

ORDINANCE NUMBER O- 19895 (NEW SERIES)

DATE OF FINAL PASSAGE SEP 11 2009

AN ORDINANCE AMENDING CHAPTER 2, ARTICLE 2,
DIVISION 7 OF THE SAN DIEGO MUNICIPAL CODE TO
ADD SECTION 22.0711 ESTABLISHING CRIMINAL
PENALTIES FOR THE IMPROPER INFLUENCE OF THE
CITY'S OUTSIDE PROFESSIONALS AND FOR
OBSTRUCTING THE CITY AUDITOR.

WHEREAS, the Report of the Audit Committee of the City of San Diego, presented to the City Council on August, 8, 2006 and on file with the City Clerk at RR-301857, recommends that the City of San Diego amend the San Diego Municipal Code to add criminal penalties for the improper influence of professionals who serve as "gatekeepers" to the public financial reporting process of the City; and

WHEREAS, it is the policy of the City that elected officials, officers, and employees make open and full disclosures to, and have honest discussions with, the auditors and other professionals providing information to the public concerning the City's finances; and

WHEREAS, this Ordinance will make it unlawful for any elected official, officer or employee of the City to improperly influence, coerce, manipulate or mislead any independent certified public accountant engaged in the performance of an audit of the City's financial statements or any other professional required to review the City's financial information and provide a report of any findings; and

WHEREAS, in order for the City Auditor to perform his or her duties under the City Charter it is necessary that all elected officials, officers and employees of the City and its related entities fully cooperate with the City Auditor in obtaining records and making full disclosure of all pertinent information sought by the City Auditor in the conduct of an audit; and

WHEREAS, this Ordinance will make it unlawful for any elected official, officer or employee of the City to take any action to improperly influence, coerce, manipulate or mislead the City Auditor or any member of his or her staff; and

WHEREAS, all employees or duly appointed representatives of the City should be free to report any activities that may violate this Ordinance without fear of retribution; and

WHEREAS, this Ordinance will make it unlawful for any elected official, officer or employee of the City to attempt to punish individuals for reporting activities that may violate this Ordinance or assisting in the investigation thereof; and

WHEREAS, these amendments to the Municipal Code are necessary to protect the public and to restore trust in City government; NOW, THEREFORE,

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

Section 1. That Chapter 2, Article 2, Division 7 of the San Diego Municipal Code is hereby amended by adding section 22.0711, to read as follows:

§ 22.0711 Improper Influence of Outside Professionals and Obstruction of the City Auditor

(a) It shall be unlawful for any elected official, officer, or employee of the City, or anyone acting under their direction, to take any action to fraudulently influence, coerce, manipulate or mislead:

- (1) any independent certified public accountant engaged in the performance of an audit of the financial statements of the City or its departments;

- (2) any professional retained by the City, including but not limited to, financial advisors, lawyers and accountants, who perform services for the City in connection with the delivery of any offering statement or other disclosure document of the City in connection with the sale of any debt obligations by the City;
- (3) any actuary performing an actuarial valuation in connection with the preparation of the City's or San Diego City Employees Retirement System's Comprehensive Annual Financial Reports; or
- (4) any bond rating agency rating the City's bonds or otherwise conducting a credit evaluation of the City's finances;

with the specific intent of rendering such financial statements or other financial information materially misleading.

- (b) It shall be unlawful for any elected official, officer, or employee of the City, or anyone acting under their direction, to take any action to fraudulently influence, coerce, manipulate or mislead the City Auditor or any member of his or her staff in the conduct of an audit with the specific intent of obstructing such audit or rendering any report of such audit materially misleading.
- (c) It shall be unlawful for any elected official, officer, or employee of the City to use his or her official authority or influence to intimidate, threaten, coerce or command, or attempt to do the same, to any elected official, officer, or employee of the City or member of a City board or commission

who reports on the activities described in section 22.0711(a) or 22.0711(b) or otherwise assists in an investigation of thereof.

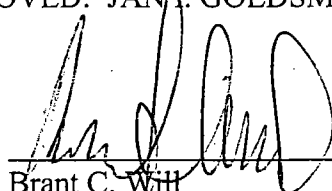
- (d) Any person who violates section 22.0711(a), 22.0711(b) or 22.0711(c), or who counsels, aids, abets, advises, or participates with another to commit such violation, is guilty of a misdemeanor and is subject to the penalties set forth in Chapter 1 of the Municipal Code.

Section 2. That a full reading of this ordinance is dispensed with prior to its passage, a written or printed copy having been available to the City Council and the public a day prior to its passage.

Section 3. This ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: JANI. GOLDSMITH, City Attorney

By



Brant C. Will
Deputy City Attorney

BCW:jdf
06/10/2009
06/22/2009.COR.COPY
07/06/2009.REVISED
Or.Dept:COO
O-2009-166

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of SEP 01 2009.

ELIZABETH S. MALAND
City Clerk

By 
Deputy City Clerk

Approved: 9-11-09
(date)


JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor

Passed by the Council of The City of San Diego on SEP 01 2009, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Sherr Lightner	/			
Kevin Faulconer	/			
Todd Gloria	/			
Anthony Young	/			
Carl DeMaio			/	
Donna Frye	/			
Marti Emerald	/			
Ben Hueso	/			

Date of final passage SEP 11 2009

AUTHENTICATED BY: JERRY SANDERS
Mayor of The City of San Diego, California.

(Seal) ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By Ducy, Deputy

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on

JUL 27 2009, and on SEP 11 2009

I FURTHER CERTIFY that said ordinance was read in full prior to its final passage.

I FURTHER CERTIFY that the reading of said ordinance in full was dispensed with by a vote of not less than a majority of the members elected to the Council, and that there was available for the consideration of each member of the Council and the public prior to the day of its passage a written or printed copy of said ordinance.

(Seal) ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By BSC, Deputy

Office of the City Clerk, San Diego, California
Ordinance Number O- <u>19895</u>