

ORDINANCE NO. 3147

ORDINANCE OF THE CITY OF CHULA VISTA ADDING
CHAPTER 2.11 TO THE CHULA VISTA MUNICIPAL CODE
RELATING TO THE OFFICE OF THE ELECTED CITY
ATTORNEY

WHEREAS, in November of 2008, the residents of the City of Chula Vista approved Proposition Q, which amended the Chula Vista City Charter to make the office of City Attorney an elected office of the City; and

WHEREAS, Proposition Q made changes to the City Charter related to the City Attorney's role, powers and relationship with the City Council; and

WHEREAS, portions of Proposition Q require City Council action to ensure the measure's full implementation; and

WHEREAS, the City Council intends to fully implement Proposition Q by adding Chapter 2.11 to the Chula Vista Municipal Code.

NOW, THEREFORE, the City Council of the City of Chula Vista does ordain as follows:

SECTION 1:

That Chapter 2.11 of the Municipal Code is hereby added to read as follows:

Chapter 2.11
ELECTED CITY ATTORNEY

SECTIONS:

- 2.11.010 Findings
- 2.11.020 Purposes
- 2.11.030 Compensation of City Attorney
- 2.11.035 City Attorney Benefits
- 2.11.040 Declaration of Vacancy
- 2.11.050 Filling a Vacancy
- 2.11.060 Boards, Commissions and Agencies of the City
- 2.11.070 Council Approval or Ratification of Legal Proceedings
- 2.11.080 Appointment of Special Counsel
- 2.11.090 Conflicts of Interest

2.11.010 Findings.

A. In November of 2008, the residents of the City of Chula Vista approved Proposition Q, which amended the Chula Vista City Charter to make the office of City Attorney an elected office of the City (“the Measure”).

B. The City Council finds that implementation of portions of the Measure requires action by the City Council.

C. The City Council further finds that the Chula Vista Municipal Code should be amended to implement the Measure where City Council action is required.

D. The City Council further finds that this Ordinance is not intended to, and does not in any way, amend or alter the provisions of the Measure. In the event of conflict between this Ordinance and the Measure, the Measure shall govern.

2.11.020 Purposes

A. The City Council intends by adding this Chapter to implement the Measure, to ensure the complete and seamless transition of the office of City Attorney from an appointed to an elected position, and to ensure compliance with state and local laws.

B. The City Council does not intend by this Chapter to expand or restrict the Measure’s scope or seek to address issues already specifically addressed in the Measure.

2.11.030 Compensation of City Attorney.

The Measure authorizes the City Council to set the compensation of the City Attorney. In addition, the Measure specifies a formula to determine the minimum compensation that may be paid to the City Attorney. To implement this formula, the City Council shall, as of February of each year, use the most current annual population estimates published by the California Department of Finance, to determine the six California cities whose populations are closest to the City, as specified in the Measure. In the event that the city attorney of any comparable city is not an employee of that city, the compensation for such city attorney shall not be used as a comparison and the city with the next higher and/or next lower population, as applicable, shall be used in the comparison.

As of March of each year, the City, through the City Manager or designee of the City Manager, shall, for each comparable city as identified above, obtain a copy of the employment contract for the city attorney and/or other documentation necessary to demonstrate the city attorney’s compensation. This data shall be used to calculate the minimum compensation of the City Attorney. The minimum compensation as calculated by the City Manager or designee of the City Manager shall be made available to the public within a reasonable time after the calculation is approved by the City Manager but not later than May of each year.

For purposes of this Section, the “compensation” of the city attorneys of the comparable cities shall mean the base salaries of the city attorneys as set forth in their respective employment contracts.

2.11.035 Benefits.

The City Attorney shall be entitled to receive benefits commensurate with the benefits provided to other elected officials of the City.

2.11.040 Declaration of Vacancy.

The Measure sets forth circumstances in which the City Council may declare the office of City Attorney vacant. A declaration of vacancy shall be made during a duly noticed regular or special City Council meeting, which may include a closed session as authorized by the Ralph M. Brown Act. Prior to declaring the office of City Attorney vacant, the City Council shall make and adopt findings, by a resolution approved by a 2/3rds vote, setting forth the basis for such declaration.

2.11.050 Filling a Vacancy.

The Measure provides that a vacancy in the office of City Attorney be filled by the City Council when fewer than 24 months remain in the term of the office. At such time as a vacancy in the office of City Attorney is declared by the City Council with less than 24 months remaining in the unexpired term, the City Council shall seek to fill the vacancy through a process that substantially complies with the process set forth in this Section 2.11.050.

To fill a vacancy in the office of the City Attorney when fewer than 24 months remain in the term of the office, the City Council shall first direct the City Clerk to make applications for the position of City Attorney available to the public and shall designate the time period for submitting applications, which time period shall be no less than ten (10) business days from the date applications are made available to the public. On such date as is designated by the City Council, the City Clerk shall make applications for the office of City Attorney available to the public at the City Clerk’s office, on the City’s website, and at any other location(s) that the City Clerk deems appropriate. Applicants must submit to the City Clerk, by the established deadline, a completed application, an economic interest disclosure form, a resume, and any additional information in support of such application. The City Clerk shall not accept late applications.

No later than five (5) days after the close of the application period, the City Clerk shall prepare and submit to the Mayor and City Council a copy of all application packages timely received and shall also establish a deadline for nominations. The Mayor and the City Council shall submit to the City Clerk, within the specified time period for response established by the City Clerk, an unrestricted number of names of applicants to be interviewed. Applicants receiving two or more nominations will be invited for an interview. With the unrestricted list of names, the Mayor and the City Council shall also submit the question(s) that they would like asked of the applicants invited to be interviewed.

Applicants will be interviewed during a noticed, public meeting of the City Council on a date selected by the City Council. Following the interview(s), the City Council shall vote to select an applicant to fill the vacancy by a majority vote of the City Council. The replacement shall be appointed to office within 60 days of the declaration of vacancy by the City Council.

2.11.060 Boards, Commissions and Agencies of the City.

The Measure provides that the City Attorney shall advise all boards, commissions and agencies of the City on legal matters referred to him or her. The City Council may waive the referral requirement and authorize, by resolution, any board, commission or agency to directly request services of the City Attorney. Otherwise, all boards, commissions and agencies of the City shall be required to request City Council authorization prior to referring matters to the City Attorney. In such cases, in order to request legal services, the board, commission or agency requesting such services shall present a written request to the City Council, which shall specify the particular matter or matters for which the board, commission or agency seeks services, a description of the requested scope of services, and any time constraints associated with said services. The City Council shall hear and act upon such request during a duly noticed regular or special City Council meeting, which may include a closed session as authorized by the Ralph M. Brown Act. If approved, the City Council shall forward the request to the City Attorney for action. The City Council may also, by resolution, delegate to the City Manager the authority to approve referrals from any board, commission or agency to the City Attorney.

The City Attorney may recommend to the City Council, at any time, that a board, commission or agency be represented by special legal counsel, when, in the sole discretion of the City Attorney, it is necessary in order to avoid a conflict of interest under state or local law.

2.11.070 Council Approval or Ratification of Legal Proceedings.

The Measure provides that the City Attorney may exercise discretion as to when to commence or maintain legal proceedings when a cause of action exists in favor of the City. The City Attorney shall seek approval before commencing or maintaining a claim on behalf of the City whenever possible. Whenever the City Attorney requests prior approval of such a claim, the City Council shall act on the request by the City Attorney to commence or maintain legal proceedings within a reasonable time and shall make any necessary adjustments to the City budget. In the event that the City Attorney is unable to request approval prior to commencing or maintaining a claim, the City Attorney shall request that the City Council schedule a closed session item for ratification of the claim at the next available duly noticed regular or special City Council meeting. In the event that the City Council declines to approve or ratify the legal proceedings, the City Attorney shall complete all activities necessary to conclude or terminate the legal proceedings in the most timely and cost-effective manner. Nothing in this Section 2.11.070 shall affect the authority of the City Attorney to prosecute code enforcement violations of the Chula Vista Municipal Code.

2.11.080 Appointment of Special Counsel.

The Measure authorizes the City Council to empower the City Attorney, at his or her request, to employ special legal counsel. In requesting the appointment of special legal counsel, the City Attorney shall present a written request to the City Council specifying the basis for the request for special legal counsel and the timeframe, scope and matter for which the special legal counsel is recommended. The request shall be heard during a duly noticed regular or special City Council meeting, and may include a closed session as authorized by the Ralph M. Brown Act. Upon approval of the use of special legal counsel, the City Council shall make any necessary adjustments to the City budget. The City Council may, by resolution, delegate this approval authority to the City Manager.

2.11.090 Conflicts of Interest.

The Measure provides that an officer of the City may, upon recommendation of the City Attorney and approval of the City Council, retain special legal counsel when a conflict of interest exists between the City Attorney and such officer of the City. Under such circumstances, the City Attorney shall make a written recommendation to the City Council that the City retain special legal counsel. The written recommendation shall include the basis for the conflict of interest and the timeframe, scope and legal matter for which the outside legal counsel is recommended. The City Council shall consider and act upon the written recommendation of the City Attorney at a duly noticed regular or special City Council meeting, including a closed session as authorized by the Ralph M. Brown Act.

SECTION II. SEVERABILITY.

If any section, subsection, sentence, clause, phrase or portion of this Chapter is for any reason held invalid or unconstitutional, such portion shall be deemed a separate and independent provision and such decision shall not affect the validity of the remainder.


SECTION III.

This Ordinance will take effect and be in full force thirty (30) days from final passage.

SECTION IV. CERTIFICATION.


The City Clerk shall certify to the adoption of this Ordinance and cause it, or a summary of it, to be published once in a newspaper of general circulation printed and published within the City of Chula Vista.

Presented by



James D. Sandoval
City Manager


Approved as to form by



Shawn Hagerty
Special Counsel

PASSED, APPROVED, and ADOPTED by the City Council of the City of Chula Vista, California, this 15th day of December 2009, by the following vote:

AYES:	Councilmembers:	Bensoussan, Castaneda, Ramirez, Thompson and Cox
NAYS:	Councilmembers:	None
ABSENT:	Councilmembers:	None



 Cheryl Cox, Mayor

ATTEST:



 Donna R. Norris, CMC, City Clerk

STATE OF CALIFORNIA)
 COUNTY OF SAN DIEGO)
 CITY OF CHULA VISTA)

I, Donna R. Norris, City Clerk of Chula Vista, California, do hereby certify that the foregoing Ordinance No. 3147 had its first reading at a regular meeting held on the 8th day of December 2009 and its second reading and adoption at a regular meeting of said City Council held on the 15th day of December 2009; and was duly published in summary form in accordance with the requirements of state law and the City Charter.

Executed this 15th day of December 2009.



 Donna R. Norris, CMC, City Clerk