

ORDINANCE NUMBER O- 19612 (NEW SERIES)

DATE OF FINAL PASSAGE MAY 02 2007

AN ORDINANCE AMENDING THE SAN DIEGO MUNICIPAL CODE BY AMENDING CHAPTER 2, ARTICLE 2, DIVISION 1, SECTION 22.0101.5, ENTITLED "PERMANENT RULES OF THE COUNCIL," BY AMENDING RULE 6.1 AND ADDING A NEW RULE 6.11.6; AMENDING CHAPTER 2, ARTICLE 2, BY ADDING NEW DIVISION 43, TITLED "AUDIT COMMITTEE", AND ADDING NEW SECTIONS 22.4301, 22.4302, 22.4303, 22.4304, AND 22.4305; AMENDING CHAPTER 2, ARTICLE 6, BY REPEALING DIVISION 17, TITLED "FINANCIAL REPORTING OVERSIGHT BOARD", AND BY REPEALING SECTIONS 26.1701, 26.1702, 26.1703, 26.1704, 26.1705 AND 26.1706 IN THEIR ENTIRETY; AMENDING CHAPTER 2, ARTICLE 2, DIVISION 41, TITLED "SECURITIES DISCLOSURE", BY AMENDING SECTIONS 22.4101, 22.4105, 22.4106, 22.4109, AND 22.4112; AMENDING CHAPTER 2, ARTICLE 2, DIVISION 3, TITLED "CITY ATTORNEY", BY AMENDING SECTION 22.0304; AMENDING CHAPTER 2, ARTICLE 2, DIVISION 7, TITLED "CITY AUDITOR AND COMPTROLLER", BY AMENDING SECTION 22.0708; ALL RELATED TO A NEW AUDIT COMMITTEE.

WHEREAS, on December 6, 2006 at a special meeting, the City Council established an Interim Audit Committee and directed the City Attorney to draft an ordinance to amend the Permanent Rules of the Council to establish an Audit Committee as a standing committee of the City Council, and directed that the Audit Committee prepare a written Charter; and further directed that the Financial Reporting Oversight Board be eliminated as being redundant to the Audit Committee; and

WHEREAS, on January 9, 2007, the City Council adopted the "San Diego City Council Temporary Rules Establishing the Audit Committee" until such time that the Permanent Rules of the City Council are amended and directed that the Audit Committee develop and recommend a Charter containing the duties and responsibilities of the Audit Committee; and

WHEREAS, on February 26, 2007, the Audit Committee proposed amendments to the

San Diego City Council Temporary Rules Establishing the Audit Committee, discussed and adopted an "Audit Committee Charter", and discussed and received a "Statement of Operating Principles" issued by the Mayor, a copy of which is attached for references purposes only as Exhibit A, and directed that the Audit Committee Charter be added to the Municipal Code; and

WHEREAS, under Charter section 280(a)(1) this ordinance is not subject to veto by the Mayor because this matter is exclusively within the purview of the City Council and not affecting the administrative service of the City under the control of the Mayor; NOW, THEREFORE,

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

Section 1. That Chapter 2, Article 2, Division 1, of the San Diego Municipal Code is hereby amended by amending Section 22.0101.5, Rule 6.1, and by adding Rule 6.11.6, titled "Audit Committee," as follows:

§ 22.0101.5 - Permanent Rules of the Council

Rule 1 through Rule 5.2. [No change in text.]

Rule 6: STANDING AND SPECIAL COMMITTEES

6.1 Creation of Standing Committees (former Rule 10)

The Council hereby creates six standing committees as follows:

(a) through (e) [No change to text.]

(f) Audit Committee

Rule 6.2 through Rule 6.11.5 [No change to text.]

Rule 6.11.6 Audit Committee

- (a) The Audit Committee shall be composed of three voting Council members. Whenever possible, on a going forward basis, the terms of Audit Committee members should be arranged to ensure that

there is always at least one experienced member of the Committee.

- (b) The Committee shall provide independent, legislative oversight for audit work performed by and for the City. This oversight shall extend to the City's internal controls over financial reporting; the City's financial disclosures; internal financial audits; and the selection, with appropriate consultation with the Mayor, and monitoring of independent audit firms.
- (c) The Committee may hold hearings on matters referred to it and as it deems necessary for the performance of its functions.
- (d) The Committee shall also have the responsibility to develop a permanent Audit Committee Charter, review the Charter annually and recommend any proposed changes to the Charter to the City Council.

Rule 6.12 through Rule 11 [No change to text.]

Section 2. That Chapter 2, Article 2, of the San Diego Municipal Code is hereby amended by adding a new Division 43, titled "Audit Committee"; and by adding new sections 22.4301, 22.4302, 22.4303, 22.4304 and 22.4305, to read as follows:

Article 2: Administrative Code

Division 43: Audit Committee

§ 22.4301 Purpose and Intent

The purpose of the Audit Committee of the City Council of the City of San Diego is to:

- (a) Provide independent, legislative oversight of the City's accounting and financial reporting processes, financial internal controls,

internal financial audit function and audits of the City's financial statements;

- (b) Assist the Council in performing its legislative oversight function in those areas;
- (c) Review the financial reports and other financial information provided by the City, the City's disclosure controls and procedures, and its internal financial controls;
- (d) Consider the reports of and interact with the City's internal auditor in connection with the internal auditor's performance of an independent internal financial audit function;
- (e) Assume direct responsibility, with appropriate consultation with the Mayor or his designee, for the appointment, compensation, retention and where appropriate, replacement of the outside auditor to the City in preparing or issuing an audit report or related work;
- (f) Oversee the work and independence of the outside auditor, approve all auditing services and permitted non-audit services provided by the outside auditor, and resolve any disagreements between the Mayor and the outside auditor regarding financial reporting; and
- (g) Carry out the specific responsibilities set forth below in furtherance of this stated purpose.

§ 22.4302 Committee Membership and Procedures

- (a) Committee members shall be appointed in accordance with the Council Permanent Rules.

- (b) The Committee shall be comprised of three voting Council members. The terms of the members, whenever possible, shall be arranged to ensure that there is always at least one experienced member of the Committee.
- (c) The Committee shall meet periodically as it determines. It shall conduct its meetings in accordance with this Charter, the procedures of the Council, the requirements of California law and such other lawful procedures as the Committee may adopt. The Committee may, consistent with California law, meet in closed session when determined necessary, including for personnel matters.

§ 22.4303 Resources

- (a) The Committee shall be advised, from time-to-time, by an ad hoc advisory committee, created and established only for the purpose of advising on questions with clearly defined objectives, and shall be temporary in nature, and shall be dissolved upon the completion of the objectives for which the advisory committee was created. The advisory committee shall initially consist of at least three members, one member who shall be appointed by the Mayor and two members who shall be appointed by the Committee. Any additional members shall be appointed jointly by the Mayor and the Committee. The advisory committee members shall be citizens selected for their accounting or audit expertise or financial management expertise. Each of the members shall serve without compensation.
- (b) The Committee may, from time to time, retain professional consultants as it considers necessary to carry out its functions. The Committee shall be provided with appropriate funding, as determined by the Committee and

approved by the City Council, for payment of compensation to any such consultants and advisors and any outside auditor, as well as for any ordinary administrative expenses of the Committee that it determines are necessary or appropriate in carrying out its responsibilities.

§ 22.4304 Complaint Procedures

Any issue of significant financial misconduct shall be brought to the attention of the Committee for its consideration. In this connection, the Committee shall establish procedures for:

- (a) the receipt, retention and treatment of complaints received by the City regarding internal financial controls or financial auditing matters and
- (b) the confidential, anonymous submission by employees of the City of concerns regarding questionable financial or auditing matters.

§ 22.4305 Key Responsibilities

- (a) The Committee's role is one of oversight, and it is recognized that the Mayor is responsible for preparing the City's financial statements and that the outside auditor, which is ultimately accountable to the Committee, is responsible for auditing those financial statements.
- (b) The following functions shall be the common recurring activities of the Committee in carrying out its oversight role. The functions are set forth as a guide and may be varied and supplemented from time to time as appropriate under the circumstances.
 - (1) Appointment of Outside Auditor. The Committee shall have direct responsibility, with appropriate consultation with the Mayor, for

the appointment, compensation, retention and where appropriate, replacement of any registered public accounting firm selected to be the City's outside auditor for the purpose of preparing or issuing an audit report or performing other audit, review or attest services for the City. The Committee shall provide oversight of the work of the outside auditor and, consistent with the requirements of the City Charter and California law, may meet with the outside auditor outside the presence of the Mayor to discuss the audit and the City's fiscal affairs.

- (2) Disclosure Controls and Procedures. The Committee shall review periodically with the Disclosure Practices Working Group and the Mayor the City's disclosure controls and procedures, and shall review and evaluate the annual report on the City's disclosure controls and procedures made by the Disclosure Practices Working Group and provide to the Disclosure Practices Working Group, the Mayor, and the City Council any comments or recommendations it may have.
- (3) Internal Controls. The Committee shall discuss periodically with the Mayor and the outside auditor the quality and adequacy of the City's internal controls over financial reporting and internal financial auditing procedures, including any significant deficiencies or material weaknesses in the design or operation of those controls which could adversely affect the City's ability to record, process, summarize or report financial data and any fraud,

whether or not material, that involves the Mayor or other employees who have a significant role in the City's financial internal controls, and discuss with the outside auditor how the City's financial systems and controls compare with practices in the municipal sector.

- (4) Internal Auditing. The Committee shall make recommendations, along with the City Council, the Mayor, and the City Attorney, for matters to be included in the Annual Audit Work Plan developed by the internal auditor as part of the internal audit function, which shall focus on financial reporting, completion of the City's Comprehensive Annual Financial Reports for fiscal years 2004 through 2007, and the City's internal controls over financial reporting, and which shall recognize the need to prioritize workload according to available resources, budget and critical needs. The Committee shall review and comment on the Annual Audit Work Plan and monitor its progress on at least a quarterly basis. The Committee shall review the results of internal financial audits and monitor the follow-up on recommendations. Consistent with the requirements of the City Charter and California law, the Committee may meet with the internal auditor outside the presence of the Mayor to discuss the internal financial audit.
- (5) Accounting Policies. The Committee shall review periodically with the Mayor and the outside auditor the quality, as well as acceptability, of the City's accounting policies, and discuss with

the outside auditor how the City's accounting policies compare with those in the municipal sector and all alternative treatments of financial information within generally accepted accounting principles that have been discussed with the Mayor, the ramifications of use of such alternative disclosures and treatments and the treatment preferred by the outside auditor.

- (6) Pre-approval of All Audit Services and Permitted Non-Audit Services. The Committee shall approve, or establish procedures for representatives of the Committee to approve, in advance, all audit services and all permitted non-audit services to be provided to the City by the outside auditor in order to ensure the outside auditor's independence.
- (7) Annual Audit. In connection with the annual audit of the City's financial statements, the Committee shall:
 - (A) Request from the outside auditor a formal written statement delineating all relationships between the outside auditor and the City consistent with Independence Standards Board Standard No. 1 and any other applicable auditing requirements, discuss with the outside auditor any such disclosed relationships and their impact on the outside auditor's objectivity and independence, and take appropriate action to oversee the independence of the outside auditor.

- (B) After appropriate consultation with the Mayor, recommend to the City Council the selection and the terms of the engagement of the outside auditor.
 - (C) Review with the Mayor and the outside auditor the audited financial statements to be included in the City's Comprehensive Annual Financial Report, and provide to the Mayor any comments or recommendations it may have, and review and consider with the outside auditor the matters required to be discussed by Statement on Auditing Standards No. 61.
 - (D) Perform the procedures set forth below in "Financial Reporting Procedures" with respect to the annual financial statements to be reported.
 - (E) Review with the Mayor and the outside auditor the City's critical accounting policies and practices.
 - (F) Recommend to the Council whether, based on the reviews and discussions referred to above, the annual financial statements should be issued by the City.
- (8) Continuing Reporting. In connection with the City's preparation of its continuing reporting of financial information, the Committee shall:
- (A) Review the City's financial information to be included in the City's continuing reports, and discuss them with the Mayor and, to the extent appropriate, the outside auditor.

- (B) Perform the procedures set forth below in "Financial Reporting Procedures" with respect to the financial information to be included in the continuing reports.
- (9) Financial Reporting Procedures. In connection with the Committee's review of each reporting of the City's annual or continuing financial information, the Committee shall:
 - (A) Discuss with the outside auditor, to the extent appropriate, whether all material correcting adjustments identified by the outside auditor in accordance with generally accepted accounting principles are reflected in the City's financial statements.
 - (B) Review with the outside auditor all material communications between the outside auditor and the Mayor, such as any letter or schedule of unadjusted differences.
 - (C) Review with the Mayor and the outside auditor any material financial or other arrangements of the City which do not appear on the City's financial statements and any transactions or courses of dealing with third parties that are significant in size or involve terms or other aspects that differ from those that would likely be negotiated with independent parties, and which arrangements or transactions are relevant to an understanding of the City's financial statements.

- (D) Resolve any disagreements between the Mayor and the outside auditor regarding financial reporting.
- (10) Securities Law Compliance. The Committee shall review and evaluate the City's compliance with its obligations under federal and state securities laws with respect to securities issued by the City and by the "related entities," as defined in San Diego Municipal Code section 22.1702, and provide to the Disclosure Practices Working Group, the Mayor, and the City Council any comments or recommendations it may have.
- (11) Coordination and Reporting. The Committee shall work to assure maximum coordination between the work of the internal auditor, the Council as legislative body and the outside auditor. The Audit Committee shall report to the City Council at least quarterly, and more frequently as needed, including reporting out of closed session, to assist the City Council in carrying out their legislative oversight duties.
- (12) Charter. The Committee shall review and reassess at least annually the adequacy of this Charter and recommend any proposed changes to the Council for approval, including any changes that may be appropriate or desirable as a result of any revision of the City Charter.

Section 3. That Chapter 2, Article 6, of the San Diego Municipal Code is hereby amended by repealing Division 17, titled "Financial Reporting Oversight Board" and by repealing sections 26.1701, 26.1702, 26.1703, 26.1704, 26.1705, and 26.1706 in their entirety.

Section 4. That Chapter 2, Article 2, Division 41, of the San Diego Municipal Code titled "Securities Disclosure", is hereby amended by amending Sections 22.4101 (b)(6), 22.4105 (b), 22.4105 (c), 22.4106 (a)(3), 22.4109 (b), and 22.4112 by replacing the words "Financial Reporting Oversight Board" with the words "Audit Committee".

Section 5. That Chapter 2, Article 2, Division 3, of the San Diego Municipal Code, titled "City Attorney", is hereby amended by amending the title of Section 22.0304 and Sections 22.0304 (a) and 22.0304 (b) by replacing the words "Financial Reporting Oversight Board" with the words "Audit Committee".

Section 6. That Chapter 2, Article 2, Division 7, titled "City Auditor and Comptroller", is hereby amended by amending Sections 22.0708 (b) and 22.0708 (b)(5) by replacing the words "Financial Reporting Oversight Board" with the words "Audit Committee".

Section 7. That a full reading of this ordinance is dispensed with prior to passage, since a written copy was made available to the City Council and the public prior to the day of its passage.

Section 8. This ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: MICHAEL A. AGUIRRE, City Attorney

By


Mark D. Blake
Chief Deputy City Attorney

MDB:jdf
03/28/2007
Or.Dept:Audit Committee
O-2007-122

APR 24 2007



STATEMENT OF OPERATING PRINCIPLES

(Originally received by the Audit Committee on February 26, 2007, as revised on April 10, 2007)

WHEREAS the City Charter provides for an Auditor and Comptroller to perform those functions related to the City's fiscal affairs specified in the City Charter;

WHEREAS the Auditor and Comptroller is to perform those functions under the direction of the Mayor except as otherwise specified in the existing City Charter;

WHEREAS the Mayor believes that it is important for the financial integrity of the City for the Auditor and Comptroller, consistent with his responsibilities under the existing City Charter, to perform the internal audit function on an independent basis working not only with the Mayor's Office, but also with the Audit Committee recently established by the City Council to provide independent oversight over financial matters (the Auditor and Comptroller or his designee with responsibility over the internal audit function is referred to herein as the "Internal Auditor");

WHEREAS this Statement of Operating Principles shall apply during the interim period prior to revision of the City Charter (the "Interim Period");

Accordingly, the Mayor hereby sets forth the following operating principles:

1. The Internal Auditor, in the exercise of his internal audit function, is directed periodically and more frequently as necessary to communicate directly to and consult with the Audit Committee and to be responsive to its requests for information consistent with the Audit Committee's oversight responsibilities with respect to the internal audit function. Such communication shall take place at the initiative of the Internal Auditor or of the Audit Committee. The Internal Auditor shall have the responsibility to inform the Audit Committee if he believes his independence is being compromised.

2. During the Interim Period, the Internal Auditor's internal audit function shall focus on financial reporting, completion of the City's CAFRs for fiscal years 2003 through 2007, and the City's internal controls over financial reporting.

3. The Internal Auditor shall prepare an Annual Audit Work Plan consistent with the foregoing paragraph as part of the internal audit function after consultation with and taking into account the recommendations of the Mayor and the Audit Committee, including prioritization of the workload according to available resources and budget. The Internal Auditor shall resolve any differences through the exercise of his independent professional judgment.

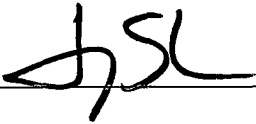
4. The Internal Auditor may consult as appropriate with the City Council or its designees, such as the Independent Budget Analyst, or the City Attorney.

5. The Mayor shall direct the Auditor and Comptroller to select as the Internal Auditor, with the participation of the Audit Committee, a person with professional qualifications as an internal auditor.

6. To the extent that the Internal Auditor is not the Auditor and Comptroller as described in Section 39 of the City Charter, the Internal Auditor may be dismissed by the Auditor and Comptroller, subject only to a right to appeal to the Audit Committee to overturn the dismissal decision.

7. The Auditor and Comptroller, in consultation with the Audit Committee, shall evaluate the performance of the Internal Auditor and shall consult with the Audit Committee with respect to the budget and compensation of the Internal Auditor.

APPROVED: JERRY SANDERS, Mayor



A handwritten signature in black ink, appearing to read 'JSL', is written over a horizontal line.