

RESOLUTION NUMBER R- **313264**

DATE OF FINAL PASSAGE **OCT 20 2020**

A RESOLUTION OF THE COUNCIL OF THE CITY OF  
SAN DIEGO DESIGNATING COUNCILMEMBER  
SCOTT SHERMAN, THE CHAIR OF THE AUDIT COMMITTEE,  
AS THE CITY COUNCIL'S REPRESENTATIVE FOR PURPOSES  
OF ANY LABOR NEGOTIATIONS REQUIRED IN THE  
APPOINTMENT OF THE CITY AUDITOR.

WHEREAS, San Diego Charter (Charter) section 39.2, adopted by City of San Diego (City) voters on June 3, 2008 and amended by City voters on March 3, 2020, provides that the City Auditor is appointed by the City Council (Council), from candidates identified by the City's Audit Committee; and

WHEREAS, the City Auditor must be a certified public accountant or certified internal auditor, and is appointed for a five-year term and may be reappointed by the Council for a second five-year term, upon the City Auditor's application and a favorable recommendation from the Audit Committee; and

WHEREAS, Charter section 39.1, adopted by City voters on June 3, 2008 and amended by City voters on November 6, 2018 and again on March 3, 2020, requires the Audit Committee to evaluate applicants for the position of City Auditor and recommend to the Council no fewer than three qualified candidates for consideration, based on the minimum qualifications set forth in the Charter and other criteria determined by the Audit Committee; and

WHEREAS, Charter section 39.1 also requires the Audit Committee to recommend to the Council the annual compensation of the City Auditor for determination by the Council; annual compensation includes initial, annual compensation; and

WHEREAS, the Charter allows the Audit Committee to use staff from the Office of the Independent Budget Analyst and to employ expert consultants, in accordance with City contracting rules, to assist in the process of evaluating City Auditor applicants; and

WHEREAS, on April 14, 2009, the Council confirmed the appointment of the City's first independent Auditor Eduardo Luna, who resigned as Auditor, effective September 28, 2018, to pursue a new employment opportunity; and

WHEREAS, by San Diego Resolution R-311979 (Sept. 25, 2018), the Council confirmed the appointment of Kyle Elser, as Interim City Auditor, to serve until Mr. Luna's successor is appointed; and

WHEREAS, on June 17, 2020, following City voters' approval of the March 2020 amendments to Charter sections 39.1 and 39.2, the Audit Committee directed the Independent Budget Analyst to work with other, appropriate City departments to begin the City Auditor recruitment process; and

WHEREAS, on September 30, 2020, the Audit Committee recommended three candidates for the position of City Auditor to replace Mr. Luna and Mr. Elser, for consideration by the Council; and

WHEREAS, on September 30, 2020, as required by the Charter, the Audit Committee also recommended a compensation range for consideration by the Council in determining the initial, annual compensation for the new City Auditor; and

WHEREAS, the Ralph M. Brown Act (Brown Act), at California Government Code sections 54950 through 54963, requires the Council, as a local legislative body, to conduct its business in properly noticed meetings that are open to the public, unless an express exception to the open meeting requirement exists, allowing for a closed session of the legislative body; and

WHEREAS, California Government Code section 54957.6(a) allows a legislative body of a local agency to hold closed sessions with the local agency's designated representatives regarding the salaries, salary schedules, or compensation paid in the form of fringe benefits of its represented and unrepresented employees; however, prior to the closed session, the legislative body of the local agency must hold an open and public session in which it identifies its designated representatives; and

WHEREAS, California Government Code section 54957.6(a) further provides that closed sessions of a legislative body of a local agency, as permitted in this section, must solely be for the purpose of reviewing its position and instructing the local agency's designated representatives; further, closed sessions, as permitted in this section, may take place prior to and during consultations and discussions with representatives of employee organizations and unrepresented employees; and

WHEREAS, California Government Code section 54957.6(a) further provides that closed sessions with the local agency's designated representatives regarding the salaries, salary schedules, or compensation paid in the form of fringe benefits may include discussions of an agency's available funds and funding priorities, but only insofar as these discussions relate to providing instructions to the local agency's designated representatives; further, closed sessions held pursuant to this section must not include final action on the proposed compensation of one or more unrepresented employees; and

WHEREAS, the City Auditor is a City employee in the unclassified service, in accordance with the Charter, including Charter section 117, and is not represented by one of the City's recognized employee organizations; and

WHEREAS, as specified in the Charter and described in this Resolution, the City Auditor is appointed by the Council, which also determines the City Auditor's compensation, including initial, annual compensation; and

WHEREAS, in accordance with the provisions of the Charter and the Brown Act, and more specifically California Government Code section 54957.6(a), the Council wishes to designate Councilmember Scott Sherman, who serves as the Chair of the Audit Committee, as the Council's representative to act, on the Council's behalf and with the Council's instructions, in any required labor negotiations related to the appointment and determination of initial, annual compensation of the next City Auditor, who will be appointed by the Council; and

WHEREAS, the Council also wishes to designate Independent Budget Analyst Andrea Tevlin and Lisa Byrne, Fiscal and Policy Analyst, as staff to work with Councilmember Sherman in negotiating terms of employment for the next City Auditor; and

WHEREAS, the Council intends to appoint the next City Auditor and make its final determination of initial, annual compensation in an open session meeting of the Council as required by the Brown Act, but reserves its authority to conduct closed session meetings as legally permitted; and

WHEREAS, in accordance with Charter section 280(a)(6), this action of the Council is not subject to the Mayor's veto power, which does not extend to the appointment of the City Auditor.

NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that the Council designates Councilmember Scott Sherman, who serves as the Chair of the Audit Committee, to serve as the Council's representative, as defined by and in accordance with California Government Code section 54957.6(a), to act, on the Council's behalf and with the Council's instructions, in any

required labor negotiations related to the appointment and discussion of initial, annual compensation of the next City Auditor; and the Council further designates Independent Budget Analyst Andrea Tevlin and Lisa Byrne, Fiscal and Policy Analyst, to act on the Council's behalf and with the Council's instructions, as staff to work with Councilmember Sherman.

APPROVED: MARA W. ELLIOTT, City Attorney

By /s/Joan F. Dawson  
Joan F. Dawson  
Senior Deputy City Attorney

JFD:jvg  
10/13/20  
Or.Dept: Audit Committee  
CC No. N/A  
Doc. No.: 2501588

Passed by the Council of The City of San Diego on OCT 20 2020, 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"/>
Jennifer Campbell	<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"/>
Monica Montgomery	<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"/>
Vivian Moreno	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Georgette Gómez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage OCT 20 2020.

**(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.

(Seal)

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

By Connie Patterson, Deputy

Office of the City Clerk, San Diego, California  
Resolution Number R- 313264