CITY ATTORNEY SUMMARY OF STRONG MAYOR FORM OF GOVERNMENT

Overview

On November 2, 2004, over fifty percent of the City of San Diego's voters voting at the election approved Proposition F. The passage of this proposition will result in a significant change to the City's form of government. In accordance with the language of Proposition F, certain provisions of the City Charter will be suspended and new provisions enacted, all to create a Strong Mayor form of government for a trial period beginning January 1, 2006, and ending December 31, 2010. The following summary is not intended to be an in-depth analysis of all of the Strong Mayor provisions, but instead to provide a broad overview of the changes to City government that will result from the passage of this measure.

The new form of government will be different from the present form of government in many substantive aspects. The current San Diego City Charter provides for a Council-Manager form of government. This form of government has also been referred to as the "City Manager form of government" because the City Manager serves as the City's Chief Executive Officer. Under our current form of government, the San Diego City Council, which is composed of nine members, eight Councilmembers and the Mayor, governs and sets policy for the City. The City Council's policies, rules, and decisions are implemented by the City Manager, who runs the day-to-day affairs of the City. The City Charter provides the City Council with no administrative powers, and prevents the Council from directing the actions of the employees under the control of the City Manager.

Under the new form of government, which is also referred to as a Mayor-Council form of government, the Mayor will no longer be a member of the City Council. There will be an eight-member City Council. The affirmative vote of at least five Councilmembers will be required to pass most legislation. The boundaries of the eight Council Districts will not be affected. The Mayor will become the City's Chief Executive Officer and will assume much of the authority and responsibility currently held by the City Manager. The Mayor will be in charge of running the day-to-day affairs of the City. The Mayor will have the authority to give direction to all City officers and employees, except those in departments and offices recognized in the City Charter as being independent, such as the Council offices, City Attorney, Personnel, Retirement, and the Ethics Commission.

Mayoral Appointments

Under the City's Strong Mayor form of government, the Mayor will appoint the City Manager with Council confirmation. The City Manager will serve at the pleasure of the Mayor and may be removed from office at the sole discretion of the Mayor. The Mayor will appoint the City Auditor and Comptroller, Police Chief, and Fire Chief, subject to City Council confirmation, but any dismissal by the Mayor could be overturned by the City Council. All other managerial department heads formerly under the City Manager will be appointed by the Mayor and serve at the pleasure of the Mayor. As under the current Charter, the Mayor will appoint the members of the City's boards and commissions, subject to City Council confirmation, unless controlling law vests the power of appointment with the City Council or a City Official other than the Mayor. The City Council retains the right to establish advisory boards and citizen committees as provided for under Charter section 43.

Office of the Independent Budget Analyst

The City Council will appoint an Independent Budget Analyst to review the annual budget prepared by the Mayor, provide independent budget information to the City Council, and manage and control an Office of Independent Budget Analyst. The Council will determine the powers of this office by ordinance. The Independent Budget Analyst will serve at the pleasure of the Council and may be removed from office by the Council at any time. The amendments to the City Charter require that the Mayor cooperate fully with the Office of Independent Budget Analyst by supplying it with information concerning the budget process and fiscal condition of the City.

City Council Meetings

Presently, the Mayor sets the agenda for City Council meetings, presides over the meetings, and makes appointments to Council committees. Under the Strong Mayor form of government, the Council will elect a presiding officer, establish its own committees, and set the legislative agenda for the City. The Mayor may make recommendations to the City Council concerning the affairs of the City, but will no longer have control of the legislative docket. The Council's presiding officer will conduct the open session meetings of the Council. The Mayor will have the right to attend and be heard at these meetings, but will not be entitled to vote, even in the case of a tie vote amongst Councilmembers.

The Mayor, City Attorney, and presiding officer of the City Council will jointly set the agenda for closed session meetings. The Mayor, when present, will preside over closed session meetings, but will not have a right to vote.

Mayor's Veto Power

Under the new form of government, the Mayor will have the power to veto most resolutions and ordinances adopted by the Council. This veto power, however, will not extend to matters that are exclusive to the conduct of the City Council and do not affect the Mayor's control of the City's administrative service. For example, the Mayor's veto power does not apply to the procedures under which the City Council governs itself, such as the selection of its presiding officer, or to the City Council's selection of the Independent Budget Analyst. The mayoral veto will not apply to emergency ordinances, the Annual Appropriation Ordinance, or matters where the Council has made a legal finding after conducting a public hearing and considering evidence, such as the issuance of land use permits. Matters that are not subject to the Mayor's veto power will be clearly indicated as such on the Council's agenda and within the body of the applicable resolution or ordinance.

When the City Council adopts a resolution or ordinance that is subject to the Mayor's veto, the City Clerk will send it to the Mayor within forty-eight hours of passage. The Mayor has ten business days to act on the resolution or ordinance. Within that period of time, the Mayor can either approve the resolution or ordinance by signing and returning it to the City Clerk, or veto it and return it to the City Clerk with written objections. If the Mayor takes no action within the ten day period, the resolution or ordinance is deemed to be approved, even without the Mayor's signed approval.

The City Council must reconsider any vetoed resolution or ordinance. In general, it takes the affirmative vote of five Councilmembers to take legislative action, and five votes to override any mayoral veto. If the Charter requires more than five votes for the passage of a resolution or ordinance, the larger number of votes will be required to override the Mayor's veto. If a vetoed resolution or ordinance does not receive sufficient votes to override the Mayor's veto within thirty calendar days of the veto, the resolution or ordinance will be deemed disapproved and will have no legal effect.

City Budget

Under the City's new form of government, the Mayor will be responsible for preparing the annual budget for the City Council's consideration and adoption. The Mayor must propose the budget and make it available for public review no later than April 15. The Council will hold a minimum of two public hearings to consider the budget submitted by the Mayor. Prior to June 15, and after at least two such public hearings have been held, the Council will be required to pass a resolution that either approves or modifies the budget submitted by the Mayor. The Council's modifications may call for adding new items or increasing or decreasing any item.

If the budget is modified by the Council, it will be returned to the Mayor, who will, within five business days, approve, veto, or modify any line item approved by the

Council. The Council shall thereafter have five business days to override any vetoes or modifications made by the Mayor. Any item in the proposed budget that was vetoed or otherwise modified by the Mayor will remain as vetoed or modified unless overridden by the vote of at least five members of the City Council. In voting to override the actions of the Mayor, the Council may adopt either an amount it had previously approved or an amount in between the amount originally approved by the Council and the amount approved by the Mayor, subject to the City Charter's balanced budget requirements.

Once the City Council approves the budget, either as originally proposed by the Mayor or after consideration of any Mayoral vetoes or modifications, it shall become a controlling document for preparation of the Annual Appropriation Ordinance for the next fiscal year.

Salary Ordinance

Under the provisions governing the City's Strong Mayor form of government, the Mayor will propose a Salary Ordinance establishing the salaries of all City officers and employees. Every year, by April 15, the City Council will introduce the Salary Ordinance. After the ordinance is introduced at a City Council meeting, it will be submitted to the Mayor, who will have five business days to either approve the ordinance or veto some or all of its provisions. The Council will then have ten business days to override any veto and pass the Salary Ordinance as introduced, or to accept the changes proposed by the Mayor and pass the ordinance at a second reading with the changes proposed by the Mayor. The Salary Ordinance passed by Council will become a controlling document for the preparation of the City's Annual Appropriation Ordinance for the next fiscal year.

Mayoral Vacancy

The City Charter changes implemented by the passage of Proposition F include language relating to filling the Office of Mayor in the event of a vacancy. Under the current language of the City Charter, the City Council has the authority to fill such a vacancy by appointing a successor within thirty days. If the City Council fails to make such an appointment within thirty days, the Council must immediately call for an election to fill the vacancy.

Under the new form of government, the City Council must appoint a successor if there is one year or less remaining in the Mayor's term, and must call an election if there is more than one year remaining. During the period of time when an appointment or election is pending to fill the vacancy, the presiding officer of the City Council will have the authority to supervise any remaining Mayoral staff, to direct and exercise control over the City Manager in managing City affairs, and to exercise any other power or authority vested in the Office of the Mayor when the exercise of such power or authority is required by law. This limited authority does not include the exercise of veto power or

any other discretionary privilege that is enjoyed by an elected or appointed Mayor. A presiding officer acting in this capacity will not lose his or her rights as a member of the Council.

New Rules of the City Council

The City Council will establish a new set of rules to guide the conduct of its meetings and the organization of its committees. Presently, these rules are set forth as the Permanent Rules of the Council, which are codified in the San Diego Municipal Code. Over the course of 2005, these Permanent Rules will be amended to reflect the new needs and requirements of the City Council as it will exist in the new form of government. Additional changes to other Municipal Code sections will be required to ensure that they are in harmony with the voter-approved changes to the City Charter.

Five Year Trial Basis

In accordance with Proposition F, several sections of the City Charter will be suspended during the five year trial. These Charter sections, which include those that establish the composition of the City Council, create rules for the passage of resolutions and ordinances, and define the role of the Mayor and Deputy Mayor, will be temporarily replaced with new Charter sections 250 through 295. These new sections will establish the framework for the new form of government discussed above. The suspension of existing Charter sections and the enactment of the new Charter sections are currently set to expire on December 31, 2010. At that time, the suspended sections will automatically be effective once again, new sections 250 through 295 will automatically be deemed repealed, and the City will return to the Council-Manager form of government under which it currently operates, unless the City's voters decide otherwise.

During the five year trial period, the City's voters, by majority vote, could choose to eliminate the expiration of the trial period and have the City operate under the Strong Mayor form of government indefinitely. They could also amend the City Charter to extend the trial period beyond five years or, in the alternative, reduce it to a shorter period. The City's voters can modify any of the language in the Charter that pertains to the implementation of the Strong Mayor form of government. In addition, the Charter can be amended to increase the number of Council districts from eight to nine when the City Council districts are reapportioned after the 2010 national census, thereby reducing the likelihood of tie votes at City Council meetings. Such actions by the City's voters can be accomplished if placed on the ballot by the City Council in accordance with the legislative process outlined above or by the actions of the citizens of the City of San Diego through the initiative process.