

Proposition C: City of Chula Vista City Attorney Charter Amendment Brief Summary

SDCTA **OPPOSES** the City of Chula Vista's proposed Charter amendment measure. The measure lacks details regarding the duties and responsibilities of the Office of Legislative Counsel. Further, the purported financial savings of reducing the salary of the City Attorney would also be negated once an Office of Legislative Council is hired. The true fiscal impact of the measure is unclear because there is no budgetary cap for the office. Finally, Proposition C would impose term limits to the Office of City Attorney and SDCTA opposes term limits.

- In 2008, voters in the City of Chula Vista (City) supported Proposition Q, which amended the City's charter to establish the position of City Attorney as an elected representative instead of an appointed position.
- Proposition C creates the ability of the City Council to establish by ordinance the Office of the Legislative Counsel
- Proposition C would also reduce the City Attorney's compensation to that of a Superior Court Judge.
- Currently, the City Attorney's salary is approximately \$209,000, while that of a Superior Court Judge is approximately \$179,000.
- Currently the City Attorney represents and advises the City Council, city officers and all boards and commissions on legal matters.
- Proposition C would amend this role by allowing the Office of Legislative Counsel to advise the Council and other boards and commissions of the City's Code of Ethics and any potential violations.
- Under Proposition C, the City Council has the authority to retain outside legal counsel once the Council determines by resolution the City Attorney has a conflict of interest, absent the recommendation by the City Attorney.
- The new position of legislative counsel may also advise the Council whether the hiring of special counsel is warranted because of a conflict of interest, and may also assist in the selection and appointment of special counsel.
- Proposition C allows the Office of Legislative Counsel to advise the council regarding its legislative duties. They are not allowed to take a position on any matters.
- It is unclear if this Office would allow for one position, or an entire staff, as the creation of the Office would come via ordinance should Proposition C pass.
- The charter amendment does not outline any spending restrictions for this Office.

Proposition C: City of Chula Vista Charter Amendment Relating to City Attorney

Board Action:

OPPOSE

Rationale:

Proposition C is a charter amendment that would not only impose term limits to the Office of the City Attorney, but also introduce a new office that would advise the City Council on a variety of matters. The measure lacks details regarding the duties and responsibilities of the Office of Legislative Counsel. The purported financial savings of reducing the salary of the City Attorney would also be negated once an Office of Legislative Counsel is hired, and the true fiscal impact of the measure is unclear because there is no budgetary cap.

Background:

Chula Vista City Attorney

In 2008, voters in the City of Chula Vista (City) supported Proposition Q, which amended the City's charter to establish the position of City Attorney as an elected representative instead of an appointed position. Proposition Q passed with 58% of voters supporting the measure. Proposition Q also expanded the responsibilities of the City Attorney to include:

“[A]dvising all boards, commissions and other agencies of the City on legal matters referred to him or her, and render written legal opinions when the same are requested in writing by the Mayor or a member of the Council or the City Manager or any other officer, board or commission of the City.”

In addition, the City Attorney was granted the discretion as to when to conduct legal proceedings, while requiring him or her to obtain the approval of the City Council and follow its direction. Lastly, the City Council has the ability to empower the City Attorney to employ special legal counsel or experts to handle any pending litigation, proceedings or in the case of a conflict of interest.

The salary of the City Attorney is set by the Council, but, “shall not be less than the median compensation paid to the City Attorneys of the six California cities whose populations are closest to that of the City of Chula Vista, provided that three are higher and three are lower in population, and that compensation may not be reduced during the City Attorney's term of office.” As of today, the City Attorney's salary is \$209,000.

The San Diego County Taxpayers Association (SDCTA) opposed Proposition Q because of the conflict of the position having to both represent the City and the “will of the people”, as is outlined in the amendment. Furthermore, Proposition Q's intent was to create a public “watchdog”, which SDCTA stated would, “undermine the critical collegial attorney-client relationship that allows for officials and employees to discuss sensitive legal issues with, and seek advice from, the City Attorney.”

Proposal:

The ballot question that will be put before voters will read:

“Shall the Charter of the City of Chula Vista be amended to limit the authority and compensation of the elected City Attorney, to establish term limits for the City Attorney, and to authorize the City Council to establish the office of Legislative Counsel to advise the City Council on its legislative duties and on conflict of interest issues?”

Office of City Attorney

Passage of Proposition C would impose new restrictions on the City Attorney. Section 502(b)(1) would be amended to add, “the City Council may provide by ordinance that the City Attorney shall neither advise, nor participate in the selection of special legal counsel to advise, on conflict of interest issues involving the City Attorney.” If a City officer is in litigation involving the City Attorney, the Council would have the authority to approve the hiring of special legal counsel.

In addition, Proposition C would impose the same term limits on the Office of City Attorney as the Mayor and City Council (two four-year terms), and limit the salary of the position to that of a Judge of the Superior Court of California.

Office of Legislative Counsel

The measure also adds Section 503.1 to the City Charter, allowing the City Council to establish by ordinance the Office of Legislative Counsel. If the Council so chooses, the Legislative Counsel would be, “selected by the Council and serve at the pleasure of the Council, on terms and conditions prescribed by the Council.”

Section 503.1(b) states, “Legislative Counsel may advise the Council regarding its legislative duties. Legislative Counsel shall neither oppose nor urge enactment of any legislation.”

Section 503.1(c) states, “Legislative Counsel may also advise the Council regarding conflicts of interest involving the City Attorney, and whether the hiring of special counsel is therefore warranted. If the Council approves the hiring of special counsel, Legislative Counsel may assist the Council in the selection and appointment of special counsel.”

Sections 503.1(d) and (e) outline the Legislative Counsel’s ability to advise the Council regarding the City’s Code of Ethics and any potential violations, as well as the City’s Charter Review Commission and the Council’s ability to provide by ordinance resolution of any potential conflicts between the City Attorney and the Legislative Counsel.

Fiscal Impact:

Proposition C would reduce the City Attorney’s compensation to that of a Superior Court Judge. Currently, the City Attorney’s salary is approximately \$209,000, while that of a Superior Court Judge is approximately \$179,000. This reduction in salary, should voters approve Proposition C, would not apply during the current term of the current City Attorney.

Passage of Proposition C creates the ability of the City Council to establish by ordinance the Office of the Legislative Counsel. The costs of providing the office, the number of staff hired within the office, and other overhead costs are unknown at this time as Proposition C is merely enabling legislation. It is reasonable to assume though that the reduction in salary of the City Attorney is negated when and if the Council approves the creation of the Legislative Counsel.

Policy Discussion:

Dual Efforts

Currently the City Attorney represents and advises the City Council, city officers and all boards and commissions on legal matters. Proposition C would amend this role by allowing the Office of Legislative Counsel to advise the Council and other boards and commissions of the City's Code of Ethics and any potential violations. This seems to outline duplicative efforts on the part of both offices should the Council decide to establish the Office of Legislative Counsel.

Conflicts of Interest

In the instances a conflict does exist, the City Attorney recommends to the City Council approval of a declaration that a conflict does exist, and the special legal counsel may be retained at City expense. Under Proposition C, the City Council has the authority to retain outside legal counsel once the Council determines by resolution the City Attorney has a conflict of interest, absent the recommendation by the City Attorney. The new position of legislative counsel may also assist in the selection and appointment of special counsel.

Council Advisor

Another provision of Proposition C allows the Office of Legislative Counsel to advise the council regarding its legislative duties. They are not allowed to take a position on any matters, thus potentially similar qualities as the City of San Diego's Office of the Independent Budget Analyst. It is unclear if this Office would allow for one position, or an entire staff, as the creation of the Office would come via ordinance should Proposition C pass. The charter amendment does not outline any spending restrictions for this Office.

List of Proponents:

The list of signors to the argument in support of Proposition C includes:

- Gerald Scott, veteran and retired business owner
- Gabriel Arce, retired
- Susan Watry, retired realtor
- Peter Watry, retired professor
- (last signor name not legible)

Proponent Arguments:

Supporters of Proposition C argue the measure provides taxpayer savings by reducing the salary of the City Attorney, which amounts to approximately \$30,000 a year. In addition, supporters state term limits should also apply to the City Attorney, as it does for the Mayor and City Council and the original measure did not intend to create a lifetime political post. Lastly, supporters argue the City Attorney should not have the ability to hire an attorney when there is a conflict of interest, and that this power should be held by the City Council.

List of Opponents:

The list of signors to the argument against Proposition C includes:

- Greg Cox, Vice Chair, San Diego County Board of Supervisors, and former Mayor of Chula Vista
- John Kaheny, retired Chula Vista City Attorney
- Patty Davis, former Chula Vista City Councilmember
- Rick Emerson, retired Chula Vista Police Chief
- John Moot, former Chula Vista City Councilmember

Opponent Arguments:

Opponents argue Proposition C is an assault on the independence of the elected City Attorney, which the voters approved under Proposition Q. Opponents further state Proposition C would allow Councilmembers to use taxpayer funds to buy advice that supports their political agendas, while disregarding the advice of the elected City Attorney. Lastly, they claim Proposition C was railroaded onto the ballot without input from the Charter Review Commission or Board of Ethics, and is a simple power grab by a Chula Vista resident who has supported Councilmembers that have placed this measure on the ballot.