

ORDINANCE NUMBER O- **21958** (NEW SERIES)

DATE OF FINAL PASSAGE **MAY 22 2025**

AN ORDINANCE AMENDING CHAPTER 2, ARTICLE 6,
DIVISION 17 OF THE SAN DIEGO MUNICIPAL CODE BY
AMENDING SECTIONS 26.1701 AND 26.1710, AND ADDING
SECTION 26.1712, RELATING TO THE CITY AUDITOR,
AUDIT COMMITTEE, AND INDEPENDENT LEGAL
COUNSEL.

RECITALS

The Council of the City of San Diego (Council) adopts this Ordinance based on the following:

A. On March 5, 2024, City of San Diego (City) voters approved Measure A, which amended San Diego City Charter (Charter) section 40 and added Charter section 40.2, authorizing independent legal counsel for the Office of the City Auditor and Audit Committee under specified conditions.

B. Charter section 40.2 states, in part: “The City Council may, by ordinance, establish additional rules and procedures to implement this section.” The Council wishes to establish procedures, by ordinance, consistent with Charter section 40.2, to ensure that the retention process for legal counsel is clear to stakeholders and the public.

C. The Office of the City Attorney prepared this Ordinance based on the information provided by City staff, with the understanding that this information is complete and accurate.

ACTION ITEMS

Be it ordained by the Council of the City of San Diego:

Section 1. Chapter 2, Article 6, Division 17 of the San Diego Municipal Code is amended by amending sections 26.1701 and 26.1710, and adding section 26.1712, to read as follows:

§26.1701 Audit Committee Duties

- (a) [No change in text.]
- (1) through (7) [No change in text.]
- (8) consult with the Mayor or his or her designee concerning the appointment of a City Auditor. The Audit Committee may create a subcommittee of the Audit Committee chair and one public member to consult with the Mayor.
- (b) The Audit Committee shall also have the following duties and responsibilities:
 - (1) acting through the Audit Committee chair, place any item within the scope of the Audit Committee's authority on the Audit Committee's agenda within 30 days of a request by any Audit Committee member, City Councilmember, or the City Auditor, or at the next Audit Committee meeting if the next meeting falls outside of the 30-day period; and
 - (2) review any issues that come to the Audit Committee's attention, which relate to the accuracy and reliability of the City's financial practices and representations and could impact the ability of the public to reasonably rely upon the financial practices and representations.

§26.1710 Oversight and Direction of the City Auditor

The Audit Committee shall oversee and direct the work of the City Auditor as follows:

- (a) through (f) [No change in text.]

- (g) provide a means for the City Auditor to discuss confidential audit-related matters with the Audit Committee, provided the means complies with the Ralph M. Brown Act;
- (h) allow the City Auditor to bring any matter before the Audit Committee;
- (i) designate one of its public members to provide support, as needed, to the City Auditor in the contracting process to procure the services of the independent legal counsel, authorized under San Diego Charter section 40.2 and San Diego Municipal Code section 26.1712; and
- (j) notwithstanding the Annual Audit Plan, permit the City Auditor to initiate any audit the City Auditor deems necessary and appropriate, so long as notice is provided to the Audit Committee, describing the impact, if any, of the new audit on the ability of the City Auditor to complete the audits approved in the Annual Audit Plan.

§26.1712 Retention and Use of Independent Legal Counsel

- (a) 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 in San Diego Charter section 40.2 and San Diego Municipal Code section 26.1712.
- (b) The Office of the City Auditor must retain independent legal counsel by contract approved by the City Council in a manner consistent with the procurement requirements in the San Diego Charter, the San Diego Municipal Code, and other applicable laws. The Office of the City Auditor

must also request City Council approval of any amendments to a contract for independent legal counsel under applicable laws.

- (c) 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. The contract cost of the independent legal counsel must not exceed the appropriated funding.
- (d) Before the Office of the City Auditor may use the independent legal counsel, who is under contract, on a specific audit, investigation, or related activity, the City Auditor must request and receive approval for the specific use from the Audit Committee.
 - (1) The City Auditor must present facts to the Audit Committee supporting the proposed use of the independent legal counsel on an audit or investigation. The Audit Committee must consider the facts presented and determine, by a majority vote, whether the proposed use of the independent legal counsel on the matter 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.
 - (2) To satisfy the requirement in section 26.1712(d)(1), the City Auditor is not required to publicly disclose the specific legal advice they seek, but must generally describe the nature of the

matter being audited or investigated. This requirement can be satisfied as part of the Audit Committee's regular review of the City Auditor's Annual Audit Plan or other work plan, or as a specific request by the City Auditor.

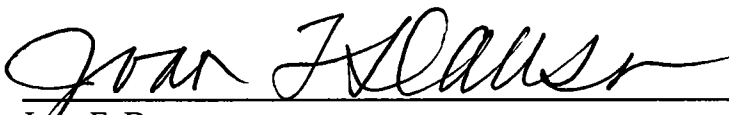
- (3) The City Auditor may request that the Audit Committee authorize the use of the independent legal counsel to provide legal advice on a fraud hotline investigation without disclosing specific factual allegations. Further, in making the request to the Audit Committee, the City Auditor must comply with applicable laws related to the confidentiality of whistleblower complaints.
- (e) Upon the City Council's approval of a contract and funding for the independent legal counsel, the City Auditor is responsible for review and payment of the independent legal counsel's invoices from the City funds appropriated by the City Council.
- (f) The Audit Committee may also use the independent legal counsel, who is under contract, for legal support and advice related to the Audit Committee's oversight responsibilities. The Audit Committee must comply with the requirements in section 26.1712 before using the independent legal counsel, including determining that the proposed use of the independent legal counsel 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.

- (g) If the Audit Committee's use of the independent legal counsel, who is under contract with the Office of the City Auditor, presents a conflict of interest as defined by applicable laws or the Rules of Professional Conduct of the State Bar of California, the Audit Committee may request that the City Council authorize separate independent legal counsel for the Audit Committee, on a specified matter. This separate independent legal counsel must be retained and used under the process described in section 26.1712.

Section 2. The Council dispenses with a full reading of this Ordinance before its passage because a written copy of this Ordinance was made available to the Council and the public before the date of its passage.

Section 3. This Ordinance will take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: HEATHER FERBERT, City Attorney

By 
Joan F. Dawson
Senior Deputy City Attorney

JFD:cm
April 7, 2025
Or. Dept: City Auditor
Doc. No. 4015312

I certify that the Council of the City of San Diego adopted this Ordinance at a meeting held on
MAY 13 2025.

DIANA J.S. FUENTES
City Clerk

By Kristell Medina
Deputy City Clerk

Approved: 5/22/25
(date)

Todd Gloria
TODD GLORIA, Mayor

Vetoed: _____
(date)

TODD GLORIA, Mayor

STRIKEOUT ORDINANCE

OLD LANGUAGE: ~~Struck Out~~

NEW LANGUAGE: Double Underline

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of a City Auditor. The Audit Committee may create a subcommittee
~~comprised~~ of the Audit Committee chair and one public member to
consult with the Mayor.

(b) The Audit Committee shall also have the following duties and
responsibilities:

(1) acting through the Audit Committee chair, place any item within
the scope of the Audit Committee's authority on the Audit
Committee's agenda ~~at within 30 days of the a~~ request of by any
Audit Committee member, ~~or~~ City Councilmember, or the City
Auditor, or at the next Audit Committee meeting if the next
meeting falls outside of the 30-day period; and

- (2) review any issues that come to the Audit Committee's attention, which ~~pertain~~ relate 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~~ the financial practices and representations.

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- ~~(+)(i)~~ notwithstanding the Annual Audit Plan, permit the City Auditor to initiate any audit the City Auditor deems necessary and appropriate, so long as notice is provided to the Audit Committee, ~~with such notice~~ describing the impact, if any, of the new audit on the ability of the City Auditor to complete the audits approved in the Annual Audit Plan.

§26.1712 **Retention and Use of Independent Legal Counsel**

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- (c) 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. The contract cost of the independent legal counsel must not exceed the appropriated funding.
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JFD:cm
April 7, 2025
Or. Dept: City Auditor
Doc. No. 4015315

MAY 13 2025

Passed by the Council of The City of San Diego on _____, by the following vote:

| Councilmembers | Yeas | Nays | Not Present | Recused |
|---------------------|-------------------------------------|--------------------------|-------------------------------------|--------------------------|
| Joe LaCava | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" 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 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 **MAY 22 2025**

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 Connie Patterson Deputy

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on

APR 22 2025

, and on **MAY 22 2025**

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- **21958**