

RESOLUTION NUMBER R- 310867

DATE OF FINAL PASSAGE DEC 09 2016

A RESOLUTION OF THE COUNCIL OF THE CITY OF
SAN DIEGO REAFFIRMING ITS CONTINUED
AUTHORIZATION TO FLUORIDATE THE CITY'S POTABLE
WATER SUPPLY USING WATER FUND MONIES.

WHEREAS, on April 11, 2000, the San Diego City Council (City Council) directed the City Manager to return to City Council with an implementation plan to fluoridate the City's water system for the City Council's consideration and approval, pursuant to San Diego Resolution R-292983 (Apr. 11, 2000); and

WHEREAS, on June 10, 2008, the City Council authorized the Mayor or his designee to negotiate and execute an agreement with the First 5 Commission to accept funding, and implement the fluoridation of the public water supply, pursuant to San Diego Resolution R-303832 (Jun. 13, 2008); and

WHEREAS, on June 10, 2008, the City Council also directed the City Attorney to return to City Council with an ordinance to repeal San Diego Municipal Code (Municipal Code) section 67.0101, a citizen's initiative passed in 1954 which prohibits the fluoridation of the City's water supply; and

WHEREAS, the City Council cannot amend or repeal citizens initiatives without voter approval pursuant to Municipal Code section 27.1049; and

WHEREAS, the City Attorney's Office issued three Memoranda of Law (City Att'y MOL Nos. 2007-1, 2008-2, and 2013-3) all explaining that Municipal Code 67.0101 was preempted in 1995 by an amendment to the California Safe Drinking Water Act requiring all public water systems with 10,000 or more service connections to fluoridate their water supplies, and that Municipal Code 67.0101 has no force or effect; and

WHEREAS, on June 23, 2009, the City Council authorized the award of a contract to design and install fluoridation equipment at all of the City's potable water treatment plants, pursuant to San Diego Resolution R-305021 (Jul. 2, 2009); and

WHEREAS, San Diego supplements naturally-occurring fluoride in our drinking water to meet the health and safety standards established by the California State Water Resources Control Board (State Board) using fluorosilicic acid, a chemical certified under ANSI/NSF Standard 60 and approved by the State Board; and

WHEREAS, in spring 2013, funding from the First 5 Commission for operation and maintenance of the City's fluoridation equipment was exhausted and the City continued to fluoridate the water supply using money from the City's Water Fund; and

WHEREAS, on August 24, 2016, litigation was filed against the City alleging that the City Council never authorized the continued fluoridation of the City's water supply after funding from the First 5 Commission was exhausted; and

WHEREAS, the City Council desires to clarify the intent of Resolution R-303832 and reaffirm that the City was and is authorized to fluoridate the City's potable water supply; NOW, THEREFORE,

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


1. That the intent of action taken by City Council on June 10, 2008, memorialized in Resolution R-303832, was to authorize the fluoridation of the City's potable water supply, including the time after funding from the First 5 Commission was exhausted.

2. That the City Council ratifies the expenditure of any and all monies from the Water Fund spent to fluoridate the City's potable water supply since the funding provided by the First 5 Commission was exhausted.

3. That the Mayor or his designee is authorized to fluoridate the City's potable water supply at all its water treatment facilities that currently exist, and which may exist in the future, until and unless the City Council specifically revokes this authorization by subsequent resolution.

4. That the Chief Financial Officer is authorized to expend monies from the Water Fund to fluoridate the City's potable water supply, provided sufficient funding is available in the approved City budget each fiscal year.

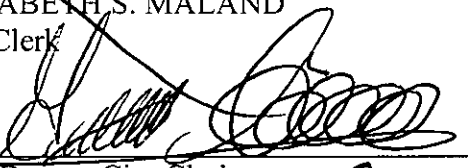
APPROVED: JAN I. GOLDSMITH, City Attorney

By 
Raymond C. Palmucci
Deputy City Attorney

RCP:mt:bas:ccm
November 7, 2016
Or.Dept:Public Utilities
Doc. No.: 1383686

I certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of DEC 06 2016

ELIZABETH S. MALAND
City Clerk

By 
Deputy City Clerk

Approved: 12/9/16
(date)


KEVIN L. FAULCONER, Mayor

Vetoed: _____
(date)

KEVIN L. FAULCONER, Mayor

Passed by the Council of The City of San Diego on DEC 06 2016, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Sherri Lightner	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lorie Zapf	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
District 3 - Vacant	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Myrtle Cole	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mark Kersey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Cate	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scott Sherman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
David Alvarez	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Marti Emerald	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage DEC 09 2016.

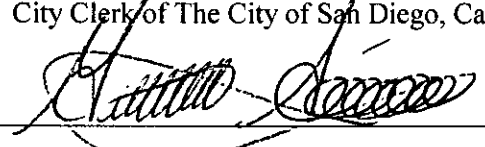
(Please note: When a resolution is approved by the Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)

AUTHENTICATED BY:

KEVIN L. FAULCONER
Mayor of The City of San Diego, California.

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

(Seal)

By , Deputy

<p>Office of the City Clerk, San Diego, California</p> <p>Resolution Number R- <u>310867</u></p>
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