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Proposition 6 would allow Austin City Council to hire, fire city attorney



Sarah Coppola - American-Statesman Staff
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This story is the last in a series of reports on Austin propositions on the Nov. 6 ballot. To find previous coverage of Austin ballot measures, go to statesman.com/go/elections.

The Austin City Council, at times troubled by the legal advice it has received, would gain the power to hire and fire the city attorney under Proposition 6 on Tuesday's ballot. Currently, the city manager has that authority.

Council members say the current structure proved especially problematic a few years ago, when the city commissioned a report from KeyPoint Government Solutions about the 2009 police shooting of Nathaniel Sanders II.

Acting on advice from then-City Attorney David Smith, the city withheld the report for months, releasing it only after the American-Statesman obtained and made public the report and ran a story contrasting the city's handling of the report with an investigation of a 2002 police shooting. Smith resigned, partly because of the controversy over the issue.

Council members say the matter might have unfolded differently had Smith reported directly to them. The city attorney's role is written into the city's charter, or constitution, so only a public vote can change it.

Council Member Mike Martinez said the council also plans to create a five-year term for the city attorney and require a vote of five out of seven council members to oust the attorney midterm. Voters in 2008 approved a similar job structure for the city auditor. (That structure isn't part of Proposition 6 and would have to be approved by the council if the proposition passes, a city spokesman said.)

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"We saw some switching and flip-flopping on legal opinions" on the KeyPoint matter, Martinez said this week. "I think (the five-year term) would free the city attorney from outside influence and hopefully reduce if not eliminate the switching of opinions depending on the circumstances."

Council members have also hinted they didn't get good legal advice about open meetings laws and policies before County Attorney David Escamilla early last year began investigating allegations that the council violated open meetings laws. (Council members recently signed deferred prosecution deals and won't face criminal charges.)

Karen Kennard, who has been Austin's city attorney since March 2011 and earns \$183,851, declined to be interviewed for this story but said in an email that "regardless of the outcome of Prop. 6, our offices will continue to do the best job we can to provide exemplary legal services."

Martinez said Kennard "works very hard for the city and is well-respected," and that if Proposition 6 passes, the council would decide if it wants to seek other candidates for the job.

The City Council also has the power to hire and fire the city manager, city clerk, municipal court clerk and municipal court judges.

A 2010 Texas Municipal League survey of 350 Texas cities found that in 80 percent of them, the city councils appoint the city attorney; in the rest, the city manager has that power.

"Some contend that 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," league officials wrote in a summary of the survey. But "having both the manager and the attorney report to the city council can be divisive, particularly if the attorney has a disposition to mix some policy advice with legal advice."

Barney Knight, who was Austin's city attorney in the 1980s and now serves in that role for small Texas cities, said he opposes 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," Knight said.

Marcus Norris, head of the Texas City Attorneys Association, said there are pros and cons to both approaches.

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 tattle-tale looking over (the manager's) shoulder," said Norris, the city attorney in Amarillo.

But 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,'" he said.

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