the November 4, 2014, election remain tentative and have not been published, we have received these projected deadlines from the City Clerk’s Office:

<u>DAY</u>	<u>DATE</u>	<u>DAYS BEFORE ELECTION</u>	<u>EVENT</u>
Friday	6/6/14	151	LAST DATE (10:00 a.m.) for public, departments and agencies to submit ballot proposals to City Clerk for review by Council Committee
Wednesday	6/11/14	146	Council Committee review
Monday	6/16/14	141	Council Docket (PUBLIC NOTICE) lists proposals referred by Council Committee
Monday	6/23/14	134	Council adopts propositions for ballot; directs City Attorney to prepare ordinances
Monday	7/14/14	113	Council adopts ordinances prepared by City Attorney
Friday	8/8/14	88	Last day for City Clerk to file with Registrar of Voters all elections material

Thursday 8/21/14 75 Last day to file ballot arguments with
City Clerk

Thus, initial drafts of proposed Charter amendment measures for the November 2014 ballot should be prepared well before June 2014, which is only eight months away. A more comprehensive revision of the Charter can target the November 2016 ballot, with the draft due on the same timeframe (June 2016).

Additionally, to the extent it may be helpful; we have attached two documents from the City's last Charter Review Committee, which convened in 2007. One document is the Executive Summary that accompanied the Committee's final report; the other is the memo from former Mayor Sanders that was distributed when the appointments were made. As our office served as counsel to the Committee and its subcommittee, we have additional materials that may be helpful as the process begins.

CONCLUSION

Initial Charter amendment proposals should be targeted for the November 4, 2014, citywide, general election ballot. State law indicates a preference for all Charter amendments to be heard at a citywide, general election and requires some to only appear on such a ballot.

Measures that will appear on the November 2014 ballot need to be finalized by June and adopted by the Council no later than July 14, 2014. The measures would first be reviewed by a Council committee, and then placed on the ballot by the City Council. As cost will also be an issue, initial measures could be proposed for 2014 and a more comprehensive Charter revision can be planned for the November 2016 general election ballot.

JG:cs

Attachment: What Is the City Charter – and How Does It Affect Me?

What Is the City Charter—and How Does It Affect Me?

Prepared by the San Diego Charter Review Committee

The Charter is the "Constitution" for the City of San Diego. Just as the United States Constitution serves as the "supreme law of the land" for our country, the San Diego Charter serves as the basic set of rules for our City government. The San Diego Charter limits City officials in much the same way that the Constitution constrains the officials of the federal government. They are not allowed to pass any law or act in any way the Charter prohibits.

The Charter establishes the boundaries that San Diego's people have imposed upon their City government. It is the source of the City's system of checks and balances, prescribing the relationship between the two branches of government: the Mayor and the City Council and the interaction of the City Attorney with both. The Mayor's authority to recommend policies, the Council's power to enact policy subject to Mayoral veto, and the Mayor's control over the implementation of City policy are all established by the Charter as the City's basic law.

The Charter Review Committee

The Mayor and City Council have recognized that there are a number of areas within the City Charter that require clarification or modification. Consequently, the Mayor and the Council have assembled a Committee of independent, qualified and broadly representative members of the community to take on the task of addressing the ambiguities and problems of the current Charter.

Mission Statement

The San Diego Charter Review Committee's mission is "to determine modifications necessary to implement the Kroll report recommendations and other financial reforms; to clarify the roles and responsibilities of elected officials and the separation of powers under the strong mayor form of governance; to identify modifications that would improve the functionality of the strong mayor form of governance during the trial period; and to identify legislative tightening that would be required for effective permanent implementation of the Strong Mayor form of governance." The Committee has established a work-plan to help achieve this important mission.

How Does the Charter Affect Me?

The Charter is the vehicle through which the people of San Diego limit and control the powers and responsibilities of their City government. If it is clear and consistent, it can allow voters to reward and punish City officials for their job performance. If it is vague, it makes it difficult for officials to act on behalf of the public. The City provides many services through responsible use of taxpayer dollars. If the Charter provides the opportunity for accountable leadership, the City can improve the quality and quantity of services delivered to the public. Otherwise, City officials are hamstrung in the performance of their duties, and cannot provide San Diego with the quality of public service that our City deserves.

Meeting Dates and Times

The Charter Review Committee and its three subcommittees are meeting every Friday from 9 a.m.-12 noon on the 12th floor of the City Administration Building, 202 C Street, San Diego, CA 92101. Please come in and make your voice heard.

We are also holding several public meetings throughout the City during evening hours so that we can elicit further public input on how the Charter can be improved.

The S.D. Charter Review Committee is online at <http://www.sandiego.gov/charterreview>

Historical Background

San Diego has had several different charters since this City became part of the United States in 1850. The City is presently governed under the terms of the Charter of 1931. This document has been amended hundreds of times in the past 76 years. The most significant changes increased the size of the City Council from six to eight members, provided for electing City Council members by district elections, and transformed the City from a Council-Manager to a strong Mayor-Council form of government.

Elected Offices

The Charter mandates the structure of City government. Among other things, this document establishes the number of officials who are elected to serve the public, the number of districts from which they are elected, which officials are to be elected citywide, and how much authority elected officials may exercise. The Charter also determines how City elections shall be conducted, including the process for redistricting.

Under San Diego's current Charter, the City is governed by a Mayor and City Council members elected by eight districts. The Charter also provides for the election of a City Attorney on a citywide basis. The City Attorney generally rules on the legality of ordinances considered by the Council and approves most contracts involving the City or any of its officers or agencies.

Appointed Offices

There are several important appointed officials whose roles and duties are prescribed by the Charter. The Chief Operations Officer (formerly, City Manager), Auditor and Comptroller, Treasurer, Independent Budget Analyst, and the chiefs of the Fire and Police departments, are all officers whose positions are established by the Charter. Some of these officers have their duties spelled out in great detail, such as the Auditor and Comptroller. Others have whatever powers are given them by a specific City ordinance, such as the Independent Budget Analyst.

There are several important boards and committees that are established by the Charter. The Charter provides for the Board of Administration of SDCERS, which administers the retirement system for City employees. The Charter provides for the appointment of a Civil Service Commission and specifies the powers of the Ethics Commission, which are authorized to oversee the integrity of the City's employment and governmental processes.

The Charter also establishes the manner in which other City agencies, boards, committees and departments may be created and staffed by the Mayor and City Council. For several agencies mandated by state law, such as the Centre City Development Corporation, the Charter sets up the method for appointing the City's representatives.

How Can I Get Involved?

Remember that the San Diego Charter cannot be changed without a vote of the people! This means there will always be public involvement. Your participation as San Diegans is critical. We welcome your involvement at every stage of this important process of Charter change.

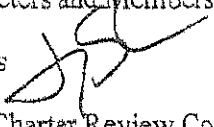
Email the Charter Review Committee: Charterreview@sandio.gov

The S.D. Charter Review Committee is online at <http://www.sandiego.gov/charterreview>



OFFICE OF MAYOR JERRY SANDERS
CITY OF SAN DIEGO

MEMORANDUM

DATE : January 22, 2007
TO : Council President Peters and Members of the San Diego City Council
FROM : Mayor Jerry Sanders 
SUBJECT : Establishment of a Charter Review Committee

In the City's first year operating under Charter Article XV: Strong Mayor Trial Form of Governance it has become apparent there are a number of areas where clarification and fine-tuning would help achieve the original intent of this reform.

In cooperation with the City Attorney's office we have begun to work through some of these issues as they arise, but much more work must be focused on these issues in order to fully prepare for an effective long-term implementation of the Strong Mayor form of governance. I believe we can all agree that when roles and responsibilities are unclear, the business of the public is not optimally served, and that a fresh review of this Charter section is a timely priority.

In addressing these issues, there are four subject areas or questions around which a work plan for the Committee will be set:

- What Charter modifications are necessary to implement the Kroll recommendations and other financial reforms?
- What is a clear definition of the roles and responsibilities of elected officials and the separation of powers under strong mayor?
- What measures may improve the functionality of strong mayor during this trial period?
- What legislative tightening would be required for effective permanent implementation of Article XV?

Each of these areas will be explored by a designated subcommittee and addressed concurrently in the Committee's work.

Committee meetings will be held twice monthly and will be noticed to the public in keeping with the Ralph M. Brown Act. Subcommittees working in each topic area are anticipated to meet once or twice monthly as is convenient for their membership and in keeping with their work load.

I will move immediately to empanel the Committee in preparation for them to begin their work on or around March 1st. It is my intention that the Committee complete its work and return its recommendations in readiness for the 2008 election cycle.

Valuing varied points of view, I would like to work with each of you to identify and nominate three individuals who may be appropriate to serve on the Committee from which I will select one from each of your submissions. In addition, I will make a number of appointments to round out the Committee ensuring a representative balance. We are looking for individuals who can be independent, possess scholarly and operational subject matter expertise, those who have experience with previous charter reform efforts and who are broadly representative of our talented citizenry.

In addition to the Committee members, three ex-officio members will serve as support resources and advisers to the Committee; one each from the City Attorney, Mayor and the Independent Budget Analyst.

I look forward to working with you on these issues so critical to our City's future and welcome your support for this effort.

JS:ACH