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October 26, 2007

REPORT TO THE COMMITTEE ON RULES, FINANCE
AND INTERGOVERNMENTAL RELATIONS

IMPROPER INFLUENCE OF PROFESSIONALS

INTRODUCTION

On August 8, 2006, the Audit Committee of the City of San Diego presented its report to Council recommending that the City amend the San Diego Municipal Code to add criminal penalties for the improper influence of professionals who serve as “gatekeepers” to the public financial reporting process of the City. Accordingly, the City Attorney has prepared the attached ordinance to amend the San Diego Municipal Code, Chapter 2, Article 2, Division 7, to add section 22.0711 which will establish criminal penalties for the improper influence of the City’s outside professionals.

DISCUSSION

The proposed amendment was fashioned after section 303 of the Sabanes-Oxley Act of 2002, which makes it “unlawful for any officer or director to take any action to fraudulently influence, coerce, manipulate, or mislead any auditor engaged in the performance of an audit for the purpose of rendering the financial statements materially misleading.”

This amendment to the SDMC will make it unlawful for elected officials, officers, and employees of the City, or anyone acting under their direction, to take any action to intentionally influence, coerce, manipulate or mislead any independent certified public accountant engaged in the performance of an audit of the City’s financial statements or other any other professional retained by the City (including but not limited to, financial advisors, lawyers and accountants) performing services to the City in connection with the delivery of any offering statement or other disclosure document in connection with the sale of any City securities, or the provision of other information reasonably likely to reach investors.

Additionally, this amendment to the SDMC will make it unlawful for elected officials, officers, and employees of the City, or anyone acting under their direction, to use or threaten to use any official authority to retaliate against an employee who brings to the attention of any appropriate agency, office or department any information regarding coercive or manipulative behavior covered by the ordinance.

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Any person who violates the ordinance, and any person who counsels, aids, abets or participates with another to commit such violation would be guilty of a misdemeanor and subject to the penalties of Chapter 1 of the Municipal Code.

CONCLUSION

The proposed ordinance will help ensure the integrity of the City's financial reporting process. This Office is prepared to answer any questions or provide additional advice as requested by the Committee.

Respectfully submitted,

MICHAEL J. AGUIRRE
City Attorney

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Attachment
RC-2007-16