

#604  
01/30/2023

(R-2023-383)

RESOLUTION NUMBER R- 314590

DATE OF FINAL PASSAGE JAN 30 2023

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO DIRECTING THE INDEPENDENT BUDGET ANALYST TO BRING FORTH A PROPOSED COUNCIL ACTION FOR THE REAPPOINTMENT OF STEWART HALPERN AS A PUBLIC MEMBER TO THE AUDIT COMMITTEE AND TO SEEK GUIDANCE FROM THE CALIFORNIA ATTORNEY GENERAL ON POTENTIAL CONFLICT ISSUES.

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, 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 City Council (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, the public members of the Audit Committee serve for terms of four years and until their successors have been appointed and qualified, and are eligible to serve two full consecutive terms; and

WHEREAS, in accordance with Charter section 39.1, the Council may waive the requirement for appointment of a public member of the Audit Committee from a pool of at least two candidates when a sitting incumbent applies and is eligible for reappointment; and

WHEREAS, on May 20, 2019, Audit Committee member Stewart Halpern was appointed to a four-year term by San Diego Resolution R-312465, his term ended January 5, 2023, and, as permitted by Charter section 39.1, he has continued to serve, awaiting either reappointment or the appointment of a qualified successor; and

WHEREAS, Mr. Halpern has expressed the desire to be reappointed to a second four-year term as a public member of the Audit Committee; and

WHEREAS, on April 21, 2022, the Office of the City Attorney advised Mr. Halpern that his service on the City's Audit Committee was incompatible with his simultaneous service as a public member on the San Diego Association of Governments' (SANDAG) Audit Policy Advisory Committee and TransNet Independent Taxpayer Oversight Committee (ITOC), and creates a conflict of interest under California law; and

WHEREAS, Mr. Halpern disagrees with the City Attorney and has declined to take one of the two actions that would have resolved his conflict: stepping down from his appointments at SANDAG in favor of his appointment at the City, or vice versa; and

WHEREAS, on October 5, 2022, the City Attorney recommended that the Independent Budget Analyst open a competitive recruitment for the Audit Committee member position currently held by Mr. Halpern so that the Council can consider and approve an applicant who is not conflicted and who possesses the independence necessary to carry out the duties of the Audit Committee under Charter section 39.1; and

WHEREAS, the Independent Budget Analyst declined to follow the City Attorney's advice and instead docketed an agenda item requesting direction from the Council with respect to Mr. Halpern's potential reappointment as a public member of the Audit Committee; and

WHEREAS, the Independent Budget Analyst presented three options to the Council for consideration when providing direction on how to proceed: run an open competitive recruitment and appointment process; bring forth a Council item to reappoint Mr. Halpern and waive the requirement for a competitive process, pursuant to Charter section 39.1; or seek guidance from the State Attorney General through a state legislator and reevaluate the appointment process decision after it has been determined whether the Attorney General would provide an opinion on the matter; and

WHEREAS, the Office of the City Attorney has drafted this resolution based on the information provided by City staff, with the understanding that this information is complete, true, and accurate; and

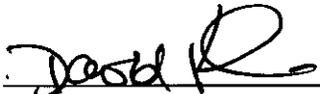
WHEREAS, under Charter section 280(a)(1), this resolution is not subject to veto by the Mayor because this matter is exclusively within the purview of the Council and does not affect the administrative service of the City under the control of the Mayor; NOW, THEREFORE,

BE IT RESOLVED, by the City Council of the City of San Diego, that the Independent Budget Analyst is directed to bring forward a proposed Council action for the reappointment of Stewart Halpern as a public member of the Audit Committee, without a competitive process;

BE IT FURTHER RESOLVED, that the Council waives the requirement for appointment of a public member of the Audit Committee from a pool of at least two candidates, because Mr. Halpern is a sitting incumbent of the Audit Committee; and

BE IT FURTHER RESOLVED, that the Independent Budget Analyst is directed to seek guidance from the California Attorney General on the conflict of interest and lack of independence issues raised by the City Attorney.

APPROVED: MARA W. ELLIOTT, City Attorney

By   
David J. Karlin  
Senior Deputy City Attorney

DJK:nja  
January 18, 2023  
Or.Dept: IBA  
Doc. No. 3195357

I certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of JAN 30 2023.

DIANA J.S. FUENTAS  
City Clerk

By   
Deputy City Clerk

Passed by the Council of The City of San Diego on JAN 3 0 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 type="checkbox"/>	<input checked="" 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 checked="" 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 JAN 3 0 2023.

**(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) DIANA I.S. FUENTES  
Interim City Clerk of The City of San Diego, California.

By Connie Patterson, Deputy

Office of the City Clerk, San Diego, California  
Resolution Number R- **314590**