

**SUMMARY REPORT TO BOARD OF SUPERVISORS**

**Review and Analysis of FY 2017-18 Charter Review Committee Recommendations**

**June 20, 2018**

## TERM LIMITS

### Article II, Board of Supervisors, Section 202, “Term Limits”

#### Current Charter Section Language

As currently written, County Charter Section 202 limits the term for Supervisors on the Board to two successive terms, each of four years, with the ability to serve additional years in office after a four-year break in service.

#### Charter Review Committee Recommendation

The Committee recommended that Term of Offices (of members of the Board of Supervisors) be revised as follows:

*The term of office of supervisor is four years. ~~Board members shall be limited to two consecutive terms. No person elected supervisor may serve as such for more than two successive four year terms. Any person elected to the office of supervisor to complete in excess of two years of a four year term shall be deemed, for the purpose of this section, to have served one full term upon the expiration of that term. No person having served two successive four year terms may serve as a supervisor until at least four years after the expiration of the second successive term in office. Any supervisor who resigns with less than two full years remaining until the expiration of the term shall be deemed, for the purpose of this section, to have served a full four year term. The above shall not disqualify any person from running for election to the Board of Supervisors for any term or terms which are not successive. The term of office commences at noon on the first Monday after the January 1st succeeding their election.~~*

*The supervisor for each of the First, Second and Third Districts shall be elected in ~~1996~~even numbered years when Presidential elections occur. The supervisor for each of the Fourth and Fifth Districts shall be elected in ~~1994~~even numbered years when Presidential elections do not occur.*

#### Charter Review Committee Discussion

The 2015-16 Grand Jury report Case 15-04, Recommendation R: 1, proposed the removal of term limits for Supervisors. As stated in the report from the Charter Review Committee, this recommendation was discussed at four separate meetings of the Committee prior to a vote, and approval of a recommendation was made by a vote of 3-2 on September 14, 2017.

Other Relevant Statutes/Regulations

This recommended change to the Charter is permitted under Government Code 25000, subsection B, which reads:

*Notwithstanding any other provision of law, the board of supervisors of any general law or charter county may adopt or the residents of the county may propose, by initiative, a proposal to limit or repeal a limit on the number of terms a member of the board of supervisors may serve on the board of supervisors. Any proposal to limit the number of terms a member of the board of supervisors may serve on the board of supervisors shall apply prospectively only and shall not become operative unless it is submitted to the electors of the county at a regularly scheduled election and a majority of the votes cast on the question favor the adoption of the proposal.*

The California Constitution differentiates between elected members of the Board of Supervisors and elected County officials. Although Government Code 25000 specifically authorizes counties to set term limits for Board members, a county may not amend a charter to limit the number of terms that other county elected officials can serve. The Charter Review Committee is proposing the repeal of term limits for members of the Board of Supervisors.

Discussion

There is not a clear-cut, best-practice policy on the subject of Term Limits. Most research focuses on state or federal legislatures rather than local governments. It is important to note that the Board of Supervisors provides policy direction on behalf of the electorate just as elected officials in other levels of government do, but that Board members also have executive authority. The Board oversees most county departments and programs and annually approves their budgets; supervises the official conduct of county officers and employees; controls all county property; and appropriates and spends money on programs that meet county residents’ needs. These duties present a steep learning curve for new Board members. Some research has shown that in all levels of government, term limits promote more competitive elections and result in higher turnover of elected positions.

Staff has reviewed professional and academic literature that discusses and analyses issues associated with term limits. Based on this review, below are some of the common arguments for and against term limits for Board Members.

| <b>Arguments Against Term Limits</b>   | <b>Arguments For Term Limits</b>  |
|--|---|
| Allows length of service that allows for a Board that is knowledgeable of government processes, savvy, effective Board | Long tenures may limit the influx of new ideas to the Board by lengthening the time that an incumbent sits on the Board |
| Allows for the development of relationships with   | May promote “political careerism,” wherein the  |

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| staff, community leaders, and other officials throughout the region  | focus is on building a political base rather than doing what's best for the constituents                                |
| Some Board members may retire, run for higher office, or lose an election to an opponent, resulting in a healthy mix of fresh perspectives and knowledgeable veterans.           | Promotes new ideas, new ways of doing things, and wider participation in government                                     |
| May allow Board members to focus less on campaigning and more on improvements in the County  | Political pressure may mount over time, resulting in a change to members over their tenure                              |
| Anti-democratic--if the voters are happy with an incumbent, why should the incumbent be prohibited from continuing to serve?   | Helps retain identity with the community rather than the institution of County government; promotes citizen Supervisors |
| Avoids short-term decision-making that neglects the long-term interests because those deciding the issue will be out of office before the real consequences of the decisions hit | Broadens participation by increasing the number of people who can serve as a Board Member over time                     |
| The County already allows for more than two terms with a "break" of four years in between.   | Increases competitiveness of elections  |

### Staff Recommendation and Board Options

Considering the independent Grand Jury as well as the Board appointed Charter Review Committee, recommended the removal of term limits, and recognizing that there is not a clear-cut, best-practice policy on the subject of term limits, it is recommended that the Board direct staff to return to the Board with ballot language for the November 2018 ballot asking the voters to determine whether term limits for members of the Board of Supervisors should be removed.

An alternative for consideration is to place a measure on the November 2018 ballot asking the voters to approve the addition of one more four-year term, allowing for three consecutive four-year terms.

## BOARD OF SUPERVISORS COMPENSATION

### Article II, Board of Supervisors, Section 204, “Compensation”

#### Current Charter Section Language

Section 204 of the County Charter reads, “Compensation of supervisors shall be fixed by ordinance.”

#### Charter Review Committee Recommendation

As part of its broader review of the County Charter, the 2015-16 Grand Jury recommended amending section 204 to further define the “basic parameters of the compensation ordinance.” The Charter Review Committee ultimately adopted the Grand Jury’s recommended revision to section 204, but added one additional word. The final Charter Review Committee recommendation reads as follows:

Compensation of supervisors shall be fixed by ordinance. **Salary, benefits and any other compensation must be clearly set forth within the ordinance and not be subject to automatic future change by changes to other officials’ salaries or benefits over which the board of supervisors has any influence.**

[New language in bold; CRC addition is underlined]

#### Charter Review Committee Discussion

The CRC first began discussing possible revision to Section 204 on July 27, 2017. This discussion was prompted by a 2015-16 Grand Jury recommendation to amend this section of the charter to provide additional guidance regarding the content of the board compensation ordinance. The Grand Jury recommended revising section 204 to read:

Compensation of supervisors shall be fixed by ordinance. **Salary, benefits and any other compensation must be clearly set forth within the ordinance and not be subject to future change by changes to other officials’ salaries or benefits over which the board of supervisors has any influence.** [New language in bold]

Discussions on July 27, 2017 were preliminary in nature, and resulted in a request that counsel provide additional information on the board compensation ordinance and recent litigation on the issue.

The CRC further discussed the issue on August 10, 2017. The committee reviewed the board compensation ordinance (then codified in Section 2.15.030 of the El Dorado County Ordinance Code), which has since been amended. At the time of the CRC’s discussions, Section 2.15.030(B) read:

Members of the Board of Supervisors shall receive the same benefits provided by the County to the elected County department heads with the exception of longevity pay, to the extent authorized by law. The salary, set forth above, and benefits of the Board of Supervisors shall increase in the same proportion as the increases in salary and benefits to the elected department heads, with such changes becoming effective at the time any salary or benefit modifications for elected department heads become effective as allowed by law.

The committee members disagreed over whether this charter provision required modification. There was concern expressed that the charter provision did not explicitly mention the constitutional requirement that the ordinance be subject to referendum, and that the then-current ordinance could be used to “boot-strap” salary increases for Board members to increases for other elected officials. Other committee members believed that the charter language was fine, and that the result of the Briggs/Santiago litigation conclusively determined that compensation increases for Board members could not be automatic. The committee continued discussions to August 24, 2017, to allow counsel additional time to research and report on the issues raised. On August 24, 2017, the committee summarily continued discussions until September 14, 2017.

At their September 14, 2017 meeting, the committee continued to disagree regarding the need to amend Section 204 of the charter. One member expressed concern that the ordinance did not list specific dollar figures for all aspects of the Board’s compensation. Counsel informed the committee, however, that the CRC did not have any jurisdiction over county ordinances. Another member then said the CRC should support the Grand Jury’s recommendation in the interest of “transparency.” The committee then largely coalesced around supporting the Grand Jury recommendation, with the addition of the word “automatic” to further emphasize the intent behind the revision. The motion to approve the amended Grand Jury recommendation then passed the CRC by a 4-1 vote, with one member absent.

#### Other Relevant Statutes/Regulations

Article XI, Section 1(b) of the California Constitution, states, in relevant part:

[E]ach governing body shall prescribe by ordinance the compensation of its members, but the ordinance prescribing such compensation shall be subject to referendum.

#### Discussion

Since the CRC made this recommendation, the board compensation ordinance has been substantially revised. Section 2.15.030 was repealed and replaced with new language codified in Section 2.06.020 of the Ordinance Code. The new ordinance no longer ties benefits for Board members to those received by other elected officials, but instead specifies each of the benefits to be received by Board members and the amounts of those benefits. Further, there is no longer any mention of Board members receiving similar increases to either salary or benefits as those received by elected officials. This new ordinance addressed the problems identified by the

Grand Jury and discussed by the CRC. Revising Section 204 of the charter would therefore not solve a current, practical problem, but would instead only address a theoretical future problem.

Even if the ordinance had not been altered, the revision to Section 204 would have been of questionable utility. Two prior Board members, Ronald Briggs and Norma Santiago, sued the County to enforce the former Section 2.15.030. Briggs and Santiago claimed that they were entitled by Section 2.15.030 to receive automatic salary increases when the Board increased salaries of other elected officials during their terms of office. The El Dorado County Superior Court disagreed. It held that the ordinance could not be read as allowing automatic compensation increases. “The BOS must still adopt an ordinance to establish the specific amount of their proportional increase. To interpret the ordinance otherwise would expressly violate Article XI, Section 1(b) of the California Constitution.” This constitutional provision requires that ordinances increasing board member compensation be subject to referendum; automatic salary increases, however, would not be subject to referendum. The court accordingly read the ordinance as a statement of policy, and that actual salary increases required giving citizens “an ability to challenge such increases” via referendum.

Given the limited utility of the proposed revision to Section 204, it is also worth considering the risks inherent in any such revision. This would introduce new, untested language into the charter. Such language may have unintended consequences as it is applied to situations not currently foreseeable. It is easy to envision potential disputes over the meanings of phrases such as “any other compensation,” “subject to,” and “any influence.” Read broadly, this could include reimbursement for mileage and other expenses, which are not currently established by ordinance. The current language has the advantage of simply restating language already in the California Constitution, and therefore has a body of established jurisprudence.

#### Staff Recommendation and Board Options

While recognizing that both the independent Grand Jury and the Charter Review Committee recommended changes to this section, staff recommends that the Board **not** move forward with the proposed revision to Section 204 of the Charter. The ordinance that was the true source of the concerns expressed by the Grand Jury and the Charter Review Commission has already been revised to fix the problems, so the proposed revision would have no effect. A change to the current language at this time would instead introduce an unnecessary element of uncertainty into the Charter.

## **CHIEF ADMINISTRATIVE OFFICER vs. CHIEF EXECUTIVE OFFICER MODEL**

**Article II, Board of Supervisors, Section 210, “Powers and Duties”; and**

**Article III, Chief Administrative Officer, Section 301, “Chief Administrative Officer”**

### Current Charter Section Language

Currently, the County Charter section 301 creates the position of the Chief Administrative Officer (CAO). This same section identifies the Chief Administrative Officer as the “chief executive officer of the county.”

The CAO is appointed by and serves at the pleasure of the Board. (Section 302).

The duties of the CAO include but are not limited to:

- a. Coordinate the work of all offices and departments, both elective and appointive, and devise ways and means to achieve efficiency and economy in all county operations.*
- b. Formulate and present to the Board plans to implement policies and accomplish goals established by the Board.*
- c. Recommend an annual budget after reviewing requests of all departments and agencies for which the Board is responsible or which request county funds.*
- d. Have responsibility for the administration of the budget after its adoption by the Board.*
- e. Provide for in-depth analysis and review of all county programs on a regular basis in such a manner that the Board may make policy decisions.*
- f. Provide and implement systems of adequate checks and controls to safeguard county money and property.*
- g. Work with all other government entities, federal, state, regional and local, in the best interest of the entire county.*
- h. On at least an annual basis, review and appraise the performance of all appointed department heads, except County Counsel, and submit the appraisal to the Board of Supervisors...*
- I. Coordinate the review and publication of a county long-range fiscal plan and the annual statement of goals as adopted by the Board of Supervisors.” (Section 304).*

Charter section 210 deals with the powers and duties of the Board of Supervisors. It mentions the CAO only in the following respect: “*a. The Board shall... (2) Appoint or remove the Chief Administrative Officer. At least once each year, the Board shall review and evaluate the Chief Administrative Officer's performance. The Board shall (1) review, and (2) accept, reject or*



*modify all performance evaluations performed by the Chief Administrative Officer pursuant to section 304(h) of this charter.”<sup>1</sup>*

#### Charter Review Committee Recommendation

The Charter Review Committee proposed that Charter sections 210 and 301 remain as written. As such the references to Chief Administrative Officer would remain the Chief Administrative Officer.

#### Charter Review Committee Discussion

On December 18, 2017 the Charter Review Committee undertook a discussion “with respect to the question of a Chief Administrative Officer vs. a Chief Executive Officer model.” The discussion focused primarily upon a distinction between the authority of a CEO to appoint and terminate non-elected department heads; whereas under a CAO model, that authority resides with the Board of Supervisors.

Upon conclusion of their discussion, the Charter Review Committee voted 3-2 to “leave Charter sections 210 and 301 as written.”

#### Other Relevant Statutes/Regulations

Government Code section 24000 enumerates the officers of a county including “an administrative officer”. The Government Code next mentions a county administrative officer in regards to the financial provisions, specifically those beginning with Government Code section 29000 (Budget and Tax Levy). Government Code section 29001 states in pertinent part, “Administrative officer means the chief administrative officer, county administrator, county executive, county manager, or other officials employed in the several counties under various titles whose duties and responsibilities are comparable to the officials named herein.”

County Charter section 301 establishes the office of “Chief Administrative Officer.” Section 302 provides that the CAO is appointed by the Board and serves at the pleasure of the Board. Section 304 sets forth the duties of the CAO and section 305 mandates the CAO’s attendance at Board meetings.

Chapter 2.13 of the El Dorado County Ordinance Code sets forth in greater specificity the role and responsibilities of the CAO.

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<sup>1</sup> Although not addressed by the Charter Review Committee, the term “Chief Administrative Officer” also appears in Charter section 401 which requires “[a]ll department heads and officers of the county , both elected and appointed” to cooperate with the Chief Administrative Officer in achieving the coordination of all county activities.

## Discussion

The issue of whether a CAO or CEO has the authority to hire and fire department heads is not dependent upon the title given to the position but rather relates to the extent the Board of Supervisors has delegated or can delegate such authority to the office created. When viewed through this lens, the decision of the Charter Review Committee to “leave Charter sections 210 and 301 as written” is prudent advice. If the Board wishes to delegate to the CAO the authority to hire and fire appointed department heads, then other changes to the Charter provisions would be necessary.

In California, a county can be a charter county or a general law county. Charter counties enjoy a greater amount of authority for self-governance than general law counties. The Constitution grants counties the power to establish through a charter their own governance structure and operational rules. This grant of “home rule” authority to counties includes providing for their officers’ powers and duties, including the powers of appointment and removal, and for the delegation of duties to various officers. *California Constitution, Article XI, section 4 (c) and (e)*. However, in areas of law other than the structure of government and operational rules, if the issue is a matter of statewide concern, and the State has occupied the field of law, a charter county may be preempted from enacting laws, by charter or ordinance, that are in conflict with general law. *Younger v. Board of Supervisors of San Diego County* (1979) 93 Cal.App.3d 864,870.

Given this opportunity for home rule, 14 counties have chosen to adopt a charter. El Dorado County has adopted a charter.

In determining the extent to which the Board of Supervisors may delegate hiring and firing authority to the CAO/CEO, the distinction between a charter county and a general law county is determinative.

In 1972, the California Attorney General issued an opinion wherein it was determined that in a general law county since the appointment of a county director of finance was a discretionary function and by law that function was vested in the Board of Supervisors, the Board could not delegate the authority to appoint that county officer to the county administrative officer. From that we see that in a general law county, that is a non-chartered county, the Board of Supervisors could not delegate to the CAO/CEO the authority to appoint non-elected department heads.<sup>2</sup>

However, in the case of a charter county, such as El Dorado County, the courts have upheld the ability of the Board of Supervisors to delegate authority involving the exercise of discretion to other county officers. In *Reuter v. Board of Supervisors of San Mateo County* (1934) 220 Cal. 314, a taxpayer challenged a county charter and ordinance that took away the duties of the

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<sup>2</sup> This assumes that the non-elected department head is a county officer rather than a county employee. That discussion goes beyond our present inquiry.

County Road Commissioner from the Board of Supervisors as provided for in the general law, and gave the responsibility to the County Engineer. The California Supreme Court found it constitutionally permissible for the County by charter and subsequent ordinances to provide for the delegation of those duties by the Board to another county officer. Courts have continued to uphold the authority of a county through its charter to provide for such delegation of authority. See *Kerr v. County of Orange* (2003) 106 Cal.App.4<sup>th</sup> 914.

Presently in El Dorado County, the Charter provides that the Board of Supervisors shall “Appoint, suspend or remove all department heads except those for whose election or appointment this charter makes other provision.” (Section 210). The Board as the appointing authority for non-elected department heads is reinforced by section 404 which provides that “Department heads serve at the pleasure of their appointing authority, the Board of Supervisors.” In light of these sections of the Charter, the Board could not by ordinance or resolution delegate the authority to appoint non-elected department heads to the CAO/CEO. In order for the Board to delegate appointing authority to the CAO/CEO with respect to non-elected department heads, the County Charter would have to be amended to eliminate the cited sections and enact a provision for such delegation.

Of the 14 Charter counties, it appears the Board of Supervisors appoints non-elected department heads in 6 counties; the CAO/CEO appoints department heads in 4 counties; and in the remaining counties it is either some department heads appointed by the Board of Supervisors and others by the CAO/CEO or the CAO/CEO has the authority subject to board concurrence or veto authority.

By way of example, Placer County, also a Charter County, has created the office of Chief Executive Officer (Placer County Charter section 401). The CEO is the chief administrative officer of the county. (Placer Charter section 502). The CEO has the authority to:

“(b) Appoint, suspend or remove subject to confirmation by the Board of Supervisors all appointive department heads except County Counsel... (Placer County Charter section 503)

Although the CEO has the authority to appoint, suspend, or remove all non-elected department heads other than County Counsel, such right is subject to confirmation by the Board. The Board retains the ultimate authority regarding the appointment of non-elected department heads.

As discussed earlier, the title given to the administrative officer of the county as described in Government Code section 24000, does not determine the extent of that position’s authority and therefore as determined by the Charter Review Committee, there is no need to change the language of Charter sections 210 and 301.

If the Board of Supervisors is inclined to move away from the Board appointment of non-elected department heads other than County Counsel, then amendments to various section of the existing Charter would have to be made, including at a minimum, Charter sections 210, 304, and 404.

Staff Recommendation and Board Options

The Grand Jury did not make any recommendations in regards to this provision. Staff recommends the Board accept the Charter Review Committee's recommendation to **not** make any changes to Charter sections 210 and 301, primarily because amending the Charter changing the title of the Chief Administrative Officer to Chief Executive Officer is not necessary.

## **CHIEF ADMINISTRATIVE OFFICER, DUTIES**

### **Article II, Chief Administrative Officer, Section 304, “Duties”**

#### Current Charter Section Language

“The Chief Administrative Officer shall be responsible to the Board of Supervisors for the proper and efficient administration of such of the affairs of the county as are or hereafter may be placed in the charge of the Chief Administrative Officer, or under the jurisdiction or control of the Chief Administrative Officer, pursuant to the provisions of this Charter, or of any ordinance, resolution or order of the Board of Supervisors. In addition to other powers and duties herein provided, the Chief Administrative Officer shall have the duty and power to:...”

#### Charter Review Committee Recommendation

The Charter Review Committee proposed that two qualifying words be added to this section, such that the section would read, “The Chief Administrative Officer shall be responsible to the Board of Supervisors for the proper and efficient administration of such of the affairs of the county as are or hereafter may be placed in the charge of the Chief Administrative Officer, or under the jurisdiction or control of the Chief Administrative Officer, pursuant to the provisions of **state law**, this Charter, or of any ordinance, resolution or order of the Board of Supervisors. In addition to other powers and duties herein provided, the Chief Administrative Officer shall have the duty and power to: ...”

#### Charter Review Committee Discussion

On September 14, 2017 Agenda File number 17-0842 contains the entirety of the Charter Commissions discussion on this topic. There was discussion of the fact that Charter section 304 does not include the specific reference to “state law”. It was countered that although that section does not contain a specific reference to “state law”, Charter section 702 specifically provides that “Unless otherwise set forth in the charter, the general laws set forth in the Constitution of the State of California and the laws of the State of California shall govern...” An initial vote to reject the Grand Jury’s recommendation to add “state law” to section 304 failed by a 2 to 3 vote count one member being absent. A subsequent motion to accept the Grand Jury recommendation to add “state law” to section 304 passed 3-2, one member being absent.

#### Other Relevant Statutes/Regulations

Government Code section 24000 enumerates the officers of a county including “an administrative officer”. County Charter section 301 establishes the office of Chief Administrative Officer. Section 302 provides that the CAO is appointed by the Board and serves

at the pleasure of the Board. Section 304 sets forth the duties of the CAO and section 305 mandates the CAO's attendance at Board meetings.

Chapter 2.13 of the El Dorado County Ordinance Code sets forth in greater specificity the role and responsibilities of the CAO.

### Discussion

The recommendation from the Grand Jury and the Charter Review Committee apparently emanates from an observation that Charter section 304 does not specifically "mandate that the Chief Administrative Officer must adhere to state law." The addition of "state law" to this provision is sought to "add clarity and eliminate doubt." In truth there is no legal doubt that the CAO in performing his/her duties must adhere to state law except as to those matters properly included within the Charter in which case the CAO is obligated to follow the Charter.

Under California law, a local executive official does not have the authority to determine that a statute is unconstitutional or refuse to enforce a statute in the absence of a judicial determination that the statute is unconstitutional. *Lockyer v. City & County of San Francisco*, 33 Cal.4th 1055 (2004). The federal supremacy clause does not itself grant a local official the authority to refuse to enforce a statute that the official believes to be unconstitutional. *Id.* at 1110-1111. "The oath to support and defend the Constitution requires a public official to act within the constraints of our constitutional system, not to disregard presumptively valid statutes and take action in violation of such statutes on the basis of the official's own determination of what the Constitution means." *Id.* at 1100-1101. See also, *Voices for Rural Living v. El Dorado Irrigation District*, 209 Cal.App.4th 1096, 1116-1117 (2012). In short, the CAO is obligated to follow state law. The only exception is where state law conflicts with a Charter provision properly included therein.

One could argue that rather than provide clarity, the addition of the phrase "state law" into section 304 actually creates a greater likelihood of confusion. By way of example, if the CAO is required by the Charter to follow state law and there exists a conflict between state law and the Charter as to a matter properly included in the Charter, the CAO should follow the Charter. The California Constitution grants to counties the authority to enact a charter to control their own structure and operational rules. ["For its own government, a county or city may adopt a charter by majority vote of its electors voting on the question." *Cal. Const., art. XI, § 3*]. While the charter authority of a county is limited to those matters expressed in Article XI, section 4 of the Constitution, as to those matters, the Charter, not conflicting state law, is controlling. By way of example, state law provides that in the event of a vacancy in the Board of Supervisors, the governor shall fill the vacancy. (Government Code section 25060). However, the Charter provides that in the event of a vacancy the vacancy will be filled by way of an election. (Charter section 203).

### Staff Recommendation and Board Options

The Grand Jury did not make any recommendations relative to this provision. Staff does not agree with the Charter Review Committee's recommendation to place a ballot measure before the voters asking to approve the addition of the words "state law" to Charter section 304. Staff is therefore recommending the Board choose **not** to place any changes in this regard on the ballot.

The primary reason for this recommendation is that County Counsel has opined that there is no legal doubt that the Chief Administrative Officer in performing his/her duties must adhere to state law, except as to those matters already properly included within the Charter, in which case the CAO is obligated to follow the Charter. Should additional clarification be deemed necessary, one option the Board could consider is to direct staff to amend existing County Ordinance Chapter 2.13 to provide that, except as otherwise provided for by the Charter, the CAO is to follow state law. This provision would be very similar to the existing Charter section 702.

## **ELECTED OFFICIALS - CONSTITUTIONAL ONLY**

### **Article IV, Department Heads, Boards and Commissions, Section 402, “Elected Department Heads”**

#### Current Charter Section Language

Currently, Section 402, Elected Department Heads, reads as follows:

*The following department heads shall be elected:*

- a. Assessor*
- b. Auditor/Controller*
- c. District Attorney*
- d. Recorder/Clerk*
- e. Sheriff/Coroner/Public Administrator*
- f. Surveyor*
- g. Treasurer/Tax Collector*

*The term of office of all elected officers is four years. The elected officers shall serve until their successors are qualified unless sooner removed as provided by this charter.*

#### Charter Review Committee Recommendation

The Committee recommended that the Board consider making “all non-constitutional department heads appointed” officers, as opposed to elected officers.

#### Charter Review Committee Discussion

The Committee addressed Charter Section 402, Elected Department Heads, pursuant to direction provided by the Board of Supervisors on October 10, 2017. The Committee recommended the Board consider making “all non-constitutional department heads appointed” (vs. elected) on December 18, 2017. As written in the County Charter, the Elected department heads are the Assessor, Auditor/Controller (consolidated offices), District Attorney, Recorder/Clerk (consolidated offices), Sheriff/Coroner/Public Administrator (consolidated offices), Surveyor, and Treasurer/Tax Collector.

Although no alternative language was recommended, this recommended change would result in the current elected offices of the Auditor-Controller, Recorder-Clerk, Surveyor, and Treasurer-Tax Collector becoming department head positions appointed by the Board. The remaining elected officers would be the Sheriff/Coroner/Public Administrator, District Attorney, and Assessor.



## Government Codes / Other Regulations

The enumeration of County officers is found in Government Code section 24000, and includes the following:

- (a) A district attorney.
- (b) A sheriff.
- (c) A county clerk.
- (d) A controller.
- (e) An auditor, who shall be ex officio controller.
- (f) A treasurer.
- (g) A recorder.
- (h) A license collector.
- (i) A tax collector, who shall be ex officio license collector.
- (j) An assessor.
- (k) A superintendent of schools.
- (l) A public administrator.
- (m) A coroner.
- (n) A surveyor.
- (o) Members of the board of supervisors.
- (p) A county veterinarian.
- (q) A fish and game warden.
- (r) A county librarian.
- (s) A county health officer.
- (t) An administrative officer.
- (u) A director of finance.
- (v) A road commissioner.
- (w) A public guardian.
- (x) Such other officers as are provided by law.

Government Code Section 24009 provides that the county officers to be elected by the people are the treasurer, county clerk, auditor, sheriff, tax collector, district attorney, recorder, assessor, public administrator, and coroner. However, as the Section further states that other than those officers' names in Section 1 of article XI of the California Constitution, any county office that is required to be elective may become an appointive office with approval by a majority vote of the people. Any county office changed from elective to appointive in accordance with this subdivision may be changed back from appointive to elective in the same manner.

Pursuant to Article 11, Section 1(b) of the California Constitution, the (b), "The Legislature shall provide for county powers, an elected county sheriff, an elected district attorney, an elected assessor, and an elected governing body in each county." Section 4 outlines those required provisions of County Charters, which also requires "An elected county sheriff, an elected district attorney, an elected assessor, and other officers, their election or appointment, compensation, terms and removal."

The El Dorado County Charter has determined several of these officers as elected department heads, others as department heads appointed by the Board of Supervisors, and combines some of these official offices into single positions. Although the Charter Review Committee has recommended that the County only retain the constitutionally-mandated elected officers, the analysis below considers each office separately due to their unique roles.

### Discussion

There are several pros and cons to elected, independent County Officers. The strongest argument in favor of elected officers is that the elected officer is beholden to the citizens and acts independently of the Board of Supervisors.

The California Constitution authorizes a county, only through its Board of Supervisors, to make and enforce local ordinances, power to sue and be sued, purchase and hold land, manage or dispose of its properties, and levy and collect taxes authorized by law. Unlike the separation of powers that characterizes the federal and state governments, the Board of Supervisors is both the legislative and the executive authority of the county. The Board provides policy direction and decision-making to county officers, and allocates resources thorough the budget process.

The supervision of constitutionally-mandated elected officers is limited due to the nature of their duties. The Board has general supervisory authority over and may investigate the performance of county duties of the district attorney, Sheriff, and Assessor in their functions as county officers. However, in their functions as state or quasi-state officials or inasmuch as they are under state control, the Board does not have supervisory authority over their duties. For example, the district attorney, as public prosecutor, is under the direct supervision of the attorney general. Similarly, in his/her capacity as a peace officer of the state, the Sherriff is under the direct supervision of the attorney general. While acting as an officer of the courts, the sheriff is not under the supervision of the Board, and the Board may not investigate the sheriff in connection with such duties. The assessor is also under state control in many respects, but not to the same degree as are the district attorney and sheriff.

Other elected department heads do not act as state or quasi-state officials and do not have specific duties that require independence from the Board of Supervisors. However, maintaining their independent status can still provide for separation of powers within the County Government. For example, the Board could direct that the Auditor-Controller or the Treasurer-Tax Collector carry out some action, which if illegal or financially imprudent, could be ignored by the independent officer in the best interest of the County. The Auditor-Controller is responsible for audits of certain agencies within the county, and is the chief accounting officer of the county. The Tax Collector serves as the depository for all funds belonging to the county, schools, and other special districts within each county and is the principal in the issuance of county debt obligations. These financial obligations, it could be argued, may be best left to independent officers that do not operate solely at the direction of the Board. As noted in the

CAO's Memo to the Chair of the Charter Review Committee, dated October 17, 2017, only four of 58 counties have appointed Auditors, with the remaining 54 establishing elected offices of the Auditor, Controller, Treasurer, Tax Collector, Recorder, Clerk, Director of Finance, or some combination of these offices. With the exceptions of Los Angeles, Sacramento, and Santa Clara Counties, all Treasurer-Tax Collectors are nonpartisan countywide elected officeholders.

Arguments in favor of appointed officers also relate to supervisory authority. Just as the Board does not have the authority to require that an elected auditor carry out illegal or imprudent acts, the Board is also limited in its authority to hold the individual responsible for any illegal acts or wrongdoing. Whereas independent, elected officers may only be removed from office by a vote of the electorate or if found guilty of "high crimes, misdemeanors or malfeasance," appointed department heads report to the Board and the CAO, and would be held responsible for mishandling the duties of the office. On a less dramatic note, appointed department heads are managed through the authority of the CAO, who handles the day-to-day operations of the County. Through CAO directives the appointed officer would be required to participate in county-wide efforts and to work with other departments toward common goals, as directed by the Board of Supervisors. Additionally, appointed positions require a rigorous process of recruiting and vetting applicants to ensure that the best possible appointment is made, whereas elected officials only need meet minimum education and/or certification qualifications.

The County Clerks, except in several large counties where they are appointed, are nonpartisan, countywide elected officials. The County Clerk-Recorder provides a variety of direct public services, such as issuing marriage licenses, filing and qualifying notary public oaths and bonds, filing grand jury reports, and filing, indexing, and maintaining records. Much of the office's functions are clerical in nature. El Dorado County is the only county in the State with an elected Surveyor, who serves as the department head overseeing addressing and road naming, Geographic Information Systems, and review of maps provided by licensed surveyors. Due to the nature of the duties ascribed to these two officers, there is less of an argument for these positions to be independent of the Board and answerable only to the voters.

#### Staff Recommendation and Board Options

At the request of the Board, the Charter Review Committee reviewed this matter and determined the Board should ask the voters to make "all non-constitutional department heads appointed" (vs. elected). This change would apply to the currently elected positions of Auditor-Controller, Treasurer/Tax-Collector, Recorder-Clerk and Surveyor. If the Board chooses to support the Charter Review Committee's recommendation, or chooses to only support the recommendation for specific positions, staff recommends that each position proposed to be changed to appointed have its own ballot measure, since the arguments for determining whether a position is elected or appointed will differ by position.

Considering it will require a significant amount of staff time to prepare each ballot measure, as well as considering that if approved by the voters the change from elected to appointed will not be effective until the end of the next term for each elected department head (January 2023), staff also recommends that the Board consider placing any such ballot measures on the November **2019** ballot.

## **ADDITIONAL AT-WILL CLASSIFICATIONS**

### **Article V, Personnel, Section 502.1, “Classified and Unclassified Employees”**

#### Current Charter Section Language

*The classified service consists of all positions in which employees have achieved civil service status except those positions designated as unclassified below.*

*The unclassified service consists of:*

- a. elected county officers;*
- b. appointed department heads;*
- c. all appointed boards, committees and commissions;*
- d. all persons serving without compensation (compensation does not include incidental fees and expenses);*
- e. casual patient and inmates at county institutions;*
- f. the following administrative personnel charged with making policy decisions: Deputy Director of Welfare; Undersheriff; The Undersheriff shall have the right to return to a former classified position in accord with county ordinance;*
- g. any person holding a confidential position to each member of the Board of Supervisors;*
- h. persons employed to render professional, scientific, technical or expert services on a temporary basis for a specific project;*
- i. persons covered under State Merit Systems;*
- j. persons employed as independent contractors pursuant to contracts, as authorized by the Board of Supervisors.*
- k. persons otherwise excluded by operation of law.*

*The Board of Supervisors shall have the right for good cause and after written notice to affected parties, to make "de minimis" changes which amend the foregoing list.*

#### Charter Review Committee Recommendation

The Committee recommended that the Board consider modifications to this Section to provide that the Board may determine, by Resolution, additional positions to be of the “unclassified service.” No specific language recommendation was provided.

#### Charter Review Committee Discussion

The Committee addressed Charter Section 502.1, Classified and Unclassified Employees, pursuant to direction provided by the Board of Supervisors on October 10, 2017.

In his Memo dated October 10, 2017, the CAO recommended to the Board that the Charter Review Committee to review the current language in Charter Section 502.1, which currently lists all “at-will” or unclassified positions thereby limiting the Board of Supervisors from identifying

any other positions as 'at-will'. As noted in the memo, this can lead to circumstances wherein a position with a high level of authority could have a significant negative impact on the County as a whole, but may have limited direct accountability to higher levels of management due to certain civil service protections.

The Committee reviewed the CAO's Staff Memo, and after discussion voted to support the CAO's recommendation for the Board to consider proposed modifications to this section of the Charter. This section of the charter, with changes, would read as follows:

*Classified and Unclassified Employees*

*The classified service consists of all positions in which employees have achieved civil service status except those positions designated as unclassified below.*

*The unclassified service consists of:*

- a. elected county officers;*
- b. appointed department heads;*
- c. all appointed boards, committees and commissions;*
- d. all persons serving without compensation (compensation does not include incidental fees and expenses);*
- e. casual patient and inmates at county institutions;*
- f. the following administrative personnel charged with making policy decisions: Deputy Director of Welfare; Undersheriff and any other unrepresented position as determined by resolution of the Board of Supervisors, all of whom The Undersheriff shall have the right to return to a former classified position in accord with county ordinance;*
- g. any person holding a confidential position to each member of the Board of Supervisors;*
- h. persons employed to render professional, scientific, technical or expert services on a temporary basis for a specific project;*
- i. persons covered under State Merit Systems;*
- j. persons employed as independent contractors pursuant to contracts, as authorized by the Board of Supervisors.*
- k. persons otherwise excluded by operation of law.*

*The Board of Supervisors shall have the right for good cause and after written notice to affected parties, to make "de minimis" changes which amend the foregoing list.*

Discussion

In his Memo dated October 10, 2017, the CAO provided reasoning behind the request to include these changes on the ballot. In general, the changes would allow for modernization of the Charter

and alignment with current practice and state requirements. As with any additional item on the ballot, this would result in some nominal cost to the county for printing costs and arguments for/against the measure.

Staff Recommendation and Board Options

This matter was brought to the attention of the Board by the Chief Administrative Officer, and the Charter Review Committee supports the recommended change. As a result, it is recommended that the Board direct staff return to the Board no later than July 17<sup>th</sup> with proposed ballot language for this proposed amendment to the Charter, to be included on the November 2018 ballot.