

ORDINANCE NUMBER O- 09717 (NEW SERIES)

DATE OF FINAL PASSAGE FEB 19 2008

AN ORDINANCE AMENDING THE SAN DIEGO MUNICIPAL
CODE BY AMENDING CHAPTER 2, ARTICLE 2, DIVISION
41, SECTION 22.4101 ET. SEQ. RELATING TO
ORGANIZATION OF THE DISCLOSURE PRACTICES
WORKING GROUP

WHEREAS, on April 30, 2007 the Council of the City of San Diego approved changes in the composition of the Disclosure Practices Working Group [DPWG] and directing the City Attorney to prepare an ordinance amending the Municipal Code in accordance with the changes approved by the Council; NOW, THEREFORE,

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

Section 1. That Chapter 2, Article 2, Division 41, Sections 22.4101 through 22.4112 are amended to read as follows:

Article 2: Administrative Code

Division 41: Securities Disclosure

§ 22.4101 Disclosure Practices Working Group Purpose and Intent

- (a) The City hereby establishes a Disclosure Practices Working Group, consisting solely of City officials with the assistance and advice of the City's disclosure counsel, which shall have the responsibilities set forth in this Division, in furtherance of the mandates of section 32.1 of the City Charter, to ensure the compliance by the City (including the City Council, City officers, and staff) with federal and state securities laws and to promote the highest standards of accuracy in disclosures provided by the City relating to securities issued by the City or by its related entities. It is the intent of the City Council that the Disclosure Practices Working Group be an internal working group of City staff and not a decision-making or advisory body subject to the provisions of the California Brown Act.
- (b) The Disclosure Practices Working Group shall:

- (1) design and implement the City's disclosure controls and procedures;
- (2) review the City's disclosures in connection with its securities and those of its related entities;
- (3) ensure the City's compliance with federal and state securities laws;
- (4) ensure that City staff receive appropriate training regarding such controls and procedures including training regarding the requirements of federal securities laws;
- (5) critically review and evaluate the disclosure controls and procedures, and compliance therewith, on an annual basis;
- (6) make such recommendations as it shall see fit regarding such disclosure controls and procedures and related matters to the Mayor, the City Council and the Audit Committee; and
- (7) ensure that the City Council, City officers, and staff comply with the federal securities laws in connection with disclosures provided by the City relating to securities issued by the City and securities issued by *related entities*.

§ 22.4102 Definitions

Each word or phrase that is defined in this Division appears in the text of this Division in italicized letters. For purposes of this Division, the following definition(s) shall apply:

Related entities mean those independent agencies, joint power authorities, special districts, component units, or other entities created by ordinance of the City Council or by State law that issue securities, for which the City Council serves as the governing or legislative body, or for which at least one City officer serves as a member of the governing or legislative body in his or her official capacity, or for which the City has agreed to provide disclosure. *Related entities* include but are not limited to the Public Facilities Financing Authority of the City of San Diego, the San Diego Facilities and Equipment Leasing Corporation, the City of San Diego/MTDB Authority, the City of San Diego Tobacco Settlement Revenue Funding Corporation, the Convention Center Expansion Financing Authority, the Redevelopment Agency of the City of San Diego, the San Diego Open Space Park Facilities District No. 1, the reassessment districts, and community facilities districts created by the City. The Controls and Procedures shall include a current list of *related entities*.

§ 22.4103 Organization of the Disclosure Practices Working Group

- (a) The Disclosure Practices Working Group shall consist of the following or, from time to time, their respective designees (as permitted by the Disclosure Controls and Procedures):
- (1) the Chief Operating Officer;
 - (2) the Chief Financial Officer;
 - (3) the City Director of Debt Management;
 - (4) the City Attorney;
 - (5) the Deputy City Attorney for Finance and Disclosure, who shall serve as Disclosure Coordinator of the Disclosure Practices Working Group, with responsibility for its operation, including arranging meetings, maintaining the agenda and arranging for information to be provided to members and participants;
 - (6) the City's outside disclosure counsel, who shall be a non-voting member; and
 - (7) the City auditor (or other person designated to fulfill that responsibility), who shall be a non-voting member.
- (b) The Independent Budget Analyst or, from time to time, that official's designee, shall be an ex officio participant of the Disclosure Practices Working Group.

§ 22.4104 Meetings

- (a) The Disclosure Practices Working Group shall meet as often as necessary to fulfill its obligations under this section, but not less than once a month. Any member of the Disclosure Practices Working Group may convene a meeting. Members may participate in meetings by telephone.
- (b) Any member or ex officio participant may place an item on the agenda of the Disclosure Practices Working Group.
- (c) Each member and ex officio participant of the Disclosure Practices Working Group who is a City official may invite such other personnel in his or her department or office to participate from time to time in meetings as he or she deems necessary for the effective operation of the Disclosure Practices Working Group.

§ 22.4105 Design and Implementation of Disclosure Controls and Procedures

- (a) The Disclosure Practices Working Group shall from time to time review the City's disclosure practices and procedures and shall recommend to the Mayor and the City Council such new disclosure controls and procedures as shall be necessary or advisable to ensure the accuracy of the City's disclosures and the City's compliance with all applicable federal and state securities laws. Such disclosure controls and procedures shall be in writing and designed to ensure:
- (1) that information material to the City's proposed and outstanding securities is compiled and communicated to senior City officials, including the Mayor, Chief Financial Officer, City Attorney, and the City Council, as appropriate, to allow timely decisions regarding disclosure;
 - (2) that such information is prepared in a timely manner to enable such senior City officials to certify the accuracy of disclosures made in connection with City financings;
 - (3) compliance with all applicable federal and state securities laws, including ensuring the disclosure of all material information with respect to the City's proposed and outstanding securities; and,
 - (4) the preservation of an audit trail regarding information prepared and reviewed in connection with such disclosures.
- (b) Such disclosure controls and procedures shall address the accurate and timely disclosure of information provided by the City in connection with securities issued by the City and by the *related entities*, and shall include those procedures established by the Audit Committee for employees and officials to submit complaints or concerns to the Audit Committee confidentially and anonymously.
- (c) The Mayor shall implement the recommendations of the Disclosure Practices Working Group relating to disclosure controls and procedures together with any recommendations of the Audit Committee, as soon as practicable, or shall within 45 days of receiving such recommendations provide the City Council with a report as to why such recommendations should not be implemented. The City Council shall review such report of the Mayor to determine whether such report of the Mayor is reasonable and carries out the program of this chapter.

§ 22.4106 Annual Evaluation and Report

- (a) Each year, the Disclosure Practices Working Group shall conduct an annual evaluation of the City's disclosure controls and procedures. In the course of that review, the Disclosure Practices Working Group shall:
 - (1) meet with key managers and staff of the Mayor's Office (particularly those managers and key staff responsible for the financial management of the City), the Chief Financial Officer's Office, and other relevant offices and departments to discuss the elements of the City's disclosure materials for which they are responsible and to evaluate the effectiveness of the disclosure controls and procedures;
 - (2) meet with the City's independent auditors and disclosure counsel to review the design and operation of the disclosure controls and procedures; and
 - (3) submit a written Annual Report on the Group's work and findings to the City Council and to the Audit Committee on or before December 15 of each year.
- (b) The Mayor and the City Auditor shall:
 - (1) review the Annual Report required by subsection (a)(3);
 - (2) certify in writing within 14 calendar days of the issuance of the Annual Report to the City Council that they have reviewed the report; and,
 - (3) provide to the City Council any recommendations or dissenting opinions that they may have with regard to the content of the Annual Report.

§ 22.4107 Timely Preparation and Review of Disclosure Documents

- (a) The Disclosure Practices Working Group shall be responsible for the following:
 - (1) reviewing the form and content of all of the City's documents and materials prepared, issued, or distributed in connection with the City's disclosure obligations relating to its securities, including without limitation, private placement memoranda, preliminary and final official statements and any supplements thereto, Comprehensive Annual Financial Reports, Annual Reports, and other filings made with Nationally Recognized Municipal Securities Information Repositories, press releases, rating agency

presentations, web-site postings, and other communications reasonably likely to reach investors or the securities markets; and,

- (2) providing for the timely review of all disclosure materials requiring approval and certification by the Mayor, Chief Financial Officer and City Attorney.
- (b) The Disclosure Practices Working Group also shall be responsible for reviewing disclosures provided by the City in connection with securities issued by the *related entities*, together with all of such documents and materials prepared, issued, or distributed in connection with such securities, to the extent that the City, the City Council, or City officers, or staff are responsible for the form or content of such documents or materials. As appropriate, the Disclosure Practices Working Group shall provide for the timely review of all such disclosure materials requiring approval and certification by the Mayor, Chief Financial Officer and City Attorney.

§ 22.4108 Promote Compliance with Securities Laws

- (a) The Disclosure Practices Working Group shall promote the City's compliance with the federal and state securities laws relating to disclosure provided by the City in connection with the City's securities and those of its *related entities* and may make recommendations to the Mayor and the City Council regarding appropriate means for furthering such compliance by the City or the *related entities*.
- (b) Members of the Disclosure Practices Working Group shall meet periodically as needed with the Audit Committee, but not less than once annually.

§ 22.4109 Training for City Employees

- (a) The Disclosure Practices Working Group shall be responsible for arranging for mandatory training, on a regular basis, for City staff, officials, City Councilmembers, and the Mayor regarding their obligations relating to disclosure matters under federal and state securities laws, and in this connection shall work with the Independent Budget Analyst regarding training of Councilmembers.
- (b) The Mayor, the Chief Financial Officer, and the City Attorney shall ensure the attendance at such training of those persons for whom the Disclosure Practices Working Group recommends such training.

Such training shall include information on how to submit complaints or concerns to the Audit Committee in a confidential and anonymous manner.

§ 22.4110 Requests of the Disclosure Practices Working Group

Officers and employees of the City and its component units and members of the Board of Administration, officers, and employees of the San Diego City Employees' Retirement System shall promptly provide such information, assurances, and/or certifications including appearing before the Disclosure Practices Working Group to answer questions as the Disclosure Practices Working Group may, at its sole discretion, request in order to assure compliance with federal and state securities laws.

§ 22.4111 Certifications by City Officials to the City Council

- (a) In connection with the approval of offering documents for securities by the City Council, the Mayor and the City Attorney each shall certify in writing to the City Council that to the best of his or her knowledge, such documents do not make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading. In the event that the Mayor or the City Attorney is medically incapacitated or physically absent from the jurisdiction, a deputy or other authorized designee of such officer may make the certification required by this section.
- (b) Upon the issuance of the City's Comprehensive Annual Financial Report [CAFR] and in connection with the incorporation of all or portions of the CAFR in the disclosure documents of the City or the *related entities*, the Chief Financial Officer shall make the certifications to the City Council required by Chapter 2, Article 2, Division 7 of the San Diego Municipal Code.

§ 22.4112 Selection of Independent Auditors

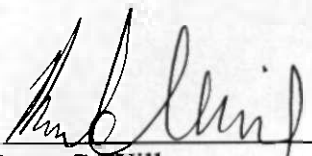
In preparation for the issuance of a Request for Proposals for an independent auditor for the City, the Mayor and the Audit Committee shall consult with the Disclosure Practices Working Group regarding its recommendations relating to appropriate expertise, experience, responsibility, and other factors on which candidates will be evaluated by the Audit Committee.

Section 2. That 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.

(O-2008-84.REV)
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Section 3. That this ordinance shall take effect and be in force on the thirtieth day from
and after its final passage.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

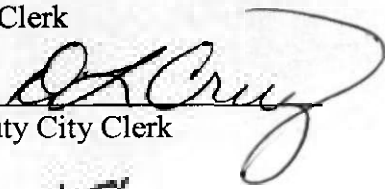
By 

Brant C. Will
Deputy City Attorney

BCW:jdf;pev:jdf
12/18/2007
01/15/2008 COR.Copy
01/23/2008 REV.
Or.Dept:City Attorney
O-2008-84

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of FEB 5 2008.

ELIZABETH S. MALAND
City Clerk

By 
Deputy City Clerk

Approved: 2-19-08
(date)


JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor

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41, SECTION 22.4101 ET. SEQ. RELATING TO
ORGANIZATION OF THE DISCLOSURE PRACTICES
WORKING GROUP

Article 2: Administrative Code

Division 41: Securities Disclosure

§ 22.4101 Disclosure Practices Working Group Purpose and Intent

- (a) ~~The City Manager, the City Attorney, the City Auditor and Comptroller, and the City Treasurer are hereby directed to establish~~ hereby establishes a Disclosure Practices Working Group, consisting solely of City officers, ~~managers, and staff, officials~~ with the assistance and advice of the City's disclosure counsel, which shall have the responsibilities set forth in this Division, in furtherance of the mandates of section 32.1 of the City Charter, to ensure the compliance ~~of~~ by the City (~~and including~~ the City Council, City officers, and staff ~~in the exercise of their official duties~~) with federal and state securities laws and to promote the highest standards of accuracy in disclosures provided by the City relating to securities issued by the City, or by its related entities. It is the intent of the City Council that the Disclosure Practices Working Group be an internal working group of City staff and not a decision-making or advisory body subject to the provisions of the California Brown Act.

(b) The ~~responsibilities of the~~ Disclosure Practices Working Group shall be:

- (1) ~~to~~ design and implement the City's disclosure controls and procedures;
- (2) ~~to~~ review the City's disclosures in connection with its securities and those of its related entities;
- (3) ~~to~~ ensure the City's compliance with federal and state securities laws;
- (4) ~~to~~ ensure that City staff receive appropriate training regarding such controls and procedures including training regarding the requirements of federal securities laws;
- (5) ~~to~~ critically review and evaluate the disclosure controls, and procedures, and compliance therewith, on an annual basis;
- (6) ~~to~~ make such recommendations as it shall see fit regarding such disclosure controls and procedures and related matters to the City ~~Manager~~ Mayor, the City Council, and the Audit Committee; and,
- (7) ~~to~~ ensure that the City Council, City officers, and staff comply with the federal securities laws in the exercise of their official ~~duties in connection with~~ disclosures provided by the City relating to securities issued by the City and securities issued by related entities.

§ 22.4102 Definitions

Each word or phrase that is defined in this Division appears in the text of this Division in italicized letters. For purposes of this Division, the following definition(s) shall apply:

Related entities mean those independent agencies, joint power authorities, special districts, component units, or other entities created by ordinance of the City Council or by State law that issue securities, for which the City Council serves as the governing or legislative body, or for which at least one City officer serves as a member of the governing or legislative body in his or her official capacity, or for which the City has agreed to provide disclosure. *Related entities* include but are not limited to the Public Facilities Financing Authority of the City of San Diego, the San Diego Facilities and Equipment Leasing Corporation, the City of San Diego/MTDB Authority, the City of San Diego Tobacco Settlement Revenue Funding Corporation, the Convention Center Expansion Financing Authority, the Redevelopment Agency of the City of San Diego, the San Diego Open Space Park Facilities District No. 1, the reassessment districts, and community facilities districts created by the City. The Controls and Procedures shall include a current list of *related entities*.

§ 22.4103 Organization of the Disclosure Practices Working Group

(a) The Disclosure Practices Working Group shall consist of the following or, from time to time, their respective designees (as permitted by the Disclosure Controls and Procedures):

- (1) the Chief Financial Officer;
 - (2) the City Director of Debt Management;
 - (3) the City auditor (or other person designated to fulfill that responsibility);
 - (4) the City Attorney;
 - (5) the Deputy City Attorney for Finance and Disclosure, who shall serve as chair Disclosure Coordinator of the Disclosure Practices Working Group, with responsibility for its operation, including arranging meetings, maintaining the agenda and arranging for information to be provided to members and participants; and
- (d) ~~(b) the Deputy City Attorneys designated pursuant to sections 22.0302, 22.0303, and 22.0304 of the San Diego Municipal Code;~~
- (e) ~~the City Auditor and Comptroller (and such other managers of the Office of City Auditor and Comptroller as the City Auditor and Comptroller deems necessary for the effective operation of the Disclosure Practices Working Group);~~
- (f) ~~the City Treasurer (and such other managers of Financing Services as the City Treasurer deems necessary for the effective operation of the Disclosure Practices Working Group);~~

(e) ~~the Deputy City Manager responsible for the financial management functions of the City (and such other senior members of the City Manager's Office as the City Manager deems necessary for the effective operation of the Disclosure Practices Working Group); and,~~

(6) the City's outside disclosure counsel, who shall be a non-voting member.

(b) The Independent Budget Analyst or, from time to time, that official's designee, shall be an ex officio participant of the Disclosure Practices Working Group.

§ 22.4104 Meetings

(a) The Disclosure Practices Working Group shall meet as often as necessary to fulfill its obligations under this section, but not less than once a month. Members Any member of the Disclosure Practices Working Group may convene a meeting. Members may participate in meetings by telephone.

(b) Any member or ex officio participant may place an item on the agenda of the Disclosure Practices Working Group.

(c) Each member and ex officio participant of the Disclosure Practices Working Group who is a City official may invite such other personnel in his or her department or office to participate from time to time in meetings as he or she deems necessary for the effective operation of the Disclosure Practices Working Group.

§ 22.4105 **Design and Implementation of Disclosure Controls and Procedures**

(a) The Disclosure Practices Working Group shall ~~conduct a thorough~~from time to time review of the City's ~~current~~ disclosure practices and procedures and shall recommend to the ~~City Manager~~ by December 30, 2004, Mayor and the City Council such new disclosure controls and procedures as shall be necessary or advisable to ensure the accuracy of the City's disclosures and the City's compliance with all applicable federal and state securities laws. Such disclosure controls and procedures shall be in writing and designed to ensure:

- (1) that information material to the City's proposed and outstanding securities is ~~accumulated~~compiled and communicated to senior City officials, including the ~~City Manager, City Auditor and Comptroller, City Treasurer~~Mayor, Chief Financial Officer, City Attorney, and the City Council, as appropriate, to allow timely decisions regarding disclosure;
- (2) that such information is ~~recorded, processed, and summarized~~prepared in a timely manner to enable the ~~requisite~~such senior City officials to certify the accuracy of disclosures made in connection with City financings;
- (3) compliance with all applicable federal and state securities laws, including ensuring the disclosure of all material information with respect to the City's proposed and outstanding securities; and,

- (4) the preservation of an audit trail regarding information prepared and reviewed or prepared in connection with such disclosures.
- (b) Such disclosure controls and procedures shall address the ~~accuracy~~ accurate and timely disclosure of information ~~disclosed~~ provided by the City in connection with securities issued by the City and by the related entities, and shall include those procedures established by the Audit Committee for employees and officials to submit complaints or concerns to the Audit Committee confidentially and anonymously.
- (c) ~~The City Manager~~ Mayor shall implement the recommendations of the Disclosure Practices Working Group relating to disclosure controls and procedures together with any recommendations of the Audit Committee ~~relating to disclosure controls and procedures~~, as soon as practicable, or shall within 45 days of receiving such recommendations provide the City Council with a report as to why such recommendations should not be implemented. The City Council shall review such report of the Mayor to determine whether such report of the Mayor is reasonable and carries out the program of this chapter.

§ 22.4106 Annual Evaluation and Report

- (a) Each year, ~~beginning in 2005~~, the Disclosure Practices Working Group shall, ~~in collaboration with the City Manager and the City Auditor and Comptroller~~, conduct an annual evaluation of the City's disclosure

controls and procedures and controls. In the course of that review, the

Disclosure Practices Working Group shall:

- (1) meet with key managers and staff ~~in~~of the ~~City-Manager~~Mayor's Office (particularly those managers and key staff responsible for the financial management of the City), the ~~City-Treasurer~~Chief Financial Officer's Office, and other relevant offices and departments to discuss the elements of the City's disclosure materials for which they are responsible and to evaluate the effectiveness of the disclosure controls and procedures;
- (2) meet with the City's independent auditors and disclosure counsel to review the design and operation of the disclosure controls and procedures; and
- (3) submit a written Annual Report on the ~~Committee~~Group's work and findings to the City Council and to the Audit Committee on or before ~~[November 1]~~December 15 of each year, beginning ~~[November 1, 2005]~~.

[7] The ~~City-Manager~~Mayor and the City Auditor and Comptroller shall:

- (1) review the Annual Report required by subsection (a)(3);
- (2) certify in writing within 14 calendar days of the issuance of the Annual Report to the City Council that they have reviewed the report; and,

- (3) provide to the City Council any recommendations or dissenting opinions that they may have with regard to the content of the Annual Report.

§ 22.4107 Timely Preparation and Review of Disclosure Documents

- (a) The Disclosure Practices Working Group shall be responsible for the following:

- (1) reviewing the form and content of all of the City's documents and materials prepared, issued, or distributed in connection with the City's disclosure obligations relating to its securities, including without limitation, private placement memoranda, preliminary and final official statements and any supplements thereto, Comprehensive Annual Financial Reports, Annual Reports, and other filings made with Nationally Recognized Municipal Securities Information Repositories, press releases, rating agency presentations, web-site postings, and other communications reasonably likely to reach investors or the securities markets; and,
- (2) providing for the timely review of all disclosure materials requiring approval and certification by the ~~City Manager~~ Mayor, Chief Financial Officer and City Attorney, and ~~City Auditor and Comptroller~~.

- (b) The Disclosure Practices Working Group also shall be responsible for reviewing disclosures provided by the City in connection with securities issued by the *related entities*, together with all of such documents and materials prepared, issued, or distributed in connection with such securities, to the extent that the City, the City Council, or City officers, or staff are responsible for the form or content of such documents or materials. As appropriate, the Disclosure Practices Working Group shall provide for the timely review of all such disclosure materials requiring approval and certification by the City Manager, Mayor, Chief Financial Officer and City Attorney, and City Auditor and Comptroller.

§ 22.4108 **Promote Compliance with Securities Laws**

- (a) The Disclosure Practices Working Group shall promote the City's compliance with the federal and state securities laws relating to disclosure provided by the City in connection with the City's securities and those of its *related entities* and may make recommendations to the City Manager, Mayor and the City Council regarding appropriate means for furthering such compliance by the City or the *related entities*.
- (b) Members of the Disclosure Practices Working Group shall meet periodically as needed with the Audit Committee, but not less than once annually.

§ 22.4109 **Training for City Employees**

- (a) The Disclosure Practices Working Group shall be responsible for arranging for mandatory training, on a regular basis, for City staff, officials, City Councilmembers, and the Mayor regarding their obligations relating to disclosure matters under federal and state securities laws, and in this connection shall work with the Independent Budget Analyst regarding training of Councilmembers.
- (b) ~~The City Manager, the City Auditor and Comptroller~~ Mayor, the Chief Financial Officer, and the City Attorney shall ensure the attendance at such training of those persons for whom the Disclosure Practices Working Group recommends such training. Such training shall include information on how to submit complaints or concerns to the Audit Committee in a confidential and anonymous manner.

§ 22.4110 **Requests of the Disclosure Practices Working Group**

Officers and employees of the City and its component units and members of the Board of Administration, officers, and employees of the San Diego City Employees' Retirement System shall promptly provide such information, assurances, and/or certifications including appearing before the Disclosure Practices Working Group to answer questions as the Disclosure Practices Working Group may, at its sole discretion, request in order to assure compliance with federal and state securities laws.

§ 22.4111 **Certifications by City Officials to the City Council**

- (a) In connection with the approval of offering documents for securities by the City Council, the ~~City Manager~~ Mayor and the City Attorney each shall certify in writing to the City Council that to the best of his or her knowledge, such documents do not make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading. In the event that the ~~City Manager~~ Mayor or the City Attorney is medically incapacitated or physically absent from the jurisdiction, a deputy or other authorized designee of such officer may make the certification required by this section.
- (b) Upon the issuance of the City's Comprehensive Annual Financial Report [CAFR] and in connection with the incorporation of all or portions of the CAFR in the disclosure documents of the City or the *related entities*, the ~~City Auditor and Comptroller~~ Chief Financial Officer shall make the certifications to the City Council required by Chapter 2, Article 2, Division 7 of the San Diego Municipal Code.

§ 22.4112 **Selection of Independent Auditors**

In preparation for the issuance of a Request for Proposals for an independent auditor for the City, the ~~City Manager~~ Mayor and the Audit Committee shall consult with the Disclosure Practices Working Group regarding its

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recommendations relating to appropriate expertise, experience, responsibility, and
other factors on which candidates will be evaluated by the Audit Committee.

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Or.Dept:City Attorney
O-2008-84

Document comparison done by DeltaView on Tuesday, January 15, 2008 1:50:42 PM

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| Format changed | 0 |
| Total changes | 142 |

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