



To: Volunteer Citizen-Based Charter Committee

From: Cathy Standiford, Partner

Subject: Elected vs. Appointed City Officials – City Attorney, City Clerk, City Treasurer

Date: September 15, 2015

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The Charter Committee is considering elements that should be included in the Charter “skeleton.” One area of inquiry has been whether certain City officials should continue to be elected at large or be appointed. Detailed analyses of provisions for City Attorney, City Clerk, and City Treasurer and associated issues have been provided by the Charter Committee Chair. The purpose of this memorandum is to summarize the information previously provided as well as additional information Committee members may wish to consider in developing specific recommendations.

## **City Attorney**

The existing City Charter identifies the City Attorney as an elected municipal officer (Article IV, Section 55). The City’s Bankruptcy Recovery Plan notes this is unusual. In fact, there are only 11 elected city attorneys in the entire State of California. The practice of electing a city attorney predates the evolution of this function to a professional specialty.

## ***Roles and Responsibilities***

One of the most important functions of the City Attorney is to render advice to the City Council to ensure Council members' actions fall within the framework of the law. In this role the City Attorney advises the Council about procedural and substantive legal issues, the possible legal ramifications of proposed courses of action, and on matters directly affecting the conduct of City Council business, such as public meeting and conflict of interest laws.

The City Attorney is typically responsible for drafting or reviewing a host of legal documents necessary for the daily operation of the City, including contracts, leases, deeds, resolutions, ordinances, bonds, and insurance documentation. The City Attorney also appears in court on behalf of the City for both criminal and civil matters, and may have primary responsibility for the criminal prosecution of violations of City ordinances, including prosecuting violations of housing and building codes, business license codes, and crimes involving the public peace, morals, and welfare. On the civil side, the City Attorney defends and sometimes initiates litigation involving personal injury liability, the environment, civil rights or personnel issues.

Some legal issues faced by cities are highly specialized. A common practice is to retain special legal counsel for such work or when the legal issue will require an investment of time that exceeds in-house capacity. Special legal counsel may be supervised by the City Attorney, report directly to the City Council, or report to another appointed official, depending on the nature of the work. For example, some cities retain special legal counsel to assist the human resources director with labor negotiations.

The Bankruptcy Recovery Plan states:

*Overlapping authority and ambiguities in the City's Charter create operational uncertainty and ineffectiveness because the role, responsibility of the Common Council, City Manager, City Attorney and Mayor are unclear and at times contradict each other.*

To address these ambiguities, the Operating Practices for Good Government, executed by the Mayor, Common Council, City Attorney and City Manager in April 2015 clarify the role of the City Attorney:

*The City Attorney will focus his attention and resources on the performance of his [or her] duty as chief legal officer to provide legal advice to the Mayor, Common Council and City Manager, and the management of his [or her] office, and shall leave the formulation of policy and managerial matters exclusively to those officials charged by the City Charter with those duties.*

This description is consistent with best practices for city attorney roles and responsibilities.

### ***Elected or Appointed***

A review of the charters of 17 comparable cities indicates the common practice is for city attorneys to be appointed, as shown in Table 1.

*Table 1. Elected vs. Appointed City Attorneys*

Population	Elected	Appointed	Comments
200,000 to 299,000	1	3	Chula Vista's city attorney is nominated and elected at large; Irvine, Modesto and Stockton city attorneys are appointed by the City Council
300,000 to 399,000	0	4	Appointed by the City Council in Anaheim, Riverside, Bakersfield and Santa Ana City
150,000 to 199,000	0	9	Appointed by the City Council in Glendale, Hayward, Lancaster, Oceanside, Palmdale, Pomona, Salinas, Santa Rosa, and Torrance
<b>Total</b>	<b>1</b>	<b>16</b>	

City attorneys may be employees of the city. However, in California, the city attorney is often either an independent practitioner or a member of a law firm providing legal services on a contractual basis.



In interviews with San Bernardino's current elected officials, there was universal agreement that the City Attorney should be appointed by the Mayor and Common Council. The National Civic League Model Charter recommends the City Attorney be appointed by the city manager or by the city manager subject to confirmation by the city council. However, in California the City Attorney is almost always appointed by the Mayor and Council, unless they are directly elected.

## **City Clerk**

The San Bernardino Charter establishes the City Clerk as an elected officer. The city clerk profession dates back to ancient history, and was among the first local government offices established in colonial America.<sup>1</sup> Today, most city clerks have specific education and training allowing them to become a Certified Municipal Clerk (CMC).

### ***Roles and Responsibilities***

The City Clerk role was initially limited to recording actions taken by the government, but has evolved into a broader set of responsibilities. The City Clerk is the local official for elections, local legislation, the Public Records Act, the Political Reform Act, and the Brown Act (open meeting laws). The duties of the San Bernardino City Clerk as specified in Article IV, Section 60 are as follow.

- Keep the corporate seal and all books, papers, records and other documents
- Attend all meetings of the Mayor and Common Council and keep minutes of the proceedings
- Take all affidavits and administer all oaths necessary in the transaction of city business
- Maintain official books and records, keeping them properly indexed and open to public inspection during office hours
- Issue business registration certificates
- Countersign all warrants on the City Treasury, except warrants of the boards
- Perform all other acts required of him or her by the Charter, by ordinance, or by the Mayor and Common Council

In addition, the City Clerk's Office accepts passport applications and serves as the filing officer for Common Council or other hearing body actions.

It is highly unusual for city clerks to be directly involved in the issuance of business license or business registration certificates and to countersign warrants. These functions are commonly assigned to the head of a finance department. Otherwise, the roles and responsibilities described in the Charter and City Code are consistent with the normal duties expected of municipal city clerks.

### ***Elected or Appointed***

A review of the 17 comparable peer agencies indicates the more common practice is for the city clerk to be appointed, as shown in Table 2. Of the peer agencies, only three have elected city

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<sup>1</sup>"History of the Clerk," City Clerks Association of California website (cacityclerks.org), accessed September 1, 2015.



clerks. Most are appointed by the City Council, although some are appointed by the city manager.

*Table 2. Elected vs. Appointed City Clerks*

Population	Elected	Appointed	Comments
200,000 to 299,000	0	4	Appointed by the City Council in Chula Vista, Irvine, Modesto and Stockton
300,000 to 399,000	0	4	Appointed by the City Council in Anaheim, Riverside and Santa Ana; appointed by the city manager in Bakersfield
150,000 to 199,000	3	6	Elected at large in Glendale, Oceanside and Torrance; appointed by the City Council in Hayward, Palmdale, Pomona, and Salinas. Appointed by the City Manager in Santa Rosa and Lancaster
<b>Total</b>	<b>3</b>	<b>14</b>	

During interviews with the City's elected officials, unanimous consensus was that the City Clerk be appointed by the Mayor and Common Council. The National Civic League Model Charter recommends the City Clerk be appointed by the City Manager. The more common practice in California, however, is for the City Clerk to be directly appointed by the City Council.

### **City Treasurer**

Similar to city clerks, city treasurers or tax collectors are among the oldest government professions, dating back to ancient history.

#### ***Roles and Responsibilities***

Article IV, Section 70 of the San Bernardino Charter identifies the City Treasurer as an elected officer and includes the following duties:

- Receive and pay out all moneys belonging to the City
- Keep an account of all receipts and expenditures
- Make a monthly statement to the Mayor and Common Council of the receipts and expenditures of the preceding month
- Perform all duties required of him or her by law and the Mayor and Common Council

These duties are further described in Chapter 2.08 of the San Bernardino Municipal Code and include the authority to make investments of City funds.

#### ***Elected or Appointed***

A review of comparable peer charters identified three elected treasurers and six appointed treasurers, as shown in Table 3. Ten of the peer agency charters make no reference to a city treasurer. Further research on each of these ten agencies confirmed the treasury functions are assigned to staff in the Finance Department.



Table 3. Elected vs. Appointed City Treasurers

Population	Elected	Appointed	Not Specified by Charter	Comments
200,000 to 299,000	0	1	3	Irvine City Council appoints city treasurer. Treasury functions assigned to Finance Department in Chula Vista, Modesto and Stockton <sup>1</sup>
300,000 to 399,000	0	2	2	Appointed by the City Council in Anaheim; appointed by city manager in Bakersfield. functions assigned to finance director in Riverside and Santa Ana
150,000 to 199,000	3	1	5	Elected at large in Torrance, Glendale and Oceanside. Appointed by City Council in Pomona. Treasury functions assigned to Finance Department in Hayward, Lancaster, Palmdale, Salinas, and Santa Rosa
<b>Total</b>	<b>3</b>	<b>6</b>	<b>10</b>	

<sup>1</sup>Modesto and Stockton charters specify the appointment of a city auditor by the City Council. However, the auditor does not perform any treasury responsibilities. Treasury functions are the responsibility of the finance director according to municipal code

When interviewed, most of San Bernardino's elected officials questioned the necessity of having a city treasurer because the duties involve a level of expertise that already exists in professional Finance Department staff. This opinion was echoed by the incumbent City Treasurer in a presentation before the Charter Committee on August 11, 2015. The National Civil League Model Charter contains no specific language concerning the treasurer. This is likely due to the modern practice of either assigning treasury functions to the Finance Department or defining the roles and responsibilities of a city treasurer in a municipal code.

