

Item # 333
4/13/2021

(R-2021-385)
COR. COPY

RESOLUTION NUMBER R- 313493

DATE OF FINAL PASSAGE APR 13 2021

A RESOLUTION OF THE COUNCIL OF THE CITY OF
SAN DIEGO APPOINTING A PUBLIC MEMBER TO
THE AUDIT COMMITTEE, IN ACCORDANCE WITH
SAN DIEGO CHARTER SECTION 39.1.

WHEREAS, San Diego Charter (Charter) section 39.1 requires the City of San Diego (City) to establish an Audit Committee to oversee the City's auditing, internal controls, and other financial and business practices as required by the Charter; and

WHEREAS, Charter section 39.2 requires the City to have a City Auditor, who must be a certified public accountant or certified internal auditor, and authorizes the City Auditor to investigate any material claim of financial fraud, waste, or impropriety within any City department; and

WHEREAS, under Charter section 39.1, the Audit Committee is responsible for directing and reviewing the work of the City Auditor, and the City Auditor reports directly to the Audit Committee; and

WHEREAS, the Audit Committee recommends the annual compensation of the City Auditor and annual budget of the Office of the City Auditor to the City Council (Council), and the Audit Committee is responsible for an annual performance review of the City Auditor; and

WHEREAS, the Audit Committee also recommends to the Council the retention of the City's outside audit firm and monitors the engagement of the City's outside auditor, among other duties set forth in Charter section 39.1; and

WHEREAS, the Audit Committee has additional responsibilities and duties as specified by ordinance of the Council; and

WHEREAS, by San Diego Ordinance O-19943 (Apr. 30, 2010) and San Diego Ordinance O-20740 (Dec. 1, 2016), the Council has established additional duties and responsibilities of the Audit Committee, including the duty to review any issues that come to the Audit Committee's attention, which pertain to the accuracy and reliability of the City's financial practices and representations and which could have a negative impact on the ability of the public to reasonably rely upon such financial practices and representations; and

WHEREAS, the duties, responsibilities, and activities of the Audit Committee are codified at San Diego Municipal Code sections 26.1701 through 26.1711, in addition to the provisions of the Charter; and

WHEREAS, in accordance with Charter section 39.1, the Audit Committee must be an independent body composed of five members; two are Councilmembers appointed by the Council and three are members of the public also appointed by the Council; and

WHEREAS, under Charter section 39.1, the public members of the Audit Committee must possess the independence, experience, and technical expertise necessary to carry out the duties of the Audit Committee, including knowledge of accounting, auditing, and financial reporting; and

WHEREAS, Charter section 39.1 states that the minimum professional standards for public members of the Audit Committee are at least 10 years of experience as a certified public accountant or as a certified internal auditor, or 10 years of other professional financial or legal experience in audit management; and

WHEREAS, in accordance with Charter section 39.1, the public members of the Audit Committee serve for terms of four years and until their successors have been appointed and qualified; and the public members of the Audit Committee are limited to two full consecutive terms, with one term intervening before they become eligible for reappointment; and

WHEREAS, Charter section 39.1 provides that the appointments of public members must be made so that no more than one public member's term of office expires in any one year; and

WHEREAS, the Council appointed the first three public members of the Audit Committee on January 5, 2009, by San Diego Resolution R-304564, and their terms each ended on January 5 of subsequent years; and

WHEREAS, following those initial appointments, the Council has established January 5 as the end date of the terms for each public member of the Audit Committee to ensure the staggering of appointments as required by the Charter; and

WHEREAS, this practice of using one end date, January 5, for all public member terms is consistent with Council Policy 000-13 (amended by San Diego Resolution R-313174 (Jul. 28, 2020)), which provides, in part, that partial terms of City appointees on City boards, commissions, committees, and other bodies, in excess of one-half of a full term are considered full terms for the purpose of any term limitations; and

WHEREAS, Council Policy 000-13 sets forth the Council's procedure for the appointment and confirmation of members of boards, commissions, committees, and other bodies; and

WHEREAS, further, in accordance with Charter section 39.1 and Municipal Code section 26.1702, the public members of the Audit Committee must be appointed by the Council from a pool of at least two candidates for each vacant position, to be recommended by a majority vote of a screening committee, composed of the Councilmember who chairs the Audit Committee, the Independent Budget Analyst (IBA), and two outside financial experts appointed by the other members of the screening committee and confirmed by the Council; and

WHEREAS, by San Diego Resolution R-303970 (Jul. 28, 2008), the Council confirmed the two outside financial experts to serve on the screening committee, who are not required to serve for a limited term under the Charter; and

WHEREAS, on March 29, 2021, the screening committee met and reviewed applications of citizens to serve as the public member of the Audit Committee to replace Ricardo Valdivia, a public member of the Audit Committee whose term expired January 5, 2021, and the screening committee voted to send a pool of two candidates to the Council for consideration; both candidates meet the minimum qualifications to serve as a public member of the Audit Committee, as defined by Charter section 39.1; and

WHEREAS, neither candidate is a resident of the City, but both reside in San Diego County; and

WHEREAS, Council Policy 000-13 states, in part that “it is the intent of the Council that appointees be residents of the City of San Diego. However, when a person with unique qualifications is available to serve who is a resident of San Diego County, but not the City of San Diego, then the Council may make a conscious exception to this policy”; and

WHEREAS, the Council wishes to ensure that the interests of City taxpayers and citizens are protected by appointing a public member to the Audit Committee, who will properly manage the City’s confidential and proprietary information, including financial and technological information, received as part of the Audit Committee’s oversight duties; and

WHEREAS, the Council also wishes to appoint a public member who is free of convictions for crimes involving dishonesty or moral turpitude, which are defined by California law (as summarized in *People v. Wheeler*, 4 Cal. 4th 284 (1992) and *People v. Chavez*, 84 Cal. App. 4th 25 (2000)) as crimes in which dishonesty is an element or which indicate a general readiness to do evil from which dishonesty can be inferred; and

WHEREAS, the Council authorizes a City review of criminal history information of the Council's appointee, consistent with applicable laws; and

WHEREAS, the Council requests that the IBA or designee work with the San Diego Police Department, Personnel Department, City Attorney's Office, or any other necessary administrative staff of the City, to complete the criminal history background check, upon appointment of the public member, consistent with the guidelines set forth in this Resolution; and

WHEREAS, if information emerges through that criminal history background process that requires attention of this Council, the Council directs the IBA to return to the Council, via the Office of the Council President, for resolution of the matter; otherwise, upon completion of the background process, the appointee must be directed to the City Clerk for the oath of office and other required administrative actions; and

WHEREAS, on March 4, 2020, California Governor Gavin Newsom (Governor) issued Executive Order N-33-20, proclaiming a State of Emergency to exist in the State of California (State) as a result of COVID-19, the disease caused by a new coronavirus, which has led to a worldwide pandemic; and

WHEREAS, by Executive Orders N-25-20, dated March 12, 2020, and N-29-20, dated March 17, 2020, the Governor authorized a local legislative body to hold public meetings via teleconferencing and waived requirements of the Ralph M. Brown Act, which require physical presence of members, the clerk, or other personnel of the body or the public as a condition of participation in or quorum for a public meeting; and

WHEREAS, the Governor's Executive Orders are issued under California law and direct all California residents to heed current State public health directives related to the status of COVID-19; and

WHEREAS, by San Diego Resolution R-312902 (Apr. 7, 2020), the Council established temporary rules on the time, place, and procedure for Council meetings to be held via teleconference for the duration of the declared State of Emergency related to COVID-19; the stated intent of the temporary Council rules is to limit City staff time needed for managing meetings, thereby limiting requirements for staff to report to City buildings for work to reduce the spread of COVID-19; and

WHEREAS, Council Policy 000-13 states, in pertinent part, that Council appointments are done by election, using written ballots, which the City Clerk counts and announces the votes for each candidate at the end of the round of balloting, which continues until one candidate receives at least five Councilmember votes; and

WHEREAS, under the current State and City orders and directives related to COVID-19, Councilmembers are appearing at the Council meeting by teleconference; therefore, consistent with its temporary rules in place during the declared State of Emergency, the Council authorizes a determination of the appointment by an election during the public meeting, using electronic mail ballots rather than written ballots, with the process administered by the City Clerk as set forth in Council Policy 000-13; and

WHEREAS, subject to the considerations set forth in this Resolution, the Council wishes to appoint a public member to the Audit Committee to replace Mr. Valdivia, whose term has expired; and

WHEREAS, under Charter section 280(a)(6), the Council appointment of a public member of the Audit Committee is not subject to veto by the Mayor; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that, consistent with the orders and actions adopted under the current declarations of emergency related to the COVID-19 pandemic, the Council authorizes an electronic mail balloting process during the public meeting,

administered for the Council by the City Clerk, to appoint a new public member of the Audit Committee.

BE IT FURTHER RESOLVED, that the Council has voted, via electronic mail ballots cast during the public meeting, to appoint Andrew Maffia to serve as a public member of the Audit Committee for the term ending January 5, 2025; this appointment is subject to completion of the post-appointment process, including completion of a criminal history background check.

BE IT FURTHER RESOLVED, that the IBA is directed to work with the San Diego Police Department, Personnel Department, City Attorney's Office, or any other necessary administrative staff of the City, to complete the criminal history background check and to return to this Council, via the Office of the Council President, for resolution, as necessary.

BE IT FURTHER RESOLVED, that the Council determines that Mr. Maffia, a resident of Carlsbad, in the County of San Diego, has unique qualifications to serve as a member of the Audit Committee, and the Council makes a conscious exception to the City residency requirements set forth in Council Policy 000-13.

APPROVED: MARA W. ELLIOTT, City Attorney

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

JFD:myb
March 24, 2021
April 14, 2021 COR. COPY
Or.Dept: Audit Committee
CC No. N/A
Doc. No.: 2617574_2

Passed by the Council of The City of San Diego on APR 13 2021, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Joe LaCava	<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"/>
Stephen Whitburn	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Monica Montgomery Steppe	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marni von Wilpert	<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"/>
Raul A. Campillo	<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"/>
Sean Elo-Rivera	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage APR 13 2021

(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:

TODD GLORIA
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- 313493