

ORDINANCE NUMBER O- 19294 (New Series)

ADOPTED ON JUN 29 2004

AN ORDINANCE SUBMITTING TO THE QUALIFIED VOTERS OF THE CITY OF SAN DIEGO AT THE MUNICIPAL ELECTION CONSOLIDATED WITH THE STATEWIDE GENERAL ELECTION TO BE HELD ON NOVEMBER 2, 2004, ONE PROPOSITION AMENDING THE CITY CHARTER BY ADDING ARTICLE XV ENTITLED "STRONG MAYOR TRIAL FORM OF GOVERNANCE," AND BY ADDING SECTIONS 250 THROUGH 295, ALL RELATING TO MODIFYING THE EXISTING CITY CITY MANAGER FORM OF GOVERNANCE FOR A TRIAL PERIOD OF TIME TO TEST IMPLEMENTATION OF A NEW FORM OF GOVERNANCE COMMONLY KNOWN AS A STRONG MAYOR FORM OF GOVERNMENT.

WHEREAS, pursuant to San Diego Charter section 223, Article 11, section 3(b) of the California Constitution, and California Elections Code section 9255(a)(2), the City Council has authority to place Charter amendments on the ballot to be considered at a Municipal Election; and

WHEREAS, by Ordinance No. O- 19305, adopted on JUL 2-6 2004, the Council of the City of San Diego is calling a Municipal Election to be consolidated with the Statewide General Election on November 2, 2004, for the purpose of submitting to the qualified voters of the City one or more ballot propositions; and

WHEREAS, the City has operated under a City Manager form of governance since 1931; and

WHEREAS, in 1963, the voters approved increasing the number of Council districts from six to eight; and

WHEREAS, in 1974, the jobs of Mayor and Council were made full-time; and

WHEREAS, in 1988, San Diego voters approved changing the election system of Councilmembers providing for nomination and election of Councilmembers by district; and

WHEREAS, in 1989, after studying the issues of governance for a year, a Council appointed Charter Review Commission concluded that present realities, such as district elections, and future probabilities including continuing growth, required substantive changes in the 1931 Charter, including a recommendation for Mayoral veto power over legislative action of the Council; and

WHEREAS, citizens and citizen groups are today demanding more efficiency and more accountability from City government and City elected officials; and

WHEREAS, changing from a City Manager form of government to a Strong Mayor form of government should result in a more efficient, accountable, and responsive City because the Mayor, a city official who is elected Citywide, will be responsible for and have authority vested in him or her directly by the electorate to carry out the legislative objectives and programs of the City Council; and

WHEREAS, other major cities in California with significant ethnic and political diversity, such as San Francisco, Los Angeles, and Oakland are governed under a Strong Mayor structure; and

WHEREAS, for all the reasons set forth above, the City Council desires to submit to the voters at the Municipal Election one proposition amending the Charter of the City of San Diego by adding Article XV, and by adding Charter sections 250 through 295; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. One proposition amending the City Charter by adding Article XV, and by adding sections 250 through 295, is hereby submitted to the qualified voters to be held on November 2, 2004, the proposition to read as follows:

PROPOSITION

ARTICLE XV

**Strong Mayor Trial
Form of Governance**

Section 250: Purpose and Intent

The City of San Diego has operated under a governance structure known as the City Manager form of government since its current Charter was adopted in 1931. Under the City Manager form of government, the City is governed by a Council consisting of eight members elected by district and a Mayor who is elected citywide. Also under this form of government, the policies, rules, and decisions of the Council are implemented by a city manager. The purpose of this Article is to modify the existing form of governance for a trial period of time to test implementation of a new form of governance commonly known as a Strong Mayor form of government.

Section 255: Operative Date; Sunset of Article; Future Action by Voters

- (a) The date for the provisions of this Article to become operative is January 1, 2006.
- (b) After January 1, 2006, the provisions of this Article shall remain in effect for a period of five years (until December 31, 2010) at which time this Article shall be automatically repealed and removed from the Charter. However, the Council and the people reserve the right to propose amendments to the Charter at the November 2010 election or sooner to extend, make permanent, shorten or repeal the effective period of this Article and to consider increasing the number of Council

districts to nine at the time of the next City Council district reapportionment which follows the national decennial census in 2010.

Section 260: Integration of Article with Charter

- (a) For the period of time this Article is operative, the following sections or subsections of the Charter shall be deemed inoperative and this Article shall supersede and completely govern the subjects:

Section 12(a) The Council [superseded by section 270]

Section 13 Meetings Of The Council [superseded by section 270]

Section 16 Introduction And Passage Of Ordinances And Resolutions
[superseded by sections 275, 280, 285, and 290]

Section 17 When Ordinances And Resolutions Take Effect; Emergency
Measures [superseded by section 295]

Section 22 Interference By Individual Members Of Council With
Administrative Service Prohibited [superseded by sections 270(g)
and 270(h)]

Section 24 Mayor [superseded by section 265]

Section 25 Deputy Mayor [superseded by section 265]

Section 27 The City Manager [superseded by sections 260 and 265]

- (b) All executive authority, power, and responsibilities conferred upon the City Manager in Article V, Article VII, and Article IX shall be transferred to, assumed, and carried out by the Mayor during the period of time this Article is operative.

Section 265: The Mayor

- (a) The Mayor shall be recognized as the official head of the City for all ceremonial purposes, by the courts for purpose of serving civil process, for the signing of all legal instmments and documents, and by the Goveemor for military purposes.
- (b) In addition to exercising the authority, power, and responsibilities formally conferred upon the City Manager as described in section 260(b), the Mayor shall have the following additional rights, powers, and duties:
 - (1) To be the chief executive officer of the City;
 - (2) To execute and enforce all laws, ordinances, and policies of the City, including the right to promulgate and issue administrative regulations that give controlling direction to the administrative service of the City. Nothing in this section shall be interpreted or applied to add or subtract from powers conferred upon the City Attomey in Charter sections 40 and 40.1;
 - (3) To recommend to the Council such measures and ordinances as he or she may deem necessary or expedient, and to make such other recommendations to the Council concerning the affairs of the City as the Mayor finds desirable;
 - (4) To attend and be heard at any regular or special open session meeting of the Council, but not the right to vote at such meetings;
 - (5) To approve or veto actions passed by the Council in open session, pursuant to sections 280 and 290;
 - (6) To attend and be heard at any closed session meeting of the Council, but not the right to vote at such meetings. When present, the Mayor shall preside over closed session. When the Mayor does not attend closed session, the Presiding Officer of the Council shall chair the closed session meeting;

NOTE: Pages 5, 6, and 7 changed by interlineation per motion of City Council.

- (7) Sole authority to appoint the City Manager, subject to Council confirmation;
- (8) Sole authority to direct and exercise control over the City Manager in managing those affairs of the City under the purview of the Mayor as expressly permitted in the Charter;
- (9) Sole authority to dismiss the City Manager without recourse;
- (10) Notwithstanding contrary language in Charter section 39, sole authority to appoint the City Auditor and Controller, subject to Council confirmation;
- (11) Notwithstanding contrary language in Charter sections 30, 39, 57 or 58, authority to dismiss the City Auditor and Controller, the Chief of Police or the Chief of the Fire Department, subject only to a right for these city officials to appeal to the City Council to overturn the Mayor's decision. Any such appeal must be filed with the City Clerk within 10 calendar days of receiving the notice of dismissal or termination from the Mayor. The City Clerk shall thereafter cause the appeal to be docketed at a regular open meeting of the City Council no later than 30 days after the appeal is filed with the Clerk;
- (12) As provided for in Charter sections 41 and 43, the authority to appoint members of City boards, commissions, and committees, subject to Council confirmation;
- (13) Sole authority to appoint City representatives to boards, commissions, committees and governmental agencies, unless controlling law vests the power of appointment with the City Council or a City Official other than the Mayor;
- (14) To cooperate fully with the Council and the Office of Independent Budget Analyst, including but not limited to, supplying requested information

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concerning the budget process and fiscal condition of the City to the Council and the Office of Independent Budget Analyst; and

- (15) To propose a budget to Council and make it available for public review, no later than April 15.
- (c) On or before the 15th day of January of each year, the Mayor shall communicate by message to the City Council a statement of the conditions and affairs of the City, and make recommendations on such matters as he or she may deem expedient and proper. In time of public danger or emergency, the Mayor shall take command of the police, maintain order, and enforce the law.
- (d) No person shall serve more than two consecutive four-year terms as Mayor. If for any reason a person serves a partial term as Mayor in excess of two years, that partial term shall be considered a full term for purposes of this term limit provision.
- (e) If a vacancy occurs in the Office of Mayor for any reason other than a successful recall election, and,
- (1) If the vacancy occurs with one year or less remaining in the term, the Council shall appoint a person to fill the vacancy.
- (2) If the vacancy occurs with more than one year remaining in the term, the Council shall call a special election to be held within ninety days of the vacancy, unless there is a regular municipal or statewide election scheduled to be held within 180 days of the vacancy. If there is a regular municipal or statewide election scheduled to be held within 180 days of the vacancy, the Council may consolidate the special election with that regular election.

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- (A) If one candidate receives the majority of votes cast for all candidates in the special election, the candidate receiving the majority of votes cast shall be deemed to be and declared by the Council to be elected to the Office of Mayor.
- (B) If no candidate receives a majority of votes cast in the special election, a special run-off election shall be held within forty-nine days of the first special election, unless there is regular municipal or statewide election scheduled to be held within ninety days of the proposed special run-off election date, at which time the City Council may consolidate the special run-off election with that regular election. The two candidates receiving the highest number of votes cast for the Office of Mayor in the first special election shall be the only candidates for the Office of the Mayor and the names of only those two candidates shall be printed on the ballot for that seat.
- (f) If a vacancy occurs by reason of a successful recall election, the Council shall adopt procedures to fill the vacancy.
- (g) Whether a person is appointed or elected to the Office of Mayor, whatever the reason for the vacancy, that person shall serve as Mayor for the remainder of the unexpired term.
- (h) Upon the appointment or election of any person to the Office of Mayor, any other City office held by that person is automatically vacated.
- (i) During the period of time when an appointment or election is pending to fill a vacancy in the Office of Mayor, the presiding officer of the Council shall be vested

with the authority to supervise the staff remaining employed in the Office of the Mayor, to direct and exercise control over the City Manager in managing the affairs of the City under the purview of the Mayor and to exercise other power and authority vested in the Office of the Mayor when the exercise of such power and authority is required by law. This limited authority would include circumstances where the expeditious approval of a legislative action is necessary to meet a legal requirement imposed by a court or another governmental agency. Such limited authority would not include the exercise of the power of veto or any other discretionary privilege which is enjoyed by a person appointed or elected to the Office of Mayor. The presiding officer, while acting under this section pending the filling of a mayoral vacancy, shall not lose his or her rights as a member of the Council.

- (j) For purposes of this section, a vacancy may result from death, resignation, or recall. If a vacancy occurs by reason of a resignation, the date of the vacancy will be the date specified in the written letter of resignation or, if there is no date certain specified in the letter, upon the date of receipt of the letter by the City Clerk.

Section 270: The Council

- (a) The Council shall be composed of eight councilmembers elected by district, and shall be the legislative body of the City.
- (b) Each councilmember shall have the right to vote upon all questions before the Council.
- (c) No resolution, ordinance, or other action of the Council shall be passed or become effective without receiving the affirmative vote of five members of the Council,

unless a greater number is otherwise required by the Charter or other superseding law. All substantive actions of the Council shall be passed by adoption of an ordinance or resolution.

- (d) The Council shall have the right to determine its own rules and order of business as provided for in Charter section 14, including a process for the selection of a presiding officer who shall have responsibility for chairing meetings of the Council and managing the docket process. Any such rules shall provide a process for the Mayor and independent department heads to propose matters for consideration by the Council in open session and a process for the City Attorney, Mayor, and Presiding Officer to coordinate the docketing of matters for consideration by the Council in any closed session of the Council.
- (e) The Council shall have the right to establish committees of the Council and to establish advisory boards and citizen committees as provided for in Charter section 43.
- (f) The Council shall have the right to establish an Office of Independent Budget Analyst to be managed and controlled by the Independent Budget Analyst. The Council shall appoint this independent officer who shall serve at the pleasure of the Council be removed from Office by the Council at any time. The Council shall determine the powers of this Office and its manager by ordinance.
- (g) No member of the Council shall directly or indirectly by suggestion or otherwise attempt to influence or coerce the City Manager or other officer appointed or confirmed by the Council in the making of any appointment to, or removal from, any City office or employment, or the purchase of any supplies, or discuss directly

or indirectly with any candidate for City Manager the matter of appointments to City Offices or employment, or attempt to exact any promises from such candidate relative to any such appointments.

- (h) Except for the purpose of inquiry or communications in furtherance of implementing policies and decisions approved by resolution or ordinance of the Council, individual members of Council shall deal with the administrative service for which the Mayor is responsible only through the Mayor, the City Manager, or the Mayor's designees.
- (i) Any City official or department head in the administrative service may be summoned to appear before the Council or any committee of the Council to provide information or answer any question.

Section 275: Introduction and Passage of Ordinances and Resolutions

- (a) Ordinances shall be introduced in the Council only in written form. An alteration necessary only to correct a typographical or clerical error or omission may be performed by the City Clerk with the written approval and concurrence of the City Attorney, so long as the alteration does not materially or substantially alter the contents, requirements, rights, responsibilities, conditions, or prescriptions contained in the original text of the ordinance. A typographical or clerical error shall include, but is not limited to, incorrect spelling, grammar, numbering, punctuation, transposed words or numbers, and duplicate words or numbers.
- (b) All ordinances except annual appropriation ordinances and ordinances codifying or rearranging existing ordinances, shall be confined to one subject, and the subject or subjects of all ordinances shall be clearly expressed in the title.

- (c) The following ordinances may be passed by the Council on the day of their introduction: ordinances making the annual tax levy; the annual appropriation ordinance; ordinances calling or relating to elections; ordinances recommended by the Mayor or independent department heads transferring or appropriating moneys already appropriated by the annual appropriation ordinance; ordinances establishing or changing the grade of a public highway; and emergency ordinances as defined by section 295 of this Charter. Other ordinances, however, shall be passed by the Council only after twelve calendar days have elapsed from the day of their introduction.
- (d) Each ordinance shall be read in full prior to passage unless such reading is dispensed with by a vote of five members of the Council, and a written copy of the ordinance was made available to each member of the Council and the public prior to the day of its passage.
- (e) The yeas and nays shall be taken upon the Council's passage of all resolutions and ordinances and entered upon the journal of the proceedings of the Council.
- (f) The enacting clause of ordinances passed by the Council shall be "Be it ordained by the Council of the City of San Diego." The enacting clause of ordinances submitted by initiative shall be "Be it ordained by the People of the City of San Diego."

Section 280: Approval or Veto of Council Actions by Mayor

- (a) The Mayor shall have veto power over all resolutions and ordinances passed by Council with the following exceptions:
 - (1) The Mayor's veto power shall not extend to matters that are exclusively within the purview of Council, such as selection of the Independent Budget

Analyst, the selection of a presiding officer, or the establishment of other rules or policies of governance exclusive to the Council and not affecting the administrative service of the City under the control of the Mayor.

- (2) The Mayor's veto power shall not extend to those matters where the Council has acted as a quasi-judicial body and where a public hearing was required by law implicating due process rights of individuals affected by the decision and where the Council was required by law to consider evidence at the hearing and to make legal findings based on the evidence presented.
 - (3) Emergency Ordinances.
 - (4) The Annual Appropriations Ordinance.
 - (5) The Salary Ordinance, which instead shall be subject to veto in accordance with the process described in section 290.
- (b) Matters that are not subject to the Mayor's veto power shall be clearly indicated as such on the Council's agenda and within the body of the resolution or ordinance, which, pursuant to section 40, shall be signed as to form and legality by the City Attorney.
- (c) The following shall apply to each resolution and ordinance that has been passed by the Council and is subject to the Mayor's veto:
- (1) Each such resolution or ordinance shall, within forty-eight hours of passage, be transmitted to the Mayor by the City Clerk with appropriate notations of the action taken by the Council.
 - (2) The Mayor shall act upon each resolution or ordinance within ten business days of receiving the clerk's transmittal.

- (3) The Mayor shall either approve the resolution or ordinance by signing and returning it to the City Clerk within the specified time limit, or shall veto any resolution or ordinance and return it to the City Clerk with his or her written objections within the specified time limit.
- (4) Failure to return the resolution or ordinance within the specified time limit, shall constitute approval and such resolution or ordinance shall take effect without the Mayor's signed approval. The City Clerk shall note this fact on the official copy of such resolution or ordinance.

Section 285: Enactment Over Veto

The Council shall reconsider any resolution or ordinance vetoed by the Mayor. If, after such reconsideration, at least five members of the Council vote in favor of passage, that resolution or ordinance shall become effective notwithstanding the Mayor's veto. If more than five votes are required for the passage of any resolution or ordinance by the provisions of this Charter or other superseding law, such larger vote shall be required to override the veto of the Mayor. If a vetoed resolution or ordinance does not receive sufficient votes to override the Mayor's veto within thirty calendar days of such veto, that resolution or ordinance shall be deemed disapproved and have no legal effect.

Section 290: Council Consideration of Salary Ordinance and Budget; Special Veto Power

- (a) No later than April 15 of each year, the Council shall introduce a Salary Ordinance fixing the salaries of all officers and employees of the City in accordance with Charter section 70. The Salary Ordinance shall be proposed by the Mayor for Council introduction in a form consistent with any existing Memorandum of Understandings with recognized labor organizations, or otherwise in conformance

with procedures governed by the Meyers-Milias-Brown Act or any other legal requirements governing labor relations that are binding upon the City. Upon introduction, the Salary Ordinance shall be transmitted to the Mayor.

- (1) The Mayor shall, within five business days of receipt of the Salary Ordinance introduced by Council, either approve the ordinance as introduced or veto all or any specific provision within the ordinance.
 - (2) The Salary Ordinance shall be returned to the Council within the five-business-day period either approved by the Mayor or accompanied by a statement explaining any reasons for the veto. The Council shall thereafter have ten business days within which to override the veto and pass the Salary Ordinance as introduced or otherwise accept the changes proposed by the Mayor in the veto statement and pass the ordinance at second reading with the changes proposed by the Mayor.
 - (3) The Salary Ordinance passed by Council shall become a controlling document for preparation of the Annual Appropriation Ordinance for the ensuing fiscal year.
- (b) Prior to June 15 of each year, the Council shall satisfy its obligations under Charter section 71 by holding a minimum of two public hearings to consider the budget submitted by the Mayor. Prior to the June 15 deadline, and after at least two such public hearings have been held, the Council shall pass a resolution that either approves the budget as submitted by the Mayor or modifies the budget in whole or in part. The Council's modifications may call for adding new items or for increasing or decreasing any item.

- (1) If approved by the Council as proposed by the Mayor, the budget shall become a controlling document for preparation of the Annual Appropriation Ordinance for the ensuing fiscal year.
- (2) If modified by the Council, the budget shall be returned to the Mayor as soon as practicable.
 - (A) The Mayor shall, within five business days of receipt either approve, veto, or modify any line item approved by the Council.
 - (B) The Council shall thereafter have five business days within which to override any vetoes or modifications made by the Mayor pursuant to section 290(b)(2)(A). Any item in the proposed budget that was vetoed or otherwise modified by the Mayor shall remain as vetoed or modified unless overridden by the vote of at least five members of the Council. In voting to override the actions of the Mayor, the Council may adopt either an amount it had previously approved or an amount in between the amount originally approved by the Council and the amount approved by the Mayor, subject to the balanced budget requirements set forth in section 71.
 - (C) Upon the expiration of the Council's five business day period, or sooner if the Council by five votes so directs, the budget as returned by the Mayor, and to the extent modified thereafter by the Council, shall become a controlling document for preparation of the Annual Appropriation Ordinance for the ensuing fiscal year.

(c) As required by section 71, the Council shall adopt the Annual Appropriation Ordinance during the month of July.

(d) The Mayor shall have no power of veto over the Annual Appropriations Ordinance.

Section 295: When Resolutions and Ordinances Take Effect; Emergency Measures

(a) In the case of a resolution or ordinance for which the Mayor has veto power:

(1) The date of approval by the Mayor pursuant to section 280(c) shall be deemed the date of its final passage.

(2) If the time for approval or veto by the Mayor has expired and no action has been taken by the Mayor, the date of expiration of that time shall be deemed the date of its final passage.

(3) If a resolution or ordinance is adopted by Council overriding the Mayor's veto, then the date of Council's override vote shall be deemed the date of final passage.

(b) In the case of a resolution or ordinance for which the Mayor has no veto power, the date of passage by the Council shall be deemed the date of its final passage.

(c) Resolutions shall become effective immediately upon their final passage, unless otherwise stated therein.

(d) Ordinances making the annual tax levy, the annual appropriation ordinances, ordinances calling or relating to elections, and emergency measures, shall take effect at the time indicated therein. All other ordinances passed by the Council shall take effect at the time indicated therein, but not less than thirty calendar days from the date of their final passage. Ordinances adopted by vote of the electors shall take

effect at the time indicated therein or the date the final canvass is issued by the County Registrar of Voters, whichever occurs later.

- (e) An emergency measure is an ordinance to provide for the immediate preservation of the public peace, property, health, or safety, in which the emergency claimed is set forth and defined in the preamble thereto. The affirmative vote of at least six members elected to the Council shall be required to pass any ordinance as an emergency measure. No measure making or amending a grant, renewal, or extension of a franchise or other special privilege shall ever be passed as an emergency measure. No situation shall be declared an emergency by the Council except as defined in this section, and it is the intention of this Charter that the courts shall strictly construe compliance with such definition.

END OF PROPOSITION

Section 2. The proposition shall be presented and printed upon the ballot and submitted to the voters in the manner and form set out in Section 3 of this ordinance.

Section 3. On the ballot to be used at this Municipal Election, in addition to any other matters required by law, there shall be printed substantially the following:

<p>PROPOSITION ____ . AMENDS THE CHARTER OF THE CITY OF SAN DIEGO BY ADDING ARTICLE XV TO PROVIDE FOR A STRONG MAYOR FORM OF GOVERNANCE.</p>	<p>YES</p>	
<p>Shall the City Charter be amended to change from a City Manager structure of government to a Strong Mayor structure of government for a five year trial period starting January 1, 2006, as a means to increase the accountability of government and the efficiency of services delivered to City residents?</p>	<p>NO</p>	

Section 4. An appropriate mark placed in the voting square after the word "Yes" shall be counted in favor of the adoption of this proposition. An appropriate mark placed in the voting square after the word "No" shall be counted against the adoption of the proposition.

Section 5. Passage of this proposition requires the affirmative vote of a majority of those qualified electors voting on the matter at the Municipal Election.

Section 6. In the event of the passage of this proposition, and for so long as the provisions of this proposition are in effect, the City Clerk shall retain in the City Charter the language of the sections temporarily superseded by this proposition, but shall add the following notations to such sections: that section 12(a) has been temporarily superseded by section 270; that section 13 had been temporarily superseded by section 270; that section 16 has been temporarily superseded by sections 275, 280, 285, and 290; that section 17 has been temporarily superseded by section 295; that section 22 has been temporarily superseded by sections 270(g) and 270(h)]; that section 24 has been temporarily superseded by section 265; that section 25 has been temporarily superseded by section 265; and that section 27 has been temporarily superseded by sections 260 and 265.

Section 7. The City Clerk shall cause this ordinance or a digest of this ordinance to be published once in the official newspaper following this ordinance's adoption by the City Council.

Section 8. Pursuant to San Diego Municipal Code section 27.0402, this measure will be available for public examination for no fewer than ten calendar days prior to being submitted for printing in the sample ballot. During the examination period, any voter registered in the City may seek a writ of mandate or an injunction requiring any or all of the measure to be amended or

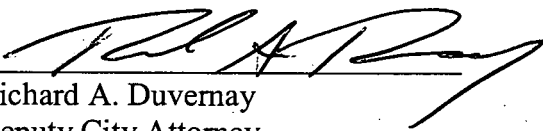
deleted. The examination period will end on the day that is 75 days prior to the date set for the election. The Clerk shall post notice of the specific dates that the examination period will run.

Section 9. A full reading of this ordinance is dispensed with prior to its final passage, a written or printed copy having been available to the City Council and the public a day prior to its final passage.

Section 10. Pursuant to section 17 of the San Diego City Charter, this ordinance relating to elections shall take effect on JUN 29 2004, which is the day of its introduction and passage.

APPROVED: CASEY GWINN, City Attorney

By


Richard A. Duvernay
Deputy City Attorney

RAD:jab
06/24/2004
Or.Dept: Rules
O-2004-149