

ORDINANCE NUMBER O- 20972 (NEW SERIES)

DATE OF FINAL PASSAGE JUL 30 2018

AN ORDINANCE SUBMITTING TO THE QUALIFIED VOTERS OF THE CITY OF SAN DIEGO, AT THE MUNICIPAL SPECIAL ELECTION, CONSOLIDATED WITH THE CALIFORNIA STATE GENERAL ELECTION TO BE HELD ON NOVEMBER 6, 2018, ONE MEASURE AMENDING THE CITY CHARTER BY AMENDING ARTICLE III, SECTIONS 11.1 AND 12.1; AMENDING ARTICLE IV, SECTION 24.1; AMENDING ARTICLE V, SECTION 40 AND REPEALING SECTION 41.1; AND AMENDING ARTICLE XVI, BY ADDING NEW SECTIONS 303 AND 304, ALL RELATING TO ETHICS, COMPENSATION, AND RESTRICTIONS ON BENEFITS FOR ELECTIVE OFFICERS.

WHEREAS, pursuant to California Constitution, article XI, section 3(b), California Elections Code (Elections Code) section 9255(a)(2), and San Diego City Charter (Charter) section 223, the Council of the City of San Diego (Council) has authority to place Charter amendments on the ballot to be considered at a Municipal Election; and

WHEREAS, by San Diego Ordinance O-20963, introduced and adopted on July 17, 2018, the Council has called a Municipal Special Election to be consolidated with the California State General Election to be held November 6, 2018, for the purpose of submitting to the qualified voters of the City one or more ballot measures; and

WHEREAS, the Council now desires to submit to the voters, at the Municipal Special Election to be held November 6, 2018, one measure amending the Charter by amending Article III, sections 11.1 and 12.1; Article IV, section 24.1; and Article V, section 40; repealing Article V, section 41.1; and amending Article XVI by adding new sections 303 and 304; and

WHEREAS, under current Charter sections 12.1, 24.1, and 41.1, the Council is required to vote every two years to establish and approve Council and Mayoral salaries, based upon recommendations provided by the Salary Setting Commission; and

WHEREAS, on February 3, 2015, the San Diego County Grand Jury issued a report, titled "Compensation of City of San Diego Elected Officials" (Grand Jury Report) in which the County Grand Jury issued findings that salaries for the City Council and Mayor should be tied to an external benchmark and the Charter should be amended to this effect; and

WHEREAS, former Salary Setting Commission chair, Robert Otilie, proposed a ballot measure to address the concerns in the Grand Jury Report and certain compensation and ethics reform issues for elective officers (Council, Mayor, and City Attorney); and

WHEREAS, the proposed ballot measure would eliminate the Salary Setting Commission and the requirement that Council vote to establish elective officer salaries, and would tie the salaries of the Councilmembers, Mayor, and City Attorney to an external benchmark, the state-approved salary for California Superior Court judges, as described in California Government Code sections 68202 and 68203; and

WHEREAS, the proposed ballot measure would phase in the new Council salaries, with Councilmembers being paid 60 percent of the state salary for California Superior Judges beginning December 10, 2020, and 75 percent of the state salary for California Superior Court judges beginning December 10, 2022; and

WHEREAS, the proposed ballot measure provides that the salaries for the Mayor and City Attorney shall be equal to the state salary for California Superior Court judges beginning December 10, 2020; and

WHEREAS, the proposed ballot measure provides additional ethical reforms that eliminate honoraria and car allowances, restrict free use of City-owned and controlled sports and entertainment venue tickets, expand restrictions on lobbying, and regulate the use of taxpayer-funded mass form constituent mailings by incumbent elective officers; and

WHEREAS, the Council now desires to submit to the voters at the Municipal Special Election one measure amending the Charter by amending Article III, sections 11.1 and 12.1; amending Article IV, section 24.1; and amending Article V, by amending section 40, and repealing section 41.1 to eliminate the Salary Setting Commission and provide for Council, Mayor and City Attorney annual salaries to be set in accordance with an external benchmark, the salary approved by the state for Superior Court judges, as may be adjusted from time to time; and amending Article XVI, by adding new sections 303 and 304, providing additional ethics reforms restricting elective officer compensation, lobbying and campaigning activities; and

WHEREAS, the Rules Committee heard and reviewed this proposed Charter amendment under the Council Policy 000-21 process, and recommended the proposed ballot measure, as amended by the Committee, be presented to the Council for consideration; and

WHEREAS, the Council, through this ordinance, now seeks to submit the proposed Charter amendments to voters on the November 6, 2018, Municipal Special Election ballot; and

WHEREAS, the Council's proposal, on its own motion, of a Charter amendment is governed by California Constitution, article XI, section 3(b), 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. One measure amending the City Charter by amending Article III, sections 11.1 (Legislative Power – Nondelegable) and 12.1 (Councilmanic Salaries); Article IV, section 24.1 (Mayor’s Salary); Article V, section 40 (City Attorney); and by repealing section 41.1 (Salary Setting Commission); and amending Article XVI, by adding new section 303 (Restrictions on Compensation and Benefits for Elective Officers) and section 304 (Restrictions on Lobbying and Campaigning for Elective Officers), all relating to ethics, compensation and benefit restrictions and salaries for elective officers, is hereby submitted to the qualified voters at the Municipal Special Election to be held November 6, 2018, and consolidated with the California State General Election to be held on the same date, with the measure to read as follows:

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**MEASURE**

**ARTICLE III**

**LEGISLATIVE POWER**

**SECTION 11.1: LEGISLATIVE POWER -- NONDELEGABLE**

The same prohibition against delegation of the legislative power which is imposed on the State Legislature by Article XI, Section 11 a of the Constitution of the State of California ~~shall apply~~ies to the City Council of ~~the~~ City of San Diego, so that its members ~~shall~~ must not delegate legislative power or responsibility which they were elected to exercise in the adoption of any ordinance or resolution which raises or spends public monies, including ~~but not limited to~~ the

City's annual budget ordinance or any part thereof, and the annual ordinance setting compensation for City employees, or any ordinance or resolution setting public policy, except where authorized by this Charter.

The City Council ~~shall~~ must annually adopt an ordinance establishing salaries for all City employees, except the City's elective officers. ~~The City Council shall adopt this ordinance~~ not later than May 30 of each year after considering all relevant evidence, including ~~but not limited to~~ the needs of the ~~citizens~~ residents of the City of San Diego for municipal services, the ability of the ~~citizens~~ residents to pay for those services, local economic conditions, and other relevant factors as the City Council deems appropriate. The City Council ~~shall~~ must give priority in the funding of municipal services to the need of the ~~citizens~~residents for police protection in considering adoption of this salary ordinance and the annual budget ordinance, and must comply with any collective bargaining laws binding on the City as a public agency employer.

The prohibition imposed by this section against unlawful delegation of the legislative responsibility to set compensation for City employees ~~shall extend~~ to any scheme or formula which seeks to fix the compensation of City of San Diego employees, except City elective officers, at the level of compensation paid to employees of any other public agency whose governing board is not elected by and not accountable to the people of the City of San Diego. This prohibition ~~shall~~ also extend to any scheme or formula which seeks to fix, establish, or adjust the compensation of City of San Diego employees, except City elective officers, at the level of the largest cities in California or the State of California.

City elective officers will receive annual salaries based on the salary paid to Superior Court judges by the State of California. The Chief Financial Officer is responsible for determining the State salary of Superior Court judges and for setting and adjusting the salaries of the City Councilmembers, Mayor, and City Attorney, as provided in sections 12.1, 24.1, and 40, respectively.

### **SECTION 12.1: COUNCILMANIC SALARIES**

~~On or before February 15 of every even year, the Salary Setting Commission shall recommend to the Council the enactment of an ordinance establishing the salary of members of the Council for the period commencing July 1 of that even year and ending two years thereafter. The Council may adopt the salaries by ordinance as recommended by the Commission, or in some lesser amount, but in no event may it increase the amount. The ordinance shall be subject to the referendum provisions of this Charter and upon the filing of a sufficient petition, the ordinance shall not become effective and shall be repealed by the Council or shall forthwith be submitted to a vote of the people at the next general statewide election~~ Effective December 10, 2020, the salary paid to City Councilmembers will be 60 percent of the salary prescribed by law and as adjusted by law for judges of the Superior Court for the State of California. Effective December 10, 2022, the salary paid to City Councilmembers will be 75 percent of the salary prescribed by law and as adjusted by law for judges of the Superior Court for the State of California.

**ARTICLE IV**

**THE MAYOR**

**SECTION 24.1: MAYOR'S SALARY**

~~On or before February 15 of every even year, the Salary Setting Commission shall recommend to the Council the enactment of an ordinance establishing the Mayor's salary for the period commencing July 1 of that even year and ending two years thereafter. The Council shall adopt the salary by ordinance, as recommended by the Commission, or in some lesser amount, but in no event may it increase the amount. The ordinance shall be subject to the referendum provisions of this Charter and upon the filing of a sufficient petition, the ordinance shall not become effective and shall be repealed by the Council or shall forthwith be submitted to a vote of the people at the next general statewide election. Effective December 10, 2020, the salary paid to the Mayor will be equal to the salary prescribed by law and as adjusted by law for judges of the Superior Court for the State of California.~~

**ARTICLE V**

**EXECUTIVE AND ADMINISTRATIVE SERVICE**

**SECTION 40: CITY ATTORNEY**

A City Attorney shall be elected for a term of four (4) years in the manner prescribed by Section 10 of this Charter. The City Attorney shall hold office for the term prescribed from and after 10 a.m. on the tenth day of December next succeeding the election and until a successor is elected and qualified. If the tenth day of December falls on a weekend or holiday, the term shall begin at 10 a.m. on the next calendar day that is not a weekend or a holiday.

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.

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 must be licensed to practice law in the State of California and must have been so licensed for at least ten years at the time he or she submits nominating petitions.

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 one year 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.

Effective December 10, 2020, the salary paid to the City Attorney will be equal to the salary prescribed by law and as adjusted by law for judges of the Superior Court for the State of California. ~~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 and in no event shall said salary be less than \$15,000.00 per year.~~

Whenever a vacancy exists in the office of the City Attorney, an Assistant City Attorney, previously designated by the City Attorney to fulfill duties in the event of a vacancy and whose name has been recorded with the City Clerk as the Interim City Attorney in the event of a vacancy, shall fulfill the duties of the City Attorney as the Interim City Attorney until a replacement can be appointed or elected as provided by this Charter. The Interim City Attorney shall have the full authority of the Office.

#### **~~SECTION 41.1: SALARY SETTING COMMISSION~~**

~~There is hereby created a Salary Setting Commission consisting of seven members who shall be appointed by the Civil Service Commission for a term of four years. The first members shall be appointed for a term commencing January 1, 1974. Initially, the Commissioners shall be appointed in a manner so that three are appointed for two-year terms and four are appointed for four-year terms. The Salary Setting Commission shall recommend to the Council the enactment of an ordinance establishing salaries for the Mayor and Council as provided by this Charter. The Council shall provide the funds necessary to enable the Commission to perform its duties. The Civil Service Commission in its appointments shall take into consideration sex, race and~~

~~geographical area so that the membership of such Commission shall reflect the entire community.~~

## ARTICLE XVI

### ELECTIVE OFFICERS

#### **SECTION 303:      RESTRICTIONS ON COMPENSATION AND BENEFITS FOR ELECTIVE OFFICERS**

All elective officers for the City, defined in this section as the City Councilmembers, Mayor, and City Attorney, must adhere to the restrictions on compensation and benefits set forth in this section. This section is not intended to conflict with any provisions in federal or state law, except, however, where the restrictions on compensation are greater in this section than what is authorized under federal or state law, the greater restriction controls the compensation received by an elective officer.

- (a) Elective officers are prohibited from accepting honoraria, as that term is defined by State law.
- (b) Effective December 10, 2020, elective officers are prohibited from receiving a regularly paid car allowance as a form of additional compensation, except they may be reimbursed for actual miles driven in a personal vehicle while on City business, in accordance with reimbursement policies that comply with federal tax laws and regulations in effect at the time of the request for reimbursement.
- (c) Elective officers are prohibited from attending any sports or entertainment event in a venue owned, partially or in whole, by the City unless the officer has paid fair market value for admission, seats, or other accommodations. Elective officers are prohibited from giving away any City-held ticket, unless the recipient pays the

face value of the ticket to the City. Any seats or similar amenities or services owned or controlled by the City, in part or in whole, within any sports or entertainment venue, must be marketed to the public at fair market value with all revenues received to be directed to the City Treasurer.

**SECTION 304:      RESTRICTIONS ON LOBBYING AND CAMPAIGNING FOR ELECTIVE OFFICERS**

- (a) Elective officers are prohibited from lobbying the City for a two-year period after leaving office.
- (b) Elective officers are prohibited from using taxpayer-funded mass form constituent paper mailings during the 75 days before an election in which that officer is running, for reelection or for a different City elective position. Elective officers are also prohibited from using mass form constituent paper mailings to publish information about any City employee who works for the elective officer and who is seeking City elective office during the 75 days before the election in which the employee is seeking office.

**END OF MEASURE**

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Section 2.      The measure 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 Special Election, in addition to any other matters required by law, there shall be printed substantially the following:

<b>MEASURE ____ . CHARTER AMENDMENTS REGARDING ETHICS AND COMPENSATION FOR ELECTED CITY OFFICERS:</b> Shall the Charter be amended to: (1) restrict benefits for elected City officers; (2) restrict lobbying and campaign activities of elected City officers; and (3) remove the requirement that Councilmembers set their salaries and those of the Mayor and City Attorney, providing instead that their salaries be set as percentages of the salary set by the State of California for Superior Court judges?	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 measure. An appropriate mark placed in the voting square after the word “No” shall be counted against the adoption of the measure.

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

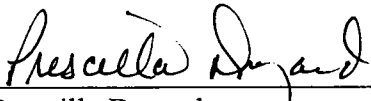
Section 6. The City Clerk shall cause this ordinance or a digest of this ordinance to be published once in the official newspaper following this ordinance’s adoption by the City Council.

Section 7. In compliance with 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. 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 prior to the day of its passage.

Section 9. 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: MARA W. ELLIOTT, City Attorney

By   
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Prescilla Dugard  
Senior Chief Deputy City Attorney

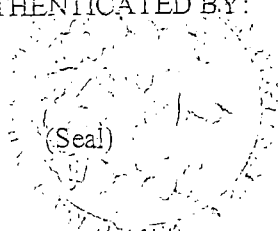
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07/25/18  
Or.Dept: Rules Committee  
Doc. No.: 1795616

Passed by the Council of The City of San Diego on JUL 30 2018, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Barbara Bry	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lorie Zapf	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Ward	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Myrtle Cole	<input type="checkbox"/>	<input checked="" 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 type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Scott Sherman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
David Alvarez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Georgette Gomez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage JUL 30 2018

AUTHENTICATED BY:



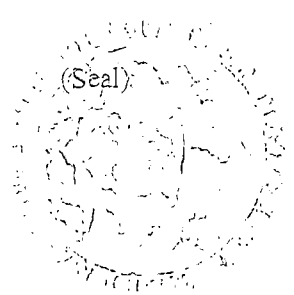
KEVIN L. FAULCONER  
Mayor of The City of San Diego, California.

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

By Linda Bruen, Deputy

I HEREBY CERTIFY that the foregoing ordinance was passed on the day of its introduction, to wit, on JUL 30 2018, said ordinance being of the kind and character authorized for passage on its introduction by Section 295 of the Charter.

I FURTHER CERTIFY that said ordinance was read in full prior to passage or that such reading was dispensed with by a vote of five members of the Council, and that a written copy of the ordinance was made available to each member of the Council and the public prior to the day of its passage.



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

By Linda Bruen, Deputy

Office of the City Clerk, San Diego, California  
Ordinance Number O- 20972