



City of Chula Vista

Staff Report

File#: 16-0362, **Item#:** 8.

CITY COUNCIL CONSIDERATION OF CHARTER CHANGES REGARDING THE CITY ATTORNEY AND LEGISLATIVE COUNSEL RECOMMENDED BY THE CHARTER REVIEW COMMISSION FOR PLACEMENT ON THE NOVEMBER 2016 BALLOT

RECOMMENDED ACTION

Council consider the Charter Review Commission's recommendation and take action as appropriate.

SUMMARY

The City's Charter Review Commission is recommending that sections 503 and 503.1 of the City Charter be amended to revise certain provisions regarding the elected City Attorney position. The proposed amendments include requiring that the City Attorney be a City resident, increasing the number of terms the City Attorney can serve to four, updating the City Attorney's duties, and revising certain provisions pertaining to the Office of Legislative Counsel.

ENVIRONMENTAL REVIEW

Environmental Notice

The activity is not a "Project" as defined under Section 15378 of the California Environmental Quality Act State Guidelines; therefore, pursuant to State Guidelines Section 15060(c)(3) no environmental review is required.

Environmental Determination

The Development Services Director has reviewed the proposed activity, Recommendation by the Charter Review Commission Regarding a Proposed Charter Amendment to Require that the City Attorney be a City Resident, for compliance with the California Environmental Quality Act (CEQA) and has determined that the activity is not a "Project" as defined under Section 15378(b)(4) of the State CEQA Guidelines because it involves only a recommendation that the City Charter be amended to revise certain provisions relating to the City Attorney and Legislative Counsel, and does not involve a potential physical change in the environment; therefore, pursuant to Section 15060(c)(3) of the State CEQA Guidelines the activity is not subject to CEQA.

BOARD/COMMISSION RECOMMENDATION

The Charter Review Commission recommends that the City Council take action to place a measure on the November 8, 2016 ballot amending sections 503 and 503.1 of the Charter, as described below and reflected in Attachment 1 to this report.

DISCUSSION

I. Background

The City's Charter Review Commission is an independent City advisory commission. One of its stated purposes is to, "work to identify language to amend the City Charter to clarify or improve the workings of the City government." The Commission recently took up discussions regarding Charter section 503, "City Attorney; Election, Powers and Duties." On June 7, 2016, the Commission presented a recommendation that the City Council place a measure on the November 8, 2016 ballot, amending Charter section 503 to require that the City Attorney be a City resident. The City Council members provided comments during that meeting suggesting that Commission consider whether or not changes should be made to other elected City Attorney provisions. The Commission has held three meetings since that time and has prepared a revised recommendation for the Council's consideration. The revised recommendation was approved by the Commission 5-1-1 (with member Ross voting against and member Spethman absent; although member Ross cast the lone dissenting vote, he was generally in favor of the proposed amendments, with a couple of limited reservations). The specific amendments proposed are reflected in redline in Attachment 1 to this Staff Report, and are summarized below.

II. Proposed Amendments

A. City Attorney Powers and Duties [Section 503(b)]

The proposed amendments would clarify and update the specified powers and duties of the City Attorney to more accurately describe current practices and policies. The only substantive change would be to require that requests for formal written legal opinions be made by the entire Council as opposed to each individual Councilperson. (Language authorizing the City Manager and the Mayor to request written legal opinions remains unchanged, and the City Clerk has been added to the list.) All changes in this Subsection were initially drafted and proposed by the City Attorney, but now have the support and recommendation of the Commission. The City Attorney will be available to present the specifics of these changes and answer any City Council questions at the Council meeting.

B. City Attorney Salary [Section 503(c)]

The original 2008 Charter provisions for the elected City attorney set the "minimum" salary based on the median of the city attorney salaries for the six cities closest in population to Chula Vista. Charter revisions approved in 2012 revised the City Attorney salary to be equivalent to the salary of a Judge of the Superior Court of California. In reviewing this provision, the Commission considered a number of possible approaches ranging from "no change" to increasing the percentage of a judge's salary, reverting back to the formula in the original elected City Attorney measure, or some other "market survey" based formula. Ultimately, the Commission concluded that its best recommendation would be to revise this section to provide that the City Attorney's salary be determined by the City Council, to be *no less than* that of a Judge of the Superior Court of California. The Commission's thinking was to return some flexibility to the City Council if it deemed increases in the City Attorney's salary appropriate (for example, if and when other City employees were to get increases, to respond to market trends for municipal attorney salaries generally, and/or to make it more likely that highly qualified candidates would choose to run for the office).

C. City Attorney Residency [Section 503(d)]

The proposed imposition of a residency requirement for the City Attorney was what initiated the Commission's review of the Charter provisions in this area originally. At the June 7th City Council meeting, the Commission recommended section 503 be amended to require that the City Attorney be a resident of the City. At that time, it was the only proposed revision. The Commission revisited that recommendation in light of the City Council members' comments at the June 7 meeting, by conducting additional research and engaging in further discussion on the matter. The Commission concluded that the importance of residency for the elected City Attorney outweighed possible limitations on the qualified applicant pool. Accordingly, the Commission has reiterated its recommendation that City residency be required for the elected City Attorney.

D. City Attorney Qualifications [New/renumbered Section 503(e)]

The Commission recommends creating separate subsections for the residency requirement and other types of qualifications for the City Attorney office. These requirements had been combined in one section (Section 503(d)) and are now presented as Sections 503(d) and (e) respectively. (The subsections following have been renumbered accordingly). The Commission discussed increasing, but decided not to change, the requirement that City Attorney candidates be licensed in California for a minimum of 7 years as an attorney before assuming office.

E. City Attorney Term of Office [Section 503(f)]

The Commission increased the term limit, from that of the Mayor and Council (two), to four consecutive terms. The Commission believed this increase was appropriate due to the unique qualifications and experience necessary for the office.

F. Legislative Counsel [Section 503.1]

In 2012 a majority of the City Council proposed the creation of the Office of "Legislative Counsel." The primary expressed purpose for this was to give the City Council its own legal advisor when the elected City Attorney had "conflicts of interest." Other proposed authority for Legislative Counsel included advising the City Council on "legislative" matters, advising the Board of Ethics, and advising the Charter Review Commission. Along with the imposition of term limits, and the reduction in the City Attorney's salary, the provision for "Legislative Counsel" was approved by the voters in 2012 and added to the Charter as Charter Section 503.1. An ordinance implementing the creation of Legislative Counsel was initially approved by the City Council in the fall of 2012. That approval was subsequently reconsidered and repealed. The City Attorney strongly opposed the creation of Legislative Counsel in the manner it was proposed as being undermining of the authority of the elected City Attorney, costly, redundant and confusing. Accordingly, when the City Council referred back to the Charter Review commission consideration of other elements of the elected City Attorney position, the City Attorney proposed material changes to the Legislative Counsel provisions in the Charter. The City Attorney's proposal eliminates the roles for Legislative Counsel as the Council's advisor on "legislative matters" and as the advisor to the BOE and Charter Review Commission. Legislative Counsel would retain authority to advise the Council when the City Attorney had an actual conflict, or to advise individual Councilmembers on conflicts of interest that they may or may not have. There is also a provision for hiring special counsel if both Legislative Counsel and the City Attorney have conflicts. The Commission agreed with the City Attorney's revisions and has

incorporated them into its recommendation.

G. Other Considerations

1. Elected Versus Appointed City Attorney. The Commission discussed this issue as part of the City Council referral. Most members of the Commission had mixed feelings about whether or not it was better to have an elected or appointed City Attorney. Their primary concern was making sure the City Attorney was selected in a way that the City would end up with the most highly professionally qualified person for the job. There are currently only 11 elected City Attorneys in the State of California. For reference, there are 482 cities in California. Of the 15 largest cities by population, which would include Chula Vista, only 6 have elected City Attorneys. The Commission ultimately decided not to recommend changing back to an appointed City Attorney at this time. This was primarily based upon the following: Voters only recently changed the requirement to elected and there are no perceived problems with the elected City Attorney; therefore, there is no reason to argue to revert to the former process.

2. Vacancy and other issues. The Commission discussed the vacancy subsection and others issues per the Council's direction related to the letter from Mr. Ross. The Commission decided to leave these sections as currently written.

3. Ballot Measure Required. The Commission's recommendation to amend the Charter would require a ballot measure. The Commission recommends that it be placed on the November 2016 ballot. If the Council approves the recommendation, City staff would return to the City Council with a resolution to add the measure to that ballot, direct the City Attorney to prepare an impartial analysis of the measure and authorize the Mayor to submit ballot arguments in favor of the measure. Should the Council desire to place this matter on the November 2016 ballot, it would need to be submitted to the Registrar of Voters by August 12, 2016.

III. Conclusion

The Commission requests that the City Council consider its recommendation and place the proposed amendments to Charter sections 503 and 503.1, either in whole or in part, on the November 2016 ballot. If the Council directs staff to place a measure on the November 2016 ballot in response to this item, staff will return on August 9th with the requisite resolution.

DECISION-MAKER CONFLICT

Staff has reviewed the decision contemplated by this action and has determined that it is not site-specific and consequently, the 500-foot rule found in California Code of Regulations Title 2, section 18702.2(a)(11), is not applicable to this decision for purposes of determining a disqualifying real property-related financial conflict of interest under the Political Reform Act (Cal. Gov't Code § 87100, et seq.).

Staff is not independently aware, and has not been informed by any City Council member, of any other fact that may constitute a basis for a decision maker conflict of interest in this matter.

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LINK TO STRATEGIC GOALS

The City's Strategic Plan has five major goals: Operational Excellence, Economic Vitality, Healthy Community, Strong and Secure Neighborhoods and a Connected Community. Council's consideration of the Charter Review Commission's recommendation relates to its goal to stay connected to the community, in that, the Charter Review Commission is made up of residents of the City.

CURRENT YEAR FISCAL IMPACT

If the City Council determines to proceed with implementing the Charter Review Commission's recommendation, it would require a ballot measure be submitted to the electorate to amend the City Charter. If it were added to the November 2016 ballot, the estimated cost would be approximately \$50,000.

ONGOING FISCAL IMPACT

There is no anticipated ongoing fiscal impact associated with this item.

ATTACHMENTS

Attachment 1: Proposed amendments to City Charter sections 503 and 503.1

Staff Contact: Jill Maland, Assistant City Attorney

(Prepared with input from the Charter Review Commission Subcommittee, Carra Rhamy, Tom O'Donnell, and Randy Bellamy)