

SAN DIEGO CITY ATTORNEY'S OFFICE

SUMMARY

The past few years have been trying times for America's Finest City. Against the backdrop of a statewide budget crisis and a major decline in real estate values, terms like Pension Scandal, Bond Market, Kroll Report, Navy Broadway Complex, Corruption Trial, and Sunroad have become all too familiar. Add a major landslide and two series of "One Hundred Year" wildfires in four years into the mix, and we are reminded of the ancient Chinese curse: "May you live in interesting times." In January 2006, after seventy-three years of a City Council-City Manager form of governance, Proposition F, passed by the electorate in November 2004, retired the City Manager's office and embarked the San Diego on a five-year experiment with a Strong Mayor-Council form of governance. A little over two years into this five-year trial period, the Mayor (acting as the "elected City Manager") and the City Council have had plenty to keep them busy. The people of the City of San Diego have asked tough questions about how well they are being served by this new form of governance.

Under the San Diego City Charter, only two officials are elected "at large" by all the voters: the Mayor and the City Attorney. With the Mayor's Office already under close scrutiny by the community because of the "strong mayor" trial period, the 2007/2008 San Diego County Grand Jury (hereinafter, "Grand Jury") acting on a complaint, studied the regulations governing the office of City Attorney. San Diego is one of less than a dozen California cities where the City Attorney is directly elected rather than appointed. The City Charter is not clear on the interpretation of the City Attorney being "an independent representative of the people." This has contributed greatly to the "interesting times" mentioned above. The city's electorate will shortly decide whether they agree with the independent representative concept, and it is not the province of a county grand jury to join in that debate. We used the authority granted us in the California Government and Penal Codes to examine those parts of the city charter that made the *status quo* possible.

PURPOSE

- To examine whether the role of the City Attorney, as defined in the San Diego City Charter, serves the public in the 21st century as well as it did when the charter was adopted seventy-seven years ago.
- To examine whether some of the approximately 135 Deputy City Attorneys should be changed to Classified Civil Service positions.

PROCEDURES

The Grand Jury interviewed recognized experts with cumulative experience of nearly a century in the field of municipal law. These included former city attorneys, both elected and appointed, from several California municipalities.

We reviewed legal opinions and texts from various sources that have been cited as authoritative on the role of a city attorney in a Municipal Corporation. These included a report by the incumbent San Diego City Attorney on the Role Of The City Attorney As Independent Representative of The People And City Of San Diego, available on the city website at <http://www.sandiego.gov/cityattorney/pdf/role050426.pdf>. This report provided us a valuable perspective on the events and public discourse leading to adoption of the 1931 San Diego City Charter.

We reviewed the final report of the 2007 City of San Diego Charter Review Committee (available on the city website at <http://www.sandiego.gov/charterreview/index.shtml>) and interviewed members of that committee.

We interviewed officials from various San Diego city departments including:

- the Mayor's Office
- several city departments and agencies that report to the Mayor
- Councilmembers' staffs
- the City Attorney's Office
- the Personnel Director's Office
- the Civil Service Commission

We reviewed the charters of two other large California cities that elect, rather than appoint, their city attorney: the 1997 Charter of the City of Los Angeles and the 1995 Charter of the City and County of San Francisco.

We interviewed attorneys from the offices of the San Diego County District Attorney and the County Counsel. These government offices also employ large numbers of attorneys who serve in roles similar to that of an associate in a private-sector law firm.

DISCUSSION #1 The Office of City Attorney

The 1931 San Diego City Charter defines the primary duties and responsibilities of the City Attorney in Article V, §s 40 and 40.1. (See Appendix A)

In General Law cities as well as in most Charter cities, the position of City Attorney is filled by appointment rather than direct election by the people. In some cases an appointed City Attorney is hired as a municipal employee; in others the city retains a law firm to handle the city's business on an as-needed basis. There are law firms in California that specialize in providing these services to a number of (mostly smaller) municipal clients.

The pros and cons of an elected rather than appointed city attorney are multifaceted, and were being debated in at least one other San Diego County municipality as this report was being written.

A major argument in favor is that an elected city attorney is accountable directly to the people and can represent their best interests, while an appointed one serves at the

pleasure of the current administration, and can be summarily dismissed for rendering an opinion the administration doesn't like. A corollary is that the city administration could theoretically shop around for an attorney who will provide the legal advice it wants to hear. This appears to have been a major point in the discussions leading to adoption of the San Diego City Charter in April 1931.

A counter-argument is that anyone functioning as a city attorney (i.e., the "chief legal adviser of, and attorney for the City and all Departments and offices thereof...") is bound by the California Bar Association's Code of Professional Responsibility to represent his or her client according to their wishes (within the law). In a city of 1.7 million people, who is the client? How do the people individually and collectively make their wishes known? What does the city attorney do when he or she has a conflict with the State Bar's Code of Professional Responsibility? The San Diego City Charter doesn't say. There are indications in the historical record that the Board of Freeholders in 1931 intended that the City Attorney would act as a sort of independent counterbalance to the elected City Council (which included the Mayor) and the appointed City Manager. How he or she is to accomplish this within the law and the Code of Professional Responsibility was left undefined, and remains so to this day.

Merriam-Webster's dictionary defines **Body Politic** as "a group of persons politically organized under a single governmental authority." In our investigation we heard hours of testimony and reviewed numerous legal opinions that were nearly unanimous on the role of a city attorney in the modern Municipal Corporation: This was that the body politic expresses its will through the elected representatives (in this case the Mayor and City Councilmembers), and the City Attorney's "civil client" is defined by that relationship.

Under this interpretation, it is the City Attorney's responsibility:

- to advise the elected representatives, and the city's subordinate departments and agencies, on the legal ramifications of city business,
- to defend the actions of the Municipal Corporation in court when necessary,
- to afford city officials attorney-client confidentiality (except as modified by California Government Code §54950.5 – the Ralph M. Brown Act), and
- to perform such other duties as the City Charter or the Council may direct. This last point may include such matters as initiating lawsuits and prosecuting misdemeanor offenses.

In its final report, the 2007 City of San Diego Charter Review Committee (see Appendix B) expressed strong concern over the current job description of the City Attorney: "One of the most serious problems with the Charter is the ambiguity of §40. The City has witnessed constant conflict over defining the duties of the City Attorney's Office

The Charter Review Committee noted that §40 does not require that the City Attorney actually be an attorney. This may seem self-evident; it's hard to imagine a successful candidate for City Attorney (elected *or* appointed) who isn't licensed to practice law in California. On the other hand, the 1997 Los Angeles City Charter, §270, does begin with the words: "The City Attorney must be qualified to practice in all the courts of the state."

The City of San Diego Charter Review Committee recommended amending §40 to include similar language.

The Charter Review Committee was also concerned that §40 doesn't presently define who the client is. "The problem with the claim that the City Attorney is to represent the general public is that the people do not speak with one voice. How does one know what the public wants in any given situation? Consequently, an attorney who sees him or herself in this manner acts as both the attorney and the client." We learned in our investigation that §40 of the charter as currently worded can create an ethical dilemma for even the most dedicated attorney who might be trying to redress past wrongs in the city's business. The Charter Review Committee recommended amending §40 to define the Civil Client as the municipal corporation of the City of San Diego, and to clarify authority over the control and settlement of litigation by the city. The Grand Jury found the committee's concerns to be justified.

The Grand Jury acknowledges the efforts of the Board of Freeholders and the community in enacting the 1931 charter. We also recognize the efforts and accomplishments of the dedicated individuals who have served as San Diego City Attorney during the past seven decades. We give due weight to historical precedent. However, we feel on balance that the existing job description of the City Attorney is inadequate in the 21st Century field of municipal law.

FACTS/FINDINGS

Fact: Article V, §40 of the San Diego City Charter was enacted in April 1931 as part of a Progressive Reform movement in the city. It does not require that the City Attorney actually be an attorney, nor does it specify who the Civil Client is.

Finding #01 Article V, §40 of the San Diego City Charter no longer reflects the generally held viewpoint concerning the role an elected City Attorney should play as general counsel of a modern Municipal Corporation and should be amended.

RECOMMENDATION

The 2007/2008 San Diego County Grand Jury recommends that the Mayor and City Council of the City of San Diego:

08-122: Draft an amendment to Article V, §40 of the San Diego City Charter, specifying more clearly the qualifications, duties and responsibilities of the City Attorney, and submit it to the electorate at an appropriate future date.

DISCUSSION #2 Employment Status of Deputy City Attorneys

[NOTE: The term “Unclassified Civil Service,” as used in this report, signifies a San Diego city employee whose employment may be terminated at any time, consistent with Article VIII of the city charter, according to the rules of his or her office or department, and consistent with any collective bargaining agreement in which he or she may be enrolled. This contrasts with the traditional, or “Classified Civil Service,” in which a final decision on termination is referred to a Civil Service Commission, and which includes an appeals process.]

When the current San Diego City Charter was adopted in 1931, the City Attorney’s Office employed approximately 5 Deputy City Attorneys to assist the newly elected City Attorney in his task of advising the Municipal Corporation on the legal ramifications of conducting its business. The deputies were hired as “unclassified” city employees who served at the pleasure of the City Attorney. This is not unusual and is similar to the status of associate attorneys at law firms in the private sector, who typically serve at the pleasure of the firm’s management. In 2008, the San Diego City Attorney’s Office employs approximately 135 Deputy City Attorneys, all of whom, according to Article VIII, Section 117, Subsection (a)(10) of the San Diego City Charter, are in the Unclassified Civil Service. During our investigation of the issues raised in Discussion #1 above, the Grand Jury learned some facts that made us take a deeper look into the employment status of Deputy City Attorneys.

A few years ago the Deputy City Attorneys for the first time formed a bargaining unit, and negotiated a Memorandum of Agreement (MOA) with the city that provides them with some minimal protections in case of a termination of employment. We were surprised to find that the equivalent rank and file attorneys at the offices of the District Attorney and the County Counsel have had collective bargaining agreements for a much longer period, and have significantly more protections than the Deputy City Attorneys. We learned that in some cases Deputy City Attorneys had left the office of the City Attorney and joined the offices of the District Attorney or the County Counsel, looking (at least in part) for better job security. We investigated what effect a high turnover at the office of the City Attorney might be having on the city’s corporate knowledge base.

Deputy City Attorneys frequently advise other city officials and employees on the legal ramifications of issues (e.g., building permits) in their departments’ areas of responsibility. The legal history of the municipal corporation’s business dealings is one of the foundation stones the city is built on. The impact a significant loss of corporate knowledge has in a law firm is difficult to measure. However, a large-scale disruption in the flow of the minute details that make up the legal brief in support of a complex piece of city business (e.g., a redevelopment project), could result in a major loss to the city in the courtroom.

As stated above, the San Diego City Attorney’s office currently employs approximately 135 Deputy City Attorneys, supervised by an appropriate number of division heads and other senior staff. We learned from the office of the City Personnel Director that over a

recent period of approximately three years, the City of San Diego hired 140 Deputy City Attorneys, while a total of 124 were separated by termination, resignation and retirement from the city's employ. The latter total does not include promotions or lateral transfers.

The Grand Jury recognizes that human resources issues are complex and the impact of personnel turnover in a large organization cannot be analyzed by simple arithmetic. This is especially true of licensed professionals such as attorneys. People change jobs for many reasons, as is their right. However, we learned from officials and employees in a number of city departments that the turnover of Deputy City Attorneys approximating one hundred percent in a little over three years has had a significant negative impact on conduct of the City's business, at least in the short term. This was due primarily to a loss of detailed knowledge of the many complex issues dealt with by a large city's multitude of departments and agencies. This knowledge can only be perfected by months or years of daily experience interpreting the Municipal Code, the policies and procedures of the various departments and agencies, and applying these to a wide range of issues. The Grand Jury in no way wishes to disparage the skill and dedication of the Deputy City Attorneys. However, our investigation revealed that the learning curve is steep, and while new hires were learning the ropes, business has suffered.

FACTS/FINDINGS

Fact: All of the approximately 135 San Diego Deputy City Attorneys are in the Unclassified Civil Service.

Finding #02: San Diego Deputy City Attorneys serve at the pleasure of the City Attorney and are subject to dismissal, with or without cause, provided only that notice is given.

Finding #03: San Diego Deputy City Attorneys enjoy significantly less job security than their counterparts in the offices of the District Attorney and County Counsel.

Fact: Since December 2004, a combined total of 124 Deputy City Attorneys have left the employ of the City of San Diego.

Finding #04: The departure of so many experienced Deputy City Attorneys has had a negative effect on conduct of the city's business.

RECOMMENDATIONS

The 2007/2008 San Diego County Grand Jury recommends that the Mayor and City Council of the City of San Diego:

08-123: Explore moving Deputy City Attorneys who have completed an appropriate probationary period from the Unclassified to the Classified Civil Service, in

order to provide greater stability in the City Attorney's Office. If this is found to be feasible, amend the city charter as necessary.

COMPLETE RECOMMENDATIONS

The 2007/2008 San Diego County Grand Jury recommends that the Mayor and City Council of the City of San Diego:

- 08-122:** Draft an amendment to Article V, §40 of the San Diego City Charter, specifying more clearly the qualifications, duties and responsibilities of the City Attorney, and submit it to the electorate at an appropriate future date.
- 08-123:** Explore moving Deputy City Attorneys who have completed an appropriate probationary period from the Unclassified to the Classified Civil Service, in order to provide greater stability in the City Attorney's Office. If this is found to be feasible, amend the city charter as necessary.

REQUIREMENTS AND INSTRUCTIONS

The California Penal Code §933(c) requires any public agency which the Grand Jury has reviewed, and about which it has issued a final report, to comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the agency. Such comment shall be made *no later than 90 days* after the Grand Jury publishes its report (filed with the Clerk of the Court); except that in the case of a report containing findings and recommendations pertaining to a department or agency headed by an elected County official (e.g. District Attorney, Sheriff, etc.), such comment shall be made *within 60 days* to the Presiding Judge with an information copy sent to the Board of Supervisors.

Furthermore, California Penal Code §933.05(a), (b), (c), details, as follows, the manner in which such comment(s) are to be made:

- (a) As to each grand jury finding, the responding person or entity shall indicate one of the following:
- (1) The respondent agrees with the finding
 - (2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.
- (b) As to each grand jury recommendation, the responding person or entity shall report one of the following actions:
- (1) The recommendation has been implemented, with a summary regarding the implemented action.

- (2) The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.
 - (3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the grand jury report.
 - (4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.
- (c) If a finding or recommendation of the grand jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the Board of Supervisors shall respond if requested by the grand jury, but the response of the Board of Supervisors shall address only those budgetary or personnel matters over which it has some decision making authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.

Comments to the Presiding Judge of the Superior Court in compliance with the Penal Code §933.05 are required from the:

<u>Responding Agency</u>	<u>Recommendations</u>	<u>Date</u>
Mayor, City of San Diego	08-122, 08-123	9/2/08
City Council, City of San Diego	08-122, 08-123	9/2/08

APPENDIX A**Excerpt from the San Diego City Charter, Article V****Section 40: City Attorney**

At the municipal primary and general election in 1977, a City Attorney shall be elected by the people for a term of seven (7) years. A City Attorney shall thereafter be elected for a term of four (4) years in the manner prescribed by Section 10 of this Charter.

Notwithstanding any other provision of this Charter and commencing with elections held in 1992, 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. Persons holding the office of City Attorney prior to the November 1992 election shall not have prior or current terms be counted for the purpose of applying this term limit provision to future elections.

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 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.

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.

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 in no event shall said salary be less than \$15,000.00 per year.

In the event of a vacancy occurring in the office of the City Attorney by reason of any cause, the Council shall have authority to fill such vacancy, which said authority shall be exercised within thirty (30) days after the vacancy occurs. Any person appointed to fill such vacancy shall hold office until the next regular municipal election, at which time a person shall be elected to serve the unexpired term. Said appointee shall remain in office until a successor is elected and qualified.

(Amendment voted 04-20-1943; effective 05-04-1943.)

(Amendment voted 04-15-1947; effective 05-01-1947.)

(Amendment voted 11-04-1958; effective 02-19-1959.)

(Amendment voted 11-06-1962; effective 01-21-1963.)

(Amendment voted 11-04-1975; effective 12-01-1975.)

(Amendment voted 06-02-1992; effective 07-13-1992.)

(Amendment vote 11-02-2004; effective 04-01-2004)

Section 40.1: Concurrent Jurisdiction of City Attorney with District Attorney.

The City Attorney shall have concurrent jurisdiction with the District Attorney of the County of San Diego to prosecute persons charged with or guilty of the violation of the state laws occurring within the city limits of The City of San Diego for offenses constituting misdemeanors.

(Addition voted 03-10-1953; effective 04-20-1953.)

Source: San Diego City Clerk

APPENDIX B

Excerpt from the Final Report of the 2007 San Diego Charter Review Committee

DUTIES OF ELECTED OFFICIALS

10. Amend Section 40 (City Attorney) to create professional qualifications for this Office, define the civil client as the municipal corporation of the City of San Diego, clarify authority over the control and settlement of litigation, and establish a process allowing a City entity to retain outside legal counsel (at the entity's own expense) when the City Attorney's Office may not provide legal advice due to an ethical or financial conflict of interest.

One of the most serious problems with the Charter is the ambiguity of Section 40. The City has witnessed constant conflict over defining the duties of the City Attorney's Office. Is the City Attorney supposed to act as a policymaker or to serve as the City's attorney? There has been disagreement over whether this officer acts as attorney for the City as the municipal corporation, or for the City as the general public. The California State Bar's Rules of Professional Conduct provide clear rules for how an attorney is supposed to work when he or she represents an organization, and how to address such matters as Attorney-Client privilege and conflict of interest. The problem with the claim that the City Attorney is to represent the general public is that the people do not speak with one voice. How does one know what the public wants in any given situation? Consequently, an attorney who sees him or herself in this manner acts as both the attorney and the client. How would one know what the public wants, outside of one's own subjective understanding? The responsibility of the attorney to conform his or her actions with the client's right to make decisions is a bedrock principle of our legal system, and protects both the attorney and the client.

Proponents of the recommendation thought the Charter should be clear that the civil client is the municipal corporation, and should establish a process to designate which officers are to make client decisions in the control and settlement of litigation. Those in favor also thought the Charter should establish professional qualifications for election to the City Attorney's Office, and create a process to resolve whether outside legal counsel should be retained in the event that the City Attorney cannot represent a City entity due to a conflict of interest. Those who opposed this recommendation did so on the grounds that the City Attorney must be authorized to represent the people, or that the officer must be maintained in the watchdog role to protect the City's interests. Others who expressed some approval of the concept or the intent of the recommendation stated that this matter was better left to an appointed or an elected Charter commission.

The majority of the Committee noted that the recommendation does allow the City Attorney to litigate on behalf of the people both for criminal matters, as well as civil matters where the Mayor or Council have given their approval. This language is only controversial in that the present Charter language is so vague it allows action that might well violate the Rules of Professional Conduct. This Charter language requires the City Attorney to follow those rules. The Charter language recommended would preserve intact the City Attorney's ability to use an injunction or *writ of mandamus* to restrain or compel actions of City officials, and thus the officer's oversight role is

protected. The Subcommittee spent a great deal of time on the issue, and a number of the other Committee members who were not on this Subcommittee are already well versed in the rules of conduct governing all attorneys. Finally, City Attorneys are not guaranteed representation on appointed or elected Charter commissions: only the governing body or the voters can create a Charter commission. Ultimately, the Committee's majority felt that this issue was one of the most important addressed by the Committee, and that to fail to recommend an improvement to remove this dangerous ambiguity from the Charter would be a dereliction of duty.³

VOTE: SEPTEMBER 27, 2007; 9 AFFIRMATIVE, 5 NEGATIVE, 1 ABSENT. ROLL CALL: AFFIRMATIVE = BERSIN, CHANNICK, DAVIES, JONES, MCDADE, MILLIKEN, MUDD, NELSON, ROTH; NEGATIVE = CLEVES ANDERSON, GORDON, KWIATKOWSKI, SORENSEN, SPARROW; ABSENT = WILSON.

Source: Archives of the 2007 San Diego Charter Review Committee

APPENDIX C

Excerpt from the San Diego City Charter, Article VIII

Section 117: Unclassified and Classified Services

Employment in the City shall be divided into the Unclassified and Classified Service.

(a) The Unclassified Service shall include:

- (1) All elective City Officers
- (2) Members of all boards and commissions
- (3) All department heads and one principal assistant or deputy in each Department
- (4) One assistant to Mayor
- (5) City Manager, Assistant City Manager, and Assistants to the City Manager
- (6) City Clerk
- (7) Budget Officer
- (8) Purchasing Officer
- (9) Treasurer
- (10) All Assistant and Deputy City Attorneys
- (11) Industrial Coordinator
- (12) The Planning Director
- (13) A Confidential Secretary to the Mayor, City Council, City Manager, Police Chief, City Attorney
- (14) Officers and employees of San Diego Unified School District
- (15) Persons employed in positions for expert professional temporary service when such positions are exempted from the Classified Service for a specified period of temporary service by order of the Civil Service Commission

- (16) Interns including, but not limited to, Administrative Interns and legal Interns, temporarily employed in regularly established training programs as defined in the job specifications of the City
- (17) Managerial employees having significant responsibilities for formulating or administering departmental policies and programs. Each such position shall be exempted from the Classified Service by ordinance, upon the initiation of the appropriate appointing authority and after receiving the advisory review and comment of the Civil Service Commission and the approval of the City Council.
- (b) The Classified Service shall include all positions not specifically included by this section in the Unclassified Service; provided, however, that the incumbents in the positions of the Planning Director and the Principal Assistant to the Planning Director on January 1, 1963 shall remain in the Classified Service until the respective positions are vacated by the incumbents.
- (c) The City may employ any independent contractor when the City Manager determines, subject to City Council approval, City services can be provided more economically and efficiently by an independent contractor than by persons employed in the Classified Service while maintaining service quality and protecting the public interest. The City Council shall by ordinance provide for appropriate policies and procedures to implement this subsection. Such ordinance shall include minimum contract standards and other measures to protect the quality and reliability of public services. A City department shall be provided with an opportunity and resources to develop efficiency and effectiveness improvements in their operations as part of the department's proposal. The City Manager shall establish the Managed Competition Independent Review Board to advise the City Manager whether a City department's proposal or an independent contractor's proposal will provide the services to the City most economically and efficiently while maintaining service quality and protecting the public interest. The City Manager will appoint seven (7) members to the Board. Four (4) shall be private citizens whose appointments shall be subject to City Council confirmation. Each shall have professional experience in one or more of the following areas: finance, law, public administration, business management or the service areas under consideration by the City Manager. Three (3) shall be City staff including a City Manager staff designee, a City Council staff designee and the City Auditor and Comptroller or staff designee. Such appointees shall not have any personal or financial interests which would create conflict of interests with the duties of a Board member. Members of the Board shall be prohibited from entering into a contract or accepting employment from an organization which secures a City contract through the managed competition process for the duration of the contract. The City Council shall have the authority to accept or reject in its entirety any proposed agreement with an independent contractor submitted by the City Manager upon recommendation of the Managed Competition Independent Review Board. The City Manager shall have the sole

responsibility for administering and monitoring any agreements with contractors. The City Manager shall be required to produce annual performance audits for contracted services, the cost of which must be accounted for and considered during the bidding process. In addition, the City Manager shall seek an independent audit every five (5) years to evaluate the City's experience and performance audits. During the period of time that the City operates under the Strong Mayor form of governance pursuant to Article XV, the reference herein to City Manager shall be deemed to refer to the Mayor.

(Amendment voted 03-13-1945; effective 04-09-1945.)

(Amendment voted 03-11-1947; effective 03-24-1947.)

(Amendment voted 04-17-1951; effective 05-03-1951.)

(Amendment voted 04-21-1953; effective 05-29-1953.)

(Amendment voted 06-08-1954; effective 01-10-1955.)

(Amendment voted 11-06-1956; effective 01-10-1957.)

(Amendment voted 04-16-1957; effective 05-15-1957.)

(Amendment voted 04-21-1959; effective 05-20-1959.)

(Amendment voted 06-07-1960; effective 01-09-1961.)

(Amendment voted 09-17-1963; effective 02-11-1964.)

(Amendment voted 11-06-1979; effective 12-17-1979.)

(Amendment voted 11-07-2006; effective 12-13-2006.)

Source: San Diego City Clerk