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September 1, 2010

REPORT TO THE COMMITTEE ON RULES, OPEN GOVERNMENT AND INTERGOVERNMENTAL RELATIONS

PROPOSED AMENDMENT TO SAN DIEGO MUNICIPAL CODE SECTION 26.06 TO
ENSURE THE SMALL BUSINESS ADVISORY BOARD DOES NOT LOSE A MAJORITY
OF ITS MEMBERS IN ANY YEAR DUE TO EXPIRED TERMS.

INTRODUCTION

The Small Business Advisory Board (Board) serves in an advisory capacity to the Mayor and City Council on matters relating to small businesses. SDMC § 26.06(a). The Board consists of eleven members who serve two-year terms. The Board is structured so that the terms of not more than five members expire in any year. This is contrary to the City's usual provision that avoids losing a majority of board members at any one time and appears to be an oversight that occurred when the number of members was increased from nine to eleven. The proposed amendment to San Diego Municipal Code section 26.06 resolves this concern, as discussed below.

DISCUSSION

On July 19, 1982, the City Council adopted Ordinance No. O-15776 (Original Ordinance), which added San Diego Municipal Code section 26.06 to the San Diego Municipal Code creating the Board. The Original Ordinance specified that the Board consist of seven members who serve without compensation for two-year terms and until a successor is duly appointed and confirmed. The Original Ordinance also stated that the members of the Board shall be appointed in such a manner so that the terms of not more than four members expire in any year. The Original Ordinance was crafted to essentially ensure that the Board would not lose a majority of its members in any year due to expired terms.

On December 5, 1983, the City Council adopted Ordinance No. O-16088, which increased the total number of members of the Board to nine members. Ordinance No. O-16088 also increased the number of members of the Board whose term may expire in any year by one member so that the terms of not more than five members could expire in any year. This revision was consistent with the Original Ordinance and guaranteed that the Board would not lose a majority of its members in any year due to expired terms.

On January 28, 2002, the City Council adopted Ordinance No. O-10928, which increased the number of members of the Board from nine to eleven members. Ordinance No. O-10928, however, did not increase the number of members whose term may expire in any year by one member to correspond to the increase in the total number of members on the Board. San Diego Municipal Code section 26.06 currently provides that the terms of not more than five members shall expire in any year. SDMC § 26.06(b). Consequently, it is possible that the Board could lose a majority of its members in any year due to expired terms.

The proposed amendment to San Diego Municipal Code section 26.06 requires that the members be appointed in such manner so that the terms of not more than six members expire in any year. This revision is consistent with the original intent of the City Council to have the terms of not more than a majority of members of the Board expire in any year.¹

CONCLUSION

The Small Business Advisory Board may lose a majority of its members under the provisions of San Diego Municipal Code section 26.06. This appears to be contrary to the City's usual practice and may have been an oversight that occurred when the number of Board members was increased from nine to eleven. The proposed amendment to San Diego Municipal Code section 26.06 will increase the number of members whose term may expire in any year from five to six members. This amendment will ensure that the Board does not lose a majority of members of the Board in any year due to expired terms.

Respectfully submitted,

JAN I. GOLDSMITH, City Attorney

By Rachel C. Lipsky
Rachel C. Lipsky
Deputy City Attorney

RCL:sc
RC-2011-32

¹ Other City boards and commissions with eleven members serving two-year terms which require that the terms of not more than six members expire in any year include the Park and Recreation Board (SDMC § 26.30(b)(3)), the Senior Affairs Advisory Board (SDMC § 26.1502), and the Commission on the Status of Women (SDMC § 26.13(b), currently inactive).

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

AN ORDINANCE AMENDING CHAPTER 2,
ARTICLE 6, DIVISION 00 OF THE SAN DIEGO
MUNICIPAL CODE BY AMENDING SECTION
26.06 RELATING TO THE SMALL BUSINESS
ADVISORY BOARD.

WHEREAS, on July 19, 1982, Ordinance No. O-15776 (Original Ordinance) was adopted by the City Council, adding Section 26.06 to the San Diego Municipal Code creating the Small Business Advisory Board (Board); and

WHEREAS, the Original Ordinance specified that the Board consist of seven members who shall serve without compensation for two-year terms and until a successor is duly appointed and confirmed; and

WHEREAS, the Original Ordinance specified that the members of the Board shall be appointed in such a manner so that the terms of not more than four members shall expire in any one year; and

WHEREAS, on December 5, 1983, Ordinance No. O-16088 was adopted by the Council, which increased the total number of members to nine members, and provided that the members shall be appointed in such manner so that the terms of not more than five members shall expire in any one year; and

WHEREAS, on January 28, 2002, Ordinance No. O-10928 was adopted by the Council, which increased the total number of members to eleven members, and provided that the members shall be appointed in such manner so that the terms of not more than five members shall expire in any one year; and

WHEREAS, Ordinance No. O-10928 did not increase the number of members whose term may expire in any one year by one member to correspond to the increase in the total members on the Board; and

WHEREAS, the proposed revisions to San Diego Municipal Code Section 26.06 provide that the members shall be appointed in such manner so that the terms of not more than six members shall expire in any year; and

WHEREAS, this revision is consistent with the intent of Council to have the terms of not more than a majority of members of the Board expire in any one year; NOW THEREFORE,

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

Section 1. That Chapter 2, Article 6, Division 00 of the San Diego Municipal Code is amended by amending section 26.06, to read as follows:

§ 26.06 Small Business Advisory Board

- (a) [No change in text.]
- (b) Small Business Advisory Board Established. There is hereby established a Small Business Advisory Board consisting of eleven members who shall serve without compensation. The Board shall include one representative from each of the following groups:
 - (1) Small Business Administration District Director or designated representative;
 - (2) President of the Business Improvement District Council or designated representative;

The nine remaining appointees considered for selection may include, but not limited to, representatives of the following areas of interest and expertise:

- (A) Small business owner;
- (B) Accounting, financial-lending, legal or economic backgrounds;
- (C) Advocates of small business interests with governmental agencies;

The members shall serve two year terms and each member shall serve until a successor is duly appointed and confirmed. The members shall be appointed by the Mayor and confirmed by the Council. The members shall be appointed in such manner so that the terms of not more than six members shall expire in any year. The expiration date of all terms shall be July 1. The Board shall select from among its members a Chairperson. The Board shall meet not less than once every three months and present a report to the Mayor and Council on an annual basis. The Mayor shall appoint one member of the Council to serve as liaison to the Board and one other member of the Council as an alternate. When filling a future Board vacancy, the City Council shall seek recommendations from the sitting members of the Board regarding the background needed by candidates for the appointment in order to provide a breadth of representation reflective of the small business community in the City.

The Board shall adopt rules consistent with laws for the government of its business and procedures.

(c) [No change in text.]

Section 2. That a full reading of this ordinance is dispensed with prior to its passage, a written or printed copy having been available to the City Council and the public prior to the day of its passage.

Section 3. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: JAN I. GOLDSMITH, City Attorney

By _____
Rachel C. Lipsky
Deputy City Attorney

RL:sc
08/26/10
Or.Dept:Mayor

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of _____.

ELIZABETH S. MALAND
City Clerk

By _____
Deputy City Clerk

Approved: _____
(date)

JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor

STRIKEOUT ORDINANCE

OLD LANGUAGE: ~~Struck Out~~

NEW LANGUAGE: Double Underline

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

AN ORDINANCE AMENDING CHAPTER 2,
ARTICLE 6, DIVISION 00 OF THE SAN DIEGO
MUNICIPAL CODE BY AMENDING SECTION
26.06 RELATING TO THE SMALL BUSINESS
ADVISORY BOARD.

§ 26.06 Small Business Advisory Board

- (a) [No change in text.]
- (b) Small Business Advisory Board Established. There is hereby established a Small Business Advisory Board consisting of eleven (~~11~~) members who shall serve without compensation. The Board shall include one (~~1~~) representative from each of the following groups:

- (1) Small Business Administration District Director or designated representative;
- (2) President of the Business Improvement District Council or designated representative;

The nine remaining appointees considered for selection may include, but not limited to, representatives of the following areas of interest and expertise:

- (A) Small business owner;
- (B) Accounting, financial-lending, legal or economic backgrounds;

(C) Advocates of small business interests with governmental agencies;

The members shall serve two (2) year terms and each member shall serve until a successor is duly appointed and confirmed. The members shall be appointed by the Mayor and confirmed by the Council. The members shall be appointed in such manner so that the terms of not more than six ~~five~~ (5) members shall expire in any year. The expiration date of all terms shall be July 1. The Board shall select from among its members a Chairperson. The Board shall meet not less than once every three (3) months and present a report to the Mayor and Council on an annual basis. The Mayor shall appoint one member of the Council to serve as liaison to the Board and one other member of the Council as an alternate. When filling a future Board vacancy, the City Council shall seek recommendations from the sitting members of the Board regarding the background needed by candidates for the appointment in order to provide a breadth of representation reflective of the small business community in the City. The Board shall adopt rules consistent with laws for the government of its business and procedures.

(c) [No change in text.]

RL:sc
08/26/10
Or.Dept:Mayor

CITY ATTORNEY DIGEST

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

EFFECTIVE DATE _____

AN ORDINANCE AMENDING CHAPTER 2,
ARTICLE 6, DIVISION 00 OF THE SAN DIEGO
MUNICIPAL CODE BY AMENDING SECTION
26.06 RELATING TO THE SMALL BUSINESS
ADVISORY BOARD.

This ordinance amends San Diego Municipal Code section 26.06 to increase the number of members of the Small Business Advisory Board whose term may expire in any one year from five members to six members so that not more than a majority of the terms of the eleven total members expire in any one year.

This ordinance contains a notice that a full reading of this ordinance is dispensed with prior to its passage, a written or printed copy having been available to the City Council and the public prior to the day of its passage.

This ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

A complete copy of this ordinance is available for inspection in the Office of the City Clerk of the City of San Diego, 2nd Floor, City Administration Building, 202 C Street, San Diego, California 92101.

RL:sc
08/26/10
Or.Dept:Mayor