

**Preliminary Report of the City Attorney/Boards & Commissions Committee
of the 2018 City of Austin Charter Revision Commission**

Summary and Proposed Options:

The City of Austin is an outlier in terms of how its city attorney is appointed. According to the most recent Texas Municipal League survey in 2010, most Texas home-rule cities (73%) authorize their council to appoint the city attorney directly.

In regard to the appointment of Austin’s city attorney, the options for the 2018 Charter Revision Commission (“2018 CRC”) to consider are:

Option One:	Status quo, with no charter revisions recommended. City attorney continues to be appointed by the city manager with no input from council.
Option Two:	The city council appoints the city attorney
Option Three:	The city manager selects the city attorney, with council approval
Option Four:	The city council appoints the city attorney, on recommendation of the city manager
Option Five:	Mayor appoints the city attorney, with council approval

Introduction: The City Attorney/Boards & Commissions Committee (the “Working Group”), consisting of Matt Hersch, Diego Martinez-Moncada, and Jessica Palvino, was asked to review Item 10.d – “Appointment of the City Attorney by the City Council” – contained in Resolution 20170622-040 and provide recommended options to the 2018 CRC. Our research and findings are presented below.

Charter Provision At-Issue:

The Working Group reviewed potential revisions to Article V, Section 6 of the City of Austin’s Charter. Currently, this section reads:

CITY ATTORNEY.

There shall be a department of law, the head of which shall be the city attorney, **who shall be appointed by the city manager.** The city attorney shall be a competent attorney who shall have practiced law in the State of Texas for at least five (5) years immediately preceding his or her appointment. The city attorney shall

be the legal advisor of, and attorney for, all of the officers and departments of the city, and he or she shall represent the city in all litigation and legal proceedings. He or she shall draft, approve, or file his or her written legal objections to, every ordinance before it is acted upon by the council, and he or she shall pass upon all documents, contracts and legal instruments in which the city may have an interest.

There shall be such assistant city attorneys as may be authorized by the council, who shall be authorized to act for and on behalf of the city attorney.

Amendment note: Section 6 appears as amended at the election of November 6, 2012.

In particular, the Working Group focused its efforts on whether the city attorney should continue to be appointed by the city manager.

Background:

Proposed revisions to Article V, Section 6, which would have required the city attorney to report to council rather than the city manager, were presented to City of Austin voters in 2012 and failed to pass.

In its February 22, 2012 Report to City Council, the 2012 Charter Revision Committee (“2012 CRC”) recommended by a vote of 14-1 that “Council appoints the City Attorney.” These recommendations were adopted by the Council and included on the November 2012 ballot as Proposition 6. (See Att. 1, Ordinance No. 20120426-069).

In adopting the 2012 CRC’s recommendation, council members expressed concerns about the current structure (which still exists today) under which the city attorney was appointed by the city manager. (See Att. 2, *Proposition 6 would allow Austin City Council to hire, fire City Attorney*, Austin-American Statesman, October 31, 2012).

Proposition 6 failed to pass, with 49.37% voting “Yes” and 50.63% voting “No.”

PROP. 6, CITY OF AUSTIN					
237 of 237 Precincts Reporting					
Yes	73,555	50.13%	44,256	48.15%	117,811 49.37%
No	73,160	49.87%	47,666	51.85%	120,826 50.63%
	Total Votes Counted in this Race:				
	146,715		91,922		238,637

Survey of Comparable Cities:

The Texas Home Rule Charters, Second Edition (2010) published by the Texas Municipal League reflects that Austin is an outlier in terms of how it selects a city attorney. (See Att. 3, Texas Home Rule Charters - Second Edition (2010) at 66). In most home-rule cities, the city attorney is appointed by the city council (73%). Only six percent (6%) of home-rule cities allow the city manager to select the city attorney without input from the council, which is the selection method currently contained in the City of Austin’s Charter. In nine percent (9%) of home-rule cities, the city manager selects the city attorney with council approval. In three

percent (3%) of home-rule cities, the city council appoints the city attorney on the recommendation of the city manager. In seven percent (7%) of home-rule cities, the mayor appoints the city attorney with council approval.

In Houston and El Paso, the mayor appoints the city attorney with the approval of city council. (See Att. 3 at 66) In Dallas, the appointment is by council. (Att. 3 at 66). In Fort Worth, the city attorney is appointed by the city council on recommendation of the city manager. (Att. 3 at 66). In San Antonio, the city manager appoints the attorney and no council confirmation is required. (Att. 3 at 66).

Summary of Argument Supporting Council Appointment of City Attorney:

Proponents of having the city attorney appointed by council argue that this is a key step for accountability. They argue that it is important for council members – who are accountable to the voters – have an attorney representing the city who is accountable to them.

If legal advice goes through the city manager, then there is a risk that the advice is filtered before it reaches council. Many legal questions are so crucial that the city council needs to be sure the attorney’s opinion is not “laundered” in any way before it gets to the council.

In connection with Proposition 6, Marcus Norris, former head of the Texas City Attorneys Association, explained the pros and cons of having the city attorney report directly to council. (See Att. 2). He explained that having the attorney report to the council can make more sense in large cities, where being a council member is a full-time job, Norris said. “If a council is actively involved in day-to-day activities at City Hall, they might not want to wait in line and say, ‘city manager, can you please have the city attorney take a look at this.’” (See Att. 2).

Proponents also point out that the overwhelming majority of home-rule cities require the city attorney to be appointed directly by council.

Summary of Argument Supporting City Manager Appointment of City Attorney:

On the opposite side, some argue that having both the manager and the attorney report to the city council can be divisive. The city manager and city attorney must often work closely together on difficult issues, so having the manager appoint the attorney can make for better teamwork between the two.

In connection with Proposition 6, former Austin City Attorney Barney Knight opposed the change. (Att. 2) He stated that he opposed the change because city councils in big cities often hire an attorney who is politically well-connected, but “does not understand how intense a specialty municipal law is. Whereas if a city manager picks a city attorney, they tend to concentrate on the breadth and depth of their municipal law experience” (Att. 2).

Marcus Norris explained the cons of having the city attorney report directly to council. (Att. 2). He explained that the city manager and city attorney often must work closely on difficult issues, so having the manager appoint the attorney “can make for better teamwork between the two.

The manager doesn't feel like the attorney is the city council tattletale looking over (the manager's) shoulder." (Att. 2.