

ORDINANCE NUMBER O- 19978 (NEW SERIES)

DATE OF FINAL PASSAGE JUL 26 2010

AN ORDINANCE SUBMITTING TO THE QUALIFIED VOTERS OF THE CITY OF SAN DIEGO AT THE MUNICIPAL SPECIAL ELECTION CONSOLIDATED WITH THE STATE GENERAL ELECTION TO BE HELD ON NOVEMBER 2, 2010, ONE PROPOSITION AMENDING THE CITY CHARTER BY AMENDING ARTICLE V, SECTION 30; ARTICLE V, SECTION 40; AND ARTICLE VIII, SECTION 117(a)(10); REGARDING EMPLOYMENT OF DEPUTY CITY ATTORNEYS.

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-19965, introduced and adopted on June 28, 2010, the Council of the City of San Diego has called a Municipal Special Election to be consolidated with the State General Election on November 2, 2010, 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 Special Election one proposition amending the Charter of the City of San Diego to establish a good cause requirement for the termination or suspension of Deputy City Attorneys who have served continuously for two years or more, except that any Deputy City Attorney may be subject to layoff due to lack of work or insufficient appropriation to meet the salary requirements necessary to maintain existing personnel; 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 30 and 40; and amending Article VIII, section 117(a)(10); and relating to a good cause requirement for certain terminations or suspensions of Deputy City Attorneys, is hereby submitted to the qualified voters at the Municipal Special Election to be held on November 2, 2010, and consolidated with the State General Election to be held on the same date, with the proposition to read as follows:

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**PROPOSITION**

**Section 30: Removal of Unclassified Officers and Employees**

Officers and employees in the unclassified service appointed by the Manager or other appointing authority not under control of the Manager, with the exception of Deputy City Attorneys, may be removed by such appointing authority at any time.

Appropriate rules and regulations shall be promulgated to establish procedures as may be necessary by which the dismissal provided for in this article shall be processed and effectuated. Procedures relating to the termination, suspension, and layoffs of Deputy City Attorneys as provided in Section 40 shall be established in compliance with the Meyers-Milias-Brown Act.

With the exception of Deputy City Attorneys, ~~N~~nothing contained herein shall be construed as in any way limiting the authority and power of the Manager or such other appointing authority not

under the control of the Manager to remove any such unclassified officer or employee appointed or employed by them and any order effecting said removal shall be final and conclusive.

**Section 40: City Attorney**

At the municipal primary and general election in 1977, a City Attorney shall be elected by the people for a term of seven (7) years. A City Attorney shall thereafter be elected for a term of four (4) years in the manner prescribed by Section 10 of this Charter.

Notwithstanding any other provision of this Charter and commencing with elections held in 1992, no person shall serve more than two (2) consecutive four-year terms as City Attorney. If for any reason a person serves a partial term as City Attorney in excess of two (2) years, that partial term shall be considered a full term for purposes of this term limit provision. Persons holding the office of City Attorney prior to the November 1992 election shall not have prior or current terms be counted for the purpose of applying this term limit provision to future elections.

The City Attorney shall be the chief legal adviser of, and attorney for the City and all Departments and offices thereof in matters relating to their official powers and duties, except in the case of the Ethics Commission, which shall have its own legal counsel independent of the City Attorney. The attorney and his or her deputies shall devote their full time to the duties of the office and shall not engage in private legal practice during the term for which they are employed by the City, except to carry to a conclusion any matters for which they have been retained prior to taking office.

The City Attorney shall appoint such deputies, assistants, and employees to serve him or her, as may be provided by ordinance of the Council, but all appointments of subordinates other than deputies and assistants shall be subject to the Civil Service provisions of this Charter. The City Attorney may appoint no more than six Assistant City Attorneys and four other assistants, who shall serve at the pleasure of the City Attorney and may be removed by the City Attorney at any time.

No Deputy City Attorney, who has served continuously as a Deputy City Attorney in the Office of the City Attorney for two years or more shall be terminated or suspended without good cause, except that any Deputy City Attorney may be subject to layoff due to lack of work or insufficient appropriation to meet the salary requirements necessary to maintain existing personnel in the Office of the City Attorney.

To ensure that Deputy City Attorneys conduct their legal work with the highest level of integrity, honesty, and professionalism, good cause for purposes of termination or suspension includes, but is not limited to, failure to comply with the California Rules of Professional Conduct.

It shall be the City Attorney's duty, either personally or by such assistants as he or she may designate, to perform all services incident to the legal department; to give advice in writing when so requested, to the Council, its Committees, the Manager, the Commissions, or Directors of any department, but all such advice shall be in writing with the citation of authorities in support of the conclusions expressed in said written opinions; to prosecute or defend, as the case may be, all suits or cases to which the City may be a party; to prosecute for all offenses against the

ordinances of the City and for such offenses against the laws of the State as may be required of the City Attorney by law; to prepare in writing all ordinances, resolutions, contracts, bonds, or other instruments in which the City is concerned, and to endorse on each approval of the form or correctness thereof; to preserve in the City Attorney's office a docket of all cases in which the City is interested in any of the courts and keep a record of all proceedings of said cases; to preserve in the City Attorney's office copies of all written opinions he or she has furnished to the Council, Manager, Commission, or any officer. Such docket, copies and papers shall be the property of the City, and the City Attorney shall, on retiring from office, deliver the same, together with all books, accounts, vouchers, and necessary information, to his or her successor in office.

The City Attorney shall have charge and custody of all legal papers, books, and dockets belonging to the City pertaining to his office, and, upon a receipt therefor, may demand and receive from any officer of the City any book, paper, documents, or evidence necessary to be used in any suit, or required for the purpose of the office.

The City Attorney shall apply, upon order of the Council, in the name of the City, to a court of competent jurisdiction for an order or injunction to restrain the misapplication of funds of the City or the abuse of corporate powers, or the execution or performance of any contract made in behalf of the City which may be in contravention of the law or ordinances governing it, or which was procured by fraud or corruption.

The City Attorney shall apply, upon order of the Council, to a court of competent jurisdiction for

a writ of mandamus to compel the performance of duties of any officer or commission which fails to perform any duty expressly enjoined by law or ordinance.

The City Attorney shall perform such other duties of a legal nature as the Council may by ordinance require or as are provided by the Constitution and general laws of the State.

The Council shall have authority to employ additional competent technical legal attorneys to investigate or prosecute matters connected with the departments of the City when such assistance or advice is necessary in connection therewith. The Council shall provide sufficient funds in the annual appropriation ordinance for such purposes and shall charge such additional legal service against the appropriation of the respective Departments.

The salary of the City Attorney shall be fixed by the Council and set forth in the annual appropriation ordinance, provided that the salary of the City Attorney may not be decreased during a term of office, but in no event shall said salary be less than \$15,000.00 per year.

In the event of a vacancy occurring in the office of the City Attorney by reason of any cause, the Council shall have authority to fill such vacancy, which said authority shall be exercised within thirty (30) days after the vacancy occurs. Any person appointed to fill such vacancy shall hold office until the next regular municipal election, at which time a person shall be elected to serve the unexpired term. Said appointee shall remain in office until a successor is elected and qualified.

**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 (9) no change in text]

(10) Not more than six ~~All~~ Assistant City Attorneys, ~~and all~~ Deputy City Attorneys, ~~and~~  
four other assistants in the Office of the City Attorney.

[subsections (11) through (17) no changes to text]

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

**END OF PROPOSITION**

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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:

<b>PROPOSITION ____ . AMENDS CITY CHARTER TO ADD GOOD CAUSE REQUIREMENT FOR CERTAIN TERMINATIONS OR SUSPENSIONS OF DEPUTY CITY ATTORNEYS.</b> Shall the Charter be amended to establish a good cause requirement for the termination or suspension of Deputy City Attorneys who have served continuously for two years or more, except that any Deputy City Attorney may be subject to layoff due to lack of work or insufficient appropriations?	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.

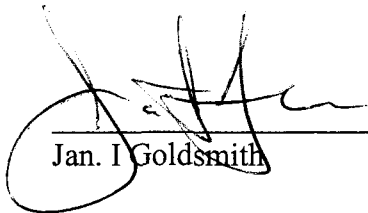
Section 6. The City Clerk shall cause this ordinance or a digest of this ordinance to be published once in the official newspaper following this ordinance's adoption by the City Council.

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: JAN I. GOLDSMITH, City Attorney

By



Jan. I Goldsmith

07/13/10  
07/23/10 Cor. Copy  
Or.Dept:City Atty.

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