

ORDINANCE NUMBER O- 21842 (NEW SERIES)

DATE OF FINAL PASSAGE JUL 29 2024

AN ORDINANCE SUBMITTING TO THE QUALIFIED VOTERS OF THE CITY OF SAN DIEGO, AT THE MUNICIPAL SPECIAL ELECTION, CONSOLIDATED WITH THE CALIFORNIA STATE GENERAL ELECTION TO BE HELD ON NOVEMBER 5, 2024, ONE MEASURE AMENDING THE SAN DIEGO CHARTER BY AMENDING ARTICLE V, SECTION 41 AND ADDING NEW SECTION 41.3, RELATING TO THE ETHICS COMMISSION.

WHEREAS, under article XI, section 3(b) of the California Constitution, California Elections Code (Elections Code) section 9255, and San Diego 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 Special Election; and

WHEREAS, by San Diego Ordinance O-21824, introduced and adopted on June 10, 2024, the Council called a Municipal Special Election to be consolidated with the California State General Election to be held November 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, the Council now desires to submit to the voters at the Municipal Special Election one measure amending the Charter by amending Article V, section 41 and adding a new section 41.3, relating to the Ethics Commission (Commission); and

WHEREAS, the Council adopted San Diego Ordinance O-18945 (June 5, 2001) establishing the Commission for the express purpose of restoring the public's confidence in the City and its officials, and to ensure that City officials fulfill their duties faithfully and honestly, and in the public's interest, rather than for reasons of private gain or special interests; and

WHEREAS, the Commission's jurisdiction to investigate and take administrative enforcement actions encompasses both current and former elected City officials; candidates for City office; certain City employees, consultants, and members of City boards and commissions who are required to file conflict of interest disclosure forms; and all registered lobbyists and those persons required to register as lobbyists with the City; and

WHEREAS, despite the Council's initial intent, the Commission is not truly independent from the entities it is charged with overseeing because the Council can eliminate the Ethics Commission by changing the San Diego Municipal Code (Municipal Code); confirms the appointment of the Commission's Executive Director; approves and controls the Commission's complaint and investigation procedures; and controls the Commission's budget; and

WHEREAS, the Mayor selects all seven members of the Commission from a pool of nominees submitted by the members of the City Council and the City Attorney, who are then subject to confirmation by a City Council majority; and

WHEREAS, the appointment process should be amended so that elected officials do not select and appoint members of the Commission; and

WHEREAS, the City will develop a new process for selecting and appointing members of the Commission and codify that process in the Municipal Code at a later date; and

WHEREAS, the Council now desires to amend the Charter to remove these impediments and create an independent and fully resourced Commission and staff, as envisioned in 2001; and

WHEREAS, the Council desires to amend Charter section 41 by removing the Commission from that section and creating a new Charter section 41.3 concerning the Commission's existence, responsibilities, composition, qualifications, and term limits; and

WHEREAS, proposed Charter section 41.3 would also fortify the Commission's independence and autonomy as the Council could add more duties or powers to the Commission, but could not eliminate or diminish the Commission's authority; and

WHEREAS, proposed Charter section 41.3 would allow the Commission to select and appoint the Executive Director without Council confirmation, and to approve and control its complaint and investigative procedures; and

WHEREAS, proposed Charter section 41.3 would authorize the Executive Director to be the appointing authority for all personnel authorized through the City's annual budget and appropriation process; and

WHEREAS, proposed Charter section 41.3 would also empower the Executive Director, who shall act in accordance with all policies and regulations adopted by the Commission and with applicable law, to initiate investigations and complaints, to subpoena witnesses and records and compel their attendance, testimony, or production, and to divulge evidence of possible unlawful conduct to other government or law enforcement agencies at any time; and

WHEREAS, proposed Charter section 41.3 would allow the Commission to continue to retain legal counsel independent of the City Attorney and to hire additional counsel to handle cases within its jurisdiction; and

WHEREAS, proposed Charter section 41.3 would require the Council to allocate sufficient funds for the Commission to carry out its responsibilities; and

WHEREAS, the Charter amendments were proposed by City Attorney Mara W. Elliott as part of the Council Policy 000-21 process, were heard by the Council's Rules Committee on April 18, 2024, and June 5, 2024, and are presented in this Ordinance for placement on the November 5, 2024 Municipal Special Election ballot; and

WHEREAS, the Council's proposal, on its own motion, of a Charter amendment is governed by article XI, section 3(b) of the California Constitution, Elections Code section 9255, and California Government Code section 34458, and is not subject to veto by the Mayor; 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, section 41 and adding section 41.3, relating to the Ethics Commission, is hereby submitted to the qualified voters at the Municipal Special Election to be held on November 5, 2024, and consolidated with the California State General Election to be held on the same date, with the measure to read as follows:

MEASURE

ARTICLE V

EXECUTIVE AND ADMINISTRATIVE SERVICE

SECTION 41: COMMISSIONS

The Mayor shall appoint, subject to the confirmation of the Council, members of all commissions, established pursuant to this section, except the members of the Commission on Police Practices and the Ethics Commission, whose appointment and service are governed by Sections 41.2 and 41.3 of this Charter. Whenever the Mayor does not appoint a member within forty-five (45) days after a vacancy occurs, the Council shall make such appointment. The commissioners shall be limited to two (2) full consecutive terms, with one (1) term intervening before they become eligible for

reappointment; and this provision shall apply to anyone who has served two (2) full consecutive terms by January 1972. The terms of commissioners may extend beyond the elective term of the appointing Mayor. The Mayor shall fill, subject to the confirmation of the Council, any vacancy and such appointment shall be for the unexpired term of the office being filled. The City Council may remove a member of the Civil Service Commission for cause by vote of two-thirds (2/3) of the members of the Council. However, before the Council may remove a member of the Civil Service Commission, written charges shall be made against the commission member and an opportunity afforded for public hearing before the Council upon such charges. The City Council may remove members of all other commissions established pursuant to this section for cause by vote of a majority of the members of the Council.

- (a) Funds Commission. This Commission shall have supervision and control over all trust, perpetuity, and investment funds of the City and such pension funds as shall be placed in its custody, and shall administer them subject to the laws of the State and ordinances of the Council. The membership of this Commission shall be appointed by the Mayor and confirmed by the Council and shall be one bank official, two unclassified citizens, and the City Attorney and City Treasurer, ex officio. They shall serve without compensation for terms of four (4) years and until their successors are elected and qualified. Notwithstanding any other provision of this section, appointments shall be made so that not more than one (1) term of office shall expire in any year.
- (b) Civil Service Commission. There shall be a Civil Service Commission consisting of five members who shall be electors of the City. Not more than three members of the Commission shall be of the same sex. The Mayor, with the approval of the

Council, shall appoint the members of the Commission. The members of the Commission shall be appointed to serve for five years and until their successors have been appointed and qualified. Notwithstanding any other provision of this section, appointments shall be made so that not more than one (1) term of office shall expire in any year. The Mayor, with the approval of the Council, shall fill any vacancy.

Members of the Civil Service Commission shall not hold any other office in City Government.

- (c) City Planning Commission. The City Planning Commission shall be organized as provided by the laws of the State and have such powers and perform such duties as are prescribed by such laws. The duties of the Commission shall also include advising upon public buildings, bridges, retaining walls, approaches, park and harbor structures, the improvement of Pueblo lands and such other improvements as the Council may by ordinance determine. The Commission shall consist of seven (7) members appointed by the Mayor, subject to the confirmation of the Council. The City Engineer, and the City Attorney, or their designated representatives, shall be members ex officio, but neither of said officers shall have a vote. The members of this Commission shall serve without compensation for terms of four years and until their successors are elected and appointed and qualified.

Notwithstanding any other provisions of this section, appointments to this Commission shall be made so that not more than three (3) members are appointed in any one year. To accomplish this, initial appointments to this Commission, after the effective date of this amendment, shall be made so as to provide that the

terms of office of two (2) members shall be for four (4) years; two (2) members for three (3) years; two (2) members for two years; and one (1) member for one (1) year.

- (d) ~~Ethics Commission. For so long as an Ethics Commission remains established by ordinance of the Council, the Executive Director of the Commission shall be appointed by the Commission, subject to confirmation by the Council, and shall thereafter serve at the direction and pleasure of the Commission. The Commission may, in accordance with complaint and investigation procedures approved by ordinance of the Council, subpoena witnesses, compel their attendance and testimony, administer oaths and affirmations, take evidence and require by subpoena the production of any books, papers, records, or other items material to the performance of the Commission's duties or exercise of its powers. The Ethics Commission shall be authorized to retain its own legal counsel, independent of the City Attorney, for legal support and guidance in carrying out its responsibilities and duties.~~

SECTION 41.3: ETHICS COMMISSION

The Ethics Commission is an independent body that monitors, administers, and enforces the City's governmental ethics laws, proposes new governmental ethics law reforms, conducts investigations, refers violations to appropriate government and law enforcement agencies, audits disclosure statements, and advises and educates City officials and the public about governmental ethics laws. The City Council may, by ordinance, mandate additional duties and discretionary powers consistent with this section and applicable state and federal law.

This Charter provision and the implementing ordinance shall control the appointment process to the Ethics Commission. The Commission shall consist of seven members who are appointed and removed by procedures approved by ordinance of the Council. The Commission must possess the independence, experience, and technical expertise necessary to carry out the duties of the Commission. Members of the Commission shall serve for terms of four years and until their successors have been appointed and qualified. Members of the Commission are limited to two full consecutive terms, with at least one term intervening before they become eligible for reappointment.

The Commission shall appoint an Executive Director who shall serve at the direction and pleasure of the Commission. The Executive Director is the appointing authority for all City personnel authorized in the department through the normal annual budget and appropriation process of the City. The Executive Director, who shall act in accordance with policies and regulations adopted by the Ethics Commission and with applicable law, is authorized to initiate investigations and complaints, subpoena witnesses, compel their attendance and testimony, administer oaths and affirmations, take evidence, and require by subpoena the production of any books, papers, records, or other items material to the performance of the Commission's duties or exercise of its powers.

The Commission shall be authorized to retain its own legal counsel, independent of the City Attorney, for legal support and guidance in carrying out its responsibilities and duties, and to retain additional legal counsel to handle cases within its jurisdiction. City Council shall allocate funds sufficient for the Commission to carry out the responsibilities described herein. The Executive Director may refer a matter and divulge evidence of

possible unlawful conduct discovered during an investigation to another governmental or law enforcement agency for appropriate action at any time.

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 __. ADDING CHARTER SECTION 41.3 AND AMENDING SECTION 41 TO STRENGTHEN THE INDEPENDENCE OF THE ETHICS COMMISSION.	YES	
Shall Charter section 41.3 be added so the Ethics Commission, which regulates City officials, candidates for City office, lobbyists, and consultants, can be eliminated only by voters, appoints its own Executive Director without Council confirmation, independently initiates its own investigations and law enforcement referrals, has defined qualifications and term limits, and is provided sufficient resources?	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.

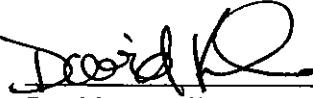
Section 7. In compliance with Municipal Code section 27.0402, this measure will be available for public examination for no fewer than ten calendar days prior to being submitted for

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. Under Charter sections 295(b) and 295(d), 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 

David J. Karlin
Senior Deputy City Attorney

DJK:cm
June 14, 2024
July 18, 2024 COR. COPY
July 26, 2024 COR. COPY 2
Or. Dept: City Attorney's Office
Doc. No. 3727473_2

Passed by the Council of The City of San Diego on JUL 29 2024, 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"/>
Henry L. Foster III	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marni von Wilpert	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Kent Lee	<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 type="checkbox"/>	<input type="checkbox"/>	<input checked="" 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 JUL 29 2024.

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 Krystel Medina, Deputy

I HEREBY CERTIFY that the foregoing ordinance was passed on the day of its introduction, to wit, on JUL 29 2024, 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 Krystel Medina, Deputy

<p>Office of the City Clerk, San Diego, California</p> <p style="font-size: 1.2em; font-weight: bold;">21842</p> <p>Ordinance Number O-_____</p>
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