

**Charter Review Committee  
Report to City Council  
February 5, 2010**

In 2006, the Charter Review Committee (CRC) recommended that the City switch from an elected to an appointed City Attorney. This recommendation was forwarded to the Council without a supporting report. The City Council considered the recommendation and sent it back to the CRC to develop a report supporting this recommendation. The CRC revived the discussion of the method of choosing the City Attorney at its September 2009 meeting by reviewing the history of its prior recommendation and developing a workplan for addressing the issue.

Albany residents now elect the City Attorney for a four-year term, with no term limit. Albany changed from an elected to an appointed Chief of Police in 2001, and the possibility of making a similar change for the City Attorney has been discussed by the Charter Review Committee at various times in years past, most recently in 2005 and 2006. The current City Attorney was elected in 1978 and has now served for 32 years, having been reelected seven times, often without opposition. His current term expires in 2010.

Of California's 480 cities, of which 116 are Charter Cities, only 11 have elected City Attorneys (see attached table). These cities include five of the ten largest cities in the state (Los Angeles, San Diego, San Francisco, Long Beach, and Oakland, with a total population of 8 million). Thus, only 2% of the cities, and 9% of the Charter Cities, with 25% of the state's population, have elected City Attorneys. Albany, with a 2009 population of 16,884, is by far the smallest city with an elected City Attorney. The next smallest is San Rafael (population 58,363). Of the 11 cities with elected City Attorneys, all are Charter Cities (see attached list). The Government Code provisions relating to city officers and in particular to City Attorneys (see attached) suggest that City Attorneys may *not* be elected in General Law cities.

The CRC invited the following individuals with relevant experience to discuss the issue at CRC meetings:

Gary Ragghianti, former elected City Attorney for San Rafael, and former appointed City Attorney in Belvedere and Tiburon  
Robert Zweben, elected City Attorney for Albany, who has held this position since 1978 and whose current term expires in 2010  
Beth Pollard, appointed City Administrator for Albany

Details of the discussions with these people are reflected in the minutes of CRC meetings for November and December 2009. These discussions included five areas related to selecting a City Attorney: role and responsibility, competence, independence, accountability, and cost, which are summarized below.

Role and Responsibility. The responsibility of a City Attorney is to serve the City Council and its agents, namely City staff, and to render legal advice. The City Attorney is not the lawyer for the general public or any individual or group within the City. The only statement about the City Attorney in Albany's Charter is Section 3.10:

There shall be a City Attorney. The qualifications for the City Attorney shall be established by the City Council, which qualifications shall be established within ninety (90) days from ratification. The City Attorney shall be the legal advisor of the Council, and all other City officials on matters appertaining to their official duties. He shall draft all ordinances, resolutions, contracts or other legal documents or proceeding required by the Council, or other officials, except as may be otherwise provided, and shall perform such other legal services from time to time as the Council may require. He shall attend all meetings of the Council unless excused therefrom by the Council or the Mayor.

The responsibilities of the City Attorney in General Law cities are similar (see attached).

Competence. The Albany Municipal Code (Section 2-7.1) provides the requirements for City Attorney:

Qualifications. To be eligible to hold the office of City Attorney, the person elected or appointed shall be an attorney-at-law, duly licensed as such under the laws of the State of California, and shall have been engaged in the practice of law for at least five (5) years prior to his election or appointment, and shall be an elector of the City at the date of appointment or of the filing of nomination papers for election to the office. No person who is not an elector of the City shall hold the office of City Attorney.

A review of other cities indicates that the formal requirements for an elected City Attorney usually do not go beyond these same requirements.

The legislative and administrative decisions of a city government involve a wide range of legal issues that have become increasingly complex, with municipal law changing rapidly since the 1970s. Although there is no precise legal definition of “municipal law,” nor any specific legal definition of “municipal lawyer,” the range of issues facing a City Attorney include the municipal applications of land use law, employment law, contract law, property law, criminal law, and many other areas.

Few single attorneys are likely to have sufficient expertise to cover all of these areas adequately, so many small and medium size cities with appointed attorneys work with municipal law firms. With an elected City Attorney, there is no guarantee that a qualified person will run or that an unqualified person will not be elected. With Albany’s small population, there may be a limited pool of qualified residents, and as a result there may be a lack of qualified residents who are willing to run. With an appointed City Attorney, there is a larger pool of qualified lawyers, providing more options, from which the City can choose an individual or firm for the position. The current City Attorney has held the position for 32 years, and has served during a period when municipal law has become increasingly complex.

Independence. An elected City Attorney chooses his or her own boundaries, and can become involved with various aspects of any issue, ranging from legal to policy to politics. This affects staff, because they may not be able to distinguish between legal, policy, and political advice. Boundaries are also affected by term limits. Albany has no term limits for City Attorney, but there are term limits for the City Council. As a result the City Attorney may have more name recognition and standing than City Council members, which may be seen as implying that the City Attorney has more institutional authority than Councilors.

There may be a tendency to assume that an elected City Attorney will be more independent than an appointed official, as an elected attorney cannot be fired, and many people consider the ability of a client (the City acting through its elected legislature) to hire and fire its legal counsel as critical to a proper attorney-client relationship. The concern about independence may stem from a misunderstanding of the role of City Attorney. The City Attorney is the lawyer of the Council and city administration and not directly of the citizens. The duties of this position are no more and no less than to provide legal advice to the City Council. There is some concern that an elected City Attorney may become involved in policy and politics beyond the duty of offering legal advice to the City Council and City staff.

Accountability. An attorney should be able to assist a client in choosing wisely from a range of lawful discretionary actions. However, the attorney, who owes a high duty of loyalty to his or her client, must not be influenced by personal interest in the political or other external consequences of any such decision, and the attorney’s advice must be perceived as being free of these influences. Selecting a City Attorney through an electoral rather than an appointive process creates a significant potential for such a conflict.

Cost. It is difficult to ascertain, but an appointed City Attorney may cost more than an elected official, particularly if a firm (rather than an individual) is selected by the City Council. However, the cost of an inexperienced elected City Attorney may outweigh the extra financial cost of an appointed City Attorney with the proper expertise. Having an inexperienced attorney may require the City to hire consultants and lawyers for specialized functions, especially now that law related to city matters is increasingly complex.

Recommendation. At its January 2010 meeting, all CRC members were in favor of changing the City Charter and switching to an appointed City Attorney, and the CRC decided (by a 7-0 vote) to recommend that the City Council place this question before the voters in a suitable election in the near future.

If the City Council decides to move ahead, timing is critical because the election of the City Attorney will be on the ballot in November 2010. If the method of selecting the City Attorney is placed before the voters in a special election in June 2010, the result will determine whether or not an election for City Attorney is held in November 2010. However, if this issue is on the same ballot as the election for City Attorney in November 2010 (or later), the ballot must specify how and when an appointed City Attorney would take office if voters favor that option.

## **Cities with Elected City Attorneys: 2009 Population Rankings**

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### **480 California Cities Ranked by 1/1/2009 Total Population**

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<b>Rank</b>	<b>City</b>	<b>County</b>	<b>Total Population</b>	
1	Los Angeles	Los Angeles	4,065,585	Elected
2	San Diego	San Diego	1,353,993	Elected
4	San Francisco	San Francisco	845,559	Elected
6	Long Beach	Los Angeles	492,682	Elected
8	Oakland	Alameda	425,068	Elected
14	Chula Vista	San Diego	233,108	Elected
19	San Bernardino	San Bernardino	204,483	Elected
20	Huntington Beach	Orange	202,480	Elected
70	Compton	Los Angeles	99,431	Elected
143	San Rafael	Marin	58,363	Elected
312	Albany	Alameda	16,884	Elected
	California		31,685,654	

*State of California, Department of Finance, January 2009 Cities and Counties ranked by Size, Numeric and Percent Change. Sacramento, California, May 2009.*

[http://www.dof.ca.gov/research/demographic/reports/estimates/cities\\_ranked/2009/](http://www.dof.ca.gov/research/demographic/reports/estimates/cities_ranked/2009/)

[http://www.cacities.org/index.jsp?zone=locc&section=util&sub\\_sec=util\\_sitesearch&app=search](http://www.cacities.org/index.jsp?zone=locc&section=util&sub_sec=util_sitesearch&app=search)

**Charter Cities (cities with elected City Attorneys are highlighted)**

Source: <http://www.cacities.org/chartercities>

Adelanto	Marina	Santa Cruz
Alameda	Marysville	Santa Maria
<b>Albany</b>	Merced	Santa Monica
Alhambra	Modesto	Santa Rosa
Anaheim	Monterey	Santee
Arcadia	Mountain View	Seal Beach
Bakersfield	Napa	Shafter
Berkeley	Needles	Signal Hill
Big Bear Lake	Newport Beach	Solvang
Buena Park	Norco	Stockton
Burbank	<b>Oakland</b>	Sunnyvale
Carlsbad	Oroville	Temple City
Cerritos	Pacific Grove	Torrance
Chico	Palm Desert	Truckee
<b>Chula Vista</b>	Palm Springs	Tulare
<b>Compton</b>	Palmdale	Vallejo
Culver City	Palo Alto	Ventura
Cypress	Pasadena	Vernon
Del Mar	Petaluma	Victorville
Desert Hot Springs	Piedmont	Visalia
Dinuba	Placentia	Vista
Downey	Pomona	Watsonville
El Centro	Port Hueneme	Whittier
Eureka	Porterville	Woodlake
Exeter	Rancho Mirage	
Folsom	Redondo Beach	
Fortuna	Redwood City	Total Cities: 116
Fresno	Richmond	
Gilroy	Riverside	
Glendale	Roseville	
Grass Valley	Sacramento	
Hayward	Salinas	
<b>Huntington Beach</b>	<b>San Bernardino</b>	
Indian Wells	<b>San Diego</b>	
Industry	<b>San Francisco</b>	
Inglewood	San Jose	
Irvine	San Leandro	
Irwindale	San Luis Obispo	
Kingsburg	San Marcos	
La Quinta	San Mateo	
Lemoore	<b>San Rafael</b>	
Lindsay	San Ramon	
Loma Linda	Sand City	
<b>Long Beach</b>	Santa Ana	
Los Alamitos	Santa Barbara	
<b>Los Angeles</b>	Santa Clara	

## Miscellaneous Government Code provisions concerning the Office of City Attorney in General Law Cities

[Items in brackets and italics are added for clarity and emphasis. Numbers at the beginning of paragraphs below are the section numbers of the Government Code. Compiled by Bob Outis.]

34856. The city manager [of a general law city] may appoint and dismiss the chief of police and other subordinate appointive officers and employees *except the city attorney*. When the offices of city clerk and city treasurer are made appointive, appointments to such offices shall be made by the city council unless the city council vests such appointing power in the city manager by ordinance.

36501. The government of a general law city is vested in:

- (a) A city council of at least five members.
- (b) A city clerk.
- (c) A city treasurer.
- (d) A chief of police.
- (e) A fire chief.
- (f) Any subordinate officers or employees provided by law.

36505. The city council shall appoint the chief of police. It may appoint a city attorney, a superintendent of streets, a civil engineer, and such other subordinate officers or employees as it deems necessary.

36506. By resolution or ordinance, the city council shall fix the compensation of all appointive officers and employees. Such officers and employees hold office during the pleasure of the city council.

41801. The city attorney shall advise the city officials in all legal matters pertaining to city business.

41802. He shall frame all ordinances and resolutions required by the legislative body.

41803. He shall perform other legal services required from time to time by the legislative body.

41803.5(a) With the consent of the district attorney of the county, the city attorney of any general law city or chartered city within the county may prosecute any misdemeanor committed within the city arising out of violation of state law. This section shall not be deemed to affect any of the provisions of Section 72193.

(b) In any case in which the district attorney is granted any powers or access to information with regard to the prosecution of misdemeanors, this grant of powers or access to information shall be deemed to apply to any other officer charged with the duty of prosecuting misdemeanor charges in the state, as authorized by law.

41803.7. Whenever the city attorney is acting as a prosecutor in a criminal case pursuant to any provision of law or under a city charter, he shall have the power to issue subpoenas in a like manner as the district attorney.

41804. The city attorney shall receive such compensation as is allowed by the legislative body.

41805. (a) No city attorney who does not, in fact, exercise prosecutorial responsibilities on behalf of the city or cities by which he is employed shall be precluded from defending or assisting in the defense of, or acting as counsel for, any person accused of any crime except for violation of any ordinance of the city or cities by which he is employed, provided that:

(1) The city or cities by which he is employed expressly relieve him of any and all prosecutorial responsibilities on its or their behalf; and

(2) The accused has been informed of and expressly waives any rights created as a result of any potential conflict created by his attorney's position as a city attorney.

(b) Where the above provisions are met, no partner or associate of a city attorney shall be prevented from defending or assisting in the defense of, or acting as counsel for, any person accused of any crime except for violations of any ordinance of the city or cities by which his partner or associate is employed as a city attorney.

This section shall not preclude any city from limiting or prohibiting the private practice of any attorney it retains or employs.