

ORDINANCE NUMBER O- 19718 (NEW SERIES)

DATE OF FINAL PASSAGE MAR 03 2008

AN ORDINANCE SUBMITTING TO THE QUALIFIED VOTERS OF THE CITY OF SAN DIEGO AT THE MUNICIPAL ELECTION CONSOLIDATED WITH THE STATEWIDE PRIMARY ELECTION TO BE HELD ON JUNE 3, 2008, ONE PROPOSITION AMENDING THE CITY CHARTER BY AMENDING ARTICLE V, SECTIONS 39 AND 45; AMENDING ARTICLE VII, SECTION 111; AMENDING ARTICLE VIII, SECTION 117; AMENDING ARTICLE XV, SECTIONS 265, 270, AND 280; AND ADDING ARTICLE V, SECTIONS 39.1, 39.2 AND 39.3; RELATING TO THE CHIEF FINANCIAL OFFICER, CITY TREASURER, INDEPENDENT BUDGET ANALYST, AUDIT COMMITTEE, AND CITY AUDITOR.

WHEREAS, pursuant to California Constitution, article XI, section 3(b), California Elections Code section 9255(a)(2), and San Diego City Charter section 223, 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-19713, adopted on February 4, 2008, the Council of the City of San Diego is calling a Municipal Election to be consolidated with the Statewide Primary Election on June 3, 2008, for the purpose of submitting to the qualified voters of the City one or more ballot propositions; and

WHEREAS, the City Council desires to submit to the voters at the Municipal Election one proposition amending the Charter of the City of San Diego to establish the positions, roles and responsibilities of Chief Financial Officer, City Auditor, and Independent Budget Analyst; modify the City Treasurer appointment process, and create an Audit Committee; and

WHEREAS, the City Council's proposal, on its own motion, of a charter amendment is governed by California Constitution, article XI, section 3(b), California Elections Code section

9255(a)(2), and California Government Code section 34458, and is not subject to veto by the Mayor; NOW, THEREFORE,

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

Section 1. That one proposition amending the City Charter by amending Article V, sections 39 and 45; amending Article VII, section 111; amending Article VIII, section 117; amending Article XV, sections 265, 270, and 280; and adding Article V, sections 39.1, 39.2 and 39.3; relating to the Chief Financial Officer, City Treasurer, Independent Budget Analyst, Audit Committee, and City Auditor, is hereby submitted to the qualified voters at the Municipal Election to be held on June 3, 2008, with the proposition to read as follows:

PROPOSITION

Section 39: ~~City Auditor and Comptroller~~Chief Financial Officer.

The ~~City Auditor and Comptroller~~Chief Financial Officer shall be ~~elected~~appointed by the City Manager and confirmed by the City Council for an indefinite term and shall serve until his or her successor is ~~elected~~appointed and qualified. The ~~City Auditor and Comptroller~~Chief Financial Officer shall be the chief fiscal officer of the City. He or she shall exercise supervision over all accounts, and accounts shall be kept showing the financial transactions of all Departments of the City upon forms prescribed by ~~him~~the Chief Financial Officer and approved by the City Manager and the Council. Subject to the direction and supervision of the City Manager, the Chief Financial Officer shall be responsible for the preparation of the City's annual budget. He or she shall also be responsible for oversight of the City's financial management, treasury, risk management and debt management functions. He or she shall submit to the City Manager and to the Council at least monthly a summary statement of revenues and expenses for the preceding

accounting period, detailed as to appropriations and funds in such manner as to show the exact financial condition of the City and of each Department, Division and office thereof. No contract, agreement, or other obligation for the expenditure of public funds shall be entered into by any officer of the City and no such contract shall be valid unless the ~~Auditor and Comptroller~~ Chief Financial Officer shall certify in writing that there has been made an appropriation to cover the expenditure and that there remains a sufficient balance to meet the demand thereof. He or she shall perform the duties imposed upon ~~City Auditors and Comptrollers~~ chief municipal fiscal officers by the laws of the State of California, and such other duties as may be imposed upon him or her by ordinances of the Council, but nothing shall prevent the ~~Council~~ City Manager from transferring to other officers matters in charge of the ~~City Auditor and Comptroller~~ Chief Financial Officer which do not relate directly to the finances of the City. ~~He~~ The Chief Financial Officer shall prepare and submit to the City Manager such information as shall be required by the City Manager for the preparation of an annual budget. ~~He~~ The Chief Financial Officer shall appoint his or her subordinates subject to the Civil Service provisions of this Charter. The authority, power and responsibilities conferred upon the Auditor and Comptroller by this Charter shall be transferred to, assumed, and carried out by the Chief Financial Officer.

Section 39.1: Audit Committee

The Audit Committee shall be an independent body consisting of five members. Notwithstanding any other Charter provision to the contrary, the Audit Committee shall be appointed as provided under this section. To ensure its independence, the Audit Committee shall be composed of two members of the City Council and three members of the public. The two Councilmembers shall be appointed by the Council, one of whom shall serve as Chair of the Audit Committee. 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. Public members of the Audit Committee shall possess the independence, experience and technical expertise necessary to carry out the duties of the Audit Committee. This expertise includes but is not limited to knowledge of accounting, auditing and financial reporting. The minimum professional standards for public members shall include at least 10 years of experience as a certified public accountant or as a certified internal auditor, or 10 years of other professional financial or legal experience in audit management. 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.

The Audit Committee shall have oversight responsibility regarding the City's auditing, internal controls and any other financial or business practices required of this Committee by this Charter. The Audit Committee shall be responsible for directing and reviewing the work of the City Auditor and the City Auditor shall report directly to the Audit Committee. The Audit Committee shall recommend the annual compensation of the City Auditor and annual budget of the Office of City Auditor to the Council and shall be responsible for an annual performance review of the City Auditor. The Audit Committee shall recommend to the Council the retention of the City's

outside audit firm and, when appropriate, the removal of such firm. The Audit Committee shall monitor the engagement of the City's outside auditor and resolve all disputes between City management and the outside auditor with regard to the presentation of the City's annual financial reports. All such disputes shall be reported to the Council. The Council may specify additional responsibilities and duties of the Audit Committee by ordinance as necessary to carry into effect the provisions of this section.

Section 39.2: Office of City Auditor

The City Auditor shall be appointed by the City Manager, in consultation with the Audit Committee, and confirmed by the Council. The City Auditor shall be a certified public accountant or certified internal auditor. The City Auditor shall serve for a term of ten years. The City Auditor shall report to and be accountable to the Audit Committee. Upon the recommendation of the Audit Committee, the City Auditor may be removed for cause by a vote of two-thirds of the members of the Council. The City Auditor shall be the appointing authority of all City personnel authorized in the department through the normal annual budget and appropriation process of the City, and subject to the Civil Service provisions of this Charter.

The City Auditor shall prepare annually an Audit Plan and conduct audits in accordance therewith and perform such other duties as may be required by ordinance or as provided by the Constitution and general laws of the State. The City Auditor shall follow Government Auditing Standards. The City Auditor shall have access to, and authority to examine any and all records, documents, systems and files of the City and/or other property of any City department, office or agency, whether created by the Charter or otherwise. It is the duty of any officer, employee or

agent of the City having control of such records to permit access to, and examination thereof, upon the request of the City Auditor or his or her authorized representative. It is also the duty of any such officer, employee or agent to fully cooperate with the City Auditor, and to make full disclosure of all pertinent information. The City Auditor may investigate any material claim of financial fraud, waste or impropriety within any City Department and for that purpose may summon any officer, agent or employee of the City, any claimant or other person, and examine him or her upon oath or affirmation relative thereto. All City contracts with consultants, vendors or agencies will be prepared with an adequate audit clause to allow the City Auditor access to the entity's records needed to verify compliance with the terms specified in the contract. Results of all audits and reports shall be made available to the public in accordance with the requirements of the California Public Records Act.

Section 39.3. Independent Budget Analyst.

Notwithstanding any other provision of this Charter, the City Council shall have the right to establish by ordinance an Office of Independent Budget Analyst to be managed and controlled by the Independent Budget Analyst. The Office of the Independent Budget Analyst shall provide budgetary and policy analysis for the City Council. The Council shall appoint the Independent Budget Analyst, who shall serve at the pleasure of the Council and may be removed from office by the Council at any time. Any person serving as the Independent Budget Analyst shall have the professional qualifications of a college degree in finance, economics, business, or other relevant field of study or relevant professional certification. In addition, such appointee shall have experience in the area of municipal finance or substantially similar equivalent experience. The Independent Budget Analyst shall be the appointing authority of all City personnel authorized in

the department through the normal annual budget and appropriation process of the City, and subject to the Civil Service provisions of this Charter.

Section 45: City Treasurer

The Manager shall appoint ~~at~~ the Treasurer ~~subject to confirmation by a majority of the members of the Council.~~ He or she shall perform duties imposed upon City Treasurers by general law, the City Charter, or ordinances of the Council. The office of the Treasurer shall consist of the Treasurer and such subordinate officers and employees as shall be authorized by ordinance.

The Treasurer shall receive, have the custody of, and disburse City moneys upon the warrant or check-warrant of the ~~Auditor and Comptroller~~ Chief Financial Officer under the provisions of section 53911 of the Government Code of the State of California. He or she shall keep such books and records as are necessary for the recording of all receipts and expenditures, together with a record of money in City depositories. Every Department officer, or institution which receives money directly from the public, shall deposit the same daily with the Treasurer, unless otherwise authorized by ordinance. The Treasurer shall demand and receive from the County Tax Collector moneys collected by him or her for use of the City. And it shall be the duty of such County official to deposit such money monthly with the City Treasurer.

The Treasurer shall determine pursuant to the general law of the state, the selection of depositories for City funds. All interest collected on City funds shall be accounted for monthly by the Treasurer.

Whenever any person is indebted to the City in any manner and the means of collection of such debt is not otherwise provided for by law or ordinance, the Treasurer shall be authorized to demand and receive the same. When any claim shall not be collectible by other methods, he or she shall report the same to the City Manager and the City Attorney for prosecution. When payment of a claim or any judgment thereon is made, he or she shall receive and receipt therefor in the name of the City.

The Treasurer shall issue notices for and collect special assessments previous to certification to the County Auditor, charges for permits for private use of public streets, and such other miscellaneous taxes, fees, assessments, licenses and privilege charges as may from time to time be assigned to him or her. He or she shall maintain a continuous inspection of the records and accounts of such taxes, licenses and privilege charges in order to effectuate their collection.

The Treasurer shall issue all permits and licenses except departmental permits and licenses which are by ordinance assigned to the particular Departments. Such permits and licenses shall be issued either directly by the Treasurer or upon specific authorization of the appropriate Department as may be required by ordinances, but all revenues derived therefrom shall be deposited with the Treasurer.

~~The Treasurer in office at the time this Charter is adopted by the people shall serve out the term of office for which he has been elected.~~

Section 111: Audit of Accounts of Officers

Each year the Council shall provide that an audit shall be made of all accounts and books of all the Departments of the City. Such audit shall be made by independent auditors who are in no way connected with the City. Upon the death, resignation or removal of any officer of the City, the City Auditor and Comptroller shall cause an audit and investigation of the accounts of such officer to be made and shall report to the ~~Manager and the Council~~ Audit Committee. Either the Audit Committee or ~~the Council or the Manager~~ may at any time provide for an independent examination or audit of the accounts of any or all officers or Departments of the City government. In case of death, resignation or removal of the City Auditor and Comptroller, the Audit Committee ~~Manager~~ shall cause an audit to be made of his or her accounts. If, as a result of any such audit, an officer be found indebted to the City, the City Auditor and Comptroller, or other person making such audit, shall immediately give notice thereof to the Audit Committee, ~~the Council~~, the Manager and the City Attorney, and the latter shall forthwith proceed to collect such indebtedness.

Section 117: Unclassified and Classified Services

Employment in the City shall be divided into the Unclassified and Classified Service.

(a) The Unclassified Service shall include:

[subsections (1) through (6) no change in text]

(7) ~~Budget~~ Chief Financial Officer, Independent Budget Analyst, and City Auditor

[subsections (8) through (10) no change in text]

(11) ~~Industrial Coordinator~~ All Assistants and deputies to the Independent Budget Analyst, and all Assistants and deputies to the City Auditor

[subsections (12) through (17) no change to text]

[subsections (b) and (c) no change in text]

Section 265: The Mayor

[subsection (a) no change in text]

(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:

[subsections (1) through (9) no change to text]

~~(10) Notwithstanding contrary language in Charter section 39, sole authority to appoint the City Auditor and Controller, subject to Council confirmation;~~

(11) (10) 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) (11) 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)~~ (12) 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) (13) To cooperate fully with the Council and the Office of Independent Budget Analyst, including but not limited to, supplying requested information concerning the budget process and fiscal condition of the City to the Council and the Office of Independent Budget Analyst; and

~~(15)~~ (14) To propose a budget to Council and make it available for public review, no later than April 15.

[subsections (c) through (j) no change in text]

Section 270: The Council

[subsections (a) through (e) no change in text]

~~(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 and may 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)~~ (f) 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)~~ (g) 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.

(+) (h) 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 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.

(6) The Mayor's veto power shall not extend to the appointment, confirmation, or removal of members of the Audit Committee or the screening committee as provided for in section 39.1, or the City Auditor as provided for in section 39.2.

[subsections (b) - (c) no change in text]

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:

PROPOSITION ____ . AMENDS CITY CHARTER RELATING TO CHIEF FINANCIAL OFFICER, CITY AUDITOR, INDEPENDENT BUDGET ANALYST, TREASURER, AND AUDIT COMMITTEE. Shall the Charter be amended to establish the positions, roles and responsibilities of Chief Financial Officer, City Auditor, and Independent Budget Analyst; modify the City Treasurer appointment process; and create an Audit Committee?	YES	
	NO	

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.

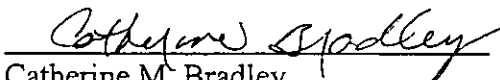
Section 5. Passage of this proposition requires the affirmative vote of a majority of those qualified electors voting on the matter at the Municipal Election.

Section 6. 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 7. 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 8. Pursuant to sections 295(b) and 295(d) of the Charter of the City of San Diego, this ordinance shall take effect on the date of passage by the City Council, which is deemed the date of its final passage.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By 
Catherine M. Bradley
Chief Deputy City Attorney

SBS:CMB:als
1/24/08
2/01/08 COR.COPY
2/04/08 REV.
2/05/08 COR.COPY 2
2/29/08 COR.COPY 3
3/03/08 REV. 2
3/19/08 COR.COPY 4
3/27/08 COR.COPY 5
Or.Dept:CityAtty
O-2008-95