

Compensation of San Diego County Board of Supervisors

EXECUTIVE SUMMARY

The 2018/2019 San Diego County Grand Jury (Grand Jury) found that the process set forth in the San Diego County Charter for setting the salary for members of the Board of Supervisors (Board) puts that Board in a difficult position. Section 402 of the charter states only that “Salaries of Supervisors are established by ordinance of the Board.” In effect, this means Supervisors may vote to increase their own compensation, whenever they desire a pay increase, beyond a cost-of-living adjustment.

The salary for elected officials of many California counties and cities is determined by external benchmarks. In some cases, those salaries, such as those for members of the San Diego County Board of Supervisors, are linked to the salaries of California Superior Court judges.

The Grand Jury recommends an amendment to the San Diego County Charter by which salaries of the Board are not only determined by an external benchmark, but also one that limits the ability of Supervisors to change the formula used to compute salaries. Such proposed limits include mandating a voter referendum for either a proposed or enacted salary ordinance or freezing the current formula. The latter option would preclude the members of the Board from voting on their own salaries again.

A Charter amendment requires a simple majority vote of the county’s electorate. The next general election is scheduled in June 2020. Irrespective of the possible need for other amendments to the charter, the Grand Jury recommends that a salary setting amendment be developed and consider being placed on an upcoming ballot for the County of San Diego.

BACKGROUND

The Grand Jury investigated the current process by which the salaries of members of the County of San Diego Board of Supervisors are determined. The Grand Jury suggests this process creates a conflict of interest, because it requires Supervisors to vote for their own base compensation.

Public interest in this topic was stimulated on December 13, 2016, when an ordinance was introduced to adjust the formula on which Board members’ salaries are based from 80% to 85% of the salary of Superior Court judges effective March 17, 2017 and then

again to 90% effective December 8, 2017. These raises were in excess of \$19,000, per year, for each supervisor and, coupled with an increase in judges' salaries, their total pay increased from \$160,033 to \$180,037.80 per year. In addition, the Grand Jury notes that these increases in salary also increase the final compensation on which their pensions are based.

That introductory meeting drew little public comment, but at the mandatory second reading on January 10, 2017, members of the public loudly voiced their concerns. They cited other community needs, including homelessness services, infrastructure maintenance and repair, and affordable housing as among the better uses for the money. County employees said they never received raises approaching the proposed 12.5%.

It is not the intent of this Grand Jury to imply that there was any malfeasance by the supervisors or to begrudge the board members their fair compensation. In fact, the Grand Jury investigation revealed that members of the Board are now paid commensurate with their counterparts in counties of roughly equal size and budgets. See Table 1 at the end of this report.

The Grand Jury investigation focused on two questions:

1. Does the County Charter need to be amended to eliminate the need for members of the Board of Supervisors to vote to accept salary increases?
2. What would a fair process be, for both members of the Board of Supervisors and taxpayers, to determine future pay raises for members of the Board?

METHODOLOGY

Members of the Grand Jury interviewed:

- A majority of members of the Board of Supervisors
- Representatives of taxpayer and voter advocacy groups

Members of the Grand Jury also reviewed:

- Salaries of members of the board of supervisors in the 13 other charter counties in California
- The San Diego County Charter
- The California Constitution and other applicable state regulations
- California Proposition 12 dated November 3, 1970
- The 1998-1999 Orange County Grand Jury report *Board of Supervisors Salary Methodology*, and the Orange County response

DISCUSSION

Charter versus General Law Counties: The California Constitution and the

California Government Code both distinguish between Charter and General Law Counties. There are 44 General Law Counties and 14 Charter Counties, including San Diego, in California. Charter Counties are governed by their unique charter, which serves as a constitution for that county. If a particular item is not addressed in the county charter, then general law provisions apply. General Law Counties must adhere to state law as to the number and duties of county elected officials.

Proposition 12 November 1970: Prior to November 1970, county supervisors' salaries were set by the State Legislature, acting on a recommendation by the Grand Jury of that county. In that year, voters approved Proposition 12, which amended Article XI, section 1 (b) of the California Constitution by providing that "each governing body shall prescribe by ordinance the compensation of its members, but the ordinance prescribing such compensation shall be subject to referendum."

However, the above section contains an exception that applies to Charter Counties. It refers to Article XI section 4 (b) of the California Constitution, which states that each county charter shall provide for the "compensation, terms, and removal of members of the governing body." There is no mention of a referendum in this section.

The ballot argument in favor of Proposition 12 was based on the concept of home rule. Since the salaries of local officials are supported entirely by local tax funds, it was argued that those salaries should be determined at the local level rather than at the state level. It also argued that the right of public comment at open meetings, and the referendum provision, would help keep supervisors' salaries at a reasonable level.

The ballot argument against Proposition 12 stated that giving supervisors the right to set their own salaries would be "too great a temptation to supervisors to set their salaries too high." It also argued that the additional cost of a special referendum election might be too expensive for some counties to bear.

Proposition 12 was subsequently approved by a margin of 50.6% to 49.4% of the popular vote.

Orange County Grand Jury Report 1999: The 1998-1999 Orange County Grand Jury, in a report entitled *Board of Supervisors Salary Methodology*, recommended that:

“The Orange County Board of Supervisors should place the matter of all future Board salary increases on the ballot of the next regularly scheduled Orange County election, after adoption of the ordinance by the Board.”

Originally a General Law County, Orange became a Charter County in March 2002. However, since the topic of salaries for members of the board of supervisors was not addressed in the charter, general law provisions continued to apply on this subject.

The Orange County Board of Supervisors’ response to the recommendation differentiated between a proposed ordinance and an enacted ordinance, and between two types of county referenda, as are outlined in the California Elections Code:

1. Elections Code Section 9140: A board of supervisors may submit a **proposed** ordinance to the people for enactment by a popular vote. In this type of referendum, the popular vote occurs **before** enactment of an ordinance. (emphasis added)
2. Elections Code Sections 9144-9145: A board of supervisors **enacts** an ordinance, which may be revoked after a petition has been filed. In this type of referendum, the popular vote occurs **after** enactment of an ordinance. (emphasis added)

In rejecting the Grand Jury’s recommendation, the Orange County Board of Supervisors contended that the language of Proposition 12 clearly intends that the second type of referendum applies. They argued that a petition under sections 9144-9145 must be filed to rescind the implementation of an existing ordinance and subject it to a vote of the people.

Survey of Charter Counties: The Grand Jury conducted a survey of the 14 Charter Counties in California in September 2018. The results are summarized in Table 1 at the end of this report. The survey confirms the fact that the recent increases in compensation for the San Diego County Supervisors are not unreasonable, when compared with salaries of supervisors in other counties of roughly equivalent populations and budgets. The survey also illustrates that 6 of the 14 Charter Counties have provisions in their charters that restrict their supervisors from voting on their own salaries. Those six counties are:

1. Los Angeles: Charter sets salary equal to Superior Court judges’ salary
2. Placer: Charter sets salary at average of three adjacent counties: Nevada, El Dorado and Sacramento Counties

3. San Bernardino: Charter sets a combined salary and benefits package that does not exceed the combined salary and benefits package of Orange, Riverside and San Diego Counties
4. San Francisco: Charter mandates that salary be set by the independent Civil Service Commission
5. San Mateo: Charter provides that raises cannot exceed the increase in the Consumer Price Index for the Bay Area, up to a maximum of 5% per year
6. Tehama: Charter establishes a flat salary for members of the Board of Supervisors

Witness Interviews: The Grand Jury interviewed representatives from local taxpayer advocacy and voter education groups. While there was no consensus on specific limitations that might be applied, the witnesses all agreed that some restrictions should be adopted to place limits on Supervisors for setting their own salary. One of the suggestions requires that a proposed charter amendment be drafted and put on a future ballot for voter approval.

The Grand Jury interviewed a majority of the San Diego County Board of Supervisors. There was consensus that the salary increases were deserved and commensurate with the county's budget and population. At the same time, they indicated that the process of voting for their own salaries put them in a difficult position. Although they all believed that the current formula would not be changed anytime soon, and that a charter amendment would not be necessary, two supervisors said they could support a charter amendment that would limit their ability to set their own salary.

Suggested Charter Amendment Options: In light of the above, the Grand Jury is suggesting a charter amendment that would limit the ability of Supervisors to determine their own salary and give voters some influence on the process. There is a precedent for such an amendment, since six other charter counties have charter provisions limiting their supervisors' salaries. The Grand Jury is proposing that the Board consider the three following options for a charter amendment and consider placing at least one of them on an upcoming ballot:

Option A: Add a sentence to Charter Section 402, requiring that any proposed ordinance changing the formula used to determine supervisor salaries, be submitted by the board to the people for enactment by popular vote, under Elections Code Section 9140. This section provides that the board may submit to the voters, without a petition, a proposed ordinance which would only be enacted if it receives a majority of votes at a

succeeding general or special election. This option allows the supervisors to propose an ordinance changing the salary setting formula (for example, from 90% to 95% of Superior Court judges), and allows the voters to ratify its enactment. This was the process recommended, but not implemented, for Orange County by its Grand Jury in 1999.

Option B: Add a sentence to Charter Section 402, requiring that any enacted ordinance changing the formula used to determine supervisor salaries shall be subject to repeal by referendum, under Elections Code Sections 9144-9145. These sections provide that voters, protesting an ordinance, must file a petition with the board of supervisors before the date the ordinance becomes effective, sixty days after enactment for salary increases. The petition must be signed by county registered voters, in an amount at least equal to 10% of the entire county vote for governor in the last gubernatorial election. Implementation of the ordinance is suspended upon receipt of the petition. The board shall then place the ordinance on the ballot, for either the next general election or a special election. The ordinance shall not become effective unless it receives a majority of votes.

Option B appears to be more time consuming and labor intensive than Option A but is used much more often to overturn controversial ordinances dealing with other issues, such as land use ordinances. Option B is also the process for overturning or ratifying supervisor enacted salary increases, specified in the state constitution for General Law Counties.

Option C: Delete the current language in Section 402 and replace it with language that would freeze the supervisor salaries at 90% of the salary of Superior Court judges. The Grand Jury believes that the salary increases of the last two years make San Diego Supervisor salaries consistent with counties with comparable populations and budgets. A charter amendment, freezing the salary, would prevent the Supervisors from changing the formula to 95% or 100%, without a vote of the people to amend the county charter again.

Cost-of-living Increases: Under state law (Government Code Section 68203), judicial salaries are subject to annual increases. The percentage of the increase cannot exceed the percentage increase earned by state employees, as determined by labor negotiations with worker organizations. For example, if the average salary of state employees increases by 2% in a given fiscal year, then Superior Court judges' salaries can also increase by up to 2%. The salary of a member of the Board of Supervisors would also increase by 2%, which would hold Supervisor salaries at 90% of the salary of Superior Court judges. (In years when the average wage of state employees does not increase, neither would the salaries of Superior Court judges nor members of the Board

of Supervisors.) Such increases are considered cost-of-living adjustments, which would not be affected by any of the suggested recommendations discussed above.

FACTS AND FINDINGS

Fact: The San Diego County charter requires that salaries of members of the Board of Supervisors be established by ordinance of the Board.

Fact: This charter provision results in Supervisors having to vote on the formula which determines their basic compensation, and as a result, their pensions as well.

Finding 01: Elected officials who set their own compensation and pensions may have an inherent conflict of interest.

Fact: A proposed charter amendment requires a majority vote of the registered voters to be enacted.

Fact: Changing the process for setting the compensation for the Board of Supervisors requires an amendment to the county charter.

Fact: Supervisors in General Law Counties establish their salaries by ordinance which is subject to a referendum of the electorate.

Fact: In California, 6 of the other 13 Charter Counties in California have provisions in their charters which limit their supervisors' ability to increase their compensation without a vote of the people.

Finding 02: A charter amendment to limit the ability of elected officials to set their own compensation would eliminate any perception of a conflict of interest.

Finding 03: A charter amendment would give voters the ability to influence the compensation of their elected officials.

RECOMMENDATIONS

The 2018-2019 San Diego County Grand Jury recommends that the San Diego County Board of Supervisors:

19-24: Consider placing on an upcoming ballot an amendment to Section 402 of the County Charter which would incorporate one of the following options for setting County Supervisors' compensation (exclusive of possible cost of living increases):

Option A: Add a sentence, requiring that any proposed ordinance changing the formula used to determine supervisor salaries, must be submitted by the Board to the people for enactment by popular vote, under Elections Code Section 9140.

Option B: Add a sentence requiring that any enacted ordinance changing the formula used to determine supervisor salaries be subject to repeal by referendum, under Elections Code Sections 9144-9145.

Option C: Delete the current language in Section 402 and replace it with language which would fix the supervisors' salaries at 90% of the salary of Superior Court judges.

REQUIREMENTS AND INSTRUCTIONS

The California Penal Code §933(c) requires any public agency which the Grand Jury has reviewed, and about which it has issued a final report, to comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the agency. Such comment shall be made *no later than 90 days* after the Grand Jury publishes its report (filed with the Clerk of the Court); except that in the case of a report containing findings and recommendations pertaining to a department or agency headed by an elected County official (e.g. District Attorney, Sheriff, etc.), such comment shall be made *within 60 days* to the Presiding Judge with an information copy sent to the Board of Supervisors.

Furthermore, California Penal Code §933.05(a), (b), (c), details, as follows, the manner in which such comment(s) are to be made:

- (a) As to each grand jury finding, the responding person or entity shall indicate one of the following:
 - (1) The respondent agrees with the finding
 - (2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.
- (b) As to each grand jury recommendation, the responding person or entity shall report one of the following actions:
 - (1) The recommendation has been implemented, with a summary regarding the implemented action.
 - (2) The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.

(3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the grand jury report.

(4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.

(c) If a finding or recommendation of the grand jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the Board of Supervisors shall respond if requested by the grand jury, but the response of the Board of Supervisors shall address only those budgetary or personnel matters over which it has some decision making authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.

Comments to the Presiding Judge of the Superior Court in compliance with the Penal Code §933.05 are required from the:

<u>Responding Agency</u>	<u>Recommendations</u>	<u>Date</u>
San Diego County Board of Supervisors	19-24	8/26/19

TABLE 1: CHARTER COUNTY SUPERVISORS' SALARIES LISTED HIGH TO LOW

The data below was obtained directly from 13 of the 14 charter counties surveyed by the Grand Jury in September 2018. The information for Sacramento County was obtained from that county's website.

Budgets over \$1 billion are rounded to the nearest \$100 million.

COUNTY	POPULATION	BUDGET FY 2019	METHOD OF DETERMINING SALARY	ANNUAL SALARY	Charter Section	Admin Code Section
Los Angeles	10,163,507	\$31.4 Billion	Same as Superior Court judges, established by county charter	\$205,823	Article II, Section 4	N/A
San Diego	3,288,612	\$6.3 Billion	90% of salary of Superior Court judges, established by ordinance of the board	\$180,037	402	Article 3 Section 3.2.1
San Bernardino	2,174,938	\$5.4 Billion	Total salary and benefits cannot exceed the average total salary and benefits of Orange, Riverside and San Diego Counties, currently \$200,933 (Benefits included)	Range \$168,062- \$192,127 (not incl. benefits)	Article VI, Section 1	
Alameda	1,663,190	\$3.4 Billion	80% of the salary of Superior Court judges by ordinance of the board	\$164,658		Salary Ordinance 3- 21.42
Orange	3,190,400	\$6.5 Billion	80% of Superior Court judges, by salary ordinance of the board	\$164,658		Section 1-2-7 of Code of Ordinances
Santa Clara	1,938,180	\$7.0 Billion	80% of the salary of Superior Court judges, per ordinance of the board.	\$160,033		NS-20.18 Section 3
San Mateo	771,410	\$3.0 Billion	Raises cannot exceed increase in Consumer Price Index for Bay Area, up to a maximum of 5%, per charter.	\$140,587	206(a) (5)	O4274
Fresno	989,255	\$3.0 Billion	60% of salary of Superior Court judges by resolution of the board; chairman is paid 72.5%	\$123,494 \$138,931		Resolutions 94-196 93-693
San Francisco	884,363	\$9 Billion (County and City)	Set every five years by Civil Service Commission	\$121,602	2.100	
Sacramento	1,530,750	\$4.5 Billion	Ordinance of the board	Range \$108,261- \$116,727	Article 3, Section 10	
El Dorado	188,987	\$605.4 Million	Fixed by ordinance of the board	\$84,477	204	2.06.020
Placer	386,166	\$939.6 Million	Average salary for supervisors in three neighboring counties, Nevada, El Dorado and Sacramento	\$77,852	207	
Butte	229,294	\$542.6 Million	30% of Superior Court judges by ordinance of the board	\$59,284		
Tehama	63,926	\$165.8 Million	Flat rate established by charter.	\$12,450	Article 4, Section 2	