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REPORT TO THE AUDIT COMMITTEE

PUBLIC MEMBERS OF THE AUDIT COMMITTEE-APPOINTMENTS AT TERM  
EXPIRATION

**INTRODUCTION**

San Diego Charter section 39.1 governs the process for appointing members of the public to the City's Audit Committee (Committee). The City Council appointed the first three public members of the Committee to staggered terms of two, three and four years from a pool of candidates recommended by the Audit Screening Committee (ASC). San Diego Resolution R-304564 (Jan. 5, 2009); *also see* City Att'y Report 2008-18 (July 3, 2008). The two-year term of a public member will expire January 5, 2011. The Committee and the Independent Budget Analyst (IBA) ask whether public members may be reappointed at the expiration of a term without selection from a pool recommended by the ASC. If a pool is necessary, the IBA asks whether the ASC, as established in 2008, may reconvene to create that pool. As we explain below, the expiration of a term creates a legal vacancy which must be filled in accordance with Charter requirements. Public members who are eligible for reappointment may be reappointed from a pool of candidates recommended by the ASC. ASC members serve indefinite terms, whether appointed or serving because they hold a particular City office. The ASC, as it was established in 2008, may reconvene to create the pool from which the Committee's public member of the Committee is appointed.

**DISCUSSION**

The Charter requires the City Council to appoint the public members of the Committee "from a pool of at least two candidates for each vacant position." San Diego Charter § 39.1.<sup>1</sup> In general, a position on such a public committee is considered legally "vacant" for purposes of appointment when "the official term of the occupant has expired." *3 McQuillin Mun. Corp.*

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<sup>1</sup> San Diego Charter section 39.1 provides in pertinent part: ". . . the Audit Committee shall be composed of two members of the City Council and three members of the public . . . The three public members of the Audit Committee shall be appointed by the City Council from a pool of at least two candidates for each vacant position, to be recommended by a majority vote of a screening committee comprised of a member of the City Council, the Chief Financial Officer, the Independent Budget Analyst and two outside financial experts appointed by the other three members of the screening committee and confirmed by the City Council. . . . The public members of the Audit Committee shall serve for terms of four years and until their successors have been appointed and qualified. Public members of the Audit Committee are limited to two full consecutive terms, with one term intervening before they become eligible for reappointment. Notwithstanding any other provision of this section, appointments shall be made so that not more than one term of office shall expire in any one year."

§ 12.100 (3rd ed. 2010). Accordingly, the two-year term position on the Committee will be legally vacant at the end of the current term, requiring the City Council to appoint someone to fill the vacant position. The first term of this position was set at less than two years to accommodate the Charter requirement that “not more than one term of office shall expire in any one year.” San Diego Charter § 39.1. The next and future terms will be the four year terms established by the Charter. The Charter process for appointment to fill this vacancy is plainly explained.

**I. THE COUNCIL MAY REAPPOINT AN ELIGIBLE PUBLIC MEMBER TO FILL A VACANCY FROM A POOL OF QUALIFIED PERSONS.**

Charter section 39.1 contemplates that eligible public members of the Committee may be reappointed and serve more than one term. Public members will “serve for terms of four years and until their successors have been appointed and qualified. [They] are limited to two full consecutive terms, with one term intervening before they become eligible for reappointment.” San Diego Charter § 39.1. The Charter is equally clear that in filling a legal vacancy created by the expiration of a term, the City Council may appoint only “from a pool of at least two candidates for each vacant position, to be recommended by a majority vote of” the ASC. *Id.* Accordingly, an eligible current member may be reappointed to fill the vacancy created by the expiration of a term only if he or she is within the pool recommended by the ASC.

**II. THE EXISTING AUDIT SCREENING COMMITTEE MAY RECONVENE TO SELECT A POOL.**

The ASC is comprised of “a member of the City Council, the Chief Financial Officer, the Independent Budget Analyst and two outside financial experts appointed by the other three members of the screening committee and confirmed by the City Council.” San Diego Charter § 39.1. In July 2008, the City Council appointed Councilmember Kevin Faulconer to the ASC. San Diego Resolution R-303897 (July 7, 2008). Councilmember Faulconer, the Chief Financial Officer (CFO) and Independent Budget Analyst (IBA) then appointed the two financial experts, who were confirmed by the City Council later in July 2008. San Diego Resolution R-303970 (July 28, 2008).

The Charter does not set fixed terms of service for, nor does it limit how long members of the ASC may serve. This means they serve indefinite terms. The CFO and IBA hold membership for so long as they hold their respective Offices. Their successors in office automatically hold the same membership. The appointed City Councilmember holds membership for so long as he or

she is a City Councilmember, or until resignation or removal. The appointed financial experts also hold membership until resignation or removal.<sup>2</sup>

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<sup>2</sup> The Charter does not address how the appointed members of the ASC may be removed. In such cases, we look to

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Because the members of the ASC serve indefinite terms, the ASC remains in effect as it was established in 2008. If any vacancies in the appointed positions occur, they should be filled in the manner of the original appointments. Otherwise the ASC may reconvene in a timely fashion in accordance with applicable provisions of the Ralph M. Brown Act to create a pool of at least two potential candidates from which the City Council shall appoint a public member of the Audit Committee for a four-year term which commences January 6, 2011. The member whose term is expiring may seek reappointment so long as he or she is otherwise eligible under the Charter.

### CONCLUSION

The expiration of the term of a public member of the Audit Committee creates a legal vacancy which must be filled in accordance with Charter requirements. Public members who are eligible for reappointment may be reappointed from a pool of candidates recommended by the Audit Screening Committee. The Audit Screening Committee, as it was established in 2008, may reconvene to create the pool from which the City Council will select the appointee to serve the four-year term which commences January 6, 2011.

Respectfully submitted,

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