

RESOLUTION NUMBER R- **314982**

DATE OF FINAL PASSAGE **JUN 28 2023**

A RESOLUTION OF THE COUNCIL OF THE CITY OF
SAN DIEGO APPROVING AND RATIFYING AN
AGREEMENT BETWEEN THE CITY AND THE SAN DIEGO
MUNICIPAL EMPLOYEES ASSOCIATION RELATED TO A
PROPOSED MEASURE TO AMEND THE CITY CHARTER TO
ESTABLISH A PROCESS FOR RETENTION AND USE OF
INDEPENDENT LEGAL COUNSEL BY THE OFFICE OF THE
CITY AUDITOR AND AUDIT COMMITTEE.

WHEREAS, on April 25, 2022, by San Diego Resolution R-314078 (May 10, 2022), the San Diego City Council (Council) directed the City of San Diego (City)'s Management Team for labor relations to meet and confer, as required by the Meyers-Milias-Brown Act, with the City's recognized employee organizations on a proposed City Charter (Charter) amendment to establish a process for retention and use of independent legal counsel by the Office of the City Auditor and Audit Committee; 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, composed 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, in January 2020, the City Auditor proposed an amendment to the Charter to allow the Office of the City Auditor to use legal counsel, independent of the Office of the City Attorney, in certain circumstances; and

WHEREAS, in 2020, the Audit Committee and the Council's Rules Committee supported the proposal, but the City was unable to timely complete the process required by the Meyers-Miliias-Brown Act (MMBA), California's collective bargaining law applicable to the City as a public agency employer; 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 power to deem independent legal counsel for the City Auditor in the City's best interests; and

WHEREAS, the Rules Committee also requested further legal review; and

WHEREAS, the proposed Charter amendment, which is on file with the Office of the City Clerk as Document Number RR- 314981-1, involves amending Charter section 40 and adding Charter section 40.2 related to independent legal counsel for the Office of the City Auditor and Audit Committee on specified conditions; and

WHEREAS, on April 25, 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; and

WHEREAS, the City's Management Team and the San Diego Municipal Employees Association (SDMEA) have now reached an agreement, on file with the Office of the City Clerk as Document Number RR- 314982, regarding the proposed Charter amendment (Agreement) and are presenting the Agreement to the Council for final determination; and

WHEREAS, under the MMBA and Council Policy 300-06, it is within the discretion of the Council to approve and ratify the negotiated Agreement related to the proposed Charter amendment; and

WHEREAS, the Council wishes to approve the Agreement, which will allow the Council to consider whether to place the proposed Charter amendment before City voters at a municipal election; and

WHEREAS, by separate action, the Council may consider and determine whether to adopt an ordinance, submitting to the qualified voters of the City for their approval or rejection at the Municipal Special Election, consolidated with the California Presidential Primary to be held in March 2024, or at a later election if the Council so chooses, one measure amending the

Charter, by amending Article V, by amending Section 40 and adding Section 40.1, relating to a process for retention and use of independent legal counsel by the Office of the City Auditor and Audit Committee; and

WHEREAS, the Agreement acknowledges 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 Agreement does not supersede any provisions of the Memorandum of Understanding between the City and the SDMEA, approved by the Council and binding on the City, or any other terms and conditions of employment of SDMEA-represented employees, as established by the MMBA and City Council Policy 300-06 and not modified by the Agreement; and

WHEREAS, the Agreement does not waive any rights of the City or the SDMEA to meet and confer over any implementing ordinance that may be required, necessary, or desirable, if the proposed Charter amendment covered by the Agreement is approved by City voters; and

WHEREAS, the City's obligation to engage in bargaining over any implementing ordinance with all of the City's recognized employee organizations, in accordance with the MMBA and City Council Policy 300-06, arises only upon and following City voter approval of the proposed Charter amendment; and

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

BE IT RESOLVED that, under the authority of the MMBA and Council Policy 300-06, the Council of the City of San Diego approves and ratifies the Agreement between the City and the SDMEA, on file in the Office of the City Clerk as Document Number rk-314982, related to a proposed Charter amendment setting forth the rules and procedures for retention and use of independent legal counsel by the Office of the City Auditor and Audit Committee.

BE IT FURTHER RESOLVED that the Council will consider, in a separate Council action, placement of the proposed Charter amendment before the qualified voters of the City for their approval or rejection.

APPROVED: MARA W. ELLIOTT, City Attorney

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

JFD:cm
May 16, 2023
January 3, 2024 COR. COPY
Or.Dept: Human Resources
Doc. No. 3307248_2

I certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of JUN 13 2023.

DIANA J.S. FUENTES
City Clerk

By _____
Deputy City Clerk

Approved: _____
(date)

TODD GLORIA, Mayor

Vetoed: _____
(date)

TODD GLORIA, Mayor

(See attached memo and signature page.)

**Office of
The City Attorney
City of San Diego**

**MEMORANDUM
MS 59**

(619) 533-5800

DATE: January 4, 2024
TO: Connie Patterson, Legislative Recorder II, Council Actions
FROM: Cindy McNary, Senior Legal Secretary, Civil Advisory Division
SUBJECT: Corrected Copies of San Diego Resolutions R-314981 (2023-746 COR. COPY; Item #608-A) and R-314982 (R-2023-745 COR. COPY; Item #608-B) from the City Council docket of June 23, 2023

This Office has corrected the second recital on page 3 of the above-described resolutions by replacing "Charter section 41.2" with "Charter section 40.2".

No other substantive edits were made to the resolutions.

JFD:cm

Attachments:

City Attorney Resolution R-2023-745 COR. COPY (San Diego Resolutions R-314982 (Jun. 28, 2023))

City Attorney Resolution R-2023-746 COR. COPY (San Diego Resolutions R-314981 (Jun. 28, 2023))


Doc. No. 3519555

BE IT RESOLVED that, under the authority of the MMBA and Council Policy 300-06, the Council of the City of San Diego approves and ratifies the Agreement between the City and the SDMEA, on file in the Office of the City Clerk as Document Number RR-314982, related to a proposed Charter amendment setting forth the rules and procedures for retention and use of independent legal counsel by the Office of the City Auditor and Audit Committee.

BE IT FURTHER RESOLVED that the Council will consider, in a separate Council action, placement of the proposed Charter amendment before the qualified voters of the City for their approval or rejection.

APPROVED: MARA W. ELLIOTT, City Attorney

By


Joan F. Dawson
Senior Deputy City Attorney

JFD:cm

May 16, 2023

Or.Dept: Human Resources

Doc. No. 3307248

I certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of JUN 13 2023.

DIANA J.S. FUENTES
City Clerk

By


Deputy City Clerk

Approved: _____
(date)

TODD GLORIA, Mayor

Vetoed: _____
(date)

TODD GLORIA, Mayor

(Note: This resolution was returned unsigned by the Mayor's Office to the Office of the City Clerk on June 28, 2023. Pursuant to the San Diego Charter Section 295(a)(2), the Mayor has 10 business days from the date the resolution was transmitted to sign or veto the resolution, said deadline being close of business on June 28, 2023. Therefore the date of expiration of that time shall be deemed the date of its final passage.)

Passed by the Council of The City of San Diego on JUN 13 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 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 JUN 28 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 J.S. FUENTES

City Clerk of The City of San Diego, California.

By Cennie Patterson, Deputy

Office of the City Clerk, San Diego, California

Resolution Number R- 314982