



N

City of Huntington Beach, Charter Amendment Measure 3

Shall proposed Charter Amendment Measure 3 to: define the Attorney-Client relationship between City Attorney and City, designating City Council as Client; determine all legal matters to be controlled by City Council and managed by City Attorney under City Council direction; permit City Council to contract with other attorneys if the City Attorney has a conflict of interest; require City Attorney to keep all legal records and comply with requests for information, be approved?

What your vote means

YES	NO
A "YES" vote will approve the proposed amendments above.	A "NO" vote will not approve the proposed amendments.

For and against

FOR	AGAINST
Rhonda Bolton City Councilmember Dan Kalmick City Councilmember	Erik Peterson Councilmember



Ballot Measures-N

Full Text of Measure N City of Huntington Beach

Text in **bold underline** = proposed additions - Text with ~~double strike outs~~ = proposed deletions

Charter Amendment Measure No. 3

Section 304. QUORUMS, PROCEEDINGS AND RULES OF ORDER.

(b) **Proceedings.** The City Council shall judge the qualification of its members as set forth by the Charter. It shall judge all election returns. Each member of the City Council shall have the power to administer oaths and affirmations in any investigation or proceeding pending before the City Council. The City Council shall have the power and authority to compel the attendance of witnesses, to examine them under oath and to compel the production of evidence before it. Subpoenas shall be issued in the name of the City and be attested by the City Clerk. They shall be served and complied with in the same manner as subpoenas in civil actions. Disobedience of such subpoenas, or the refusal to testify (upon other than constitutional grounds), shall constitute a misdemeanor, and shall be punishable in the same manner as violations of this Charter are punishable. ~~The City Council shall have control of all legal business and proceedings and all property of the legal department, and may employ other attorneys to take charge of or may contract for any prosecution, litigation or other legal matter or business.~~

Section 309. CITY ATTORNEY. POWERS AND DUTIES. To become and remain eligible for City Attorney the person elected or appointed shall have graduated from a law school accredited by the American Bar Association, be an attorney at law, duly licensed as such under the laws of the State of California, shall have been engaged in the practice of law in this State for at least five years prior to their election or appointment. The City Attorney shall have the power and may be required to:

- (a) Represent and advise the City Council and all City officers in all matters of law pertaining to their offices, **except as otherwise provided in this Charter.**
- (b) Prosecute on behalf of the people any or all criminal cases arising from violation of the provisions of this Charter or of City ordinances and such state misdemeanors as the City has the power to prosecute, unless otherwise provided by the City Council.
- (c) Represent and appear for the City in any or all actions or proceedings in which the City is concerned or is a party, and represent and appear for any City officer or employee, or former City officer or employee, in any or all civil actions or proceedings in which such officer or employee is concerned or is a party for any act arising out of their employment or by reason of their official capacity, **except as otherwise provided in this Charter.**
- (d) Attend all regular meetings of the City Council, unless excused, and give their advice or opinion orally or in writing whenever requested to do so by the City Council or by any of the boards or officers of the City.
- (e) Approve in writing the form of all contracts made by and all bonds and insurance given to the City.
- (f) Prepare any and all proposed ordinances and City Council resolutions and amendments thereto.
- (g) Devote such time to the duties of their office and at such place as may be specified by the City Council.
- (h) Perform such legal functions and duties incident to the execution of the foregoing powers as may be necessary, **except as otherwise provided in this Charter.**
- (i) **Maintain the records of their office in compliance with all City policies and applicable law, and** ~~surrender~~ to their successor all books, papers, files, and documents pertaining to the City's affairs.
- (j) Assist and cooperate with the City Manager consistent with Section 403 of the City Charter.
- (k) Provide advice related to compliance with the City Charter, **the Municipal Code, and applicable laws** to all elected and appointed officials of the City.

Section 310. ATTORNEY-CLIENT RELATIONSHIP.

(a) Pursuant to the California Rules of Professional Conduct, the civil client of the City Attorney is the municipal corporation, the City of Huntington Beach. The City Council shall have control of all litigation of the City, to the extent that the relationship between attorney and client permits or authorizes such control by the client. The City Attorney shall manage all litigation and legal matters of the City in accordance with this Section, subject to client direction by the City Council, and subject to the City Attorney's duty to act in the best interests of the City and to conform to applicable law and ethical and legal obligations. The City Council shall control the assertion and waiver of the attorney-client privilege. The City Council may direct the City Attorney or the City Manager to contract with other attorneys to take charge of any prosecution, litigation, or other legal matter or business in any of the following circumstances:

- (1) At the request of the City Attorney; or**
- (2) On its own initiative:**

(A) in the event of a conflict of interest for the City Attorney or their office under applicable law or the California Rules of Professional Conduct;

(B) in the event that a legal matter directly involves or relates to the City Attorney, their office, or staff in a way that is materially different than the impact of the matter on other City Departments.

(b) The City Council shall have client control of all legal business and proceedings and all property of the legal department. The City Attorney shall keep records of all actions and proceedings in which the City or any officer, employee, Board, or Commission is an interested party, and copies of all written opinions given by the City Attorney's office. The City Attorney shall comply with all direction and requests for information from members of the City Council and the City Manager, and shall report to the City Council on the status and progress of litigation on a regular basis and upon reasonable request.

Ballot Measures-NImpartial Analysis
City of Huntington Beach
Measure N**Current Huntington Beach City Charter**

The current Huntington Beach City Charter assigns powers and duties regarding the City's legal business to both the City Council and City Attorney. Section 304(b) states that the City Council controls all legal business, proceedings and property of the City and may hire other attorneys to manage legal matters and business; Section 309 states that the City Attorney represents and advises the City Council and City officers in all legal matters, in addition to other duties.

Proposed Amendments to the Charter

The City is proposing Charter Amendment Measure N ("Measure N"), which would amend the Charter by delineating the powers and duties of the City Council and City Attorney as they relate to the City's legal business. The proposed amendments in Measure N are below:

Add a new Section 310 – New Section 310(a) defines the attorney-client relationship in the City, with the City as the client. As the City's representative, the City Council (client) would direct all litigation and legal matters. The City Attorney (attorney) would, in turn, receive that direction and manage all litigation and legal matters accordingly.

New Section 310(a) also permits City Council to hire outside attorneys to manage certain legal matters, but only in specific, limited circumstances: (1) at the request of the City Attorney (2) in the event the City Attorney or their office may have a conflict of interest, or (3) if a legal matter directly involves or relates to the City Attorney, their office or staff. New Section 310(b) also provides detailed instructions for the City Attorney on handling legal records and providing regular status updates on litigation. Existing Section 309(i), which is related to records, is amended to be consistent with new Section 310(b).

Other amendments – Measure N proposes additional amendments with less substantive changes that allow existing Sections to be consistent with the new Section 310, such as adding the phrase "except as otherwise provided in this Charter" throughout Section 309 (City Attorney Powers and Duties) and deleting the final sentence in Section 304(b) since it is generally restated throughout new Section 310. Lastly, Section 309(k) would be amended to clarify that the City Attorney will provide advice on compliance with the Municipal Code and other applicable laws.

Measure N was placed on the ballot by the City Council in response to the recommendations of the appointed Charter Revision Committee comprised of seven residents and City representatives. Measure N requires simple majority approval of voters to take effect. A "YES" vote will approve the proposed amendments above. A "NO" vote will not approve the proposed amendments.



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Argument in Favor of Measure N

Rebuttal to Argument in Favor of Measure N

Every component of our City government owes our residents the duties of accountability, transparency, and integrity. In contrast, the City Attorney's office has interpreted our City's Charter to permit it to act in a manner contrary to state law and norms of professional responsibility for attorneys: the City Attorney's office maintains that it must have oversight of legal matters even when that office has a **conflict of interest**.

Councilmembers Bolton/Kalmick PROVE this is a POWER-GRAB to give City Council MORE POWER to hire outside attorneys - BYPASSING the voters' City Attorney. It's DANGEROUS - it undermines the INDEPENDENCE of the City Attorney that HB has voted for since early-1900s. The City Attorney has successfully fought FOR THE RESIDENTS, won countless major legal victories, and ensured City Council follows ALL LAWS. This Amendment gives MORE POWER to City Council to secretly hire attorneys behind closed-doors, hidden from voters. In 2021, City Council hired lapdog attorney Craig Steele, who is a progressive POLITICAL activist and favorite of Councilmember Kalmick. City Council paid Steele taxpayer money to produce a phony "political hit piece" attacking Mr. Gates. This is what giving City Council, a highly political body of non-lawyers, the POWER to hire their lapdog attorneys produces - political harm and deception designed to dupe the public into believing this proposed Charter Amendment is necessary. The only thing it proves is the DANGER created by hiring attorneys behind closed-doors. Although highly critical of Mr. Gates, Bolton/Kalmick were NOT ON CITY COUNCIL during most of Mr. Gates's legal work. Yet, Bolton/Kalmick make a number of false claims against Mr. Gates, which are not true. I have worked with Mr. Gates for 8 years. All decisions were made BY CITY COUNCIL and Mr. Gates is nothing but a stellar City Attorney. Vote NO.

Such misinterpretation of the Charter invites abuse, to taxpayers' detriment. It is also completely inconsistent with fundamental principles of sound governance. Significantly, the City Attorney's misinterpretation has already contributed to circumstances that, in our opinion, disadvantaged the City in certain litigation, resulting in a \$2,500,000 payout to two former City Attorney office employees and a \$1,500,000 legal bill for the City. Our opinion is based on an independent operational review of how the City handled this litigation.

s/ Erik Peterson
Huntington Beach City Council Member

Using the same Charter misinterpretation, the City Attorney's Office also tried to thwart this independent review, and even hired another outside firm (at taxpayer's expense) to threaten to sue the City Council. This cannot be what voters intended when they elected their City Attorney.

The review (available at <https://bit.ly/3RvZHfg>) found numerous, serious irregularities and a significant breakdown in the attorney-client relationship between the City Council and the City Attorney's office. It made a number of recommendations including amending the Charter; this Measure is the result. The Citizens Charter Review Committee concurred with this amendment.

We urge adoption of the revisions suggested in Measure N to make clear the respective roles and responsibilities of the City Attorney and the City Council concerning the City's legal affairs and to clarify that the City Attorney must be recused from acting as counsel or supervising matters where the City Attorney may have a conflict of interest.

s/ Rhonda Bolton
City Councilmember

s/ Dan Kalmick
City Councilmember

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Argument Against Measure N

Vote NO on this measure to amend the City Charter. This amendment changes the City Attorney role from representing the "City," to representing the "City Council as Client." This is a dangerous POWER GRAB by the City Council who is looking to REMOVE the INDEPENDENCE FROM the current CITY ATTORNEY position. This would take away the elected City Attorney's ability to fight for the City and the taxpayers, and make him/her beholden to the City Council, a highly political body. The City Council wants the voters to believe, as the not-so-independent analysis suggests, that this measure is harmless and simply "clarifies" the attorney-client relationship. Not true. This measure GIVES the CITY COUNCIL new POWER, i.e., the authority to bypass the elected City Attorney in order to directly hire outside attorneys at great taxpayer expense. We need to maintain the current, cost-efficient, checks and balances, full transparency and accountability that the independently elected City Attorney gives us. Vote NO on this amendment and retain the independence of the elected City Attorney so that they work for the voters not City Council.

s/ Erik Peterson
Councilmember

Rebuttal to Argument Against Measure N

This amendment makes no changes to the City Attorney's current role. The City Council has always been the Client, with the exclusive right to direct the City Attorney in their representation of the City. While the City Attorney is an elected position in Huntington Beach, it is NOT an independent position. The City Attorney cannot "fight for the City and the taxpayers," as the opponent of this Measure states, WITHOUT City Council authorization.

I authored the legal opinion that defines the authority of the City Council and City Attorney under the Charter. The current City Attorney has warped that opinion. It was NEVER intended to preclude the Council from hiring outside counsel when a **conflict of interest** arises.

Thus, this amendment clarifies and defines only two narrow instances where the City Council may hire counsel outside the City Attorney's purview: 1) when a conflict of interest arises as defined by the California Rules of Professional Conduct for Attorneys; or 2) when a legal matter directly involves the City Attorney or their office. These instances are already defined in State law, but the current City Attorney has taken an aggressive position that contradicts these standard legal interpretations.

I strongly support having an elected City Attorney and would reject any amendment that would undermine that office, or constituted a "power grab." Measure N is a good governance measure.

I urge you to vote YES on Measure N

s/ Gail Hutton
Elected Huntington Beach City Attorney 1978-2002