

ORDINANCE NUMBER O- 21744 (NEW SERIES)DATE OF FINAL PASSAGE NOV 06 2023

AN ORDINANCE SUBMITTING TO THE QUALIFIED VOTERS OF THE CITY OF SAN DIEGO AT THE MUNICIPAL SPECIAL ELECTION, CONSOLIDATED WITH THE CALIFORNIA STATE PRESIDENTIAL PRIMARY ELECTION, TO BE HELD ON MARCH 5, 2024, ONE MEASURE AMENDING THE CITY CHARTER, BY AMENDING ARTICLE V, BY AMENDING SECTION 40 AND ADDING SECTION 40.2, RELATING TO INDEPENDENT LEGAL COUNSEL FOR THE OFFICE OF THE CITY AUDITOR AND AUDIT COMMITTEE ON SPECIFIED CONDITIONS.

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- 21743, introduced and adopted on OCT 31, 2023, the Council called a Municipal Special Election, to be consolidated with the California State Presidential Primary Election, to be held March 5, 2024, for the purpose of submitting to the qualified voters of the City of San Diego (City) one or more ballot measures; and

WHEREAS, Charter section 39.2 establishes the position of City Auditor, who conducts audits in accordance with an annual audit plan and performs other duties as provided by ordinance or general laws; and

WHEREAS, Charter section 39.2 also provides that the City Auditor may investigate any material claim of financial fraud, waste, or impropriety within any City department; and

WHEREAS, Charter section 39.1 establishes the Audit Committee as an independent body of the City, comprised of two members of the Council and three members of the public; and

WHEREAS, Charter section 39.1 provides that the Audit Committee has oversight responsibility regarding the City's auditing, internal controls, and any other financial or business practices required of the Committee by Charter; 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 must report directly to the Audit Committee; and

WHEREAS, Charter section 39.1 also provides that the Council may specify additional responsibilities and duties of the Audit Committee by ordinance as necessary to carry into effect the Charter provisions; and

WHEREAS, the duties and activities of the Audit Committee are further described by ordinance of the Council, codified in San Diego Municipal Code sections 26.1701 through 26.1711; and

WHEREAS, the Council has also established the Office of the City Auditor as a City department, as set forth in San Diego Municipal Code section 22.1801; and

WHEREAS, Council Policy 000-21 covers the process for members of the public, Councilmembers, the Mayor, mayoral department directors, independent department directors, or a separate public agency to submit proposed ballot measures to the Council for consideration; and

WHEREAS, in January 2020, as part of the Council Policy 000-21 process, the City Auditor proposed an amendment to the Charter to allow the Office of the City Auditor to use outside legal counsel, instead of the elected City Attorney, whenever the Audit Committee determines such use is in the public's interest (proposed Charter amendment); and

WHEREAS, in 2020, the Audit Committee and the Council's Rules Committee considered and supported the proposed Charter amendment, but the City was unable to timely complete the process required by the Meyers-Milias-Brown Act (MMBA), California's collective bargaining law applicable to the City as a public agency employer, before the November 2020 election; and

WHEREAS, on February 16, 2022, the Rules Committee voted to advance the proposed Charter amendment to the Council to reauthorize the meet and confer process and to modify the proposed Charter amendment to vest with the Audit Committee the authority to determine when use of outside legal counsel by the City Auditor is within the "public interest," as that term is defined by generally accepted government auditing standards promulgated by the United States Government Accountability Office or successor agency; and

WHEREAS, on April 25, 2022, by San Diego Resolution R-314078 (May 10, 2022), the Council directed the City's Management Team for labor relations to provide notice and opportunity to negotiate bargainable matters identified in the proposed Charter amendment, in accordance with the MMBA; and

WHEREAS, by San Diego Resolution R-314981 (June 28, 2023), the Council approved an agreement between the City and the Deputy City Attorneys Association, memorializing the completion of the meet and confer process related to the proposed Charter amendment and

acknowledging that the Council, within its discretion, may take any and all further actions necessary to place the proposed Charter amendment before City voters at the March 2024 election or at some later election, as determined by the Council; and

WHEREAS, by San Diego Resolution R-314982 (June 28, 2023), the Council approved an agreement between the City and the San Diego Municipal Employees Association, memorializing the completion of the meet and confer process related to the proposed Charter amendment and acknowledging that the Council, within its discretion, may take any and all further actions necessary to place the proposed Charter amendment before City voters at the March 2024 election or at some later election, as determined by the Council; and

WHEREAS, the Council now desires to submit to the voters at the Municipal Special Election, consolidated with the California State Presidential Primary Election, on March 5, 2024, one measure amending the City Charter, by amending Article V, by amending section 40 and adding section 40.2, relating to a process for hiring outside legal counsel instead of the elected City Attorney for the City Auditor and Audit Committee; and

WHEREAS, under the proposed Charter amendment, the City Auditor may use outside legal counsel, instead of the elected City Attorney, and without input or approval from the elected City Attorney, for legal support and advice in audits, investigations, and related activities subject to certain limitations; and

WHEREAS, the City Auditor must retain outside legal counsel by contract approved by the Council in a manner consistent with the Charter, including the City's required competitive procurement processes and other applicable laws; and

WHEREAS, the Council has discretion to determine and appropriate funding for the City Auditor's hiring of outside legal counsel, and is not mandated to provide any minimum level of

funding for the independent legal counsel on an annual or regular basis and must determine funding consistent with the Council's budgetary authority under the Charter; and

WHEREAS, before the City Auditor may use outside legal counsel who is under contract, the Audit Committee must determine that the use on an audit, investigation, or related activity is within the "public interest," as that term is defined by generally accepted government auditing standards promulgated by the United States Government Accountability Office or successor agency; and

WHEREAS, the Audit Committee may use retained independent legal counsel under the conditions set forth in section 40.2 for legal support and advice related to the Audit Committee's oversight responsibilities; 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 Government Code section 34458, and is not subject to veto by the Mayor; and

WHEREAS, the Office of the City Attorney has drafted this Ordinance based on the information provided by, and verified by City staff, including information provided by affected third parties, with the understanding that this information is complete, true, and accurate; NOW, THEREFORE,

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

Section 1. One measure amending the Charter, by amending Article V, by amending section 40 and adding section 40.2, related to outside legal counsel for the City Auditor and Audit Committee, is hereby submitted to the qualified voters at the Municipal Special Election to be held on March 5, 2024, consolidated with the California State Presidential Primary Election to be held on the same date, with the measure to read as follows:

MEASURE

ARTICLE V

EXECUTIVE AND ADMINISTRATIVE SERVICE

SECTION 40: City Attorney

A City Attorney shall be elected for a term of four 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 consecutive four-year terms as City Attorney. If for any reason a person serves a partial term as City Attorney in excess of two 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 and the Commission on Police Practices, which each shall have its own legal counsel independent of the City Attorney, and in the case of the Office of the City Auditor, which may retain and use independent legal counsel for the City Auditor, the City Auditor's subordinates, and the Audit Committee on the conditions set forth in Charter section 40.2. 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, provided that the salary of the City Attorney may not be decreased during a term of office.

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 40.1 [NO CHANGE IN TEXT.]

SECTION 40.2: Legal Counsel for the Office of the City Auditor and Audit Committee

The Office of the City Auditor, acting through the City Auditor, may retain and use legal counsel, independent of the City Attorney, for legal support and advice in audits, investigations, and related activities within the authority and duties of the Office of the City Auditor, subject to the limitations set forth in this section.

The Office of the City Auditor must retain independent legal counsel by contract approved by the City Council in a manner consistent with the Charter, including the City's required competitive procurement processes and other applicable laws. The City Council has

discretion to determine and appropriate funding for the Office of the City Auditor's independent legal counsel. The City Council is not mandated to provide any minimum level of funding for the independent legal counsel on an annual or regular basis and must determine funding consistent with the City Council's budgetary authority under the Charter. The City Council may, by ordinance, establish additional rules and procedures to implement this section.

Before the Office of the City Auditor may use the independent legal counsel who is under contract, the Audit Committee must determine that the use on an audit, investigation, or related activity is within the "public interest," as that term is defined by generally accepted government auditing standards promulgated by the United States Government Accountability Office or successor agency.

The Audit Committee may use retained independent legal counsel under the conditions set forth in this section for legal support and advice related to the Audit Committee's oversight responsibilities.

Independent legal counsel retained and used under this section will only be responsible for legal support and advice related to those activities within the authority of the Office of the City Auditor, acting through the City Auditor, and the Audit Committee's oversight responsibilities. Any attorney-client relationship between independent legal counsel and the City Auditor, the City Auditor's subordinates, and the Audit Committee must be formed in a manner consistent with California law and the Rules of Professional Conduct of the State Bar of California.

END OF MEASURE

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:

MEASURE ____ . CHARTER AMENDMENT AUTHORIZING THE CITY AUDITOR AND AUDIT COMMITTEE TO USE OUTSIDE LEGAL COUNSEL INSTEAD OF THE ELECTED CITY ATTORNEY. Shall Charter section 40 be amended and section 40.2 be added to authorize the City Auditor and Audit Committee to use outside legal counsel instead of the elected City Attorney, subject to certain conditions, when the Audit Committee determines such use is in the public interest?	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.

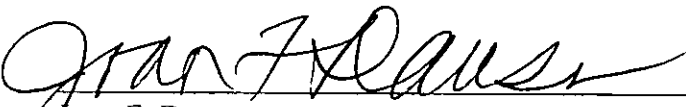
Section 6. The City Clerk shall cause this Ordinance or a digest of this Ordinance to be published once in the official newspaper following this Ordinance’s adoption by the Council.

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 City 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 made available to the 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 Council, which is deemed the date of its final passage.

APPROVED: MARA W. ELLIOTT, City Attorney

By 
Joan F. Dawson
Deputy City Attorney

JFD:cm
October 31, 2023
November 2, 2023 COR. COPY
Or. Dept: City Auditor
Doc. No. 3461014_2

Passed by the Council of The City of San Diego on NOV 06 2023, 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 type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Stephen Whitburn	<input type="checkbox"/>	<input checked="" 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 type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Kent Lee	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Raul A. Campillo	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" 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 NOV 06 2023

AUTHENTICATED BY:

(Seal)

TODD GLORIA

Mayor of The City of San Diego, California.

DIANA J.S. FUENTES

City Clerk of The City of San Diego, California.

By Connie Patterson, Deputy

I HEREBY CERTIFY that the foregoing ordinance was passed on the day of its introduction, to wit, on NOV 06 2023, said ordinance being of the kind and character authorized for passage on its introduction by Section 275 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.

(Seal)

DIANA J.S. FUENTES

City Clerk of The City of San Diego, California.

By Connie Patterson, Deputy

Office of the City Clerk, San Diego, California

Ordinance Number O- 21744